Organizational factors that contribute to police deadly force liability

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A B S T R A C T

Police use of deadly force is a significant concern for municipal policymakers and law enforcement agencies. Following U.S. Supreme Court case law, police agencies and municipal entities may be held civilly liable under Section 1983 for force that is not objectively reasonable; for failure to train; and for policies, customs, and practices that cause constitutional injury. This article analyzes eighty-six cases from the U.S. District Courts and the U.S. Courts of Appeals on Section 1983 liability regarding police use of deadly force. The article focuses specifically on police firearm use in deadly force situations, highlighting how managerial disorganization and administrative breakdown impacts departmental decision making. Principles of management, such as division of labor, hierarchy of authority, span of control, unity of command, and communication are used to explain bad shootings that lead to potential police liability.

Introduction

Police use of deadly force is an issue of considerable concern for municipal policymakers and law enforcement agencies (Alpert & Smith, 1999; Fyfe, 1981). It is also a significant subject for citizens and researchers (Kappeler, Sluder, & Alpert, 1998; Skolnick & Fyfe, 1993). As Kappeler et al. (1998) indicated, rough treatment of individuals by police is prevalent, and police corruption and discrimination highlight prevailing problems. During the 1960s and 1970s, police misconduct became publicly known (Son & Rome, 2004), Waegel (1984) noted that police use of excessive force was a contributing factor to public disorder in the 1960s. By 1979, the death of Arthur McDuffie in Miami attracted public attention, and in 1991 national attention was focused on the police beating of motorist Rodney King in Los Angeles (McCluskey, Terrill, & Paoline, 2005). In February 1999, an unarmed African immigrant was shot and killed in a barrage of forty-one bullets fired by four White officers of the New York City Police Department (NYPD) (Son & Rome, 2004). In November 2006, fifty bullets from NYPD officers killed a bridegroom (Seifman, Weiss, & Greene, 2006), and the officers involved in the shooting were indicted by a grand jury in March 2007 (Milton, 2007).

Although police are granted the legal right to use force, excessive force is that which is “unreasonable or unnecessary to accomplish a legal objective”: unnecessary force has plagued police administrations, causing community resistance, federal investigations, criminal prosecutions, and civil liability (Kappeler, 2006a, p. 80; Ross, 2000, 2003). Specific regulations and administrative policies guide police decision making because of the serious nature of police misuse of deadly force and the importance of police decisions when to use deadly force (Hontz, 1999). Officers are guided by federal and state court cases, state law, and departmental and municipal policies (Hontz, 1999). Failure to follow regulations regarding proper use of force may be a source of civil liability under Title 42 U.S. Code Section 1983,1 which has developed into “a way of life for criminal justice personnel” (del Carmen, 1994, p. 410).

Prior studies identifying causes of police excessive deadly force had examined environmental, organizational, and situational factors, and found that administrative policies can ameliorate police misconduct (Fyfe, 1979, 1988; Geller & Scott, 1992; Walker, 1993). The importance of administrative control over police use of deadly force has also been identified in U.S. Supreme Court decisions (City of Canton v. Harris, 1989; Monell v. New York City Department of Social Services, 1978). As Kappeler (2006b) noted, inadequate use of force results from unconstitutional municipal policies and lack of training.

Following previous research, the purpose of this article is to explore the impact of administrative failures on police shootings by analyzing civil liability cases in the U.S. Courts of Appeals and the U.S. District Courts. Quasi-causal relationships between dysfunctional management and police deadly force liability examined through an inductive case-by-case methodology will uncover the importance of administrative regulations and contribute to the development of organizational controls to address police excessive use of deadly force. While the article pertains to liability resulting from poor management, even rogue officers who operate under intact policies, appropriate training, and adequate supervision can choose to engage in misconduct, leading to liability for the officers but not the supervisor or the agency.

Relevant U.S. Supreme Court cases

The U.S. Supreme Court has decided four major cases and two less important ones under Section 1983 that set relevant precedent for

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the U.S. Supreme Court established standards governing police use of
deadly force. Before this decision, police use of deadly force for all fleeing
felons was considered legitimate (*Tennnenbaum, 1994*). Ending this
practice, the Court ruled that deadly force was not proper unless an
“officer has probable cause to believe that the suspect poses a significant
threat of death or serious physical injury to the officer or others” (*Tennessee v. Garner, 1985*, p. 1). As Frye and Walker (1990) indicated,
the *Garner* decision had a significant effect on police because it
invalidated deadly force fleeing felony statutes in thirty-four states.

In *Graham v. Connor* (1989), the U.S. Supreme Court established
constitutional limitations on the police use of non-deadly force. Before
*Tennessee v. Garner* (1985), most federal courts used the Fourteenth
Amendment’s substantive due process standard to assess police use of
non-deadly force (*Johnson v. Glick*, 1973). The Court changed this by
holding that “excessive force in the course of arrest, investigatory stop,
or other ‘seizure’ of a person are properly analyzed under the
Fourth Amendment’s ‘objective reasonableness’ standard” (*Graham v.

established “objective reasonableness” as the standard for excessive
force, but there is no mechanical application to any excessive force
claims as each is decided on a case-by-case basis. In *Broseau v. Haugen*
(2004), the U.S. Supreme Court held that police use of deadly force
against a fleeing suspect does not violate clearly established rules when
a suspect is posing an imminent threat of danger to officers or others. In
*Scott v. Harris* (2007), the Court authorized police use of deadly force
during a high-speed vehicle pursuit when a suspect endangered officers’
and innocent citizens’ lives. After *Scott*, police may reasonably use
deadly force to end threats immediately, because a speeding vehicle
attempting to evade police is an instrument of deadly force.

*Molll v. New York City Department of Social Services* (1978) is the
leading case on municipal liability under Section 1983 for forces,
customs, and practices that cause constitutional injury. Under *Monell*,
municipalities are liable for implementing policies or having customs
or practices that violate a citizen’s constitutional rights. Finally, *City of
Canton v. Harris* (1989) is the leading U.S. Supreme Court case
regarding failure to train police officers. According to *City of Canton v.
Harris* (1989), municipalities such as cities, counties, and agencies are
liable under Section 1983 when “failure to train amounts to deliberate
indifference to the rights of persons with whom police come into contact” (p. 378). The Court reasoned that municipalities are
deliberately indifferent to the inhabitants’ constitutional rights when
they do not train their officers regarding the appropriate use
of force in the “obvious areas” of police work where force can be
foreseeable. Supervisors must train officers in the “obvious areas”
in which their officers may use force. Footnote 10 in the *Canton*
decision helps explain the obviousness rule: because municipalities ask police
officers to arrest felons and to carry weapons, and when making
felony arrests it is obvious that firearms are needed, the Court said it
would be deliberately indifferent on the part of the city not to train
officers in the constitutional limits of firearm use. Thus, *Canton*
made police pay more attention to their restrictive training programs
(Vaughn, Cooper, & del Carmen, 2001).

**Civil liability and administrative controls for excessive use of force**

While individual police misconduct and abusiveness are primarily
controlled by court decisions under *Tennessee v. Garner* (1985) and
*Graham v. Connor* (1989), municipalities can be liable for unconstitu-
tional policies and failure to train their officers under *Monell v. New
York City Department of Social Services* (1978) and *City of Canton v.
Police officers and their municipalities may reduce Section 1983
liability by adopting administrative policies that control officer
behavior in use of force situations (*del Carmen, 1991*). Hughes
(2001) emphasized the importance of internal departmental policies
to control police misbehavior. After *Garner* and *Canton*, police
administrators recognized that desired legal results could not be
achieved without policy and administrative reforms within law
enforcement agencies. Thus, scholars are in agreement that those
decisions spurred more police use of force training and policy
development (*Tennenbaum, 1994; Vaughn et al., 2001*).

Elements of these administrative policies are not new concepts;
rather, they are components of organizational theories, including
traditional management theory (*Fayol, 1949; Taylor, 1911/1947*);
contingency management (*Blake & Mouton, 1964; Fielder, 1998*); and
and Dias and Vaughn (2006) used managerial concepts to explain that
administrative breakdowns and managerial disorganization may lead
to increased litigation. In this article, civil liability for police use of
deadly force will be addressed by analyzing federal cases within the
backdrop and context of administrative breakdown and managerial
disorganization.

**Research hypothesis**

Following previous studies that posited that civil liability may be
curtailed by administrative policies that control police misconduct and
organizational breakdown, this article hypothesizes that managerial
failure may spur litigation for police excessive deadly force. Based on
organizational breakdown and managerial disorganization theory, it is
expected that civil liability for police use of deadly force should
increase when police officers are poorly supervised, inadequately
trained, and lack communication and accountability. In line with the
theoretical framework mentioned above, this article hypothesizes that
some police excessive use of deadly force is associated with a collapse
of command and control, hierarchy of authority, communication,
accountability, and division of labor (*Fayol, 1949; Weber, 1946/1992*).

**Methodology**

*Molll v. New York City Department of Social Services* (1978) and
*City of Canton v. Harris* (1989) were used to find relevant civil liability
cases related to managerial disorganization and administrative
breakdown. As the focus is organizational in nature, the search
strategy in the Westlaw campus on-line data base was designed to
capture cases where departments and municipalities were sued. Thus,
while the Westlaw search strategy did not involve cases based on
individual officer liability under *Tennessee v. Garner* (1985) and
*Graham v. Connor* (1989), these cases appeared in *Monell* and *Canton*
litigation. Regarding police shootings, the focus was on police use of
deadly force. Consequently, the use of non-deadly force involving
night sticks, stun guns, taser guns, and pepper gas were excluded. For
the consistency of the analysis, only federal cases were selected
because suits under state law are governed by different standards and
court precedents (*Acker & Irving, 1998*). Finally, cases before *Garner*
were excluded because pre-*Garner* deadly force cases used the old
substantive due process standard under the Fourteenth Amendment.

Any conclusions made based on lower federal court decisions
might be inadequate. The U.S. Supreme Court, however, “denies or
dismisses about 99 percent” of petitions requesting a writ of
certification or certiorari (*Murphy, Pritchett, Epstein, & Knight, 2006*, p. 87). The denial or dismissal of these cases does not mean
the Court agrees with lower court decisions, but federal lower court
decisions at the circuit level set precedents within that jurisdiction
when they do not reach the Court. Having only a few cases involving
police use of deadly force decided by the U.S. Supreme Court within
the last three decades, this article analyzes federal lower court cases to
get a clearer picture of the state of the law within the federal courts.

In the Westlaw campus on-line data base, the following search
terms were used: “police”/p “deadly force”/p “Canton,” “police”/p
cases regarding Section 1983 liability for failure to train police officers during years 1985 and 2005. This strategy produced 239 cases from the U.S. District Courts and the U.S. Courts of Appeals. Out of 239 cases, 86 cases focused directly on police deadly force for firearm use between 1985 and May 2008. These cases are highlighted in this article.7

Lower federal court case law on police use of deadly force

Of the eighty-six Section 1983 cases regarding police use of firearms in deadly force incidents, individual officers were sued for lack of objective reasonableness under Graham v. Connor (1989) in fifty-five cases and for excessive force under Tennessee v. Garner (1985) in fifteen cases. With respect to municipal liability under Section 1983 for policies, customs, and practices that caused constitutional violations, fifty-seven of the eighty-six cases were litigated under Monell v. New York City Department of Social Services (1978). Under City of Canton v. Harris (1989), police agencies and municipal entities were sued in sixty-two cases. With respect to municipal liability under Section 1983 for policies, customs, and practices as well as inadequate training that amounts to deliberate indifference that leads to unreasonable police use of deadly force. Third, organizational factors are then utilized to explain the causes of police use of unreasonable deadly force. The article concludes that more research is needed to link organizational dysfunction in a variety of criminal justice agencies to civil liability.

Individual police officer liability under Garner and Graham

After Tennessee v. Garner (1985), the U.S. Supreme Court ruled that police officers cannot use deadly force against nonviolent fleeing felony suspects. Police officers are also required to use objectively reasonable force under Graham v. Connor (1989); however, as shown in Table 1 use of deadly force against suspects who were surrendering to police authority; use of deadly force against cooperative suspects;

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<th>Table 1</th>
<th>Individual police officer liability under Tennessee v. Garner (1985) and Graham v. Connor (1989)</th>
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<td>Categories</td>
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<td><strong>Cases where the individual officer was not liable</strong></td>
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<tr>
<td>Careless handcuffing</td>
<td>• Injuring a suspect while handcuffing with a gun drawn (Dodd v. City of Norwich, 1987; Troublefield v. City of Harrisburg, 1992)</td>
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<td>Split-second decisions</td>
<td>• When officers were threatened by a knife (Bullard v. City of Mobile, 2000; Morris v. City of Philadelphia, 2007; Roy v. City of Lewiston, 1994)</td>
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<td>Others</td>
<td>• An off-duty officer involved in a love triangle shot and killed his girlfriend's former boyfriend (Hudson v. Maury, 1994)</td>
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<td>• An off-duty officer killed a security guard at an amusement park who asked him to leave because he was drinking beer in violation of the park's rules (Turk v. McCarthy, 1987)</td>
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<td>• Voluntarily dismissed by plaintiffs who ultimately sued sheriff in her official capacity (Whitewater v. Goss, 2006)</td>
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<td>• Chiefs in their individual capacity did not participate in the shooting (Randle v. Panici, 1991)</td>
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This article examines the organizational factors that lead to unreasonable police use of deadly force. First, through an inductive case-by-case analysis of facts and court reasoning, this article assesses patterns of individual officers’ use of deadly force. Second, the article examines municipal liability through the lenses of unconstitutional policies, customs, and practices as well as inadequate training that amounts to deliberate indifference that leads to unreasonable police use of deadly force. Third, organizational factors are then utilized to explain the causes of police use of unreasonable deadly force. The article concludes that more research is needed to link organizational dysfunction in a variety of criminal justice agencies to civil liability.

### Table 1

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<td><strong>Cases where the individual officer was liable</strong></td>
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<td>Failure to control adrenalin overload resulting from hot pursuit</td>
<td>• Killing a suspect lying on the ground (Carr v. Castle, 2003)</td>
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<td>• Injuring a suspect with his hands up in the air (Carter v. Chicago, 2004; Cooper v. Merrill, 1990)</td>
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<td>• Killing a suspect who stopped his vehicle (Clark v. Nassau County, Florida, 1991)</td>
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<td>Street justice</td>
<td>• Killing a suspect after he was handcuffed by an officer who had chronic paranoid schizophrenic (Graham v. Sauk Prairie Police Commission, 1990)</td>
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<td>• Killing a suspect who failed to follow police orders (Moore v. Yost, 1993)</td>
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<td>Deadly use of force against uncooperative suspects</td>
<td>• Use of force against citizens attempting to commit suicide (Conners v. Town of Brunswick, 2000; Murphy v. Bitsui, 2004; Sova v. City of Mt. Pleasant, 1996)</td>
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<td>Failure to handle suicide by cop situations</td>
<td>• Killing a suspect with a .24 percent blood alcohol level (Bing v. City of Whitehall, 2005)</td>
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<td>• Killing a suspect who refused to open the door (Paiva v. City of Reno, 1996)</td>
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<tr>
<td>Abuse of authority</td>
<td>• Injuring a suspect as a result of failure to apply the knock and announce rule (Sledd v. Lindsay, 1996)</td>
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<td>Failure to update legal developments</td>
<td>• Killing a suspect while chasing fleeing suspect on foot with handgun drawn (Collins v. Metcalf, 1997)</td>
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<td>Split-second syndrome</td>
<td>• Killing a suspect holding a pipe (Brown v. Doe, 1999)</td>
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<td>• Contagious shooting (Parker v. Town of Swansea, 2003)</td>
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<td>• Killing a suspect ninety seconds after contact (Allen v. Muskogee, Oklahoma, 1997)</td>
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<td>Reckless use of deadly force</td>
<td>• Friendly fire (Small v. City of Philadelphia, 2007; Vaughn v. City of Orlando, 2008; Young v. City of Providence, 2005)</td>
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<td>Misidentification of suspects</td>
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and reckless use of deadly force were found to be the primary causes of individual officer's liability under Section 1983.

Use of deadly force against suspects who were surrendering to police authority

Police must not use deadly force against suspects who are surrendering. While most police-citizen encounters begin with misdemeanor or nonviolent crimes, police officers sometimes believe their safety is threatened when it is not, thus creating conditions for unnecessary deadly force (Meadows & Trostle, 1988). The police subculture also teaches officers to control police-citizen interaction (Manning, 1978), meaning that police become aggressive when they perceive they are losing control (van Maanen, 1978). Under these circumstances, some police officers use excessive force due to their psychological fear of losing control (Griffin & Bernard, 2003). Although the individual officers were held liable under Tennessee v. Garner (1985) and Graham v. Connor (1989), police managers have an organizational responsibility to inform their subordinates on the constitutional limits of deadly force.

Adrenalin overload

Oftentimes, long and dangerous high speed chases and foot pursuits make police officers frustrated because of “adrenalin overload,” which leads to application of excessive force (Montgomery, 2005, p. 11). In Carr v. Castle (2003), the victim fled on foot from a police officer who responded to an assault call. Once the victim was stopped, the officer killed him by shooting him eleven times in the back. Despite the officer’s contention that the victim was holding a brick of concrete, the Tenth Circuit remanded the case for a new trial because trial testimony indicated the victim was shot from behind while he was lying on the ground. Oklahoma City refused to settle the case for $50 million, so the case went to trial. At trial, the plaintiffs reduced their wrongful death claim to $75,000 for pain and suffering and $75,000 for punitive damages (Associated Press, 2004).

Similarly, a victim was shot three times and injured while he was surrendering with his hands held up in the air (Cooper v. Merrill, 1990). According to the victim, the officer’s second and third shots were fired at close range at the surrendering suspect who had no weapon and posed no threat. The district court in Delaware denied the officer’s motion for summary judgment. Federal courts have also found it unreasonable under Tennessee v. Garner (1985) for the police to use deadly force against surrendering suspects who voluntarily stopped in order to end police pursuit (Ayuso v. Amerosa, 2008; Carter v. Chicago, 2004; Clark v. Nassau County, Florida, 1991; Davis v. City of Detroit, 2006; Rudolph v. Jones, 2002; Whifield v. Melendez-Rivera, 2005).

Research shows the primary cause of police officer death is the danger associated with responding to a robbery. This causes heightened sensitivity to risk and increase in adrenalin (Rayburn, 2007). In Fletcher v. District of Columbia (2005), an African American man, armed with a nine millimeter Beretta, robbed a liquor store. He fell down and abandoned his handgun after being shot. During the encounter, police officers called him a “nigger,” and one officer shot him in the right eye while he was lying on the ground, even though he showed no threat at the time of the shooting. Under Section 1983, the victim sued the officers for excessive deadly force. Since there were factual issues in dispute about the reasonableness of the police force, the district court in the District of Columbia denied the officers’ motions for qualified immunity and summary judgment. These cases show that police use of excessive force against surrendering suspects is unreasonable under Graham v. Connor (1989) (also see Jones v. Town of East Haven, 2007).

Street justice

Even though it is not often the case, police officers’ informal retribution occurs when officers decide to “take care of business” and administer “curbside justice,” which is outside the purview of police authority and should be strictly controlled by administrators (Montgomery, 2005, p. 11). In Graham v. Sauk Prairie Police Commission (1990), a victim was shot twice in the head and killed after being handcuffed behind his back. At the time of the shooting, the victim was not fleeing and showed no threat. During the Section 1983 wrongful death lawsuit, evidence showed that the police officer was a chronic paranoid schizophrenic. As such, a district court in Wisconsin granted summary judgment in favor of the plaintiff. On the appeal, the Seventh Circuit affirmed the district court’s judgment that the officer’s act was an intentional constitutional tort.

Another victim was shot several times and killed by police officers while exiting a door in Moore v. Yost (1993). Police gave the victim specific orders to remain in his house. The victim was shot as he walked out his front door because the police became upset that he did not follow their specific directives to stay inside. Yet, the unarmed victim did not attempt to flee, assault the officers, or resist arrest. Pursuant to Section 1983, the victim’s estate sued the officers for excessive deadly force and wrongful death. The police officers did not raise any defense in the district court; hence, conceding their liability.

Summary of cases where police used deadly force against suspects who were surrendering to police authority

Federal courts are more likely to find the police liable when they use deadly force against unarmed, nonviolent, and nonthreatening fleeing suspects. The environmental situations that lead up to police encounters with surrendering suspects are full of trepidation and adrenalin. These emotional conditions require police managers to convey to their subordinates that deadly force must be restrained, and is only permissible if the suspect poses an imminent threat of danger or great bodily harm to officers or others. In the above cases, however, officers fired at surrendering suspects who showed no immediate threat. Courts held that the police shootings were inexcusable because no objectively reasonable officers in the same situation would have used deadly force. The intentional act of shooting a surrendering suspect subjects police to Section 1983 liability.

Deadly use of force against uncooperative suspects

Use of deadly force against uncooperative suspects based on the objective reasonableness standard under Graham v. Connor (1989) has been criticized for ambiguity (Alpert & Smith, 1994; Kappeler & del Carmen, 1990). The federal courts, however, consistently find that objective reasonableness is the standard for an individual officer’s good faith at the time force is used (del Carmen, 1994; Meadows & Trostle, 1988). Even though departments and officers must follow the courts’ guidelines about objective reasonableness, unreasonable and abusive firearm cases continue to be litigated when police face uncooperative suspects.

Suicide by cop

Excessive use of weapons often results from police officer frustration when dealing with suicidal subjects (Lord, 2000). With the increased prevalence of distressed and mentally ill individuals on America’s streets, police officers need special instruction, training, and direction from supervisors regarding identification of disturbed persons, how to approach them, and how to resolve potential problems without resorting to deadly force. In Sova v. City of Mt. Pleasant (1998), the parents of a son with depression called the police for help to stop him from committing suicide. Upon arrival, police officers found the heavily drunk son, who failed to reconcile the relationship with his girlfriend, attempting to kill himself with two knives in his hands. As the son was approaching the officers, three shots were fired that killed him. When the officers fired their guns, the son had not committed a crime nor showed any threat to the officers
or others. Pursuant to a Section 1983 lawsuit, the Sixth Circuit reversed the district court’s decision that granted summary judgment to the officers. Moreover, encounters with disturbed citizens often prompt authoritarian reactions by police. This occurs when officers fail to maintain professional neutrality and self-control (Arcaya, 1989). In this same vein, some federal courts have found police use of deadly force against citizens attempting suicide unreasonable (Connors v. Town of Brunswick, 2000; Murphy v. Bitsoi, 2004).

Suspect intoxication

Research about police-citizen encounters recommends that police officers be well-acquainted with suspects’ environmental conditions, personal characteristics, tactical locations, and venues of possible resistance (Belvedere, Worrall, & Tibbetts, 2005; Reiss, 1980). Failure to understand suspects’ demeanor and personal characteristics has resulted in unnecessary deadly force. In Bing v. City of Whitehall (2005), a SWAT team was dispatched to investigate a suspect with a weapon. Due to communication difficulties with the suspect, the SWAT team used pepper gas and a flashlight device several times before they entered the suspect’s residence. Before entering the house, two officers fired their shotguns into the door; the suspect was behind the door. When the suspect was killed by twenty-two shotgun wounds, his blood alcohol level was .24 percent. The officers were sued under Section 1983 for wrongful death and excessive use of deadly force. A district court in Ohio held that factual issues about the reasonableness of using force under Graham v. Connor (1989) precluded the defendants’ motion for summary judgment.

Abuse of authority

Police should keep their private life compartmentalized and separate from their occupational role as a law enforcement agent (Vaughn & Coomes, 1995). When officers do not, they may “physical[y] abuse [citizens] through the use of excessive force” (Kappeler et al., 1998, p.24). Abuse of police authority can result in bad outcomes as evidenced by Ott v. City of Mobile (2001), where an off-duty police officer, wearing street clothes, shot and killed a citizen after a private altercation. The officer got into a street fight and attempted to arrest several individuals, but to no avail. At this point, the officer retrieved his gun and badge from his private vehicle; thereafter, the shooting occurred. The officer never identified himself verbally as a law enforcement official. The officer raised no defense in the district court, but the municipality maintained that the officer was not acting under color of law. A district court in Alabama found that factual issues precluded the motion for summary judgment for the officer.

Bad attitudes displayed by citizens bring about problematic police-citizen interactions (Alpert & Dunham, 2004; Dunham, Alpert, Stroshine, & Bennett, 2005); however, the forms of citizens’ resistance are not limited to physical violence (Terrill, 2001; van Maanen, 1978). Regardless of the types of citizens’ resistance, police might use physical or deadly force when confronted with disrespectful behavior (Worden & Catlin, 2002). A victim who showed only passive resistance was shot and killed by authoritarian police in Paiva v. City of Reno (1996). Evidence showed police officers were investigating an assault and asked the victim to open the door. The victim, however, refused to let the officers inside his home. The officers shot dozens of times and killed the resisting man. Despite the officers’ contention that the victim was holding a gun, forensic evidence showed no gun was present. A district court in Nevada denied the officers’ claim for summary judgment and qualified immunity because there were factual issues regarding the reasonableness of the police response under Graham v. Connor (1989).

Legal updates

In contradiction to long-held police street practices, the U.S. Supreme Court has held that law enforcement officers are required to knock and announce prior to executing a search warrant (Wilson v. Arkansas, 1995), unless exigent circumstances are present (Richards v. Wisconsin, 1997). The Court has said that police officers must identify themselves prior to engaging in aggression to reduce the risk of violence and protect privacy interests of others (Josephson, 1996). Disregard for these standard procedures were an immediate cause of unnecessary use of force in Sledd v. Lindsay (1996).

In Sledd v. Lindsay (1996), while executing a search warrant, police shot a man holding a gun. The victim did not know that the intruders were police officers because they did not identify themselves. The victim maintained that he was holding the gun for self-defense. At the criminal trial, evidence showed that officers lied, were disingenuous, and perpetuated a “code of silence,” which hampered internal police and prosecutorial investigations. The police were found to be in the wrong; therefore, the victim was found not guilty of attempted murder, armed violence, aggravated assault, and possession of cocaine and cannabis. Thereafter, the victim sued the officers pursuant to Section 1983 for excessive deadly force. The Seventh Circuit found that the “knock and announce principle forms part of the reasonableness inquiry under the Fourth Amendment” (Sledd v. Lindsay, 1996, p. 287) under Wilson v. Arkansas, 514 U.S. 927 (1995), and to avoid misidentification, the officers had to knock and announce their presence prior to using deadly force. Notwithstanding the dangerousness of serving warrants against armed criminal suspects, police managers need to supervise and train officers to adhere to the rule of law.

One of the major goals of police using force is to achieve compliance and control (Bittner, 1970), however, using more force than is required during a physical altercation is actionable under Section 1983 (Montgomery, 2005). Self-defense with a baton would have been the more adequate response in Collins v. Metcalfe (1997) than shooting the suspect. In Collins, a police officer shot and killed an escapee. The officer was pursuing the victim on foot with his gun drawn, even though research by White (2006) suggests that officers should holster their guns when chasing fleeing suspects on foot. After a struggle, the officer fired his gun, hitting the victim in the neck. The officer alleged that the victim was holding a gun, but the police department’s Latent Comparison Unit found no fingerprints on the gun that the officer indicated the victim was holding. The officer who shot the victim raised no defense in the district court. The Collins case clearly shows departments need to be careful when crafting policies with respect to pursuit of unarmed suspects with police weapons drawn. It is always a close call in these situations, but the goal of public safety should be carefully balanced against unreasonable suspect injury.

Split-second syndrome

Unsatisfactory resolutions of police-citizen encounters are inevitable due to their urgency and potential dangerousness (Fyfe, 1986). The pressure and the short time available during encounters have been called the “split-second syndrome” (Fyfe, 1986). It limits police officers’ calculation of threat levels and may lead to bad shootings (Fyfe, 1986). As explained in Graham v. Connor (1989), the U.S. Supreme Court has recognized that “police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation” (p. 396). When rapid police reactions are not required, however, the decision to use deadly force may cause Section 1983 liability. The split-second syndrome often results from low-lighted areas, suspects trying to hide from police, and police officers’ speculating about dangerousness (White, 2006). In Holland v. City of Houston (1999), a victim was shot and killed by an off-duty police officer who was working for a disco club. Facts showed the officer separated combatants, including the victim, who were fighting in the club. Outside the club, someone shouted that one of the combatants was holding a gun. Hearing this statement, the officer thought the victim was holding a shotgun, so he fired his gun and killed the victim. There were no fingerprints, however, on the shotgun.
the officer alleged the victim was holding. A district court in Texas found that due to conflicting evidence, the wrongful death claim under Section 1983 should proceed to trial. In some respects, the Holland case is reminiscent of Tennessee v. Garner (1985), where the officer shot an unarmed suspect, at night, because he thought the suspect was holding a gun. While these situations are extremely risky and volatile for police, managers must include training that focuses on weapon use in low-light situations and officers’ behavioral responses.

The Holland v. City of Houston (1999) case is supported by research that shows when the officer “had less time to prepare himself...the likelihood of shooting accurately decreases” (White, 2006, p. 324). In other words, police use of deadly force resulting from officers’ split-second syndrome is one of the leading causes of civil liability. Other situations where shootings go bad include believing unarmed suspects were armed (Brown v. Township of Clinton, 2006; Gilmore v. City of Atlanta, Georgia, 1985; Johnson v. City of Richmond, 2005; McKnight v. District of Columbia, 2006); shooting a suspect who was holding a pipe (Brown v. Doe, 1999); and killing non-dangerous drivers who drove past police (Fields v. Nawaoka, 2008; Luke v. Brown, 2007; Quade v. Kaplan, 2008; Scott v. Vasquez, 2004; Smartt v. Grundy County, Tennessee, 2002; Smith v. City of Wilmington, 2007; Willis v. Oakes, 2006).

Aveni (2003) reported that “a significant number of shootings took place whereby one or more officers perceive another officer’s stumble and fall as being affirmation that he is under attack” (p. 85). While it is an open question whether departments are constitutionally required to train for such inevitabilities, good police administration demands that shows when the of weapon use in low-light situations and of behavioral responses.

Even though the objective reasonableness standard is not simple to assess, police may be liable when using deadly force against a mentally ill but innocent resident; a heavily intoxicated person; and a noncooperative citizen. Existence of imminent danger of threat to officers or citizens can justify police use of deadly force against uncooperative suspects (Brosseau v. Haugen, 2004; Scott v. Harris, 2007); however, some of these tragic events may have been prevented with proper administrative controls, closer supervision, more training, and increased oversight (Walker, 2005). In addition, federal courts do not assess deadly force based on an officer’s personal emotions (Ott v. City of Mobile, 2001). The Graham v. Connor (1989) standard asks what an objective reasonable officer would do at the scene; the subjective beliefs of the officer at the scene are irrelevant (Whren v. United States, 1996). Even considering work conditions where officers are forced to make inevitable split-second judgments, police supervisors must help their officers to carefully limit their use of force. Managerial communication to officers must instruct them not to provoke a violent response from citizens, which creates the need for use of deadly force (Allen v. Muskogee, Oklahoma, 1997; Vaughn, 1996a).

Reckless use of deadly force

While police departments modified policies to enhance their officers’ safety in dangerous situations (Alpert & Fridell, 1992), seventeen police officers were accidentally killed from 1996 to 2005 as a result of cross fires, mistaken identity, and firearm mishaps (Federal Bureau of Investigation, 2005). Lack of communication within a department caused friendly fire accidents in several cases.

Misidentification of suspects

In Young v. City of Providence (2005), two police officers responded to a call regarding an assault. When officers arrived at the scene, a man pulled a gun from his car. At this moment, the suspect, an off-duty police officer, engaged in back-up and identifying himself as police with his gun pointed downward. The responding officers misidentified the off-duty officer as a suspect and began to fire. The off-duty officer was killed by the two patrol officers who worked with him in the same police department. The victim’s estate sued the officers pursuant to Section 1983 for wrongful death. After a bifurcated trial in the district court, the jury found that one officer, who shot the victim first, violated the victim’s constitutional rights. On appeal, the First Circuit concluded that the act of the officer, who shot first, was unreasonable under Tennessee v. Garner (1985). In fact, undercover police work has been identified as one of the most risky and dangerous police assignments; therefore, managers should cautiously implement these tactical operations with due care and precision (Pogrebin & Poole, 1993). In two additional cases (Small v. City of Philadelphia, 2007; Vaughn v. City of Orlando, 2008), officers were also found liable for friendly fire.

Municipal liability under Monell and Canton

While the analysis of cases under Tennessee v. Garner (1985) and Graham v. Connor (1989) did not reveal the whole state of affairs regarding police deadly force, municipal and failure to train cases litigated under Monell v. New York City Department of Social Services (1978) and City of Canton v. Harris (1989) exposed a more detailed reality of police shooting misconduct and organizational breakdown. The Monell decision authorized Section 1983 lawsuits against police departments and municipal entities when their policies, customs, and practices were responsible for unconstitutional deprivations of citizens’ rights (Kappeler, 2006a). The Court, in City of Canton v. Harris (1989), also held that a municipality’s failure to properly train its employees and officers can constitute a “policy or custom that is actionable under Section 1983” (p. 388). As Table 2 shows, municipal policies about deadly police force and their failure to train continue to be litigated in federal courts.

Summary of cases involving use of deadly force against uncooperative suspects

Even though the objective reasonableness standard is not simple to assess, police may be liable when using deadly force against a
Unconstitutional policies, customs, and practices involving deadly force

Although there have been debates about what constitutes policymakers and supervisors as well as what forms actionable policies, customs, and practices (Worrall, 2001), in this article, municipalities in fifty-seven out of eighty-six cases were sued pursuant to Monell v. New York City Department of Social Services (1978) for unconstitutional polices, customs, and practices. The situations under which these lawsuits occurred included drawing a gun while handcuffing a suspect; using deadly force as the first alternative; implementing inadequate off-duty policies; and fostering a code of silence.

Drawing a gun while handcuffing suspects

Application of handcuffs is “an emotionally charged, highly dangerous aspect of an officer’s job” (Petrocelli, 2006, p. 36); however, some police departments are criticized for ignoring the importance of handcuff training (Nowicki, 2002). Proper handcuffing techniques involve issuing strong verbal commands, approaching the suspects from behind or at a forty-five degree angle, applying the handcuffs with two hands, and preparing for suspects’ resistance. Adopting these maneuvers has been called “life-saving” (Salas, 2005, p. 40); hence, priority must be given to the possibility that suspects can resist handcuffing at any time (Black, 2001). In addition, officers should not draw their guns because, if suspects resist, officers are left with only the deadly force option (Campbell, 1999). Such was the case in Dodd v. City of Norwich (1987). Where the municipality’s policy was for the officers to draw their guns and aim it at the suspects during handcuffing. In Dodd, while the officer attempted a handcuffing, the suspect was shot and killed when he attempted to grab the officer’s gun. Based on Monell v. New York City Department of Social Services (1978), the estate of the victim sued the city under Section 1983 for an unconstitutional policy which caused the victim’s death. While the district court of Connecticut held that both the police officer and the municipality were immune from Section 1983 liability, the Second Circuit reversed the case against the city. The Second Circuit noted that “if the gun is left out of the holster during handcuffing, it increases the likelihood of a struggle and injury through accidental discharge of the gun” (Dodd v. City of Norwich, 1987, p. 5). Even though the court considered the victim who lunged for the officer’s gun, the victim’s death was caused by the municipal policy of training its officers to handcuff a suspect with their guns drawn, which invited the victim to reach for the gun. White (2006) recommended that police departments should develop policies so that officers “holster[ their] one’s gun prior to a physical struggle” (p. 324). These policies are implemented to protect police officers and arrestees from unnecessary injury or death and to protect municipalities from liability.

Inadequate force continuum

Police officers must be prepared “to use a level of force that is commensurate to the level of citizen resistance encountered” (Terrill, Alpert, Dunham, & Smith, 2003, p. 154). A continuum of force adopted into municipal policies can provide officers with “guidance as to the options most appropriate for a given level of resistance” (Terrill et al., 2003, p. 154). Municipalities who have well-functioning police implement their own use-of-force continuum and train officers regarding adequate use of force because the force continuums can “enable them to avoid [using] deadly weapons” (Alpert, Dunham, & Stroshine, 2006, p. 191; Dornety, 2005; Williams, 2002). Failure to fully equip officers with a variety of non-deadly alternative weapons and tactics undermines the fundamental ethos of Graham v. Connor.
Improper off-duty policies

A number of police deaths occur between on-duty officers and citizens, but accidental shootings by off-duty officers have been a threat to the safety of police officers (Federal Bureau of Investigation, 2005). A Philadelphia study of on- and off-duty shootings reported that 80 percent of police shootings were on-duty and 20 percent were off-duty (White, 2000). Case law illustrates that off-duty shootings pose potential municipal liability (Pyfe, 1980; Geller & Karales, 1981; Meyer, 1980); therefore, municipalities should carefully evaluate their policies for carrying guns with respect to on-duty and off-duty officers (Vaughn & Coomes, 1995).

Research shows that new police officers need more training than what is taught at the police academy (Colwell, Miller, Lyons, & Miller, 2006; Sun, 2003). In fact, police recruits need training in problem-solving and decision-making prior to being assigned street and patrol duties (Bradford & Pynes, 1999). The plaintiff in Young v. City of Providence (2005) sued the municipality under Section 1983 for its “always armed/always on-duty policy” (p. 14). The rookie officer who shot the off-duty officer had been working only eight days in the police department; he thought the off-duty officer was a suspect holding a gun. Even though the city argued that there were no previous friendly fire incidents and the municipality's training program was acceptable, the First Circuit noted that the rookie would not have shot the off-duty officer if the municipality had trained officers about the possibility that on-duty officers could meet off-duty officers at crime scenes. The district court's summary judgment for the city was reversed because of the failure to train police in predictable off-duty incidents. On remand, the district court held that police departments must consider the existence of on-duty/off-duty interactions and provide “training aimed at avoiding on-duty/off-duty misidentifications by fellow officers” (Young v. City of Providence, 2005, p. 139). Failure to “institute and require proper and adequate training, police and procedures concerning officers’ identification and recognition of undercover or plainclothes officers for the safety of undercover/plainclothes officers and others” can cause municipal liability under section 1983 (Vaughn v. City of Orlando, 2008, p. 6). Lack of communication within the hierarchy of authority resulted in tragic consequences when officers were not informed of off-duty operations. According to White (2000), “research shows that a high percentage of off-duty shootings violate administrative policy” (p. 297).

Code of silence

The code of silence may be defined as unwillingness to report official police misconduct to protect colleagues (Westmarland, 2005). Unusually strong solidarity in police work places formulated by low predictability and potential danger drives police to maintain the code of silence that emphasizes loyalty to the department and other officers (Mollen, 1994; Westley, 1953) and makes officers reluctant to report unethical behavior to proper authorities (Parks, 2000; Skolnick, 2002). In addition, federal courts have found that maintaining a code of silence may cause the police to turn a blind eye to serious police wrongdoing. This raises concerns about the police managerial system and the dysfunctional nature of the organization itself, which may form favorable conditions for liability under Section 1983. As the code of silence is ingrained into police culture as a form of municipal customs and practices, it causes officers to believe their misconduct is not scrutinized. The code of silence among internal affairs and supervisors in the New York City Police Department, for example, allowed one officer to snort cocaine off the dashboard of his squad car; run a team of police “thugs” who showed up at crime scenes to steal guns, drugs, and money, while they sold them back to the community; and to purchase a car and house several times greater than his income. These events indicated a lack of supervisory discipline, lack of appropriate span of control, lack of communication among commanders, and the absence of unity of command. Mollen (1994) said internal affairs practiced “willful blindness.”

The plaintiff in Sledd v. Lindsay (1996) sued the department pursuant to Section 1983 for excessive force that resulted from the code of silence. The plaintiff showed that the frequency of annual complaints regarding use of excessive force, the rate of internal investigations, and the results of the internal investigations were problematic. Although 20 percent of the internal investigations indicated abusive use of force, the department did not take further steps to train officers or to stop the illegal behavior. The Seventh Circuit found that the departmental code of silence caused its officers to believe that their excessive use of force was permissible and acceptable. The district court’s summary judgment in favor of the city was reversed and the case was remanded for trial. The code of silence is clearly a management and administrative problem that needs attention from the highest levels of the law enforcement command structure (Jones v. Town of East Haven, 2007).

Summary of cases involving municipal liability under Monell

Federal courts invoke municipal liability under Monell v. New York City Department of Social Services (1978) when a direct causal relationship exists between the municipal policies, customs, and practices and the officers' unconstitutional use of deadly force.13 Municipal policies that require officers to draw their gun while handcuffing, to carry only deadly weapons, and to be “always armed/always on-duty” without proper training, were found, in some cases, to be the moving force behind the violations of federally protected rights. Federal courts also found that failing to foster a no tolerance policy for a code of silence was not the custom and practices followed by the officers. Thus, policymakers should try to prevent lawsuits by instituting proper departmental policies, customs, and practices.

Failure to train police officers

After the City of Canton v. Harris (1989) decision, police departments, municipal entities, and supervisors can be sued under Section 1983 for failing to adequately train their officers. These policymakers are not free from liability under Section 1983 if officers violate citizens’ federally protected rights, resulting from departmental and municipal training deficiencies. Despite the allegations of Schultz (1984) and Schrader (1988) that adequate training will decrease lawsuits and legal liabilities, in sixteen cases analyzed in this article, municipalities and supervisors were found liable under Section 1983 for failing to train their officers.

Dynamics of police pursuit

Proper police administrators train officers in the dangerous nature and constitutional limits of high speed pursuits (Hicks, 2003). Police officers should receive training designed to have a proper understanding of “emotional and physical dynamics” energized by the pursuits (Montgomery, 2005, p. 11). Failure to control the psychological arousal a
high speed pursuit spurred resulted in unnecessary deadly force use in Cooper v. Merrill (1990). In Cooper, an officer testified that he was never trained regarding high speed pursuits at the police academy. Further, there was no departmental policy about police pursuits despite the frequent use of high speed pursuits. The municipality maintained, however, that its police officers were trained pursuant to a state statute about police pursuits. The municipality agreed that it did not have an oral or written policy about the use of deadly force during and immediately after high speed pursuits; thus, the district court found there was little evidence that the municipality made an effort to train officers about the use of deadly force, except just saying “be careful out there” (Cooper v. Merrill, 1990, p. 568). As a result, the district court denied the city’s motion for summary judgment because of its failure to train officers. Such failures can amount to deliberate indifference under City of Canton v. Harris (1989) if they caused a violation of the victim’s constitutionally protected rights (Clark v. Nassau County, Florida, 1991; Johnson v. City of Richmond, 2005; Rudolph v. Jones, 2002; Scott v. Vasquez, 2004; Smartt v. Grundy County, Tennessee, 2002; Smith v. City of Wilmington, 2007; Willis v. Oakes, 2006; Zuchel v. City and County of Denver, Colorado, 1993). The recent U.S. Supreme Court case on high speed pursuits, Scott v. Harris (2007), should have little impact on the Cooper decision. While the Scott case focused on police vehicles as an instrument of deadly force during pursuits, the Cooper case involved failure to train, wherein the municipality did not train the officer adequately in post-pursuit firearm use.

Contagious shootings

Another training case, Parker v. Town of Swansea (2003), was related to Cooper v. Merrill (1990). Evidence showed the department did not make efforts to reduce mistake-of-fact shootings and bunch-shootings; the department also did not adopt low-light shooting programs, which were advocated by training experts (Aveni, 2003). In Parker, there was no possibility the suspect could escape the police; however, one of the officers left a covered position, which provoked an unnecessary shooting of the suspect forty-nine times, which has been explained as contagious shooting (see Note 9). The district court found that even though an isolated incident of wrongful use of deadly force cannot amount to deliberate indifference under Kibbe v. City of Springfield (1985) and City of Canton v. Harris (1989), the municipality’s failure to train its police officers in alternatives that could have prevented the shooting made this incident inevitable. Due to the existence of factual issues about the inadequate training regarding alternatives to deadly force, the municipality’s motion for summary judgment was denied.

Mentally ill suspects

Many police departments have been criticized for failing to train officers and develop policies to provide adequate services for people with mental illness (Hill & Logan, 2001). Law enforcement agencies should train officers in mental health issues and develop specialized programs to enhance officers’ knowledge and skills to identify and communicate with mentally ill people (Hails & Borum, 2003). In Allen v. Muskogee, Oklahoma (1997), the Tenth Circuit opined that handling mentally ill and aggressive people is a routine police activity. During confrontations with emotionally distressed citizens who are trying to commit suicide, police officers should be careful not to provoke a violent response. The Tenth Circuit denied the motion for summary judgment in Allen v. Muskogee, Oklahoma (1997) because “the likelihood that officers will frequently have to deal with armed emotionally upset persons, and the predictability that officers trained to leave cover, approach, and attempt to disarm such persons will provoke a violent response, could justify a finding that the [municipality]’s failure to properly train its officers reflected deliberate indifference to the obvious consequence of the [municipality]’s choice” (p. 845).

Investigative techniques

Police officers must be trained to accept legal behaviors, including resistance, disrespect, and verbal abuse from the public (Houston v. Hill, 1987). Police administrators, however, should be aware that officers might apply force during encounters with citizens who merely refuse to respond to officers’ commands (T errill, 2001). Controlling for police officers’ emotions and levels of coercion is required in all police activities. In Moore v. Yost (1993), the municipality was sued pursuant to Section 1983 for the wrongful death of a victim who was shot and killed by police. Evidence showed the victim opened his door to meet police officers when they came to his house to investigate an incident involving him. A district court in Illinois found that such an investigation was a routine police activity. The court also said that inadequate training about how to investigate was highly correlated with the use of firearms, and that unnecessary deadly force, as was the case here, could be foreseeable when a municipality failed to train its officers in proper investigative techniques. The court held that “the need to train officers in this routine situation so as to avoid improper shootings and death is compelling enough to say that failure to do so would constitute a deliberate indifference to the potential consequences which include the likely deprivation of civil rights” (Moore v. Yost, 1993, p. 3). The municipality’s motion for summary judgment was denied because the violation of the victim’s constitutional rights resulted from the failure to train its police officers in the proper use of deadly force.

Poor requalification

Whereas the U.S. Supreme Court rejected an inadequate hiring claim in Board of County Commissioners of Bryan County v. Brown (1997), municipalities can be liable for “failing to train all of their officers in acts they know officers will perform” (Spector, 2002, p. 136). As Morrison (2006) indicated, most police departments have failed to adopt strict requalification policies. As such, inadequate training and requalification caused a constitutional violation in Paiva v. City of Reno (1996), where two unqualified officers killed an uncooperative crime victim. The police department acknowledged the officers were untrained and ill-suited for police work. According to the department’s evaluation of the two officers, the officers lacked self-control and were inexperienced, ill-tempered, aggressive, and arrogant. The district court pointed out that the department “does not...appear to have taken any affirmative steps, by way of counseling or additional training, to correct these deficits” (Paiva v. City of Reno, 1996, p. 1494); the department dispatched the officers without training and counseling in spite of four reprimands, which was the “plainly obvious consequence” of the police shooting (Board of County Commissioners of Bryan County v. Brown, 1997, p. 422). The motion for summary judgment for the city was denied because the tragic incident was foreseeable and might have been prevented with appropriate training, supervision, and counseling. Courts consistently hold that failing to train and supervise problematic officers results in deliberate indifference in Section 1983 lawsuits (Fields v. Nawotka, 2008; Galliano v. Borough of Seaside Heights, 2007; Price v. Sery, 2008).

Despite the above discussion where municipal liability occurred, federal courts do not always find cities liable under Section 1983, even if their individual officers were liable for use of deadly force. In Bing v. City of Whitehall (2005), while the SWAT team’s motion for summary judgment was denied due to the high probability of being liable for excessive use of deadly force, the district court granted the municipality’s motion for summary judgment because there was no evidence to prove municipal liability. In Fletcher v. District of Columbia (2005), the municipality was sued under Monell v. New York City Department of Social Services (1978) for not training and monitoring officers’ use of deadly force. The district court granted summary judgment for the municipality because the plaintiff failed to show the city’s practice caused the injury.
In twenty-nine cases, municipalities as well as individual police officers were exonerated because of weak links to prove municipal wrongdoing under City of Canton v. Harris (1989). Moreover, federal courts dismissed cases or granted summary judgment in favor of municipalities when their officers were not acting under color of law in Gibson v. City of Chicago (1990), Hudson v. Maxey (1994), and Turk v. McCarthy (1987). Finally, the U.S. Supreme Court held that “if a person has suffered no constitutional injury at the hands of the individual police officer, the fact that departmental regulations might have authorized the use of constitutionally excessive force is quite beside point” (City of Los Angeles v. Heller, 1986, p. 799).

Summary of cases involving municipal liability pursuant to Canton

Inadequate training regarding “obvious areas” of proper use of deadly weapons can invoke municipal liability under City of Canton v. Harris (1989). Federal courts found that training on the dynamics of police pursuits and mentally ill suspects, the possibility of contagious shootings, and proper investigative techniques, as well as disciplining and supervising problematic officers clearly meet training in the “obvious areas” test established under Canton. Failure to train, discipline, and supervise police officers regarding these areas is deliberate indifference, which results in municipal liability. Thus, agencies and supervisors are obligated to train officers to possess adequate knowledge and skills required in law enforcement.

Police organizational breakdown after Garner, Graham, Monell, and Canton

Law enforcement training, supervision, and accountability structures have had an important impact on restricting police use of unnecessary deadly force (White, 2001). As Blumberg (1989), Fyfe (1979, 1988), and Uelmann (1973) noted, police organizational policies have had the most powerful influence on controlling excessive deadly force. White (2000, 2003) also emphasized that police procedures have been the most successful method to control police discretion when using deadly force. Administrative policy developments have included improvements in officer selection, training, supervision, and adhering to rules and policies (Hughes, 2001).

Even so, definitive and systematic inference about the exact impact of City of Canton v. Harris (1989), Graham v. Connor (1989), Monell v. New York City Department of Social Services (1978), and Tennessee v. Garner (1985) on police use of deadly force cannot be made in this article due to the limitations of qualitative analysis. Nor can it be said that the examples of police excessive deadly force illustrated here provide proof for the total collapse of police management. It can be argued, however, that even after important court decisions, some police administrators and managers have failed to regulate police shooting behaviors that could have prevented excessive deadly force. These examples illustrate “evidence of the inevitable result of a particular management practice” (Russell, 1994, p. 180), resulting in a specific negative police outcome.

It has also been recognized that police administration and management may not be solely responsible for excessive deadly force because police shooting behaviors can be impacted by external factors such as crime rates, dangerousness to the police, situational determinants, and police-citizen encounters (White, 2003). The argument presented here was that breakdown of administration and management to control police shooting behavior is an important, but not the only, cause of civil liability. As Dilulio (1987) and Useem and Kimball (1989) have argued, civil liability in the criminal justice system results from “poor management” and “administrative disorganization” (Vaughn, 1996b, p. 149).

While administrative disorganization and managerial breakdown in police use of deadly force comes from various sources, this analysis suggested that dysfunctional departments were more susceptible to legal liability. Police departments, municipal entities, supervisors, and individual officers were sued under Section 1983 for use of deadly force with surrendering suspects prohibited under Tennessee v. Garner (1985); use of deadly force without objective reasonableness under Graham v. Connor (1989); reckless shootings provoked by unconstitutional municipal policies regarding handguns, deficient on- and off-duty policies, and customs that developed into a code of silence under Monell v. New York City Department of Social Services (1978); and failure to adequately train officers under City of Canton v. Harris (1989). Dias and Vaughn (2006) described desirable good managers as those “who implement a functional span of control within the hierarchy of authority, practice strict accountability, rely on a mix of formal written and informal verbal communication, operate with clear goals and objectives, and delegate appropriate tasks to subordinates” (p. 552). In many of the cases reviewed, basic managerial principles appeared to be absent.

Police organizations produce managers that have the capability to be functional and/or dysfunctional (Mieczkowski, 1991). Compared with the desirable manager, it appears that the managers highlighted here did not follow proper division of labor, hierarchy of authority, command and control, and communication. Scholars claim it is inefficient to manage within a closed bureaucratic, rigid, and hierarchical police organization (Zhao, 1996). As Dias and Vaughn (2006) suggested, criminal justice agencies should use human relations and situational and contingency management to overcome some of the authoritarian and dysfunctional aspects of paramilitary organizations.

In the cases analyzed, lack of training was a cause of police excessive deadly force. Police officers who were dispatched and assigned duties without proper training were potential “social dynamite,” infringing on inhabitants’ constitutional rights (Spitzer, 1975, p. 645). Police shootings declined after Tennessee v. Garner (1985) because police organizations increased levels of training and heightened oversight, supervision, and administrative policies (Culliver & Sigler, 1995). Garner brought high levels of media attention and public awareness to police use of deadly force. Police departments limited deadly force shootings by “outlining the notification and departmental review procedures required whenever police weapons were fired” (Sparger & Giacopassi, 1992, p. 213). Although the number of justifiable homicides by police has decreased since the Garner decision (Fox & Zawitz, 2007; Tenenbaum, 1994), some of the managers highlighted in this article failed to implement job specialization and division of labor required by Graham v. Connor (1989) and Tennessee v. Garner (1985). Twelve cases of deadly force used against surrendering suspects, twenty-three cases of deadly force used against uncooperative suspects, and the cases involving reckless use of deadly force serve as examples of breakdown of management resulting from failing to train and direct officers properly. This article demonstrates that constitutional rights were violated by untrained subordinates when police managers failed to apply proper job specialization and division of labor; failure to train officers about the possibility of friendly fire when implementing a 247 on-duty policy; failure to train warrant service under the knock and announce rule; failure to train about how to properly handcuff a suspect; and failure to train about the adrenalin rush associated with high speed pursuit driving. This article lends credence to the assertion that administrative breakdown results from inappropriate job specialization and division of labor combined with insufficient training (Dias & Vaughn, 2006).

took no action until the officers falsely imprisoned an innocent but mentally ill man. These cases show a breakdown of management through an inappropriate hierarchy of authority and weakened command and control structure.

When police managers fail to communicate, the breakdown leads to lack of control, collapse of the hierarchy of authority, and unguided goals and objectives (Dias & Vaughn, 2006). In *Jones v. Town of East Haven* (2007) and *Sledd v. Lindsay* (1996), departmental supervisors did not follow proper procedures for communication. Instead, they fostered a code of silence, which stifled the flow of communication in written and verbal forms, leading to a bad police shooting. In *Cooper v. Merrill* (1990), the department did not have a written policy regarding use of force and high speed pursuits. In *Paiva v. City of Reno* (1996), internal supervision was not enough to preserve the forensic evidence regarding the death of an innocent victim.

**Conclusion**

By analyzing deadly force cases in the lower federal courts after *City of Canton v. Harris* (1989), *Graham v. Connor* (1989), *Monell v. New York City Department of Social Services* (1978), and *Tennessee v. Garner* (1985), this article contextualizes the relationship between police deadly force and managerial disorganization and breakdown. As shown in the case analysis, breakdown of division of labor, hierarchy of authority, command and control, and communication may contribute to excessive police deadly force. Consequently, the primary concern of police organizational management should be solid managerial principles and administrative policies.

Police departments can be unruly and difficult to control. Even the best endeavors to eradicate intentional abuse of authority can be short-lived and fleeting, as the deviant subculture pulls officers in unsavory directions (Ross, 2000, 2003, 2006). Crozier (1964) noted that “a bureaucratic organization is an organization that cannot correct its behavior by learning from its errors” (p. 187). If this pessimistic view is not mistaken, police will face significant litigation in the future.

There are several limitations to this article. First, some police shootings may have nothing to do with the breakdown and disorganization of the police managerial system. The police subculture may produce rogue officers for which management are not responsible (Kappeler et al., 1998). Second, under the theory of “normal accidents,” Weick (2004) hypothesized that bad shootings occur even though police administrators adopt every procedure, practice, policy, and training program recommended by experts. Under this perspective, bad shootings are inevitable when millions of complex, interactive events are simultaneously occurring. Third, one inherent weakness in analyzing cases from a legal doctrinal perspective is that the ultimate disposition of the cases is rarely known (Acker & Irving, 1998).

Future research should focus on several aspects of police deadly force. Excessive use of deadly force is not the sole domain of police; thus, researchers should explore use of deadly force in other paramilitaristic agencies within the context of organizational breakdown, including the military within civilian peacekeeping operations. Evaluating use of force in correctional facilities might also be explained by organizational failure and administrative dysfunction.

While this article focuses on federal cases, application of breakdown theory to state-level cases might produce more organizational examples involving use of deadly force. Finally, analysis of municipal policies regarding investigation tactics, high speed pursuits, off-duty policies, and ethics related to use of deadly force will be of help to find and correct unconstitutional police behaviors.

**Acknowledgement**

An earlier version of the article was presented at the 2007 Academy of Criminal Justice Sciences meeting, held in Seattle.

**Notes**

1. *Title 42 of the U.S. Code, Section 1983 reads:* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory of the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except where such an act, or omission taken in such officer’s judicial capacity, injudicious relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be an act of Congress applicable to the District of Columbia.

2. Also see *Board of County Commissioners of Bryan County v. Brown* (1997), where the Court held that municipalities are only liable when their officers’ actions are the “plaintiff obvious consequence” (p. 398) of the plaintiff’s injury.

3. A police use of deadly force case under Section 4283 is a “lawsuit filed under federal law that seeks damages from a police officer, supervisor, and/or department on the ground that these defendants, acting under color of law, violated the plaintiff’s constitutional rights or right given by federal laws” (del Carmen, 2007, p. 509). The U.S. Supreme Court has found that “claims of excessive force are to be judged under the Fourth Amendment’s objective reasonableness standard” (Bruseeu v. Haagen, 2004, p. 197). Thus, police use of deadly force can be litigated under Section 1983 for violations of Fourth Amendment rights.

4. While a police officer or a supervisor can defend himself or herself with qualified immunity (Harlor v. Fitzgerald, 1982), a municipality cannot use qualified immunity as a defense when its policies violate citizens’ constitutional rights (Owen v. City of Salem, 1990). As a result, qualified immunity is not applicable. Moreover, Section 1983 embodies no substantive rights. Section 1983 is a procedural mechanism that allows plaintiffs who have had federally guaranteed rights (i.e., constitutional rights, Americans with Disabilities Act, 1990, Title VII, etc.) violated by a person who was a state or local law trespasser to sue. In this article, all cases involve Section 1983 actions or lawsuits based on circumstances the plaintiffs say violated their Fourth Amendment rights guaranteed under federal law.

5. This happens because individual officers and municipalities are frequently sued within the same case.

6. A search connector that

7. Included in the analysis was *Gilmere v. City of Atlanta, Georgia* (1985) because it was decided after *Tennessee v. Garner* (1985).


9. According to Wilson and Rashbaum (2006), contagious shooting is defined as police “gunfire that spreads among officers who believe that they, or their colleagues, are facing a threat...[but they are actually not]...[Your partner] shoots, and you shoot, and the assumption is [the other police officer has...[good reason[s] for shooting...so they just chim in” (p. 1).

10. Upon appeal, the U.S. Supreme Court denied the petition for writ of certiorari. At this point, the case ended.

12. With respect to individual officer liability for careless handling of suspects, see Dodd v. City of Norwich (1987), where a police officer was not liable for acting pursuant to police policy for mistakenly firing a gun at a suspect who was resisting arrest when the officer was trying to handcuff the suspect. In Troubleshoot v. City of Harrisonburg (1992), a police officer arrested a suspect, applied handcuffs, began to holter his gun, his gun discharged, and hit the suspect in the leg. The suspect’s claim was rejected because the police had reasonably believed that the “governmental termination of freedom of movement through means intentionally applied” (Brower v. Inyo County, 1980, p. 597), and accidental shootings are not intentional torts (Glasco v. Bullard, 1991).

13. When there is no direct relationship between municipal policies and officers’ use of deadly force, federal courts do not find municipal liability under Section 1983. In Collins v. Metcalfe (1997), a victim, after struggling with a police officer, was shot in the neck and killed by the officer who was chasing him on foot with his gun drawn. Relying on Hudson v. New York City Department of Social Services (1978), the plaintiff argued that the municipality had a practice of authorizing its police officers to pursue unarmed civilians with their guns drawn. Even so, the district court held that the city was not liable under Section 1983 because of a lack of evidence proving the existence of a pattern of unconstitutional unwritten policy or custom. In Holland v. City of Houston (1999), the district court found the off-duty carry policy created by the municipality was not problematic because deadly force was not caused by the off-duty policy. In Hudson v. Maxwell (1994), the district court held that to be actionable under Monell, the city’s policy should be the moving force behind the constitutional violation; hence, the “always carry” off-duty policy was not the cause of the deadly force against the officer’s friend’s ex-boyfriend. Similarly, in Ott v. City of Mobile (2001), the court also held that the city’s firearms policy requiring an off-duty officer to carry a gun was not the cause of the duty officer’s act during a private altercation.


16. Many cases reported in this article reflect appellate courts’ opinions of interlocutory appeals from lower courts. As such, they do not involve a ruling on the merits of the case. Interlocutory appeals decide the cases’ procedural issues, involving disputes on the scope of motions for summary judgment, which must be resolved before the case can go to trial. The full merits of the cases are rarely reported in Westlaw or LexisNexis. The practical effect of a court granting the defendant’s motion for summary judgment is that the case is dismissed and the plaintiff has no further opportunity to go to a jury. If the plaintiff is not satisfied, however, he or she may proceed to trial. This does not mean that the plaintiff will win, only that a court has determined that he or she has the right to present his or her evidence to a jury, which could find that he or she suffered a violation of a clearly established right (Koehler v. City of Waukegan, 2005). Often when the plaintiff prevails at the summary judgment stage of the proceeding, the defendant will seek to settle the case out of court to avoid the possibility of a large monetary judgment being imposed against it by an unpredictable jury (Freedman, 1995). The legal record typically ends at this point because negotiated settlements are often sealed and not included in the official public record (Vaughn, Cooper, & del Carmen, 2001).

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