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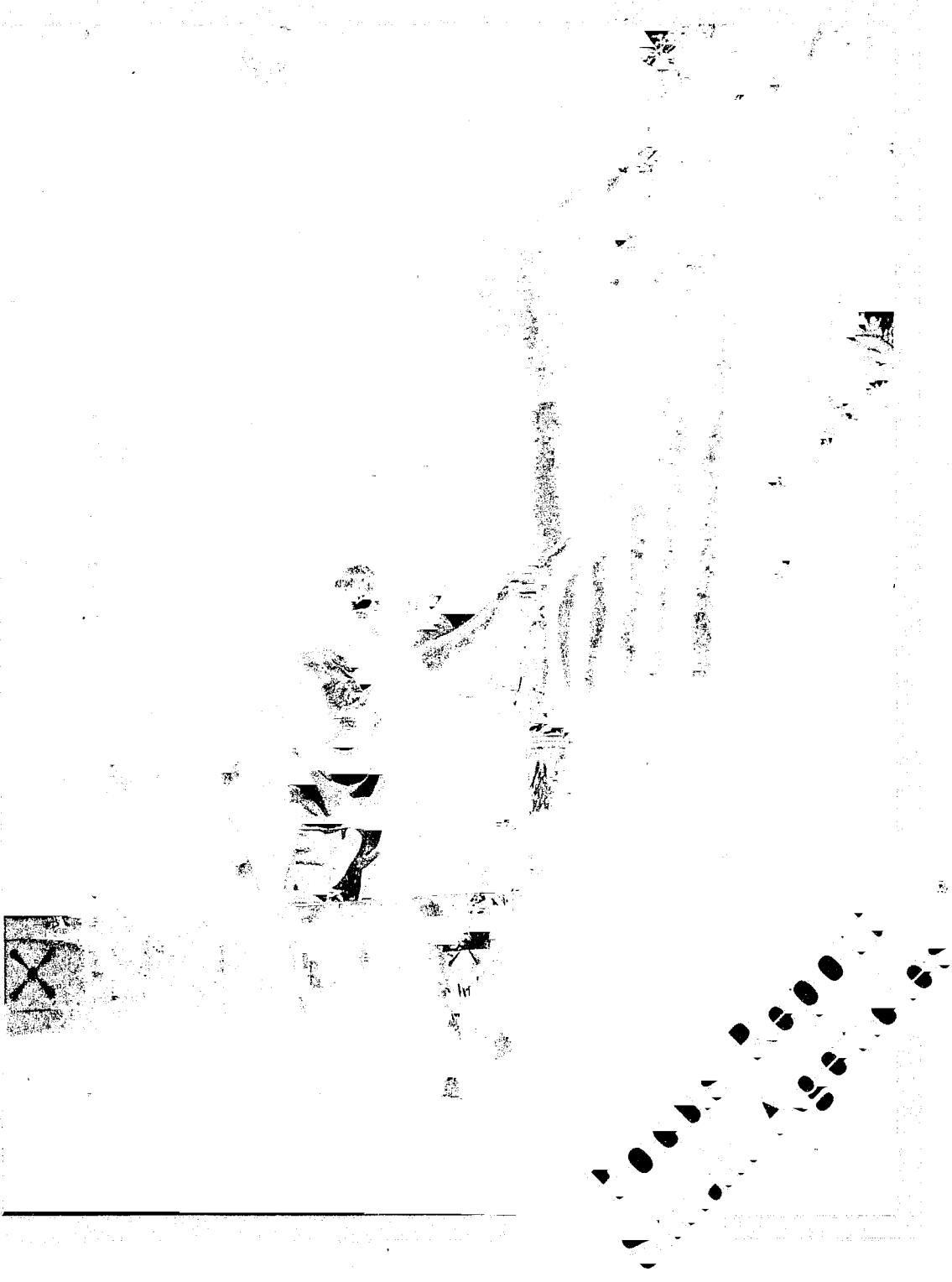
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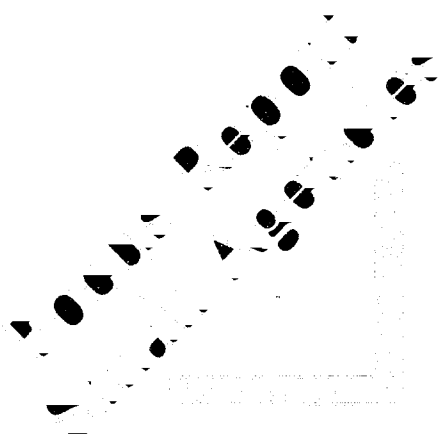
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About The Cover:

Photographer David Farr, of the Utah State Police Laboratory in Salt Lake City, selected Farmington, Utah Police Chief Val Morton and his sons, Derrick and Brice, to portray the kind of lifestyle enjoyed by many officers employed by small town police departments. The five member Farmington Police Department serves a community of 8200 people located 16 miles north of Salt Lake.

H. Scott Kingwill, Publisher
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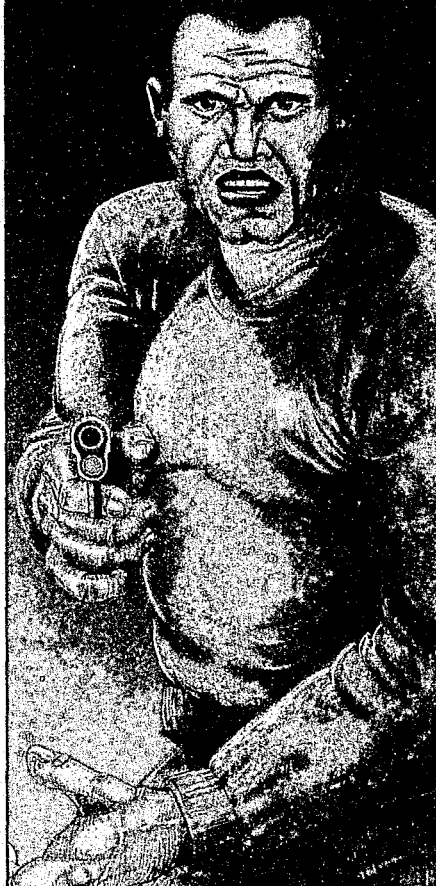
Columnists:
Irving Zeichner
Bernard Lepper
Jack Molden

Frank G. MacAloon, Editor Emeritus

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Municipal Liability Update

by Timothy Capron & Titus Aaron

As the chief of a small town police agency, you are called out on a cold February night to handle a problem that looks like trouble. Patrol Officer Jones stopped a vehicle for a routine traffic violation in which the driver was acting strangely. His behavior included mumbling, complaints of blurred vision and apparent intoxication. Jones, a two-year member of your department, decided that the driver was intoxicated and transported him to the holding cell—where he passed out.

Two hours later, the shift commander found a "medic alert" bracelet on the subject identifying him as a diabetic, and he was transferred to the hospital. When he notified the family, he discovered the subject is an attorney who is notorious for pursuing civil rights lawsuits against police departments.

Although the above example is hypothetical, situations like this do occur. An officer who acts improperly while on duty may create tremendous civil liability for a municipal government if the municipality did not properly train and supervise the officer.

Imposing civil liability on municipalities for the unconstitutional acts of police officers is one action the federal government can take to prevent municipal police officers from violating the Constitutional rights of citizens. This article outlines a brief history of the civil liability of municipalities and recommends ways they can limit such liability under Title 42, U.S.C., Section 1983 (hereinafter: "Section 1983"). Section 1983 prohibits any person acting under color of state law from violating the federal constitutional rights of a citizen.

Municipalities now pay strict attention to the limitations placed on government conduct by Section 1983. In 1961, the U.S. Supreme Court said that municipalities were not persons within



the meaning of Section 1983 and could, therefore, not be held civilly liable under its provisions.

A decade of upheaval and turmoil in the United States, the 60's, had just begun and the civil disobedience, protests and riots of this period resulted in many citizens coming into contact with the police. It was during this era that people became more conscious about civil rights and how government officials were treating citizens.

In 1978, the United States Supreme Court reversed its 1961 decision and held that municipalities were persons within the meaning of Section 1983 and, therefore, could be sued under its provisions if the injuries complained of were inflicted pursuant to a government "policy or custom."

After municipalities became civilly liable under Section 1983, the cost of insurance for civil liability dramatically increased for many municipalities. In-

surance was not reasonably available to others, due to prohibitive costs.

Imposing civil liability on municipalities may be a necessary evil. Fear of civil liability will, it is argued, deter unconstitutional conduct and force administrators to issue clear guidelines in sensitive areas. It would cause reviews and updates of policies and procedures to be conducted more frequently.

Administrators would be more likely to provide adequate supervision and offer initial and in-service training programs for police officers. Given today's hostile environment, in which lawsuits are an approved way to challenge the conduct of police officers, municipalities must seriously consider what can be done to minimize their civil liability.

The recommendations that follow will be hard to implement in the many police departments with fewer than ten employees. Yet, failure to enact the recommended procedures could result in a

tourist from New Jersey and his smart lawyer owning the town.

Selection

Better selection of personnel can reduce the potential for a municipality being held civilly liable. All applicants should be required to meet *reasonable* physical and mental qualifications prior to becoming a police officer. Such qualifications need to be evaluated in light of the job for which the applicant is being considered. A complete physical examination should be conducted by a medical

doctor selected by the municipality. A competent psychologist should examine and screen each applicant for abnormal personality traits.

A department must ensure that applicants for the position of police officer read and write sufficiently to perform the job for which the applicant is being considered. Standard reading and writing tests are available and most psychologists have access to them.

The department should conduct extensive background investigations. It may be beneficial for a municipality to

contract with a private firm for conducting these investigations. It should include a look at the financial stability, driving record, insurance, education and training of applicants. The department should also demand references from each applicant; and they should be verified.

Courts have looked at the amount of training a police officer has received in determining whether a person was properly selected, trained and supervised. Likewise, information should be verified regarding the prior training of officers who have made lateral transfers. A municipality cannot afford to assume that it hired a trained individual.

Although compliance with these recommendations will result in more people becoming involved in the selection process, a municipality may have effectively shared the responsibility. Hence, liability is also shared if an applicant is selected who later becomes a problem. For example, if a background investigation reflects that an applicant has no prior criminal record and later it turns out that he is an escaped convicted rapist, now a prime suspect in a local case, a municipality may have recourse to escape liability by demonstrating that the XYZ Detective Agency, a private business, conducted the background investigation.

Selection is a costly process, but improper selection of the wrong individual is even more costly. Shortcuts can result in the selection of officers that will never become an asset to the department. A municipality's selection process should include a provision that new employees must pass (the first time) a training academy.

Training

Providing adequate training to police officers is another way municipalities can limit their civil liability. No municipality should permit an officer to be assigned patrol duty until he has graduated from a qualified academy and completed a probationary period.

A municipality should require annual in-service training. Every officer should receive updates on changes in legislation, case law, first aid, firearms proficiency, use of deadly force, and pursuit driving. Such courses should be conducted by qualified instructors. Records of attendance, examination scores and lesson plans should be maintained in the event they are needed in court.

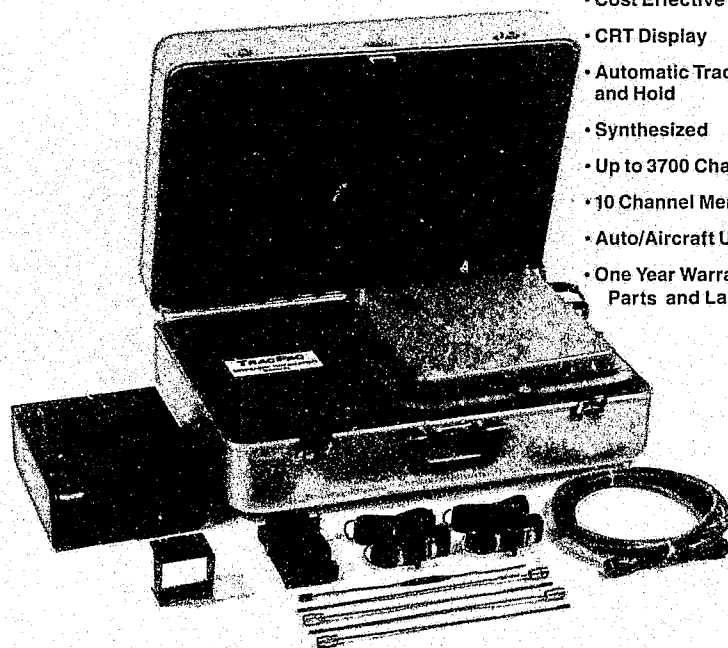
Additionally, officers who change jobs within a department should receive

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training for any area they have not previously been trained for. For example, an officer who normally works patrol is injured and is reassigned to the city jail. The officer should receive training in jail procedures and the constitutional limitations on jailers before duty in the jail.

Supervision

Supervision of personnel remains a difficult area, particularly in small departments. It is difficult for many to accurately evaluate a fellow officer. Yet, it must be done.

Evaluations must be done fairly. Each new employee, academy graduate or lateral transfer should be assigned a supervisor or field training officer. This supervisory officer should conduct regular written evaluations of the officer's work while the officer is on probation. If the evaluations are poor, the officer should be counseled about his shortcomings and another supervisor should be assigned. The supervisory officials' supervisor should review both reports. If both training officials agree that the employee is performing poorly, he should be discharged.

As a standard practice, a municipality should ensure that each new employee receives instructions regarding all unique local regulations that an academy may not have covered. Also, all officers should receive annual written evaluations of their work. A standard evaluation form that is "blessed" by an attorney should be used to conduct such evaluations.

Proper supervision of a police force can be costly and burdensome. The task of direct supervision and evaluation of fellow police officers can be an emotionally draining experience. Individuals acting as trainers or supervisors deserve more pay—they earn it.

Retention of Personnel

The retention policy of a police department should be clearly spelled out. It should require, at a minimum, completion of the training academy and a probationary period. Retention should be earned. Set high standards and make everyone live up to them. Retain those who can live up to your standards, discharge those who can't or won't. Be ruthless—no second chances. You will not get a second chance in court.

A municipality should investigate all complaints of officer misconduct. A record of the results of the investigation and any corrective action taken should

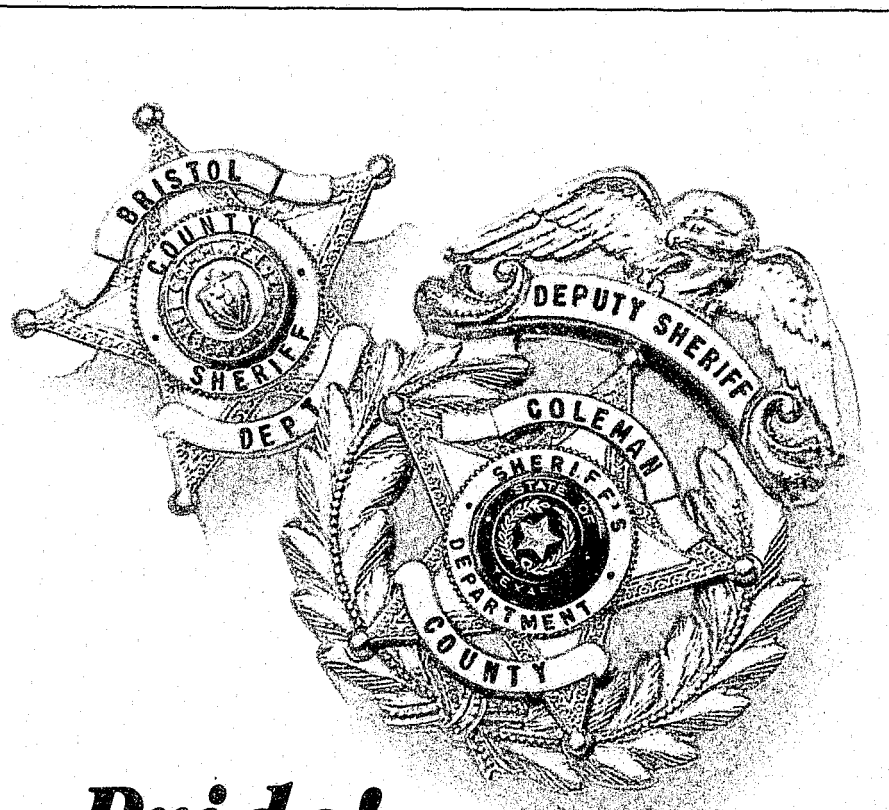
be retained. Officers who are frequently cited for misconduct, questionable judgment or improper actions are a liability and should be dismissed.

Dismiss officers also who receive substandard evaluations from more than one supervisor. Do the same with officers with drug or alcohol problems if they fail to complete a rehabilitation program. Do not retain an officer who fails annual in-service training or does not attend in-service training.

Finally, ensure that an attorney reviews all proposed termination actions

before the officer is terminated. A dismissal without proper documentation will surely result in a lawsuit by the terminated officer.

Today, civil liability is recognized as a way to compel police officers to comply with the federal constitution. Making the issues of selection, training, supervision and retention, priorities in the administration of a police force can be a costly endeavor. However, given the hostile environment that practitioners must operate in, the alternative is even more costly. L&O



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