INTRODUCTION

Lesson Plan

Cultural Awareness

Class Purpose:
Many law enforcement agencies are implementing Community Based Policing policies, and as a beginning step we need to look at the different types of people that we serve. If we are going to be effective into the 21st century, we need to recognize the changes that we are going to see as the population and demographics of our country and community change.

What this class is not:
It is not a problem solving course of instruction.
It is not an effort to change your values.
It is not an effort to turn you into a “new person.”
What this class is:
It is designed to further augment our skills, provide information, education and tools to assist you in working with the community.
It is about communication tools that will help you to:
- work more effectively
- work more efficiently
- be a better listener
- gain respect for diverse communities
- become a more competent and complete law enforcement professional

What We’re Here to Learn
Goals of Cultural Awareness
Rationale Behind Cultural Awareness
Benefits for Law Enforcement
Values and Perceptions
Concept of Power
Concepts of Communication
Communication Across Cultures
Goals
Build a dynamic structure of trust and communication between the public and police.
Issues:
- Traditional “kick ass and take names”
- Community involvement or lack of.
- Police Corruption
- Police Abuse
- Arrogance
- Organizational Attitude
- Public Ignorance
Using empowerment of and education of both the police and the public to sustain positive and productive relationships in progressive times and adverse times.
In order to make allies of our adversaries, or to increase public support and gain the trust back we need to:
Become better listeners
Become better communicators
Understand that we will almost always have to be the ones who will take the first step towards education, improvement, and will always be under scrutiny.
Rationale
If positive interaction and dialogue is going to occur, we need to look at the demands placed upon us:
Demands of the public
  1. Be honest, be fair, be objective, be sensitive, be caring, better listeners, etc, etc.
Demands of the organization which are those that say you will, you shall, do this, do that, with less, etc.
Who is stuck in the middle? Who carries the burden of change, who has more impact that the chief? Whether we like it or not, you and I do.
  1. Rationale
Demographic changes that affect us now and in the future, in the United States:
Washington D.C. is over 70% African American
Miami, Florida is over 66% Hispanic
By the year 2000, at least 50% of the population in California will be able to speak another language besides English
Los Angeles, California is 40% Hispanic, 37% Anglo, and 13% African American. 18% of the population is below the poverty level.
Rationale
Over 100 different languages are spoken in the California High Schools
Anglos will be only 52% of the population of United States by the year 2050.
In Arizona and New Mexico at least 25 Native American tribes are represented in the general population.
Benefits for Law Enforcement
Cultural Awareness
Definitions
Culture - A complex group of characteristics, including knowledge and beliefs, artistic bases, morals and mores, some agreement on law and politics, customs and traditions
Cultural Awareness
Definitions
Racism - The belief that some races are inherently superior (physically, intellectually, or culturally) to others, and therefore, have the right to dominate them.
Cultural Awareness
Definitions
Bias - A preformed negative opinion or attitude toward a group of persons based upon their race, religion, ethnicity/national origin, or sexual orientation.
Prejudice - A pre-judgement about a person or class of persons composed of opinion or bias. It is usually socially learned and grounded in misunderstandings, misconceptions, and inflexible generalizations.

Values and Perceptions
Our values drive our decision making process in our personal lives as well as our professional lives. In this respect, it is important to understand exactly where our values come from.

- Who raised you?
- Where were you raised?
- How were you raised?
- Cultural background, no matter how far removed you may be from your cultural heritage.

Values and Perceptions
As we grew into adulthood, we refined and further developed our value system.

Then we became police officers.

Is there then another set of additional values placed upon us?

- What are they?

Values and Perception
We have personal values, coupled with police values, and for years it sometimes puts us in the position, or we place ourselves in the position of us and them:

“I’m a cop, and your not.”

Now we ask you to go into the community and be an integral working partner in the community as a professional. To do that, you need to understand issues of power and how it relates to people before we can begin to work on effective communication.

Concept of Power
What are some of the reasons that the “American Culture was founded?
Freedom of religion was paramount to the people that came here, to worship in the church they wanted to

Respect for the individual, rights by nature of citizenship, not wealth or means

Opportunity for personal wealth

Equal system of justice

Control of centralized power, constitutional system

Concept of Power
In most countries across the world what is the most visible sign of power and government?

The military
In the United States, what is the most visible sign of government and power?

The Police
We are visible and available 7 days a week, 24 hours a day. With that visibility comes responsibility. Our image within the community is critically important.

It is important to:
Treat people fairly and objectively.
Be aware of the inherent power we represent to other cultures in the community.
Be aware that is some communities you also represent affluence because of the new police car you drive, the new uniform, radio, etc.
Be aware that our image is affected by:
Response times for calls for service.
Our behavior when responding to calls.
Behavior both on and off duty.
Behavior during and after use of force incidents.
Our ability to solve problems.
What percentage of people are non-supportive of the police?
Approximately 10% or less.
Believe it or not, approximately 90% of the people are generally supportive of the police.
Why do we, as police officers, feel the percentage is so low?
If 90% are supportive, what are some of the reasons that it may not appear as though they are?
Reasons
Fear of the other 10%
Our job may be and often is taken for granted until they need us
Sections of the community are often afraid of the police
Recent Southeast Asian immigrants
People from Mexico, Central and South America, the former Soviet Union.

Concepts of Communication
In police work:
15% of our job in law enforcement is apprehension, arrest and booking.
85% is communication.
We are seriously affected by:
  - What humans say
  - What they say they are thinking
  - What they mean by what they say

Meanings and Perceptions
The meaning is perceived and understood by others that share the same language and experiences.
Every meaningful sentence or phrase has a surface and underlying structure.
Human communication is a unique process that involves grammatical structure, intended and understood meanings

Perception
  **Perception is selective** - At any one time, there are too many stimuli in the environment for us to observe. Therefore, we screen out the overload and allow only selected information through our perceptual screen to our conscience mind.
Perception
  **Perceptual patterns are learned** - Our experience teaches us to perceive the world in a certain way
  **Perception is culturally determined** - We learn to see the world based on our cultural background.
  **Perception tends to remain constant** - Once we see something in a particular way, we continue to see it the same way.
Perception
  *We therefore see things that do not exist, and do not see things that do exist.*
Our interests, values and culture acts as filters and lead us to distort, block and even create what we choose to see and hear. We perceive what we expect to perceive. We perceive things according to what we have been trained to see, according to our cultural map. These rules apply to everyone.

Communication Styles
All of us take in, process or perceive information differently, and we make decisions based on how we interpret that information. Have you ever wondered how two people can stand side by side and see the same situation and when asked about it, seem as though they were both on different planets?

In order to be better communicators, let’s take a look at how people process information, what are the mechanics of the process, expanding upon the dynamics between the sender and receiver.

People take in information basically two ways:
Sensing - relies primarily on observable facts or happenings through one or more of the five (5) senses.
Intuition - relies on meanings and casual relationships, or possibilities beyond what the conscious mind sees.

Once the information has been received the mind then makes a decision or judgement on what has happened.

There are two ways in which the decision making process occurs:
- Thinking (T) - Decides impersonally on the basis of logical consequences
- Feeling (F) - Makes a decision primarily on the basis of personal or social values.

Concepts of Communication
Now, let’s look at the four combinations of the communications preference models (Myers-Briggs) and what are typical communications behaviors for each of the four (4) combinations....

Sensing - Thinking (ST)
Uses the five senses to take in information
uses “pure” logic and objective reasoning
Typical Communication behaviors are:
- Concrete, logical, traditional, decisive, impersonal, direct, analytical and structured.
- 64% of police officers are ST, compared with 25% of the general public.

Sensing - Feeling (SF)
Takes in and processes information through the five (5) senses, BUT has a primary concern for personal and social values.
May use subjective reasoning in the decision making process
Typical Communication behaviors include:
- Sociable, tactful, loyal, caring, cooperative, friendly, organized and considerate
- 14% of police officers are SF, compared with 29% of the general public.

Intuitive - Thinking (NT)
Take in and process information through the sixth sense - intuition.
After using this intuitive process to take in information, a decision will be made based upon “pure” logic and reasoning.
Typical Communication behaviors include:
- Global, precise, factual, visionary, demanding, reserved, and theoretical.
16% of police officers are NT, compared with 18% of the general public.

Intuitive - Feeling (NF)
Processes information through the intuitive process
makes decisions with consideration to personal values, feelings and/or social values.
Typical Communication behaviors include:
- Creative, idealistic, friendly, charismatic, empathetic, intense, committed, congenial, and devoted.
- 6% of police officers are NF, compared with 28% of the general public.

Communication Preferences
Maybe this is why a police officer and a social worker can sit on a park bench and watch the same arrest incident occur before them and:
- The officer may see his or her counterpart using only the appropriate force necessary to make the arrest
- The social worker may see the officer using excessive force.

Higher and Lower Contact Communication Styles
Higher context - words, emotion and emphasis all combine into what the message is. Depends very heavily upon non-verbal aspects of communication.
Lower context - Words are very specific, have definite meaning and definitions. People and cultures that are lower in context, generally what they say is what they mean. Less verbal and very direct in communication style. Very structured with serious emphasis on who, what, when, where and why.

Communication Across Cultures
We are going to look at six (6) different cultures and their communication styles:

Police
- Lower context communicators
  - Specific instructions, demands that expect a specific response
  - We consider ourselves as extended family and are protective of each other
  - When one of “us” gets killed or seriously injured, we stop and think about the officers family, department members, etc.

Hispano - Latino
- Higher Context Communication
  - a group of cultures ties together by a common language
  - structure of the language itself is fluid, emotional and diverse
  - There is pleasure in the process of the language, emotion, posturing, gesturing
  - Extended family structure
  - African American

Higher Context Communication
- stratified and regionalized
Gestures, eye contact, silence, all learned in school and home with long standing cultural implications
Body language emphasizes the emotion of the message
Traditionally an oral culture, where the ability to use language is seen as a personal strength respected within the culture.
Extended family culture

Euro - American
Lower Context Communication
- German, English, Scandinavian, Dutch, Celtic are the main cultural influences.
- Very direct and structured in the use of language
- Emotion is not a driving force in the delivery of the message, words are.
- Words have very specific meanings to the sender and receiver.
- Nuclear family unit

Native American
Higher Context Communication
- Regionalized and stratified communication styles
- Languages are fluid and many of the cultures, languages and religions are universal.
- The process used in delivering the message is just as important as the chosen words.
- Extended family

Asian
Higher Context Communication
- Regionalization of the cultures has had an impact on the language and usage of the language.
- Respect and politeness to the speaker are very important
- Being direct is rude and offensive
- Respectful for authority
- Extended family unit
- Communication Techniques

Every culture has customs, traditions, and conventions for socializing and communicating. These can be generally broken down into eight (8) areas:

Conventions of Courtesy
Sequence
Phasing
Objectivity
Specificity
Assertiveness
Candor
Simplicity

Conventions of Courtesy
People who don’t use the formulas established within a culture for courtesy and respect may be considered rude.
People that don’t know the conventions may feel rejected when the expected response is not there.
Conventions may be the tempo of the conversation and tone of voice.
Don’t assume conclusions on a group or individual based on the initial contact

Sequence
How people arrange information varies from culture to culture (La casa roja - the red house)
People that are bilingual may have to think in one language and respond in another
There is no direct language interpretation from most languages to English or vice-versa.

Phasing
Culture affects how and when business is discussed.
Regional differences also affect the communications protocol.
Business and pleasure don’t always mix.

Objectivity
The facts - orderly, logical, and precise are what is appreciated.
Trust has a significant affect on intercultural communication.
A dominating air damages communication.

Specificity
Starting with specifics is a lower context style, while other cultures may start with generalities and move into specifics.
Lower context cultures may look at parts of the picture, where higher context cultures may look at the whole picture.
Communication may be out of sync.

Assertiveness
In some cultures, assertiveness may be appropriate and in others it is very rude.

Simplicity
Using big words may not impress, it may fail to communicate. Keep it simple.

General Considerations
Many cultures are family based. If you know how to respond to the matriarch or patriarch you can deal with the directly with the unit and have a greater chance to control events.
Respect of persons at all times.
Be respectful of their homes.
Don’t be judgemental of their life style.

General Considerations
Show concern for their problems.
Most body space for police officers is 3-4 feet. In may cultures it is about 6-18 inches.
Use clear concise language. Do not use slang as it may be considered racial.
Do not use physical stature as a method of interrogation.

General Considerations
Build common ground and expand from that point.
Do not yell when your not understood. It only agitates and scares.
When things go bad, never sacrifice your safety for political correctness.

Cultural perspectives - HANDOUTS
Remember
As demographic shifts continue, the state of New Mexico as well as the rest of the country will continue to see a more diverse population in all sectors.
As groups melt into society they will not discard their cultural identities. Some attitudes and thinking styles may change but loyalties and belief structures are much more entrenched.
INSTRUCTIONAL GOAL:

1. To provide law enforcement officers with a basic understanding of civil and criminal liability for police misconduct

2. To clarify the concept of qualified immunity so that law enforcement officers may utilize its protection

3. To teach law enforcement officers the theories behind civil liability so that they may avoid it

INSTRUCTIONAL OBJECTIVES:

Upon completion of this course, the participants will be able to:

1. Define civil liability as it applies to the actions of police officers.

2. Define how civil law may be used by citizens to redress poor, inadequate or negligent treatment provided by police officers.

3. List the basic requirements for criminal liability under 18 U.S.C. sections 241 and 242.


5. Define the civil legal consequences of negligent failure to provide emergency medical services.

6. Define the civil legal consequences for failing to adequately protect persons in police custody.

7. Define the civil legal consequences for failing to adequately protect property.
8. Define the civil legal consequences for negligently allowing a prisoner to escape.

9. Define the civil legal consequences of mishandling emotionally disturbed individuals.

10. Define the legal ramifications of use of force. Identify the consequences of conducting an unlawful search.

11. Identify the standard to be used in determining an officer’s liability in a high speed pursuit situation.

12. Define the consequences of unlawful arrest and false imprisonment.

13. Differentiate between the provisions of the New Mexico Tort Claims act and section 1983.

14. Identify the remedies provided to citizens under the Federal Tort Claims Act.

15. Define tort

16. Distinguish tort from crime

17. Identify the categories of torts that apply to law enforcement officers

18. Define the significance of the employer-employee relationship in terms of civil liability

19. Define the legal doctrine of “respondent superior.”

20. Define sovereign immunity

21. Identify three categories of torts that generate liability

22. Identify an officer’s standard of conduct in a negligence situation

23. Identify the defenses available to law enforcement officers.
I. INTRODUCTION

A. Over the past twenty years the proliferation of civil rights lawsuits has created a great deal of anxiety and concern among law enforcement officers. This, of course, has created a need for intensive and practical training and education in all areas of law enforcement from knowledge of fundamental rights to firearms and less lethal training. The best way to understand where civil rights and civil liability issues are going is through a practical and historical overview of the underlying reasons for the emergence of litigation against law enforcement officers.
B. Shortly after the end of the Civil War, Congress passed several constitutional amendments designed specifically to force states to apply laws uniformly for all citizens. Equal protection for freed slaves was the foremost goal.

C. The amendments that were applicable were the 13th, 14th and 15th. Of course, in order to enforce a constitutional provision, legislation must be enacted to carry the force of law. The result was the Federal civil Rights Act of 1871 – 42 U.S.C. section 1983.

D. “Every person who, under color of any statute, ordinance, regulation, custom or usage of any State of territory, subjects or causes to be subjected, any citizen of the United States or other persons 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.”

1. The purpose of section 1983 was to make civil remedies available to citizens who sustained injuries at the hands of agents of state or local government. The Act does not apply to Federal officials.

2. Originally, the Act was directed at Ku Klux Klan activities that rose to the level of terrorism after the Civil War. Section 1983 enabled the Federal Government to act against oppressive state actions.

3. For nearly a century, section 1983 was rarely used against law enforcement officers because of an original specific intent requirement.

4. In 1961, the United States Supreme Court decided *Monroe v. Pape* which did away with the specific intent (to deprive someone of his/her civil rights) requirement. The case concerned plaintiff Monroe who was held in custody for questioning for ten hours after Chicago officers entered his apartment, at night, without a warrant. He was never charged. The Supreme Court held in favor of Monroe who received $13,000.00 in damages as a result of an unlawful search; a violation of his Fourth Amendment rights.

5. *Monroe* opened the door for federal litigation for anyone who alleged the denial of a right of constitutional magnitude by a state or local official including a law enforcement officer. Of course today, the Act may be enforced in State as well as Federal court.

6. Before we enter into an analysis of civil liability as it applies to police officers, we must first understand the definition. Later, we will expand that definition and look at the federal and state laws that apply to specific situations.

a. When a law enforcement officer becomes civilly liable, he/she becomes responsible to a plaintiff to compensate that party and to make them whole for an injury caused by the officer. Criminal liability results in
punishment – imprisonment and/or fine. Civil liability results in an award of monetary damages to the injured party.

7. The following are areas where police misconduct can result in civil liability under section 1983:

   a. Illegal search and seizure
   b. Excessive force
   c. Assault and battery
   d. Coerced confessions
   e. Discriminatory prosecutions
   f. False arrest and imprisonment
   g. Deadly force

8. Additionally, section 1983 protects the following constitutional rights:

   a. Right to counsel
   b. Privilege against self-incrimination
   c. Freedom of assembly
   d. Reasonable bail
   e. Prompt arraignment
   f. Speedy and fair trial

9. A law enforcement officer cannot be held liable under section 1983 if he/she: acted in good faith with probable cause, reasonable suspicion or any other recognized legal standard.

E. Federal law imposes criminal sanctions against law enforcement officers who deprive individuals of their civil rights, as well, under 18 U.S.C. section 241, 242. This is a specific intent statute:

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1. “Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any state to deprivation of any rights, privileges or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains or penalties count of such inhabitant being an alien, or by reason of his color, race than are prescribed by law,…shall be fined $1,000.00 or imprisoned not more than one year, or both, and if death results shall be subject to imprisonment for any term of years or for life.”

   a. This statute is used to prosecute police brutality cases
b. This is a specific intent statute. Police officer must have the specific intent to violate the rights of the victim at the time of deprivation of those rights.

c. Section 241 covers conspiracy to violate the civil rights of the victim.

d. Requires two or more people and is not limited to government officials

II. USE OF FORCE

Brutality or excessive force complaints are the basis for many of the lawsuits filed against law enforcement officers. Usually, these allegations follow an arrest. Additionally, if a law enforcement officer demonstrates the specific intent to deprive a person of their civil rights, an excessive force complaint can result in a criminal prosecution under 18 U.S.C. 241 and/or 242

B. Essentially, these are civil or criminal assault and battery charges.

C. Law enforcement officers may be liable for torts involving excessive force when they:

1. Continue to use force against a suspect after resistance has ended either with hands or an impact weapon.

2. Use chemical agents to excess
3. Threaten a suspect with bodily harm
4. Use excessively severe restraints
5. Use force to cause an unnecessary injury
6. Use firearms or threaten with firearms
7. Use electrical devices
8. Command dog attacks or bites
9. Use vehicles to ram
10. Use torture or terror techniques – both physical and psychological

D. The standard is as follows: Officers are expected to apply only the force that is reasonable in order to resolve a given situation. When resistance stops, force should stop.

E. Officers may become liable for intentional torts such as assault, battery, false imprisonment, etc. when they use excessive force. It is important to remember that these torts carry punitive damages. Therefore, not only may an officer be liable for a classic tort;
he/she may also end up in federal tort claims court on an allegation of a violation of 4th or 14th Amendment rights.

F. When deadly force is used, the estate of the deceased person may sue for either a deprivation of the deceased’s right to “Life, liberty or property,” (Due Process) or for wrongful death.

G. The death may be caused by an intentional act or a negligent act on the part of the law enforcement officer. Both are considered deadly force issues.

H. Any use of deadly force in New Mexico must be justified both constitutionally and statutorily. New Mexico follows Tennessee v. Garner which holds that an officer must have probable cause to believe either he/she or another is in imminent danger of death or serious bodily harm. Essentially, then, the use of deadly force is to be viewed as a last resort.

I. Intentional use of deadly force may result from the following situations

1. Self-defense or defense of others
2. To prevent escape or in conjunction with an arrest

J. Negligent use of deadly force can result from the following situations:

   Accidental shooting where officer fails to observe whether or not someone was in the line of fire
   Indiscriminate firing
   Mistaken identity of a suspect
   Warning shots
   Mistaken belief that a suspect is armed

K. As a result of a deadly force incident, a law enforcement officer may be subjected to review by the agency, possible prosecution by the District Attorney and potential civil liability

L. All law enforcement officers must learn their agency’s deadly force policy and comply with it in order to protect themselves.

III. LIABILITY FOR SEARCH AND SEIZURE

A. Whether a search or seizure is reasonable will depend upon whether or not a law enforcement officer has a valid warrant or has probable cause to believe a crime has been or is being committed and an exigent circumstance is present, or that a search
of a premises without a warrant is justified and evidence seized is the fruit or instrumentality of a crime.

B. The following situations may be actionable as unreasonable under the 4th Amendment:

a. Overly intrusive and degrading searches
b. Strip searches
c. Random searches
d. Improper execution of a search warrant
e. Searching the wrong premises
f. Overreaching the extent of a search permissible by a search warrant.

IV. HIGH SPEED PURSUITS

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A. The law governing high-speed law enforcement pursuits bears analysis as it is currently in a state of flux.

1. Prior to 1998, the due process claims brought by plaintiffs in these cases followed a gross negligence standard. In order for a law enforcement officer to be liable in a high speed pursuit situation, plaintiffs need only prove a “deliberate indifference” to the health, safety or well-being of another. In County of Sacramento v. Lewis, the United States Supreme Court, recognizing the difficult job law enforcement officers must do and the difficult judgment calls they must make, held that the standard for liability will be “shocking the conscience.” This of course, makes it more difficult for plaintiffs to prove their cases since this is a high level of criminal negligence.

B. It is of utmost importance that law enforcement officers follow their agencies’ policies and procedures where high-speed pursuits are involved. To do so creates an officer’s greatest protection from liability.

V. OVERVIEW OF CIVIL LAW

There are 3 types of civil laws that law enforcement officers may deal with in their daily activities; Contract, Equity and Tort. Officers may become involved in Contract law when called to a dispute between business partners, etc. Equity law comes into play when there is a dispute between people where one person feels “wronged”, but it does not rise to criminal conduct, but may offend community standards, such as neighborhood disputes. Both of these need to be handled with
sensitivity and empathy, and is an excellent venue for community policing problem solving techniques. But the end result may be that the officer needs to advise the parties to seek professional legal counsel. The bulk of an officer’s interest in civil law is in tort law.

A. Prior to an analysis of the New Mexico Tort Claims Act, it is appropriate to review the law of torts since the concept cannot be bandied about without an appropriate understanding of the law.

B. A tort is a civil wrong for which the remedy is monetary damages. It is designed to allow a person a remedy against those that cause injury. A crime is a wrong perpetrated against the person or property of another for which the remedy is fine/imprisonment or both.

C. Perhaps the most common tort allegations stem from negligence. In order to establish liability for negligence, the following elements must be established:

1. Defendant owed a legal duty to plaintiff
2. Defendant breached that duty
3. Defendant’s breach of that duty was the proximate cause of harm
4. Plaintiff was, in fact, injured or damaged

D. General duties owed by law enforcement officers that give rise to their standard of conduct are as follows

1. To uphold the constitutional rights, laws, privileges and immunities of citizens
2. To not subject citizens to unreasonable risk of harm. In other words, not to be negligent in the performance of duties
3. To protect the general public
   a. It’s clear that these duties are broad and all encompassing. As a result, when a law enforcement officer is sued for negligence, element one is usually the deciding factor.
E. Types of torts:

1. Intentional – The voluntary/intentional doing of an act which is substantially certain to cause harm or injury to another. More than simply negligence, an intentional act requires some sort of motive or deliberate fault of differing levels.
   
   a. Illegal search or seizure
   b. Invasion of privacy
   c. False arrest
   d. False imprisonment
   e. Illegal detention
   f. Assault
   g. Battery

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F. Negligent – breach of a duty which creates an unreasonable risk of harm

1. Judged by the reasonable person standard
2. Measured by ordinary care
3. Must be the proximate or legal cause of injury

   a. Negligent operation of vehicles
   b. Negligent traffic supervision
   c. Negligent use of weapons or accessories
   d. Negligent use of force
   e. Negligent use of chemical agents (inadequate training, etc.)
   f. Negligent arrests
g. Negligently causing injuries to fellow officers  

h. Negligence in prisoner handling  

i. Negligent hiring  

j. Negligence in training  

k. Negligent supervision  

l. Negligence in allowing an illegal policy to exist  

m. Negligence in handling property or evidence  

n. Failure to act – neglect of duty  

o. Failure to respond  

p. Failure to protect  

q. Failure to warn  

G. Damages for negligent torts include general and compensatory damages.  

H. Damages for intentional torts include general, compensatory and punitive or exemplary  

I. There is a third category of tort, which usually does not apply to law enforcement officer. However, there are a few circumstances where this tort might apply – strict liability  

1. Strict liability is liability without fault. Usually claims of this nature are reserved for those injured by an ultrahazardous product or activity.  

2. In strict liability cases, a plaintiff does not have to prove negligence and its elements, or intent, only that the activity or product was ultrahazardous and the defendant knew or should have known this.  

a. Use and manufacture of explosives
b. Use and manufacture of toxic substances

3. This theory has most often been applied in law enforcement situations involving the use of attack dogs. Classically, a dog trained to attack or bite, particularly a German Shepherd or Rottweiler has been considered ultrahazardous.

4. Of course, a law enforcement officer has a good faith defense and a defense of necessity should a claim be brought under this theory.

5. Remedies in strict liability are usually restricted to general and compensatory damages since neither fault, nor intent are issues.

VI. NEW MEXICO TORT CLAIMS ACT

A. Basically, the New Mexico Tort Claims Act did away with the 11th Amendment notion of State Sovereign Immunity. This means that a citizen could not sue a state at all. By developing a statutory scheme, the state has basically told its citizens just what they can sue it for.

B. The New Mexico Tort Claims Act provided every citizen in New Mexico with a remedy for misconduct on the part of the state.

C. Under the Act, "law enforcement officer" means any full-time, salaried public employee of a governmental agency whose principal duties under the law are to hold in custody any person accused of a crime, maintain public order, investigate crimes.

1. Liability attaches for:

   a. Torts within the scope of the officer’s duty

   b. Violation of property rights

   c. Violations of any rights secured by the United States and New Mexico Constitutions
2. The governmental entity must defend and indemnify the law enforcement officer

3. The area of intentional torts is not as clear. If an officer commits an act fraudulently or with malice, then the governmental entity may have an argument not to indemnify or to recover costs from the officer

4. There is a limit on damages:
   a. $100,000 – property damage per incident
   b. $300,000 – personal injury per incident
   c. $500,000 – total for all claims per incident

5. Under the Federal Tort Claims Act there is no limit on damages and only rights of constitutional magnitude are covered.

**VII. FEDERAL REMEDIES**

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A. Under the Federal Tort Claims Act, Section 1983, a citizen may sue for a deprivation of constitutional rights

1. Requirements:
   a. Conduct of a person
   b. Under color of law
   c. Constitutional right

B. No monetary limits; plaintiff can sue for any amount

C. Non-intent statute

D. Protects all rights guaranteed by the Constitution

E. Unlike 18 U.S.C. section 241 and 242, 1983 is a civil statute for which the remedy in monetary damages.
VIII. FAILURE TO PROTECT

A.. Suits alleging failure to protect citizens, witnesses or informants are becoming more and more common. They stem from many and varied situations.

1. Most recently, there have been allegations that police officers stood by and failed to act while women were being physically attacked and harassed in Central Park in New York City

2. In these suits, plaintiffs file actions against officers for failing to protect them against some kind of criminal activity

3. Common law holds that an officer has a duty to the citizens to preserve law and order and to protect life and property

4. Failure to execute one’s duty (nonfeasance) or the negligent performance of one’s duties (misfeasance or malfeasance) can subject a police officer to disciplinary action, including termination and can contribute to criminal or civil liability.

   a. Malfeasance – An act by a law enforcement officer which, without a doubt, violates the law

   b. Misfeasance – Improper performance of an official act. Usually occurs when an officer fails to use the degree of care, skill or diligence required by the circumstances

   c. Nonfeasance – The omission, without sufficient excuse, of an act which ought to have been done

LO8

1) Failure to arrest a dangerous motorist

2) Failure to arrest or restrain a known violent person

3) Failure to provide protection against criminals in general
4) Failure to prevent escapes or negligent release

5) Failure to maintain adequate highway safety conditions

6) Placing citizens, witnesses or informants in positions of substantial risk of harm

A. There are several other subcategories that are related to the concept behind failure to protect. They are as follows:

1. Negligent failure to provide emergency medical service

2. Negligent failure to adequately protect persons in police custody

LO5

3. Negligent failure to protect property

LO6

4. Negligent mishandling of emotionally disturbed and other special needs individuals.

LO7, LO9

a. Canton v. Harris, 489 U.S. 378 (1989) dealt with all four categories enumerated above. In this case, the respondent was placed under arrest by the city of Canton police department. She was incoherent and fell down several times. No help or medical assistance was obtained for her even though she was in police custody. Additionally, none of the officers made any effort to assist her.

After Harris' release from custody, she was diagnosed as severely emotionally disturbed. She filed suit under 42 U.S.C. 1983, alleging that her right to Due Process under the Fourteenth Amendment to the United States Constitution was violated. The United States Supreme Court held that where officers demonstrate a "deliberate indifference" to the special needs of persons with whom they come in contact, and the policy of their department, municipality or other governmental entity is unconstitutional, then that failure to properly train and the resultant inability to care for particular people to whom a duty is owed, can result in liability for both officers and their agency and governmental entity. (But see County of Sacramento v. Lewis – "shocking the conscience" standard.)

5. Of course, the consequences of the holding in this case include a broad expansion of liability for failure to adequately supervise, failure to train and failure to adopt a constitutional policy for officers to follow.
6. Since there is no cap on damages in the federal system, awards can be astonishing.

7. Remember, if the acts of the officer are negligent, then he/she will be liable only for general and compensatory damages. However, if the acts are intentional, that officer may become liable for punitive damages. (exemplar damages) These are damages that serve to punish or set an example.

LO20

IX RESPONDEAT SUPERIOR

A. “Let the master answer” – literally. This means that under certain circumstances the principal may be liable for the torts of his/her agent. The employer may be liable for the torts of his/her employee.

B. There are a few requirements for liability to be in place.

1. First – an employer-employee relationship must exist

2. Second – the employee’s negligence etc. must occur during the course and scope of employment

3. An employer is not liable for an employee’s torts if that employee was “on a frolic of his own.”

LO19

C. Issues of civil liability governing employers and employees; municipalities or other governmental entities and their officers, are case law and statute driven. The most important point to remember, however, is if the policy of the agency has created the problem or created the negligence or other tort inflicted upon the plaintiff by an officer, then there is potential liability on the part of that agency/entity. Generally, the courts hold that the matter becomes a question for the jury.

D. It is not uncommon to see a county or municipality as well as an agency or even the state itself, named as a defendant in a tort claim. It is far more unusual to see liability attach where that entity has kept up with its policy and procedures and has followed the law.

LO21
E. Essentially, the theories and doctrines discussed above, along with statutes like 1983 and the New Mexico Tort Claims Act, and the cases that interpret those statutes, have done away with the concept of “sovereign immunity”. This simply means that the state, city, county, government, is immune from liability for anything its agents do. Simply put, in common law terms, the king will only let you sue him for those actions he determines you can sue him for. Most jurisdictions have developed statutory exceptions to sovereign immunity for which they allow suit to be brought.

X. CONCLUSION

A. Civil rights litigation is on the rise. Most officers will find themselves, at one time or another, named as defendants in civil suits. While there is no way to protect an officer from being named as a defendant, there are certainly some things an officer can do in order to protect him/herself from liability should that situation arise

1. Follow departmental policy and legal training
2. Stay current with legal developments
3. Never let ego or personality become entwined with work
4. Carefully document
5. Use tape recorder
6. Never lie or cover up an incident
7. Never assist other officers in lying or covering up incidents
8. Prepare cases meticulously in order to insure convictions
9. If you make a mistake, remember, you have a right against self-incrimination pursuant to both Miranda and Garrity

LO24

10. When in doubt, consult someone with knowledge.
B. If you stay abreast of training and latest legal developments and learn how to incorporate this knowledge into your everyday duties, then you will increase your chances of immunity from liability.

C. Qualified immunity is the best defense to a claim involving negligence. The standard defenses to intentional torts are always available should a situation arise. I.e. – self-defense, accident, necessity, etc. However, immunity will take an officer right out of a lawsuit. That officer will be dismissed as a defendant.

COURSE LEVEL DEFINITIONS

100 LEVEL: BASIC LEVEL - FOUNDATIONAL BLOCK OF INSTRUCTION. PRE-REQUISITE TO ALL HIGHER LEVEL COURSES.

200 LEVEL: INTRODUCTORY LEVEL. REQUIRES COMPLETION OF PRE-REQUISITE COURSE(S). [ONE OR MORE 100 LEVEL COURSE(S)]

300 LEVEL: INCUMBENT LEVEL. REQUIRES COMPLETION OF PRE-REQUISITE COURSE(S). [ONE OR MORE 200 LEVEL COURSE(S)]

400 LEVEL: ADVANCED LEVEL. REQUIRES COMPLETION OF BASIC ACADEMY AND POSSIBLY PRE-REQUISITE COURSE(S)

CLASSIFICATION OF LEARNING OBJECTIVE

(C): COGNITIVE BASED LEARNING OBJECTIVE
(P): PSYCHOMOTOR BASED LEARNING OBJECTIVE
(C/P): BOTH COGNITIVE AND PSYCHOMOTOR BASED LEARNING OBJECTIVE
(V): VALUE BASED LEARNING OBJECTIVE

(Emphasizing Sacred Trust the community has placed in the hands of the law enforcement officer, addresses related professional conduct and respect for rights of citizens. All lesson plans must contain at least one value based learning objective.)
COURSE AUDIT

PRIMARY INSTRUCTOR:

SECONDARY INSTRUCTOR:

SUPPORT STAFF (i.e.: Scenario Managers, Role Players, etc):

DATE(S)/ TIME(S) OF INSTRUCTION:

LOCATION OF INSTRUCTION:

RECOMMENDED CURRICULUM CHANGES: Identify inaccurate information, outdated information, new information to be added to update material, etc. (Use additional pages if necessary)

ADDITIONAL INSTRUCTOR COMMENTS: (If any portion of the course content was not presented, indicate the specific content here)

If course content other than the NMDPS TRD approved Basic or PST academy curriculum is taught, the alternative curriculum must be submitted to the Law Enforcement Academy Deputy Director's office and approved prior to delivery of the alternative instructional materials.
Alternative curriculum was taught.

Accreditation number of alternative curriculum:

INSTRUCTOR NOTES

SIGNATURE  DATE

Primary Instructor

Reviewed by Program Coordinator

Reviewed by Bureau Chief

Reviewed by LEA Director or Designee