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The Importance of Focused Policy in Modern Policing
By Joseph Fodera, Charles Alifano and Lou Savelli

Two of the most pervasive and important issues facing police agencies and their officers today are litigation coupled with negative public perception; or public *misconception*. Although these issues appear to be distinctly different, the contrary is true. Both issues share common threads similar and connected in nature to one another as well as being directly related to each other as individual issues.

The rise in litigation cases brought against various law enforcement agencies has a direct correlation to increased negative public perception of law enforcement officials. The resulting effect of these litigations is somewhat alarming to law enforcement agency heads as well as to local municipal government officials, who often times have the burden of satisfying large monetary judgments issued against their respective agencies. Some of these judgments have an adverse impact on municipal budgets in spite of diligent planning undertaken in an attempt to account for various unforeseen circumstances. This impact is often more difficult for the smaller agencies and municipalities to absorb than larger ones. Inexcusably, as exposed in numerous court cases and investigative reviews, the lack of focused policy, written procedures and guidelines contribute greatly to hefty monetary judgments against agencies and municipalities.

Countless Law Enforcement officers are questioned annually by litigating attorneys in an attempt to solicit an explanation of their actions in a variety of cases. Many of these cases have involved physical injuries to civilians, and, quite often, to police officers themselves. The results generally reveal that many police departments and other law enforcement agencies lack policies to deal with various incidents requiring specific police action. Police officers are sometimes left on their own to act upon instinct and/or inadequate training that may be lacking specificity related toward various and often times hazardous situations encountered on a daily basis by enforcement officers. This may result in officers being unprepared to act properly during such incidents, thus increasing the potential for other than safe and appropriate resolutions to these types of situations.

Focused policies and procedures need to be developed, taught and, more importantly, implemented. While policing in the United States, and Worldwide involves diverse situations with many variables, the enormous potential of problem incidents resulting from police-public (citizen) interaction can be greatly minimized with clear,

focused policies and procedures. In fact, most police officers welcome specific policies and procedures aimed at potentially hazardous and highly complex situations and prefer to follow guidelines set forth by their respective Departments. Many have even expressed a willingness to seek employment with other agencies due to the lack of specific policies within their present agency. These same officers feel a sense of protection from litigation, and indemnification from unreasonably large monetary judgments when focused policies are followed. This often results in a more confident officer possessing a high work ethic, whose actions are positively reflected by his or her performance evaluations.

In a recent case involving a large Metropolitan Police Department, policies and procedures came into question regarding the utilization of distraction devices upon entry into a dwelling pursuant to the execution of a high-risk search warrant. Such a device was used at a location where the subject was not present and an innocent civilian death resulted. While extremely unfortunate, the incident has caused an intense internal investigation by the Department involved and a detailed review of the circumstances by the local prosecutor's office. In addition to potential litigation, the public's outcry for justice has resulted in decreased confidence in police performance and increased skepticism of the Department's integrity. Police Commanders and officers involved have been reassigned and the policies and procedures are under intense scrutiny. Some of the questions asked by litigating attorneys will be, *"Is there a policy to use an explosive distraction device during the execution of a search warrant? Who is ultimately responsible to authorize such use? What kind of investigation must be conducted and/or information verified prior to utilizing such a device? Can we sue the officers involved for not following proper procedures? Are there proper procedures in place in this agency for this situation? Can we seek criminal charges against the officers for such a horrendous act?"*

Imagine if you will, being the head of a police agency that becomes the subject of litigation due to the actions of one of its members. You are called to the witness stand and questioned as to your Department's policies pertaining to any one of a number of situations. You must admit, albeit hesitatingly, that your agency does not have a policy in effect pertaining to the incident for which you are in litigation. The attorney then questions you as to what other Departments you would compare yours to, and then, after you answer, he presents policy after policy from those agencies, showing to the jury that your agency is negligent in not having taken the precaution of drafting policies which are currently in use in other like agencies. Similarly, your Agency can also come under fire for the lack of training afforded to your personnel. Along with a rather large settlement being the likely outcome, you will undoubtedly be called upon to explain why this oversight occurred and how you plan to remedy it.

The following list of subjects, although not all inclusive, should be given serious consideration when attempting to determine if procedure or guidelines should be developed and/or revised:

- General safety rules and regulations
Include Prohibitive Conduct

- Liability Issues
 - For the Department or Agency (Employer)
 - For the Municipality
 - For the Officer (Employee)
- The structure and organization of the Department or Agency
 - The span of responsibility and control of each level of the organization
- Operational Direction
 - Patrol Duties and Responsibilities
 - Investigative Duties and Responsibilities
 - Scope of Jurisdiction
 - Internal Investigation/Audit Responsibility
 - Administrative and Payroll Management responsibilities
 - Legal Matters
 - Labor Management
 - Statistical Crime Gathering and Recording
 - Emergency Management
- Interagency Relationship Coordination
 - Prosecutors (Local, State, Federal)
 - Corrections (Sheriff's Departments)
 - State and Federal Law Enforcement Agencies
 - Non-Law Enforcement Entities
- Case Management Policy
- Court/Trial Preparation and Presentation
- Evidence Collection, Control and Custody Chains
 - Invoicing Methods (Narcotics, Firearms, etc.)
 - Laboratory delivery, Storage and Analysis Protocols
 - Disposal/ Return to Owner
- Civil Enforcement Protocols
 - Asset Forfeiture
 - Civil Evictions
 - Nuisance Abatements/Padlocking Procedures
- Equipment usage and Funds Procurement
 - Maintenance/ Storage/Accounting/Security
 - Auditing Guidelines
- Uniformity of Investigational, Enforcement and Prosecutorial Methods and Tactics
- Confidentiality of Members Engaged in Covert Assignments
 - Use of Undercover Officers
 - Use of Automobiles/Identification
 - Personnel Records and Data Systems
 - Undercover Operations
- Confidential Sources
 - Use of Confidential Informants/Cooperating Witnesses
 - Record-keeping
 - Tracking
 - Activation/Deactivation

- Geographic Locations of various Agency Off-Site Housing
- Intelligence gathering, recording and Dissemination
- Crime Complaint Reception, recording, Documentation and Distribution
- Operational De-confliction Methods
 - Investigation
 - Enforcement
 - Covert
- Surveillance Protocols
- Warrant Guidelines
 - Search
 - Arrest
 - Eavesdropping
- Training and Performance Evaluations
- Community Affairs/Outreach
- Public Information Office
- Counter-Terrorism Protocols and Information Sharing

When your Department is under fire because of the actions of one of its members, positive public perception can assist in healing any “wounds” sustained as a result of that incident. If you have sound policy and procedure, and the bureaucracy and citizenry can see that your members did not violate that policy, which was written based upon generally accepted police practices, you will have already won half of the battle.

Absent a violation of procedure or a lack of policy altogether, your detractors will be hard pressed to gain a foothold in their attempts to make your department appear inept, or, worse, criminally negligent or monetarily culpable in any litigation brought against it.

If your Agency or Department does not have the resources to maintain a full time policy and procedure staff, it is highly recommended that consideration be given to outsourcing to a consulting company capable of providing well thought out, professionally researched, written policy and procedure. In addition to the savings realized by not having to maintain personnel dedicated to researching and drafting departmental policy, the monetary benefits experienced by your Department in decreased legal judgments alone will more than justify any expenses incurred. Additionally, if your agency has not had its Policy and Procedural manual examined and updated recently, consider conducting a complete evaluation and overhaul to bring your Agency into compliance with generally accepted law enforcement policy and procedure practices.

In short, there is no alternative to having concise, precise, well-worded police policy and procedure. Sending your officers out to serve the public without giving them the direction and guidance that is required is tantamount to sending them out unarmed.