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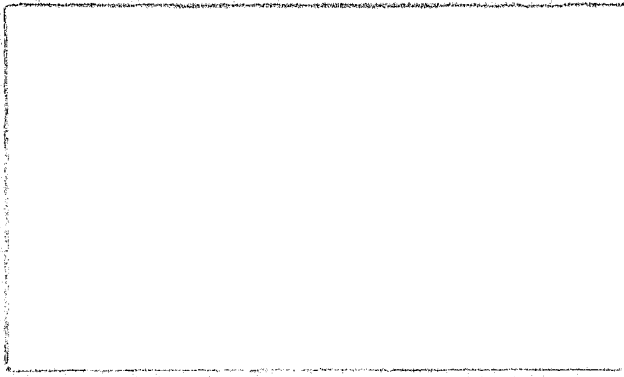
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**Department of Criminal Justice Services
Commonwealth of Virginia**



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SUMMARY OF PROCEEDINGS OF
THE SECOND ANNUAL CRIMINAL
JUSTICE LIABILITY MANAGEMENT SEMINAR
JANUARY 8 - 9, 1986

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ACQUISITIONS

Prepared by:
Connie E. McHale
For:
Virginia Department of Criminal
Justice Services
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TABLE OF CONTENTS

	PAGE
I Overview	1
II Presentations	4
A. Joseph E. Scuro, Jr. "Practical Approaches to Handling Liability Suits and Complaints"	4
B. G. Patrick Gallagher "What Administrators Can Do To Reduce the Potential for Liability Suits"	10
C. Thomas C. Seals "The Expert Witness: How One Can Help or Hurt Your Case"	14
D. Craig Rockenstein "Defending Suits Against Criminal Justice Agencies"	17
III. Workshops	20
A. "Use of Force" Moderators: James L. Hague and David F. Halbach	20
B. "Failure to Protect" Moderator: G. Patrick Gallagher	24
C. "Personnel Management" Moderator: Emory A. Plitt, Jr.	26

OVERVIEW

The second annual Criminal Justice Liability Management Seminar was held January 8 and 9, 1986 at Virginia Commonwealth University in Richmond, Virginia. The seminar was co-sponsored by the Department of Criminal Justice Services and Virginia Commonwealth University's Institute for Criminal Justice and Public Safety Research.

The increasing number of liability suits is of utmost concern to law enforcement and corrections personnel, supervisors and administrators. The seminar was designed to provide a forum for the discussion of practical approaches to reducing liability suits. Each speaker and workshop focused on an area of concern in the liability spectrum.

Joseph E. Scuro, Jr., who represents a number of police departments in the San Antonio Texas area, presented practical approaches to reducing liability suits and complaints from a police/corrections managers' point of view. Mr. Scuro discussed what he terms "preventive law" techniques for police departments that include keeping abreast of changes in current law, improved documentation, particularly in police reports, and updating policies and training. He advocates an aggressive defense by police departments to liability lawsuits.

The second issue addressed at the seminar concerned what administrators can do to reduce the potential for liability suits. This topic was presented by G. Patrick Gallagher, Director of the Institute for Liability Management in Vienna, Virginia, who discussed "self-inflicted wounds" and methods for reducing or preventing this. Gallagher also outlined a

"Quality Circle" approach to reducing the potential for liability. The circle begins with establishing clear agency policies and procedures. These are made a part of the agency's training curricula and the agency's management must assure that they are adhered to at all times through the enforcement of discipline. The circle is completed by an on-going evaluation of policies which should lead to changes, as circumstances change.

Thomas C. Seals, expert witness and Director of Protection Services for the Cleveland Clinic Foundation in Ohio, addressed the issue of the expert witness. Seals defined the role of the expert witness; how one can help or hurt your case and what criteria to look for when seeking an expert witness.

Craig Rockenstein, Police Legal Advisor for the Metro-Dade County Public Safety Department in Miami, Florida, discussed the defense of suits against criminal justice agencies. He addressed the issues of negligent hiring, negligent retention, negligent assignment, negligent entrustment, negligent supervision and negligent training.

The three seminar workshops served to promote discussion of current dilemmas faced by law enforcement and corrections personnel. While it was not the purpose of the workshops to provide solutions to these dilemmas, it was intended that participants learn from each other and be able to implement new strategies in their respective areas of employment. The workshops involved issues related to the use of force, failure to protect, and personnel management.

Participants in the use of force workshop discussed overdocumentation, vagueness in use of force laws and policies, legal loopholes,

unrealistic training and the increasing difficulty in obtaining and keeping insurance. The failure to protect workshop focused on factors such as lack of direction, the implications of the increase in the services provided by police officers and the rights of pressure groups. Other factors discussed included the general duty versus specific duty of police officers and categories of litigation such as failure to apprehend, failure to protect government places and failure to investigate.

The personnel management workshop participants discussed the right to free speech of employees, the right to due process and the right not to be discriminated against. The basis for these lawsuits involves the use of testing that may not be job related and the disparate treatment of employees.

"Practical Approaches to Handling Liability
Suits and Complaints" by Joseph E. Scuro

The first conference presentation identified practical approaches to handling liability suits and complaints. The speaker, trial attorney Joseph E. Scuro, Jr. has extensive experience representing police personnel as defense counsel in civil litigation in 12 states and the Commonwealth of Puerto Rico. His discussion focused on practical approaches to dealing with liability matters from a police/corrections manager's point of view. Scuro suggested that law enforcement agencies engage in "preventive law" by becoming aware of current trends in liability. He stated, however, that fear of litigation should not be allowed to replace sound judgement in the operation and management of a police department.

According to Scuro, the Burger court has put law enforcement agencies in a position where plaintiffs have a great deal of legal power and discretion that the agencies as defendants do not have. This increasing power was spawned by Monell v New York City Department of Social Services, 98 S.Ct. 2018 (1978), which, in essence, allowed local units of government to be held liable under Title 42 U.S.C. Section 1983. In Owen v City of Independence, MO (445, U.S. 622, 1980), the right of good faith immunity was also, in effect, taken away from governmental entities. Further, 42 U.S.C. Section 1988 has given more impetus to such actions by allowing the prevailing party to obtain attorney fees, in addition to any damages. As a result, law enforcement agencies must begin to practice preventive law in order to minimize their civil liability. Individual police officers must be informed of current law beginning with their first day in the academy and continuing

throughout their career as changes in the law occur that may affect the way they carry out their duties. Officers must understand that they will be held accountable for their actions just as much as their immediate supervisor, the agency administrators, the trainers, the academy and perhaps the municipality in which the department and/or training academy is located.

Scuro emphasized that written reports generated by police officers are not of the quality that they should be. Lawsuits are often filed one or more years after the incident has occurred. Thus, the original report that was initially prepared by the officer is subject to strict scrutiny. Police officers should know that certain types of incidents have a greater potential for litigation than others. Scuro pointed out that a large number of police lawsuits are the result of the use of force between an officer and a citizen. If this contact has resulted in an injury, especially from a shooting or is an injury requiring hospitalization, the officer should assume a potential lawsuit and document the event accordingly.

One tactic used by a plaintiff's counsel in court is to demonstrate that the information in a report was gathered after the litigation was begun. If this can be clearly evidenced in a jury trial, the defendant's credibility is lessened and, according to Scuro, this is too often the case.

Since police departments are usually intimidated by lawsuits, Scuro advocated an aggressive approach in the defense against a lawsuit. For example, the plaintiff's attorney demands that the police department

provide all possible records and the department readily complies. In fact, the burden is on the plaintiff to prove to the court that the records are indispensable to their case. Scuro chastised departments that give up their records too readily, thereby helping the plaintiff.

As part of his aggressive defense to a lawsuit, Scuro also recommended the use of psychological strategies. They include such things as conducting an investigation of the plaintiff and, during the deposition, questioning the plaintiff on every minute detail of his life. As a result of such "mind games," the plaintiff usually becomes nervous and then becomes defensive. While these tactics may appear to be questionable, Scuro viewed them as necessary. When a plaintiff sues a police officer and/or the police department, he is hoping that the threat of the suit so intimidates the police department that they will settle out of court for a large sum of money.

Another practical approach to preventing liability suits and complaints is to insure that training, policies and procedures are concurrent with recent laws. For example, many departments still adhere to deadly force policies which permit an officer to use deadly force if it is in accordance with state penal codes. However, in the case of Tennessee v Garner, 105 S.Ct. 1694 (1985), the Supreme Court's decision resulted in making what was then that state's current deadly force law unconstitutional. Many states' deadly force policies are similar to Tennessee's in that these policies authorize the use of deadly force against a suspect merely to prevent his escape. However, in Tennessee v Garner, the Supreme Court held police may not use deadly force

against an apparently unarmed and nondangerous, fleeing suspect unless such force is necessary to prevent the escape and to prevent injury or death to himself or others. It is therefore essential that police departments re-evaluate their deadly force policies in accordance with this holding.

Many law enforcement administrators believe that abiding by the minimum training standards imposed by their state will provide some civil liability protection. According to Scuro, state imposed standards are frequently insufficient. The training of police officers must approximate situations that are encountered in daily activities. While this may appear to be an obvious statement, many departments do not incorporate such realistic situations into their training. This is clearly illustrated in the case of Popow v City of Margate, 476 F. Supp. 1237 (1979) where an officer accidentally shot a citizen while pursuing a fleeing kidnapper. The officer involved had received his initial firearms training ten years earlier when he first joined the force. His subsequent shooting instruction was firearms requalification every six months at a range under controlled conditions. The court held that while the officer had received the minimum training required under state law, the City of Margate is residential and therefore it was likely that an officer would have to chase a suspect at night. Failure to provide additional instruction such as shooting at a moving target, night shooting and shooting in residential areas constituted a negligent failure to provide appropriate training. Unfortunately, current firearms training in most departments is unrealistic. Officers are trained in controlled situations and conditioned to fire six complete rounds into the kill-zone of a silhouette

target. Scuro advised that the practice of firing six complete rounds looks extremely bad to a jury, not to mention the increased chance of killing a suspect or innocent bystander.

A certain lack of training in discipline is also evidenced in police vehicle pursuits that result in the injury or death of innocent citizens. Too often, such pursuits generate the urge to "get the guy" or to be "in at the finish." Scuro advised that policy and training should direct police officers to stop the vehicle pursuit at a reasonable point and radio ahead for intercepts.

Scuro admitted that supervisors and administrators will find it exceedingly difficult to balance autocratic control and officer discretion. It is impossible to proceduralize every possible situation that an officer may encounter in the course of his performance on the job. However, supervisors and administrators can take steps to reduce variations in the interpretation of departmental policy. Failure to ensure that officers read and interpret departmental policy correctly can have disastrous results in the courtroom. It is common practice for the plaintiff's attorney to hold the department's policy manual in front of the jury and ask the testifying officer to identify it. In Scuro's example, the case involved the use of deadly force and the department had a 4-page deadly force policy. The officer correctly identified the manual as the department's policy concerning deadly force. He was then asked to recite it. If the officer had been properly prepared, he would then state that he had been taught to understand it and not to memorize it. The

plaintiff's attorney would then state, "tell us what it means." Thus, it is in the best interests of police departments to insure that every officer is aware of current changes in departmental policy.

It is the supervisor's responsibility to insure that each officer has not only read the policy but understands it so that he can communicate the correct interpretation to the court in the event he is called upon to testify in a lawsuit.

The approaches to reducing the potential for liability presented by Scuro are practical methods for doing just that. With the rising costs of insurance premiums and damages awarded to plaintiffs against police departments, the swift implementation of these procedures would be most advisable. Even for those departments that feel reasonably secure in their policies and procedures, closer scrutiny would not be amiss.

"What Administrators Can Do To Reduce the Potential
for Liability Suits" by G. Patrick Gallagher

G. Patrick Gallagher, Director of the Institute for Liability Management in Vienna, Virginia, is well-known for his knowledge of civil liability issues and methods for reducing the potential for liability. In his presentation, Gallagher discussed practical ways to avoid "self-inflicted wounds" and how the "quality circle" of policy, training, supervision and discipline can help the criminal justice manager on a daily basis.

Gallagher defined the term "self-inflicted wounds" by using descriptive examples. He used an example from the Hill Street Blues television series where police officers are told by a supervisor to "go out there and do it to them before they can do it to you." In a realistic example, Gallagher described members of a SWAT team wearing T-shirts with the saying "Shoot'em all! Let God sort'em out" inscribed on the back. Obviously, evidence of this nature is damaging to the defense of a lawsuit against a police department.

Police departments can avoid such "self-inflicted wounds" by developing standards that the police officers will accept and adhere to. Currently, it is the expert witness who frequently applies standards externally to a department through his testimony in the courts. Gallagher insisted that while police administrators must develop new standards in their own department they should also work together to insure some degree of uniformity of standards among departments. He stated "uniformity does not decrease autonomy, rather, it increases autonomy in the long run."

The "convoy syndrome," which is the tendency is to move as fast as the slowest truck, illustrates this concept. In the law enforcement community agencies that are lagging behind in instituting new policies tend to exert a slow-down effect on other departments. It was suggested that these departments must be left behind when implementing new standards in the hope that they will catch up later.

Gallagher suggested that departments avoid what he terms "SPLAT Teams" or "Special Personnel Lacking Any Training." Special units created without appropriate training and officer selection criteria do exist and are liability time bombs for the administrators and departments creating them.

Merely putting memos from the chief into each officers in-box will not generate a change in behavior nor will the sergeant reading a memo at roll call according to Gallagher. Too often, the sergeant will deliver the memos to the officers with a poor attitude and this could result in officers dismissing the subject of the memo.

Gallagher recommended a proactive "Systems Approach" to reducing lawsuits. He stated that current methods of selecting and training new officers are not systematized and therein lies the possibility of lawsuits. Gallagher's solution was to combine techniques, such as interviews, polygraph, written and oral tests, physical and agility tests, and psychological screening for the best prediction of a recruit's future performance.

He advocated a Field Training Officer (FTO) program for new supervisors, suggesting the department select the best sergeants to supervise new sergeants; in effect an FTO program for sergeants. He also stated that departments have not made good use of the probationary period during which the most knowledgeable choices can be made concerning who will be the better officers. According to Gallagher, a systematic approach is not new; it merely puts into practice existing methods that have been underutilized.

He outlined the following steps for implementing a new training program:

1. Perform a job task analysis
2. Determine job performance objectives and curriculum
3. Develop an instructors' guide with lesson plans that include parameters and controls.
4. Evaluate through competency tests and auditing of the training.

These steps form one aspect of Gallaghers' method to aid criminal justice agencies in building liability protection programs, which he refers to as the "Quality Circle." It consists of three equal parts -- direction, maintenance and assessment operating in three consecutive time frames -- proactive (policy and support); active (training and supervision); and reactive (discipline and evaluation). The Quality Circle approach is the interaction of policies, training and discipline. To implement the "Quality Circle" successfully, the concerned administrator must assess his danger and react accordingly. He must identify agencies that are trend setters and

review their policies. The administrator should also identify the area(s) producing the most lawsuits in his agency and review policies, practices and procedures that exist (or do not exist) in these areas of liability. Once this is completed, written directives for the agency should then be prepared and personnel should be trained accordingly. Gallagher stated that these steps will not eliminate lawsuits but they may help protect the agency from successful lawsuits.

"The Expert Witness: How One Can Help or
Hurt Your Case" by Thomas C. Seals

Thomas C. Seals, a former police chief, and Director of Protective Services for the Cleveland Clinic Foundation in Ohio, serves as an expert witness for both defendants and plaintiffs. Seals discussed the ideal expert witness and provided advice on how to select an expert witness. Webster defines an expert as an individual, who because of education and experience, has acquired an unusual amount of knowledge about a subject. Seals described the ideal expert witness as one who has education, experience and training in an area of specialization.

The use of expert witnesses in liability cases is on the rise. An expert witness can be a valuable resource in a trial because the jury views these individuals as an objective third party. These persons give the appearance of having no vested interest in the case outcome and juries therefore value their opinion. Police departments being sued sometimes attempt to secure expert witnesses from within their department. In such cases, this individual will be perceived as having a vested interest in the trial outcome and thus will have less credibility with the jury.

A good expert witness is valuable in that his many hours of courtroom experience provides better insight into the chances of success for his client and places him in a position to offer his opinion to the court.

Seals advised that an important characteristic to look for in an expert is objectivity. The ideal expert witness will evaluate a case, discuss

the case with the attorneys and offer his opinion concerning the possible outcome of the case. If the case has little chance of success in the courtroom, perhaps it should be settled out of court, however if this should prove impossible, then the expert witness can help mitigate the potential damages.

Seals provided suggestions to help establish the credibility of the expert witness. He emphasized that while education is an important criteria for an expert witness, the education should be pertinent to the experts' area of expertise and not be taken at face value. Seals recommended that departments determine whether the individual actually earned his certificates or received them as a result of "grandfathering" or one day seminars. Although there is some significance placed on the number of times an expert witness has testified, Seals stated that his credibility depends upon applicable education and employment experience.

When seeking an expert witness, Seals cautioned against using those individuals who advertise. He advised that departments involved in litigation ask around in seeking an expert witness. A valuable source for locating reputable expert witnesses is a criminal justice facility, either a university with a well-known criminal justice program or a police training center. Seals also suggested that a State Standards and Training Commission (or its equivalent) can provide information on experts in the area of training and whether state or other requirements were met.

A reputable expert witness' fee may range from \$60 to \$150 per hour. Fees of \$300 to \$400 an hour for expert witness services, while sometimes

appropriate are usually exorbitant and should be questioned. According to Seals, witness fee amounts are admissible testimony in court. The usual process in admitting witness fees is for the trial attorney to ask the expert witness whether or not he has been employed as an expert witness. The expert responds in the affirmative and the attorney then asks the expert if he is being paid to testify. Seals suggested that the expert should respond negatively and then state that he is being paid for his time involved in the case, which includes research, conferences, consultation and testimony. In order to maintain credibility before the jury, it is essential that the expert witness not appear to be a "hired gun."

In summary, Seals stated that the civil courtroom has become a setting for the "battle of experts" and that the outcome of court trials depends on which expert can better convince the jury.

"Defending Suits Against Criminal Justice
Agencies" by Craig Rockenstein

Craig Rockenstein serves as a police legal advisor for the Metro-Dade County Public Safety Department in Miami, Florida. He presented an overview of problems found in defending liability cases in six potential liability areas that have been identified by the courts and commented on Dade County cases in which these liability areas were addressed. He also noted that a great number of liability cases are successfully defended, but that successful defense cases are not as newsworthy as cases where high damages are awarded.

The first area of potential liability for police departments concerns negligent hiring or appointment of police officers. Liability can arise from the appointment of an unfit officer if the screening process showed or should reasonably have shown that the candidate was unfit. Rockenstein stated that, too often, in times of crisis, new officers may be hired and pushed through an inadequate selection and training process, thus it is essential to have sound programs for selection and training.

Liability due to negligent retention can result if an officer who caused an injury was inappropriately retained after having committed a prior improper act. The departments' supervisory officers may be held liable for failure to adequately instruct, evaluate and report on the officers and, in addition, may be held liable for failure to terminate the officer. Rockenstein advised that supervisors regularly review personnel files for both positive and negative trends in officers' behavior.

In negligent assignment, a third area of potential liability, supervisors and trainees can be held liable if an officer who causes an injury did not have the necessary skills for his assignment. Rockenstein suggested that supervisors should not place an officer in an assignment for which he is not competent.

In negligent entrustment, supervisors and trainers can be held liable if officers are allowed to use or carry equipment for which they have not been adequately trained.

Negligent supervision is yet another area of potential liability for law enforcement and corrections. Supervisors can be held liable if they were or should have been aware of potential problems with their personnel and failed to correct those problems.

Finally, Rockenstein addressed the issue of negligent failure to train. Liability will result if an officer receives training that is incorrect, inadequate, or not relevant to the officers' daily experience. Rockenstein advised that departmental rules and regulations be kept up-to-date and that police officers be kept informed of changing policies and laws through continued training. It is very important that supervisors also receive continued training and education, as they serve as trainers for their subordinates.

Rockenstein also identified other areas that are or will become liability risk areas for police departments, such as tardy responses to 911

emergency calls and for inadequate training in the handling of domestic intervention cases, particularly in situations of spousal abuse cases where the police officer is given discretion to either arrest or counsel the abusive spouse. When the law gives an officer the ability to make an arrest if the officer believes that the abused spouse will be injured if the abusive spouse is not arrested, the officer must be adequately trained to recognize the "danger" signs and take correct action. Liability could result if an abusive spouse is not removed and then injures the victimized spouse, when it appeared that an arrest should have been made.

"Use of Force" Workshop
Moderators: James L. Hague
David F. Halbach

The three workshops conducted at the Liability Management Seminar involved issues related to the use of force, failure to protect and personnel management.

In the use of force workshop, several issues were raised by the attendees who represented the law enforcement and corrections areas of the criminal justice system. Excessive use of force is the number one generator of liability suits. A study of litigation involving police officers completed by the International Association of Chiefs of Police during the years of 1967-1976 showed a 500% increase in suits. Two thirds of these suits were related to use of force and false arrest/false imprisonment.

Concerns raised by the attendees involved the vagueness of policy statements concerning use of force. As one participant stated, "Force as a means to control inmates is still used but there is such a tenuous line between what is considered acceptable and what isn't." The observation was made that too often use of force policies are so vague that it is almost impossible to interpret one the same way twice. Legalese [such as ". . . using the minimum amount of influence to bring the subject under control,"] often makes interpretation unnecessarily difficult.

Yet another corrections officer pointed out that inmates today are much more violent then twenty years ago. Today, most persons convicted of property crimes are sentenced to community programs and institutional

corrections personnel are encountering a much tougher and more violence prone inmate. This officer argued that "you cannot reason with these inmates, they only understand force."

It was the consensus of workshop participants that in view of the Supreme Court's recent decisions and the general mood of the country, the use of force should be kept to the extreme minimum in order to avoid both frivolous and legitimate suits.

Another issue raised at the workshop involved documentation of activities. The corrections attendees in particular felt that too much time was required documenting their work and that this excessive attention to detail hampered their ability to effectively perform their job. However, these attendees were urged to continue to thoroughly document incidents involving potential litigation especially those involving the use of force.

The corrections personnel also believed that their decision-making discretion was limited by legislators and judges. It was suggested that legislators and judges be invited to attend workshops such as this. Representatives from both the state legislature and courts were invited to attend the Liability Management Seminar but none were in attendance at this workshop.

Another area of concern involved the unrealistic nature of training received by corrections and law enforcement personnel. Training cannot always replicate real life situations, however technology has advanced to the point

that training can often simulate real life situations encountered by both law enforcement and corrections personnel. While it could be argued that such training should be job task related in order to train officers for those real life situations would be prohibitively expensive with the number of lawsuits against criminal justice agencies and the high damage awards to plaintiffs, the initial expense may well be worth it, especially simulation training covering the use of force.

Law enforcement participants were concerned that liability insurance for police agencies is becoming more difficult to keep or obtain. Insurance companies are raising their premiums to exorbitant rates or cancelling their premiums altogether due to the costs of litigation and the many court judgments against law enforcement agencies nationwide.

Workshop participants not only raised concerns, but also offered suggestions to alleviate some of the problems that agencies are encountering. One corrections officer suggested a technique that is used in the institution where he is employed. At this institution, they videotape the handling of inmates. The fact that the inmate believes his actions are being videotaped appears to subdue him. They know that it is no longer their word against the correctional officer's because the proof is on film.

The Liability Defense Quality Circle was offered as a suggestion for reducing potential liability. This concept consists of three vital parts:

policy, training, supervision/discipline. If anyone of these three components is missing, the agency is in a position of potential liability. However, if the department has taken measures to generate concise policies, provide maximum as opposed to minimum training and provide good supervision, there is an excellent possibility that liability will stop at the individual whose behavior initiated the suit.

"Failure to Protect" Workshop
Moderator: G. Patrick Gallagher

The workshop involving issues related to failure to protect was conducted by G. Patrick Gallagher.

According to Gallagher, failure to protect is a broad area with no clear cut directions as to when and how it is applied. Some of the highest awards are from suits involving failure to protect. One of the cases that Gallagher discussed involved an award of \$265,000 in damages against the California Highway Patrol. Two California highway patrolmen arrested a male for driving under the influence of alcohol and refused to assist his female passenger, leaving her stranded on the highway. Litigation stemmed from the subsequent assault and rape by three males after the police had left.

Thurman v City of Torrington (USDC Conn, Civil No H-84-120 10/23/84), is another case discussed by Gallagher in which a federal court awarded \$2 million to Tracy Thurman after the police refused to follow a court order and protect her from her husband.

Gallagher discussed pertinent factors in cases of failure to protect. These factors include the increase in services provided by law enforcement agencies in special units, special tactical teams, and vice squads. Another factor involves the theory of social contract between the government and its citizens whereby the government has a duty to protect its citizens from crime.

Gallagher stated that police have two types of duty to protect. Police have only an at-large duty to patrol and protect the public; a special duty that is only established between police and an individual when the individual calls for assistance and the police acknowledge accepting that duty and responding.

When a citizen calls for aid, he is then relying on that duty to assume help is en route. Gallagher illustrated this concept with an example of an individual calling the police to report that someone is trying to break into her house. The police dispatcher tells the woman that "an officer will be right over." This creates a special duty between the police and the caller and she relies on that statement (the assumption/reliance rule). If the police arrive an hour later following the break-in and injury to her, she can hold them liable for failure to protect.

According to Gallagher, areas that generate litigation involving failure to protect are failure to apprehend, the "911" cases illustrated above, failure to protect government places and failure to investigate, particularly in spouse abuse cases.

"Personnel Management" Workshop
Moderator: Emory A. Plitt, Jr.

The workshop involving personnel matters was conducted by Emory A. Plitt, Jr., Assistant Attorney General and General Counsel to the Maryland Department of Public Safety and Corrections. The issues discussed in this workshop related to the hiring, firing, discipline, transfer and promotion of criminal justice employees. The workshop discussion focused on public safety (police) officers. Plitt stated that his perspective is that of legal counselor to management and his goal is to aid criminal justice management in their response to internal lawsuits.

Lawsuits relating to personnel matters are brought by current employees and individuals seeking employment. According to Plitt these lawsuits create much more turmoil than do external lawsuits and, if not handled properly, tend to make heroes out of 'dissidents'.

The First Amendment states that individuals have a right to freedom of speech, movement, association, etc. Plitt advised police departments that employees who publicly speak out against their department have a right to this free speech if what they are saying is true. As to freedom of association, an officer dating another officer in a relationship that is not interfering with their job performance is protected under the free association clause of the First Amendment.

Under the Fourteenth Amendment due process or "fundamental fairness" clause, an employee has a property interest in his position. Once the employee has completed the probationary period, he has a rightful expectation of continued employment and should not expect termination without due process

hearings. In disciplinary proceedings, the department must state exactly what the employee has done that constituted a rule violation. The purpose is to put the employee on notice that he will be required to defend his actions and give him time to prepare a defense. This defense must be heard by a neutral individual in an administrative hearing. In disciplinary proceedings, the department must ensure that regulations meet constitutional tests (1st, 4th, 5th and 6th Amendments) and that the vagueness of applicable rules also be taken into consideration. Plitt stated that these rules and details must be attended to or the agency can expect to lose in court and thereby make a hero out of what he termed a 'dissident.'

During the workshop, participants suggested that since criminal justice administrators cannot grant immunity; they must allow officers to consult an attorney before speaking. Further, if the officer believes that one of his federally guaranteed rights is involved, he does not have to wait until all agency grievance steps are exhausted before seeking redress against the department.

Plitt admonished agencies to avoid the tendency to fall into the "conduct unbecoming to an officer" syndrome in disciplinary actions. This terminology is too vague and the officer never sees, in writing, what this conduct involves. The officer should understand exactly what conduct or behavior brought about this charge and he is entitled to a full review.

The officer should also be reminded that standards of conduct apply when they are off-duty as well. While it is generally true that the behavior of an off-duty policeman is his own business, when the officer's private life affects his job performance and/or other employee's job performance, the department has a right and duty to take action against that employee.

When terminating a non-tenured employee, Plitt advised that departments should have a policy of refusing to respond to inquiries concerning the termination since this could affect the employee's chances of obtaining other employment.

The issue of discrimination was raised by workshop participants. Plitt stated that federal judges make decisions regarding discrimination; not the politicians. He advised that departments pay close attention to the current statutes. The essence of a discrimination lawsuit usually involves disparate impact. A department must be prepared with a job task analysis to defend why they chose to hire or fire a particular individual. A department must also be able to prove that any testing completed was job related and essential in determining whether the individual could perform the tasks required on the job. Testing should not to be used as a screening device. A second issue involved in a discrimination lawsuit is that of disparate treatment. The department must be able to document why two individuals in the same situation were treated differently.

According to Plitt, the Burger Court has been the most permissive in allowing lawsuits by employees to proceed against public agencies.

The number of internal lawsuits in police departments is on the increase. The recommendations presented in this workshop are intended to be common-sense proposals to reduce the number of internal lawsuits and to reduce the potential for litigation brought on by external lawsuits.