



Team Leader Legal Liability Concepts

NATIONAL TACTICAL OFFICERS ASSOCIATION

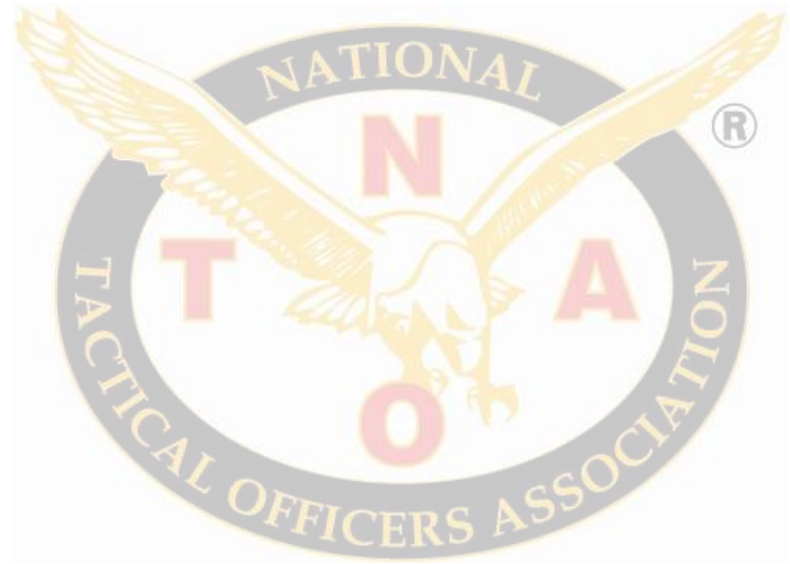
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Performance Objectives

- Understanding of civil liability and awareness on how to avoid civil litigation.
- Be able to define qualified immunity.
- Understanding of the seven general theories of liability.
- Understanding use of force case law.
- Understanding the importance of training.





Section One

UNDERSTANDING LIABILITY



SWAT Definition

A designated law enforcement team, whose members are recruited, selected, trained, equipped and assigned to resolve critical incidents involving a threat to public safety, which would otherwise exceed the capabilities of traditional law enforcement first responders and/or investigative units.



Focus of Effort

- The primary characteristic of SWAT teams that distinguishes them from other teams is the focus of effort. SWAT teams are focused on tactical resolutions, as opposed to other functions such as investigation.



Law & Liability in SWAT

Use of Force

- SWAT operators are commonly tasked with handling tense, uncertain and rapidly evolving situations. Keeping that in mind, it is important to discuss the following areas of law concerning SWAT operations.
 - Hostage Situations
 - High-Risk Warrant Service
 - Barricaded Suspects



Why Train for Hostage Rescue?

- To not train for Hostage Rescue we show a deliberate indifference to what we already know. . .
- **That hostage situations do occur!!!**
- Must provide realistic ongoing training to “obvious” recurring job functions.



Why Train for Hostage Rescue?

- Canton v. Harris
 - **Deliberate Indifference**
 - “Should have Known”
 - “Could have Known”
 - “Would have Known”



Liability

- Operators should be trained in hostage rescue and other SWAT related tactics, and be qualified should the need arise.
- Operators should meet a minimum selection criteria of their department
- Operators should be proficient in the use of all weapon systems far and above that of the normal patrol officer.



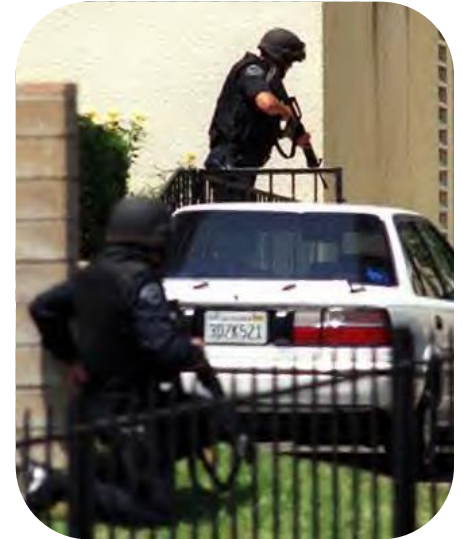
Liability

- Was the training program inadequate? If so, does the inadequate training represent “policy?”
- Deficiency must be related to the injury incurred.
- A pattern or history of problems/incidents that can be related to improper training or management is key to liability. Don't allow these patterns to exist. Be a leader!



Liability in Training

- Foreseeable Problems:
 - Lack of Training
 - Unqualified Operators
 - Unqualified Team Leaders
 - Unqualified Tactical Commanders
- *Must be addressed, otherwise innocent lives and/or team members are placed at risk of injury or death!*



Litigation Avoidance

- Policy and Procedure – All agencies should have clearly defined policies and procedures for their tactical teams.
- Effective and appropriate use of force depends in large part on sound and tested policy.
- There is no grey area, just right or wrong. Lead!



Litigation Avoidance

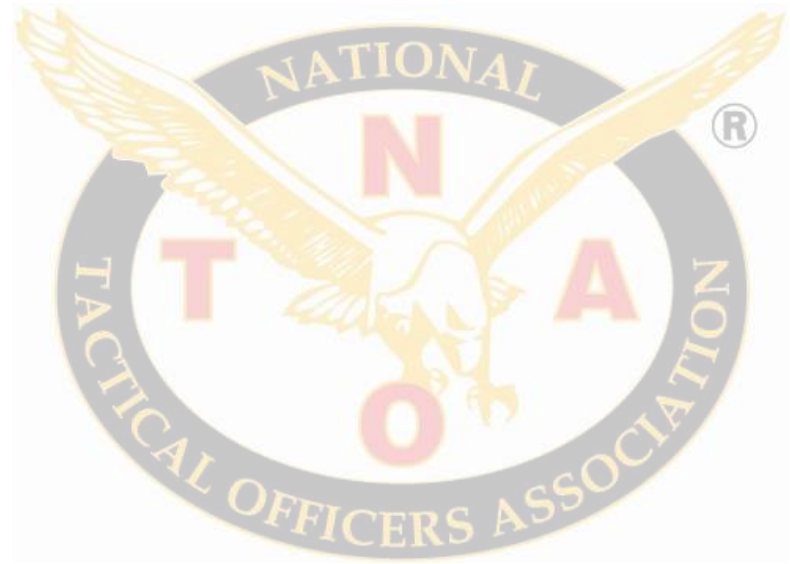
- Proper training (documented) reduces our liability!
- All team members should be required to think and problem solve. As a Team Leader, encourage your operators to think, but remain disciplined.
- Promote overall situational awareness and ensure operators understand the big picture in order to reduce liability and eliminate safety concerns.
- It is **your** job as the Team Leader to provide the overall big picture.



Litigation Avoidance

- **TRAINING!**
- Documentation
- Education
- Policy and Procedure
- Counsel
- Make your First Statement Count
- See Problems before they Happen
- Expert Assistance





Section Two

QUALIFIED IMMUNITY



Qualified Immunity

- Defense that protects “government officials” from civil liability.
- Requires the court to first decide a two-part question:
 1. Was the law governing the official's conduct clearly established?
 2. Under that law, could a reasonable officer have believed the conduct was lawful?



Qualified Immunity

- This two-part question is preceded by first answering whether or not a constitutional right was violated.
- Even where a constitutional violation has occurred, an officer will be immune from suit if he/she "could have reasonably believed that his/her particular conduct was lawful." *Romero v. Kitsap County*, 931 F.2d 624, 627 (9th Cir. 1991)



Qualified Immunity

- Officers may only use that force which is objectively reasonable under the circumstances (Graham v. Connor)
- One factor that may determine reasonableness will embody an allowance for the fact that officers are often forced to make split second decisions in circumstances that are tense, uncertain, and rapidly evolving.



Qualified Immunity

- Thus, in those situations where a police officer uses deadly force, he is shielded from liability if his conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.



Training/Litigation Protection

- **Canton v. Harris (489 U.S. 378)**
 - Failure to train can constitute a policy that gives rise to liability under 42 U.S. Code § 1983, if it rises to the level of deliberate indifference.
 - It is when the need for more or different training is so obvious and the inadequacy so likely to result in violation of constitutional rights that policy makers can reasonably be said to have been “deliberately indifferent” to the need.



Training/Litigation Protection

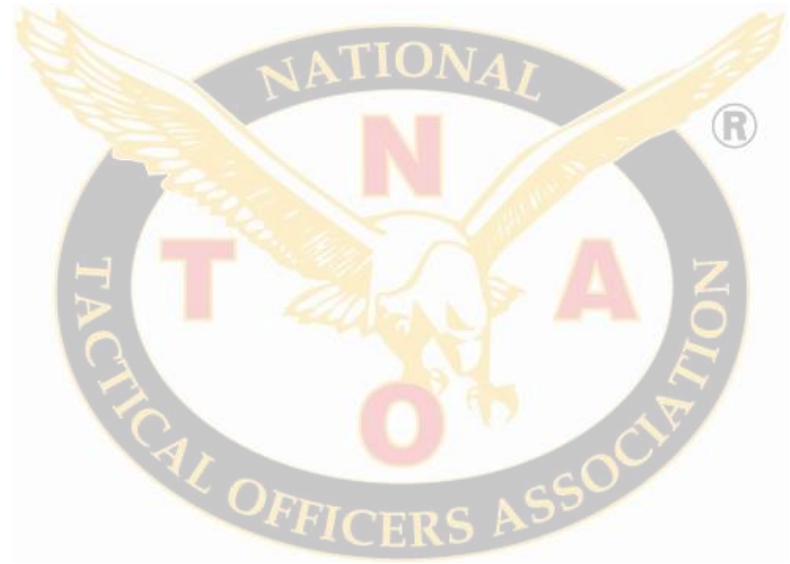
- **Canton v. Harris**

Citing

Pembaur v. Cincinnati (475 U.S. 469)

- “Did the policymakers consciously and deliberately choose a course (policy or custom) of inadequate training for a particular category of its police officers?”
- City of Evans- SIMS protection example.





Section Three

SEVEN GENERAL THEORIES OF LIABILITY



Most Common Theories of Liability

- Deliberate Indifference.
- From “Deliberate Indifference” arise 7 general theories of liability.



Negligent Hiring

- Constitutional violation would not have occurred had the Tactical Commander properly performed a thorough screening of the errant officer prior to placing the officer on the team.
- The Court must test the link between the policy maker's inadequate decision and particular injury alleged. "Painfully Obvious" information in the background of the employee.



Negligent Assignment

- Assigning an operator to a job without ascertaining his/her competence.
- Retaining an operator on the team who is “known to be incapable” of performing the job.
 - Director acquiesced in his administrative capability in assigning him duties for which he was clearly unfit.
 - Team Leader’s preventive or “training” measures to control the known violent tendencies of the officer.



Negligent Entrustment

- Team Leader or Trainer's failure to properly supervise or control an operator's custody, use, or supervision of equipment or facilities entrusted to him/her.
- Plaintiff must prove TL or Trainer knew or had reason to know operator was incompetent, inexperienced, or reckless (training records).



Failure to Direct

- Failing to direct refers to a failure to inform operators of the special requirements and/or limits of the job to be performed. ***Ops Order***
- Operators should be trained and tested in their comprehension of policy and tactical doctrine content.



Failure to Supervise

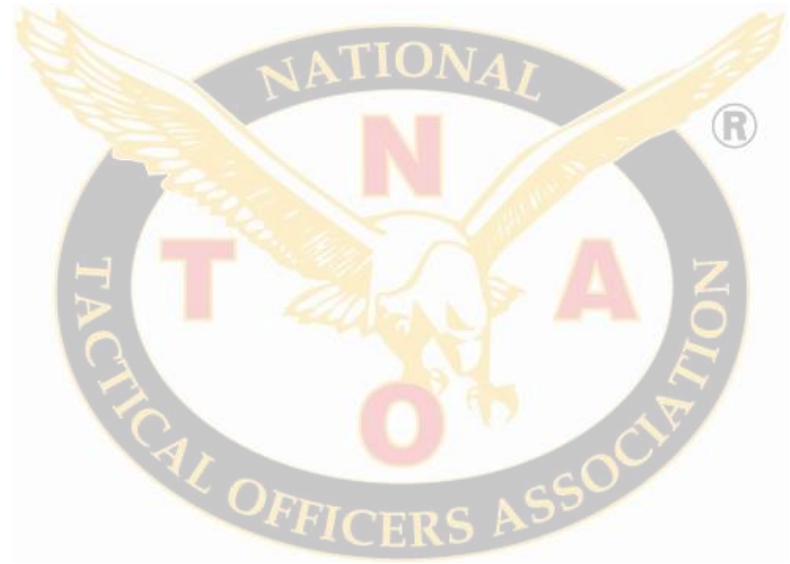
- Team Leader and Commander fundamental duty is to adequately supervise and control actions of their team members.
- Failing to have knowledge of their operator's behavior could raise to the level of deliberate indifference.
- Team Leader must be causally linked to the pattern or constitutional violation.



Failure to Discipline / Negligent Retention

- Failure to take action when the operator has demonstrated an unsuitability to the job.
- Team Leader did nothing to correct the behavior.
- Tolerating known misconduct creates a “de facto” policy.
- Liability will not attach when the Team Leader fulfills their basic functions of properly enforcing policies/operational requirements.
- Remove operators that need to be removed!





Section Four

GRAHAM V. CONNOR



Graham v. Connor



- **Reasonableness Standard**
 - What is reasonable; not what is right or wrong.
 - Would another SWAT team/operator with similar or like training, in similar or like circumstances have acted in a similar or like fashion?
 - 20/20 hindsight on the SWAT operator is not allowed according to SCOTUS.
 - We must put ourselves in the place of the operator at the time of the incident.
 - Situations are tense, uncertain, and rapidly evolving.



GRAHAM TEST



- ***Totality of the Circumstances*** known to the officer ***at the time the force is employed.***

GRAHAM TEST



- Within the **Totality of the Circumstances**, reasonableness rests on three (3) major factors:
 1. The severity of the crime at issue. This is the crime for which the officer is immediately responding with force, not necessarily the original call for service or crime.



GRAHAM TEST



2. The **immediate threat** of the suspect to the **safety of the officer or the public.**

Facts illustrating the threat posed by the suspect at the time the force was used.

3. The officer's reasonable perception of the suspect's **Active Resistance** to arrest or attempts to evade. This **defines the intensity of the suspects actions.**



Totality of the Circumstances

- The immediate threat of the suspect to the safety of the officer and or the public:
 - Imminent is a pending action, also officers evaluate actions based on perceived or projected threats/actions of the suspect.



“Officers need not avail themselves of lesser alternatives of force.”

- U.S. Supreme Court

GRAHAM TEST



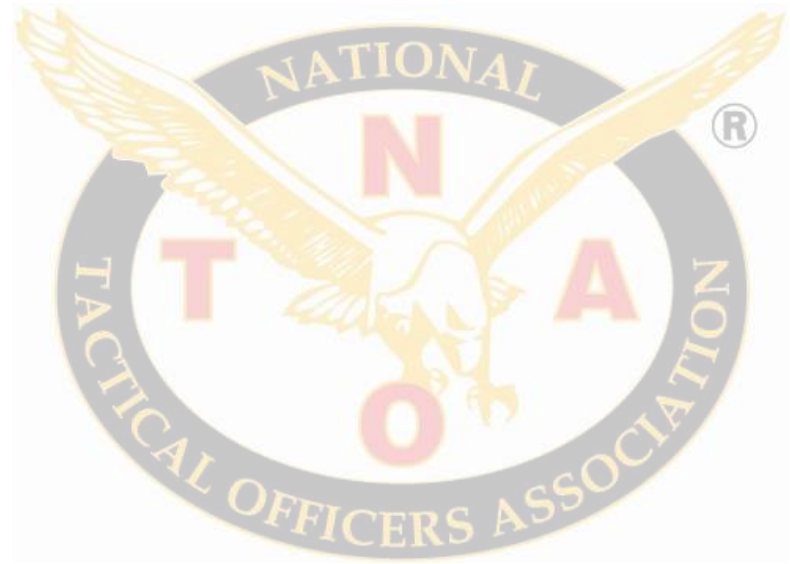
- SCOTUS stated:
 - “Officers need not avail themselves of lesser alternatives of force.”
 - The test is one of reasonableness, not escalation.



Protective Measures

- Actions **OPERATORS** take as an **operator** during tense, uncertain, and rapidly evolving situations in order to ensure the safety of **all concerned**. These actions involve the manipulation of persons by verbal commands through and including the employment of deadly force.





Section Five

TENNESSEE V. GARNER (471 U.S. 1)



Tennessee v. Garner

- Tennessee v. Garner (471 U.S. 1) gives strict guidelines in the use of deadly force to stop fleeing suspects.
- ***Three effects of Tennessee v. Garner:***
 - Moved deadly force under the 4th Amendment.
 - Created a standard regarding the use of deadly force against fleeing suspects.
 - Created the Reasonable Officer Standard.



Tennessee v. Garner

- Four elements of a deadly force encounter:
 1. Ability
 2. Opportunity
 3. Imminent Jeopardy
 4. Preclusion



Fleeing Defined

- Fleeing is not the Hollywood chase or an extended foot chase.....it is merely movement that is intended to provide time to escape or evade police or gain a tactical advantage, and by that action continues the state of emergency.



7 Components of Garner

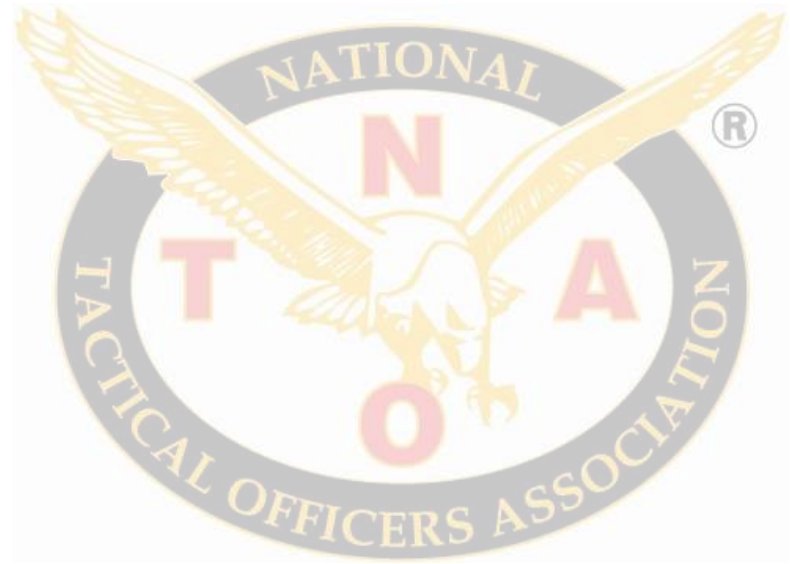
1. Only the facts known to the officer at the time of the shooting or use of force.
2. The type of crime involved (violence).
3. The threat of the criminal to present arresting officers should his apprehension be delayed.
4. The threat of the criminal to future arresting officers should the suspect evade present attempts to capture.



7 Components of Garner

5. The threat of the criminal to the public should the suspect evade arrest.
6. The type of resistance offered by the suspect (perceived or projected).
7. A warning, when feasible, should be given. Hence the purpose of negotiations.





Section Six

IMPORTANCE OF TRAINING



Training Mindset

- Operators should be prepared mentally to take a life in order to save a life.
- As a Team Leader you need to identify problems or potential problems
- Fix the problem or remove the problem.



Tactical Training +
Tactical Experience =

***Tactical
Competence***



Tactical Training

- Training related to the resolution of critical incidents with the use of special munitions, weapons systems, tactical doctrine, and strategy.
- This training is highly dependent on coordinated teamwork and familiarity with teammates. All tactical training is perishable and requires frequent practice in order to ensure proficiency.



Tactical Experience

- Encompasses the operators knowledge of employing weapon systems and tactical doctrine during actual operations. Furthermore it's the operators familiarity with the emotional and mental focus of critical incidents and how it effects their ability to perform.
- Proportionately, the operators ability to see things develop during dynamic encounters increases with each operation.



Tactical Competency

- Encompasses both tactical training and tactical experience. By merging the two together the operator develops a level of competency over time if the training and the tactical experiences are consistent and frequent. Your ability to lead your team will increase with every mission.



How Do We Train?

- Start with a minimum qualified operator.
- The key term is ***QUALIFIED***.
- That operator must remain qualified and be continually tested for proficiency.



**“Mediocrity results first
and foremost from
management failure, not
technological failure.”**

- Jim Collins

Things to Consider. . .

- Any supervisor who has never done a tactical entry, can't direct a tactical entry.
- Discipline on the team is paramount and must be demonstrated by all members of the team.
- Your ability to lead is based on your tactical competency.



Things to Consider. . .

- A poor performer can put on all of the best SWAT gear in the world, but he/she will still be a poor performer; just well dressed.
- Make sure operators are prepared and up to the task at hand.



Things to Consider. . .

- There are no small tactical mistakes.
- There is no room for mediocrity; on your worst day you must be better than the bad guy. This can only happen if Team Leaders instill this mindset into their operators.



Questions?



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