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A SOURCEBOOK

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Police Accountability, Risk Management, and Legal Advising

Carol A. Archbold

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A Foreword by *Dr. Samuel Walker*

This book represents a pioneering exploration of important but largely neglected aspects of policing and police accountability. The problem of police misconduct has been with us since the first American police departments were established about 170 years ago. Use of excessive force, unjustifiable fatal shootings of citizens, and other acts of misconduct continue to plague our society. They are also an important part of the racial and ethnic tensions that pervade our communities. While we have long known that these problems exist, we have only recently begun to address them in a serious fashion.

The question before us is not whether we should do something about police misconduct, but which remedy or combination of remedies is most effective. In recent years we have made significant progress in developing administrative controls over police use of force and other aspects of policing that pose a threat to the life, liberty, and well being of citizens. We have also developed a new tool, early intervention systems, to identify patterns of misconduct and do something about them. Finally, new forms of citizen oversight are bringing an important element of external citizen perspective to misconduct issues.

This book explores two important but long neglected accountability mechanisms. As Carol Archbold's research indicates, the concept of police legal advisors first appeared more than thirty years ago. But as she explains, the idea never fully developed. At the same time, the idea of risk management is well established in other areas of American life, particularly private industry and health care. But it has never taken hold in American policing.

Carol Archbold's book is an important contribution to the literature on police accountability. It not only explains the concepts of police legal advisors and risk management, but also provides valuable data on what mechanisms currently exist in American police departments - and even more important, what does not exist. I fully

expect that this pioneering work will spark a new body of research and policy development in policing. And I also expect that the resulting policy developments will make a significant contribution to the professionalization of the American police.

Professor Samuel Walker
Department of Criminal Justice
University of Nebraska at Omaha
Omaha, NE 68182-0149

CHAPTER 1

Introduction

The nature of police work exposes police officers to liability risks everyday, resulting in greater chances of them becoming the subjects of civil litigation. Current police liability literature reports that litigation cases involving the police have increased over the past three decades (Archbold & Maguire, 2002; Franklin, 1993; Kappeler, 2001; McCoy, 1987; Novak, Smith & Frank, 2003; Payne, 2002). In turn, the monetary costs associated with lawsuits involving the police have also increased over time. For example, both Los Angeles and New York City paid out over \$70 million in settlements for police misconduct from 1991 to 1996 (Human Rights Watch, 1998). On May 22, 2003 the Cincinnati Enquirer reported that the city of Cincinnati would pay out \$4.5 million in settlements for 16 lawsuits involving Cincinnati police officers. This settlement will be recorded as the largest legal settlement involving the police in the city's history (The Cincinnati Enquirer, 2003).

Some police managers have recognized this increase in litigation and payouts resulting from litigation, and have begun to take proactive measures to reduce exposure to liability risks. Two of these proactive measures are the employment of police legal advisors and the use of risk management techniques. There is currently no research in the United States on these two measures however. This book presents the findings of the first national study on the use of risk management and police legal advising by law enforcement agencies as part of their efforts to reduce police officer exposure to liability risks.

POLICE ACCOUNTABILITY AND EFFECTIVE POLICE MANAGEMENT TOOLS

Creating a culture of accountability and a high level of professionalism within police organizations can be achieved through various

management tools. In a 2001 report written by the U.S. Department of Justice, several policies are recommended to increase police accountability and effective management within police organizations. Some of the suggested practices include: (1) increased supervision over police officers (specifically involving use of force, and search and seizure incidents), (2) acquiring feedback on police services from citizens and community groups, (3) establishing mechanisms where civilians can participate in evaluating police services and programs including civilian review boards or oversight agencies, and (4) implementing information management systems (including early warning systems) (U.S. Department of Justice, 2001).

Risk management and police legal advising easily fit into the list provided by the Department of Justice, as the goal of both approaches encourages increased police professionalism, more effective police management, and greater police accountability.

POLICE LIABILITY

Existing research suggests that police activities that are associated with high exposure to liability risk and that cost police departments large sums of money prompt police administrators to review and alter department policies and practices to avoid future litigation (Alpert & Dunham, 1992; McCoy, 1984). Police chiefs surveyed by McCoy (1984) specifically identified police use of force and auto pursuits as the two areas where policies can be designed to control police officers' actions, and where advanced police training can decrease the chances of litigation. McCoy suggests that police chiefs mentioned these two items because they are likely to result in the most expensive payouts for serious injury in civil litigation cases. The findings of McCoy's study are important because it points out that some police administrators are aware of high-risk liability incidents, and that they also attempt to alter department policies and training to reduce or prevent future litigation involving members of their organizations.

Police managers recognize specific incidents that result in civil litigation against their departments because of large monetary settlements or because of the media attention given to celebrated litigation cases against the police such as the 1991 Rodney King incident in Los Angeles (McCoy, 1984; Cannon, 1997). The incidents that most likely result in litigation include improper use of force (non-

lethal and lethal) during arrest, high-speed pursuits, and several other serious allegations of police misconduct (Alpert et al., 2000; del Carmen, 1991; Payne, 2003). In response, law enforcement agencies have attempted to improve police training, police recruitment standards, and department policies and procedures to maintain control over exposure to liability (U.S. Department of Justice, 2001). Police executives are also pushing for national accreditation (Marino, 1998), implementation of community oriented policing programs (Worrall, 1998), and peer counseling programs (Vogt, 1985) to help reduce the chances that their officers will be named as defendants in civil lawsuits.

An important topic that has not been discussed in policing literature is the way that police executives have tried to reduce payouts resulting from litigation by using techniques embraced by legal personnel and risk management assessors. Some law enforcement executives have begun to deal with police liability issues by employing police legal advisors and risk managers within their organizations.

POLICE LEGAL ADVISORS

The role of police legal advisors in law enforcement agencies is to provide a wide range of legal services to all police personnel. For example, legal advisors are often used to examine both existing and newly adopted department policies to ensure that they comply with local, state and federal regulations. They also recommend changes in the standards associated with recruitment and training of all police officers. Legal advisors use their legal expertise to track and analyze past legal cases and settlements involving the police to create preventative measures to combat future legal problems. The scope of police legal advisors duties usually reflects the needs and characteristics of each individual police organization by which they are employed (Caplan, 1967).

Police executives have sought the advice of legal counsel for liability issues since the early 1900s. The New York City Law Library Legal Unit was the first formal legal unit housed within a police department in the United States (Schmidt, 1972). The need for legal advisors within police organizations has increased significantly over time as changes in laws and Supreme Court case decisions have

influenced the police role in society. In the 1960s and 1970s, legal advisors were starting to become integrated into police organizations to keep up with the constant changes in law and changes in the procedures used to enforce those laws.

Despite the need for legal advising within law enforcement agencies, the adoption of police legal advisors in the United States has been sluggish over the last four decades. In 1966, the National League of Cities sponsored a national study that revealed that only 14 U.S. police departments employed legal counsel on a full or part-time basis out of the 276 police departments responding to their survey (Bancroft, 1966). To date, there is no current list of law enforcement agencies that employ police legal advisors. Further, the topic of police legal advising has gone virtually untouched by both police scholars and police practitioners since the early 1970s. The national study described in later chapters of this book provides an in-depth look into which law enforcement agencies utilize the services provided by police legal advisors, and also explores the role, function, and perceived impact of police legal advisors on police liability management.

Early literature on police legal advising suggested that the slow pace of the adoption of police legal advisors in the United States could be attributed to several factors. First, the literature reports that there had been resistance from city and county attorneys who proclaim that police organizations that employ police legal advisors would be “doubling up” on legal services (Caplan, 1967; Schmidt, 1972). Therefore, instead of hiring police legal advisors, some law enforcement agencies have continued to utilize their city or county attorney.

Another factor cited in the literature related to the slow adoption of police legal advisors is a lack of resources. As is the case in most public or private organizations, budgetary constraints often hinder police organizations from adopting new, innovative programs. This has reportedly been the case with police legal advisors (Caplan, 1967; IACP, 1998; Schmidt, 1972).

Resistance from police executives who are unfamiliar with the police legal advisor role, more lucrative job opportunities for lawyers in private practices or large law firms, and a lack of formal training for police legal advisors are also factors noted in the earlier literature that are believed to have contributed to the lagged adoption of legal advisors by police agencies (Caplan, 1967; Lorch, 1969). It has been

predicted that the level of resistance to police legal advisors may diminish with time because there has been a significant increase in police litigation cases over the past three decades (Franklin, 1993; Kappeler, 1997; McCoy, 1987), which might reflect an increase in the need for more legal advice by police agencies. Employing police legal advisors may be an additional managerial tool for police executives concerned with increasing organizational loss resulting from liability incidents.

RISK MANAGEMENT

Risk management is a management tool that can be used to identify and manage potential risk and liability problems in organizations. In the past, risk management was mostly used as an insurance-based technical tool. Today risk management is viewed as a broad, policy-oriented, managerial technique used by a wide array of organizations (Young, 2000). Organizations adopt risk management practices because of the increase in the threat of litigation, to reduce the risk of harm to both their clients and employees, and to provide a higher quality of services to their clients (Wong & Rakestraw, 1991).

Recently, some law enforcement agencies have implemented risk managers (either in addition to or as a replacement of police legal advisors) to aid in the identification of department policies and procedures that lead to liability-related losses. Similar to legal advisors, risk managers are utilized by police agencies to reduce officer exposure to liability incidents. Risk managers use a variety of insurance-based techniques to assess levels of liability within organizations, and then create various strategies to reduce or manage exposure to the identified risks (Esenberg, 1992).

Risk managers and risk management programs are more underutilized by law enforcement agencies than are police legal advisors. This assessment of the scarce presence of risk management in law enforcement is evident by the lack of published literature and research on the subject in the United States. Ironically, there is a great need for the fiscal management that risk managers provide in some of the largest police departments in the country.

THE LINK BETWEEN POLICE LEGAL ADVISORS AND RISK MANAGEMENT

The national study presented in this book examines the use of police legal advisors and risk management by American law enforcement agencies in an attempt to reduce officer exposure to liability risks. Both risk managers and police legal advisors are included in this study because both groups share common goals and roles within police organizations. Additionally, both groups use similar methods and techniques to accomplish those shared goals.

Police organizations can use police legal advisors and risk managers either separately, together, or in some other unique combination depending on the individual needs of the organization. The duties of risk managers parallel those of police legal advisors because both groups are employed by police organizations for the same reason – to reduce and maintain control over police liability incidents. Both groups use their training to identify, and then examine policies and procedures that often result in litigation (and sometimes monetary payouts) for the police organization. Even with very different professional and educational backgrounds, police legal advisors and risk managers can achieve similar goals when handling police liability incidents.

CONTRIBUTIONS TO THE LITERATURE

This book explores the use of police legal advising and risk management by law enforcement agencies in an effort to reduce police litigation cases, and the costs associated with exposure to liability risks. More specifically, the national study presented in Chapter Four examines: (1) The prevalence of the use of risk management and legal advising in law enforcement agencies in the United States, (2) some of the characteristics and roles of the identified risk management and police legal advising programs in police agencies, (3) some of the factors associated with the adoption of such programs, and (4) the perceived impact of utilizing police legal advising and risk management to handle police liability issues.

The data used in this study is based on three primary data sources: (1) Telephone interviews with police personnel, risk managers, and police legal advisors in 354 U.S. county and municipal law

enforcement agencies that employ 200 or more sworn police personnel; (2) a national survey of the municipal and county police departments that reported that they utilize police legal advising and/or risk management in prior telephone interviews; and (3) case study analyses of four police departments that use various combinations of risk management and police legal advising techniques. The research findings presented in this book describe how law enforcement agencies can use such managerial tools to handle police liability and organizational loss resulting from exposure to liability incidents. In addition, the findings of this exploratory study will provide a strong foundation for future empirical assessment of this topic.

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CHAPTER 2

Police Liability in the United States

Police liability is of increasing concern to members of the public, police administrators, and individual police officers. Current literature suggests that the management of police liability increases police professionalism, and also contributes to police accountability. This book explores two alternative approaches to liability management: risk management and police legal advising.

A recent report released by the U.S. Department of Justice outlines several ways that police agencies can make organizational changes to promote police integrity, improve police practices and policies, and decrease exposure to liability incidents that often result in litigation. The report suggests alterations in policy and practice in six areas including: (1) use of force, (2) the investigation of complaints and misconduct of officers, (3) promoting police accountability and effective police management, (4) improved police training, (5) ways to practice non-discriminatory policing and data collection on race, and (6) improved standards for recruitment, hiring, and retention of police officers (U.S. Department of Justice, 2001).

Two suggested changes that are not included on the list are the adoption of risk management and police legal advising programs, even though they are closely related to recommendations suggested in the 2001 U.S. Department of Justice report. The premise of this book is to present police legal advisors and risk management as two additional ways that police organizations can increase police accountability, while reducing liability within their organizations.

This chapter provides a discussion of the literature on police liability, as well as a detailed look at the use of police legal advising and risk management by police executives to manage police liability.

THE CURRENT STATE OF POLICE LIABILITY IN AMERICA

Police liability has become one of the most widely discussed topics by police executives, police officers, and police scholars. Police exposure to liability has increased in the past three decades because of significant social, political, and legal changes in the United States. All of these changes, especially the changes in law, have impacted police work. By failing to adjust police policies and procedures to accommodate the changes in law, police executives have seen an increase in litigation and citizen complaints (Beh, 1998; Livingston, 1999). Two indicators of increased police liability are the rising number of civil suits filed against the police, and the monetary loss resulting from those lawsuits.

By varying accounts, the number of civil suits filed against police officers has risen since 1960 (Franklin, 1993; Kappeler, 1997; McCoy, 1987; Payne, 2003). McCoy (1987) found that all of the police chiefs from the 20 largest cities in the United States reported that their departments had been sued in civil cases in the past. Additionally, the total number of federal civil cases filed against police officers under Section 1983 nearly tripled from 1978 to 1996 (Kappeler, 2001). Lawsuits that are filed against police officers under Section 1983 involve any police actions that fall outside of the scope of a police officers official authority, which results in violation of civil rights as defined in the United States Constitution (Kappeler, 2001).

Another indication of the increase in litigation involving the police are the large monetary awards given to citizens that win lawsuits filed against the police. For example, Human Rights Watch (1998) reported that New York City paid out \$70 million in settlements for police misconduct lawsuits between 1994 -1996. Similarly, the city of Los Angeles paid \$79.2 million in settlements and judgments in civil suits against Los Angeles police officers from 1991-1996. More recently, the Mayor of Los Angeles, Richard Riordan, suggested that “the city set aside 25 years worth of tobacco settlement money – as much as \$300 million – to pay for lawsuits anticipated from the city’s latest police corruption scandal involving officers in the Rampart district” (Los Angeles Times, 2000). The rising costs resulting from police-related liability incidents indicate that there is a need for additional ways to manage such incidents. The purpose of this book is to suggest

the adoption of risk managers and police legal advisors as two additional ways to manage police liability.

POLICE WORK AND EXPOSURE TO RISK

The need for legal advising and risk management in law enforcement becomes apparent when the sources of exposure to liability in police work are examined. First, the nature of police work is inherently dangerous, and regularly exposes officers to liability incidents. Almost all of the basic duties of police work expose police officers to liability on a daily basis (Gallagher, 1990b; Wennerholm, 1985). Additionally, inexperienced police officers working in high crime areas also play a part in police exposure to high-risk liability incidents. Inexperienced officers are sometimes put in situations where they have to make quick decisions with sometimes less than a thousand hours of training in the police academy (Katz, 1998). Lack of experience and limited police academy training, can contribute to the probability that officers will be exposed to potential liability risks.

COMMON LIABILITY INCIDENTS IN POLICE WORK

One aspect of police work that makes it unique to all other professions is the ability of police officers to use lethal and non-lethal force (Bittner, 1970). This unique aspect of police work contributes to police officer exposure to high levels of risk, which could lead to litigation. It has been reported that improper use of lethal and non-lethal force by police officers during arrest, and improper service of due process are two incidents in which damages are most likely sought, and that settlements are paid out to citizens (Blalock, 1974; del Carmen, 1991; Newell et al, 1993).

Liability Assessment and Awareness International (LAAW) (2001) suggests that police executives could manage liability related to use of force through close supervision of patrol officers. The group also suggests that police department policies should be created and maintained to keep the use of force under control. Also, by applying the highest standards to the use of force by police officers, as well as the review process of all misuse of force cases, law enforcement agencies can get a handle on use of force liability incidents (Liability Assessment and Awareness International Inc., 2001). This assertion by

the LAAW parallels the findings of most of the research on the use of deadly force, which suggests that policies and mandatory reporting of use of lethal force harnesses police officer behaviors and activities (Culliver & Sigler, 1995; Fyfe, 1979; Fyfe, 1981; Geller & Scott, 1992; Sparger & Giacomassi, 1992).

Another common liability incident that can result in litigation against police officers is false arrest (International Association of Chiefs of Police, 1974; Kappeler, 2001; Schmidt, 1985). Kappeler (2001) defines false arrest as “the unlawful seizure and detention of a person” by a police officer (p. 21). In most cases, false arrest claims consist of those cases where individuals believe that the police did not have probable cause to stop or question them (Kappeler, 2001).

To avoid liability resulting from claims of false arrest, police officers can obtain a warrant prior to making arrests. Securing a search warrant prior to arrest takes the authority of determining probable cause away from police officers, and places the responsibility on judges (Kappeler, 2001). Because making arrests is such a common police action, it is not always possible to obtain a warrant prior to making an arrest, which in turn, exposes police officers to liability.

Another frequent liability incident that often results in payout for police agencies is law enforcement vehicle operation. High-risk liability incidents involving law enforcement vehicles include: high speed pursuits, how and where police vehicles are parked, whether or not emergency lights/equipment is used while police vehicles are parked, where police officers place people and all involved vehicles during the investigation of traffic stops, the misuse or nonuse of vehicle occupant restraints (both officers and passengers in police vehicles), and both major traffic accidents and minor fender benders involving law enforcement vehicles (Liability Assessment and Awareness International, Inc., 2001).

The issue of police liability and risk management for emergency vehicle operations is addressed in an entire chapter of a recently published book, *Police Pursuits: What We Know* (Alpert et al, 2000). Alpert and colleagues discuss several ways to identify and respond to exposure to risks related to emergency vehicle operations within police agencies including: (1) a review of historical loss data, (2) a review of both past and pending lawsuits filed against the police agency, and (3) surveying patrol officers about some of the issues that arise from operating law enforcement vehicles (Alpert et al, 2000, p. 154).

Because the operation of police vehicles is a necessary part of modern policing, identifying and then managing the risks associated with police vehicle operation also becomes a necessary task for police executives.

One of several ways to manage police vehicle liability incidents is to require mandatory reporting of any traffic-related incidents including both major and minor accidents (Liability Assessment and Awareness International Inc, 2001). In addition to mandatory reporting of all traffic infractions, all evidence available after any traffic incidents should be collected and preserved by law enforcement agencies (Liability Assessment and Awareness International Inc, 2001). Incident reports including thorough descriptions of each traffic-related incident, exhaustive lists of evidence collected after traffic-related incidents, and any other important information pertinent to traffic-related incidents should be given to police managers to keep on file in case litigation occurs in the future. All of these steps are believed to help police agencies protect themselves against traffic-related litigation cases.

Police liability can also become an issue when police services are not conducted within defined jurisdictional boundaries. The Liability Assessment and Awareness International, Inc. (2001) assert that roughly 10 percent of law enforcement litigation involves jurisdictional issues. Incidents requiring the use of police services (such as high-speed pursuits, surveillance or investigation, and serving warrants) often require that law enforcement officials involved in those incidents understand jurisdictional boundaries.

Although jurisdictional liability incidents only comprise a small portion of litigation cases against the police, the Liability Assessment and Awareness International, Inc. (2001) suggests several steps that can be taken to reduce those incidents.

First, all police personnel need to be informed of the jurisdictional boundaries, accompanying jurisdictional policies, and any changes in jurisdictional policies as defined by agency directives. This step is important, as jurisdictional boundaries are state law dependent.

Second, it is also important to keep all records and evidence from vehicle-related incidents on file at the police department in case traffic accidents or injuries result from high-speed pursuits that carry over into other jurisdictions (Liability Assessment and Awareness International Inc., 2001).

And third, there should be periodic review of all traffic-related incidents that take place outside of officer jurisdiction by risk managers and/or legal advisors employed by the police department. The results of each review will allow the department to make changes that could impact the frequency of traffic-related incidents outside of the department's jurisdiction (Liability Assessment and Awareness International, Inc., 2001).

Canine unit dog bites are another liability concern for law enforcement managers. The American Civil Liberties Union of Southern California has asked for an investigation of the Los Angeles Police Department K-9 unit practices because of a reported increase in the number of dog bites of citizens. It has been reported "that an average of nearly one person per day is bitten by Los Angeles Police Department canines" and that "more than 900 men, women, and children have been attacked and mauled by these dogs in a 3-year period" (American Civil Liberties Union of Southern California, 1992, p. 21).

The ACLU of Southern California also reports that there is evidence that the LAPD concentrates its use of canine units in predominantly minority-populated neighborhoods of Los Angeles (1992). Statistics included in a June 2000 report by Merrick J. Bobb (Special Counsel to the Los Angeles County Sheriff's Department) corroborate the ACLU's assertion. The statistics in the report suggest that K-9 units may be utilized in minority neighborhoods more often than in non-minority concentrated neighborhoods. With police departments of all sizes implementing K-9 programs, this issue could become more of a liability concern to police agencies in the future.

POLICE LIABILITY ASSESSMENT

There are a variety of liability assessment resources available to law enforcement agencies. Some of those resources are provided by agencies such as the Liability Assessment and Awareness International, Inc., the International Association of Chiefs of Police – Legal Section, and the Public Risk Management Association (PRIMA) which focus on improving police services and police professionalism by reducing police officers' exposure to liability risks.

Public Risk Management Association Liability Assessment Guidelines

The Public Risk Management Association (PRIMA) has published a guide to help law enforcement agencies assess their exposure to liability incidents. The PRIMA Police Liability Assessment Guide (2001) suggests that police managers pay close attention to the following categories during liability assessment:

Law Enforcement Training

- All police officers and police reserve officers should be trained and certified by the State before they have any contact with citizens during regular police activities.
- The basic training in the police academy that is required of all police officers should exceed the minimum standards set by the State.
- All police officers and police reserve officers should be trained and be able to display competency in the areas of using firearms (both on and off duty), impact weapons, shotgun, mace, emergency and pursuit driving, First Aid, defensive tactics, dealing with barricaded subjects, hostage situations, and incidents involving hazardous waste. In addition, legal training should be given to each police officer both before and during their law enforcement career.
- All police officers should be required to go through a Field Training Officer (FTO) program, and should be given “probationary” status for a period of time after FTO training is completed. In addition, the department should maintain records of successful completion of both FTO training, and competency during probationary period.
- All police officers should be required to be re-qualified each year in the use of firearms and other non-lethal weapons, as well as handling other critical tasks.

- All police instructors and trainers should be required to participate in annual or periodic refresher courses to enhance their training abilities.
- Records of all police training and qualifications/re-qualifications for both supervisors and line officers should be formally documented and maintained.
- Law enforcement agencies should require psychological screening of all police recruits, and should provide psychological services to all police personnel thereafter.

Department Policies and Procedures

- All police personnel should be provided with a copy of department policies and procedures. Any changes or updates in policies and procedures should be given to all personnel immediately.
- The law enforcement agency should have clearly stated written policies and procedures for critical tasks including use of force (as well as use of force reports and review of reports), emergency and pursuit driving, off-duty employment and carrying weapons while off-duty, domestic violence, and any situations that involve infectious diseases.
- The agency should also have significant training, and clearly stated policies and procedures for SWAT or tactical units, hostage rescue squads, K-9 Units, and units involved in the handling of bombs or other toxic materials.

Collaborations with Local Legal Counsel

- Law enforcement agencies should have local city attorneys periodically review department policies and procedures to ensure that they reflect current laws that affect police operations.

- Local city attorneys should also be consulted when any new policies or procedures are created by police departments, to make sure that the policies are congruent with formal local and State laws.
- Law enforcement agencies should seek the aid of local city attorneys to train and update police officers on any changes in the law resulting from court decisions or other legislative processes.
- To identify existing risks of liability to the police agency, local city attorneys should conduct periodic reviews of civil suits and payouts from civil litigation to determine potential high-risk situations and police procedures. After any high-risk situations or procedures are identified, both police managers and local legal counsel should collaborate on potential changes that could be made to reduce or eliminate unnecessary risks.

Once a general liability assessment guide or checklist is exhausted, police executives can focus on liability incidents that may be unique to their organization (Barrineau III, 1994). Both past and pending civil suits and citizen complaints filed against the police, and agency records indicating agency loss histories can be used to identify those liability incidents that are unique to each individual law enforcement agency. PRIMA suggests that law enforcement agencies seek the help of legal advisors or insurance risk assessors when assessing agency loss histories.

Gallagher's "six-layered liability protection system"

Liability assessment checklists and guidelines help organizations identify areas of potential exposure to risk. The idea of protecting law enforcement agencies against liability risks while increasing police officer professionalism is the idea that serves as the basis for G. Patrick Gallagher's "six-layered liability protection system" (Gallagher, 1990a, 1992). The six layers that should be covered in law enforcement agencies that Gallagher refers to include: (1) policies and procedures, (2) officer training, (3) supervision, (4) performance management or

discipline, (5) continual review and monitoring of identified risks, and (6) revising actions used to counter risks when necessary (1990a, 1992).

Gallagher asserts that if any of the six layers are either excluded or not functioning properly, police agencies are not fully protecting themselves from liability incidents. "All components must be present and interactive. It is the quality of each component and the quality of its interaction with all the others that will forge the highest degree of protection from the system" (Gallagher, 1992, p. 24). The "six-layered" system proposed by Gallagher contains some of the basic components found in liability assessment checklists and guidelines used by a variety of organizations and agencies.

REDUCING POLICE EXPOSURE TO LIABILITY INCIDENTS: RECENT ATTEMPTS

There is debate over whether or not police administrators can make organizational changes or implement innovative programs to reduce lawsuits involving the police. Some scholars suggest that police agencies that utilize innovative programs (such as early warning systems, proactive paramilitary units, and community oriented policing) actually increase their chances of being exposed to liability incidents and citizen complaints (Worrall, 2001).

On the opposite side of the debate, there appears to be some factors that can reduce the probability of police officers becoming involved in litigation cases. Current research indicates that changes made within police organizations such as increased or improved police officer training (Barrineau III, 1994; Blalock, 1974), obtaining accreditation (Marino, 1998), and the use of specific programs, such as community oriented policing (Worrall, 1998) has had an impact on civil suits filed against the police. There is also research that suggests that police officers' fear of being sued also deters some police officers from participating in activities that could result in civil litigation (McCoy, 1984). The following section examines the results of current police liability research, and several methodological issues that impact the results of that body of research.

Approach #1: Community Oriented Policing

Current liability research suggests that the implementation of Community Oriented Policing (COP) programs in police departments has had a positive impact on the number of civil suits against the police. John Worrall (1998) examined the impact of administrative determinants on civil suits filed against the police. Using data from a 1996 survey of 248 police departments and the 1993 Law Enforcement Management and Administrative Statistics (LEMAS) survey, Worrall found that “as departments became committed to community-oriented policing through the adoption of COP policies and programs, lawsuits declined, and quite markedly (1998, p. 307).” This finding suggests that decisions made by police administrators to implement certain programs in their organizations, can have an impact on the number of civil suits filed against them. However, in a 2001 study, Worrall found a mix of effects where community policing had either no effect or a positive effect on civil lawsuits involving the police. Additional research on this issue is needed to further understand the impact of community policing on lawsuits involving police officers.

Approach #2: Accreditation

The Intergovernmental Risk Management Agency (IRMA) is an agency that provides risk management grants to municipal level agencies across the United States. In 1998, IRMA conducted a study to see if there is a difference in the number of liability claims filed against police departments that were accredited by the Commission on Accreditation for Law Enforcement Agencies (CALEA) compared to those agencies that were non-accredited. In addition, IRMA wanted to assess the effectiveness of the risk management services they provide to law enforcement municipality members.

To conduct this study, data from liability claims paid out by police agencies that received IRMA services from 1993-1997 were collected from IRMA underwriting and loss records. An analysis of the IRMA data indicates that accredited police agencies had fewer claims per 100 officers (8.61) compared to non-accredited police agencies (10.28) (Marino, 1998). There was also a significant difference in the severity of the amount of payout resulting from claims that were filed against accredited and non-accredited police agencies. From 1993 through

1997, accredited police agencies that were IRMA members paid out a total of \$396,882.76, while non-accredited IRMA police agencies paid out \$1,312,089.62 (Marino, 1998). The author concludes that accreditation from CALEA impacts a police agency's ability to better manage liability payouts compared to non-accredited law enforcement agencies.

The results of the IRMA study should be interpreted with caution because of several methodological problems. First, the study does not control for the size of the police agencies included in the sample, the difference in the demands for service placed on each of the police agencies, or demographic differences in the cities where each police agency operates. It is likely that police organizations that are located in urban cities where there are higher police-citizen contact ratios will have increased exposure to high-risk liability incidents. The IRMA study does not control for such factors.

A second problem with the IRMA study is that it is impossible to know if the low number of claims filed against accredited agencies resulted because of accreditation and not some other characteristic of the police agencies (such as management styles, or education and training requirements). For example, some research suggests that police officers that have two or more years of college education receive fewer citizen complaints, are less frequently involved in litigation situations, and have fewer disciplinary problems than their non-college educated counterparts (Carter and Sapp, 1990). This finding casts doubt on the idea that accreditation alone can reduce police involvement in civil litigation cases. The IRMA study does not explore the possibility that other factors could influence the number of liability claims filed against police agencies.

Third, the idea that a police department is more effective because they have all of the policies and programs required by CALEA to be an accredited agency is misleading. Accreditation does not guarantee that there are control mechanisms in place to enforce the required policies that are necessary for accreditation by CALEA. For example, most police departments have policies against sexual harassment of female officers by their male counterparts. Having a sexual harassment policy does not ensure that harassment will not take place in an organization; but the policy can have an impact on harassment if police managers enforce the harassment policy, and if a disciplinary system exists and is

properly used whenever harassment has taken place within the organization.

And finally, the study does not use any variables that measure the number of risk management services provided by IRMA to police agencies (such as number of hours of IRMA training). It is impossible to gauge how much IRMA services impact police involvement in civil liability cases without the use of such variables because it is unclear how many IRMA services were provided to each police agency. Thus, to conclude that accreditation alone reduces the number of lawsuits and monetary loss from lawsuits for police-involved liability incidents would be a mistake.

Approach #3: Improved police training

Some literature suggests that increased and improved police training can impact the probability of police officers becoming named as defendants in legal suits. Most of the literature suggests that it is “common sense” that improved training will result in fewer lawsuits, but often does not provide any empirical evidence to support the “common sense” theory.

According to Schultz (1984), improvements in all phases of police training can prove to be beneficial to police officers when it comes to being named defendants in civil suits. George Schrader (1998) also stated, “that documenting firearms training not only reduces liability for the city and department but is an excellent training medium” (p.3). Neither Schultz nor Schrader used empirical evidence to support their assertions on the impact of police training on police liability.

In contrast to Schultz and Schrader’s assertions, John Worrall (1998) found that training is not an important factor in determining the probability that civil lawsuits will be filed against police organizations. However, Worrall cautions that the measure he used for the training variable may have been “too simple or crude” to catch the effects of training on the number of civil suits in his study. But because of the lack of research conducted on the impact of police training in nearly all stages of police work, it is still unclear as to its direct or indirect impact on police activities and behaviors.

Approach #4: Police department policies and directives

To date, there are few empirical studies that examine the impact of use of non-lethal force policies and the use of mandatory reporting of use of non-lethal force incidents on civil suits filed against the police. Most of the empirical research has focused on the use of agency policies to regulate the use of deadly force by police officers. In most studies, the implementation of a police department policy on the use of deadly force or the impact of the 1985 *Tennessee v. Garner* court case decision are assessed to identify the impact of such policies. The results of these studies have overwhelmingly supported the idea that more stringent use of deadly force policies significantly reduces the number of police-involved shootings (Culliver & Sigler, 1995; Fyfe, 1979; Fyfe, 1981; Sparger & Giacomassi, 1992). These studies also reveal that mandatory reporting of any use of firearms by police officers adds to the control and management of the use of deadly force by police officers.

Equally important as having clearly stated policies, is making sure that all police personnel within the organization are familiar with all existing policies. Colletti (1997) suggests that periodic proficiency exams can be given to establish some measurement of understanding of department policies. The results of proficiency exams can easily pinpoint the areas where police officers need further training.

Approach #5: Peer counseling programs

Allegations of police misconduct or misuse of force can sometimes result when police officers are unable to deal with stress or are suffering from job “burn out”. Vogt (1985) suggests that police officers form peer-counseling groups to deal with on-the-job stressors and to prevent job “burn-out”. There is potential benefit in providing an environment that promotes communication among police officers to discuss on-the-job stressors, as well as ways to deal with that stress. By using peer-counseling groups as a cathartic mechanism to reduce stress, police officers may be involved in fewer conflicts with citizens, thus resulting in fewer complaints or lawsuits filed against them. To date, there is no scientific research to support this claim.

Approach #6: Responding to the fear of litigation

Some police scholars and practitioners believe that there are some police officers that avoid certain police actions that can result in litigation because they fear being named defendants in civil suits filed by citizens (McCoy, 1984). In contrast, there are others that believe that the fear of litigation has little (if any) affect on police actions (Yale Law Journal, 1979). Even though police officer fear of litigation is not a specific approach or type of program used to reduce exposure to risks, there is some literature that suggests that informing police officers of the reality of litigation can impact their decision to initiate certain police actions.

A study conducted by Scogin and Brodsky in 1991 examined the level of “litigaphobia” (litigation + phobia) experienced by individual law enforcement officers. The results of the study indicate that most law enforcement officers moderately worry about work-related lawsuits filed by citizens. Also, 69 percent of police officers report that they take specific actions in their day-to-day work activities to prevent law suits being filed against them, such as “treating people fairly” or “going by the book” (Scogin and Brodsky, 1991, p. 43). And finally, most of the responding officers made statements indicating that they view being sued by citizens as “inevitable and unavoidable” due to the nature of their work. The authors suggest that pre-service and in-service training on police liability and the litigation process would prove beneficial to both the individual police officer and police department.

Candace McCoy (1984) also suggests that the threat of litigation can deter widespread police abuse in police departments. She contends that if police departments were systematically defying constitutional standards, they would be forced to operate under court orders until they began to function legally. McCoy also asserts that “increased procedural review and adequate record-keeping, disciplinary actions, careful police training, and a steady exchange of information between city attorneys and police are all good indicators that police departments indeed take deterrence seriously (1984, p.56).” It is important to note that the author’s suggestions were not based on the results of any empirical studies.

In contrast, there is also research that suggests that the threat of civil lawsuits does not deter police officers from participating in

unlawful activities. In 1979, student editors of the Yale Law Journal analyzed 149 misconduct cases filed against police officers from 1970-1977. The law students concluded that there was little or no deterrent effect from civil litigation. In most cases, juries sided with police officers, even in cases where there was sufficient evidence pointing to police misconduct or abuse. It was clear in most cases that certain factors (such as the plaintiff's involvement in illegal activity) swayed the jury to side with police officers (Yale Law Journal, 1979). This finding suggests that improper actions by police officers could possibly be overshadowed by the suspect's prior criminal history.

Two alternative approaches that have not been mentioned in police liability literature include the use of police legal advising and risk management by law enforcement agencies. Chapter Three discusses some of the earliest police legal advising and risk management literature, as well as current literature that focus on the use of police legal advising and risk management as police liability management tools.

CHAPTER 3

Police Legal Advising & Risk Management: Alternative Police Liability Management Tools

Some police administrators are beginning to utilize administrative mechanisms to reduce the risk of liability for their organizations with the help of legal and insurance specialists. In general terms, police legal advising takes place when lawyers are employed by police agencies to both manage and prevent legal problems involving police personnel. Legal advising has been slowly adopted by law enforcement agencies since the early 1960s. In contrast, risk management programs are still in the infancy stage of being embraced by police agencies. Risk management programs are adopted from the practices of insurance agencies as an effort to control the amount of unnecessary financial loss in organizations over time. Both approaches are potentially viable options to identify and manage police liability within police organizations.

POLICE LEGAL ADVISORS

The importance of adopting police legal advisors into police organizations was first highlighted in two documents that served as important sources of information for law enforcement agencies in the 1960s. First, O.W. Wilson (1963) discussed the importance of having a police legal advisor within law enforcement agencies in his text, *Police Administration*. The second document that supported the adoption of police legal advising was the *Task Report* written by the President's Commission on Law Enforcement and the Administration of Criminal Justice (1967). The federal government provided resources to fund the position of legal advisors in police departments, which further encouraged the adoption of police legal advisors.

Despite the obvious need for police legal advising, little attention has been given to the use of such people or groups in policing research since the early 1970s.

The first municipal law enforcement agency to adopt a legal unit was the New York City Police Department in 1907. The New York based legal unit was officially titled the “New York City Law Library Legal Unit” (Lorch, 1969). The early duties of the New York City Law Library Legal Unit focused on conducting research on routine police operations including patrol, interrogations, and searches. Essentially, this unit was created to watch over any legal issues that would arise involving New York City police officers. Expected duties and the number of members in the New York City Legal Unit increased significantly by 1970 as the legal needs of the NYPD also broadened (Schmidt, 1972). For a comprehensive history of the New York City Police Department Legal Bureau, see Lorch (1969).

Both substantive and procedural law affects every phase of police work; therefore, police organizations need to have access to full-time, highly skilled legal advisors. It is the police legal advisor that will interpret and adjust police agency policies and directives to keep up with the ever-changing laws that define the police role. In 1967, the need for police legal advising was explicitly stated in the Presidents Commission on Law Enforcement and Administration of Justice’s Task Force Report: *The Police* (1967):

A major instrument for insuring...increased effectiveness is the introduction of lawyers into the law enforcement process, particularly in the areas of planning and investigation. Even the best policeman and the best police administrator will, at times, need the advice of a lawyer who is knowledgeable in the administrative and criminal law. In fact, the better the office and the department, the more sensitive they will be to the complexity of the law, and the more likely to test their judgments against those of the police legal advisor.... (p. 63).

The National Advisory Commission on Criminal Justice Standards and Goals (1973) also suggested “that every police agency with 200 or more personnel should establish a police legal unit with at least one attorney as a full-time legal advisor” (p. 280). Police executives can

hire either full or part-time police legal advisors to make their organizations more legally efficient in training and procedure while at the same time raise the standards of professionalism within their organizations.

Police legal advisors (either alone or with the aid of risk managers) also provide police agencies with advice on ways to maintain a level of fiscal responsibility. “Because the average police chief in the United States presides over the equivalent of a multi-million dollar corporation, it is imperative that the chief demand and get legal advice of a quality commensurate with his or her departments importance. This is all the more crucial given the capacity of police-citizen contacts to generate very significant liability claims” (Geller, 1991, p. 447). In larger cities where there is more exposure to liability incidents for police officers, the advice of a police legal advisor or risk manager could be an important fiscal and management tool for police executives.

Training Programs

To staff a legal unit with properly trained employees or prepare a lawyer with the tools to advise police personnel, it is essential that legal training focuses on liability issues directly related to police work. A program at Northwestern University provided the necessary training for police legal advising in the late 1960s through 1970. The “Police Legal Advisor” (PLA) program began in 1964 as a two-year Masters of Law program and was later changed to a 12-month certification program. In 1970, the Northwestern PLA program became a joint program with the International Association of Chiefs of Police (IACP) for one year. Since 1971, there has not been any formal school for police legal attorneys in the United States (Schmidt, 2001).

Since the early 1970s, the Federal Bureau of Investigations (FBI) has sporadically held “National Law Institute” sessions that cover issues in criminal procedure and labor law. In addition, an association of police legal advisors was formed in 1968, and was later adopted as part of the International Association of Chiefs of Police as the IACP

Legal Officers Section. The IACP Legal Officers Section still meets as part of the IACP annual conference (Schmidt, 2001).¹

A police internship program at the University of Wisconsin Law School also provided specialized training to law students that had an interest in working as police legal advisors in the 1960s. This program trained law students to understand legal issues that are specifically relevant to police work, and then placed students within law enforcement agencies for hands-on training. The internship program was dissolved six years after it began because of lack of resources to subsidize students that were part of the legal advising program (Goldstein, 2001).²

Today, there are no formal police legal advising programs within an academic setting that focus specifically on training law students to become police legal advisors. Some law schools will offer individual courses that deal specifically with legal issues that law enforcement agencies encounter. The International Association of Chiefs of Police (IACP) Legal Section and other independent agencies offer periodic training seminars on police civil liability issues.

In addition to the lack of specialized training for police legal advisors, the role of police legal advisors within police organizations have been given virtually no attention in policing literature. The idea of adopting police legal advisors seems to have diminished just as quickly as it was introduced back in the late 1960s and early 1970s. The topic of police legal advisor often re-emerges in practitioner-oriented publications circulated among police personnel such as *The Police Chief* magazine or the *FBI Bulletin*. For example, a 1998 issue of *The Police Chief* magazine featured an article written by the IACP – Legal Section on the importance of adopting police legal advisors (IACP, 1998). This article contains virtually the same information on

¹ Wayne Schmidt is currently the Executive Director of Americans for Effective Law Enforcement, and the Editor of Fire and Police Personnel Reporter newsletter. Schmidt is a graduate of the Northwestern PLA program, and also served as the director of the PLA program from 1968-1973. (Telephone interview, March 2001).

² Dr. Herman Goldstein provided historical information on the Police Legal Advising program at the University of Wisconsin Law School in a telephone interview on May 2, 2001.

police legal advisors as was presented by the IACP roughly thirty years ago. Although important, the 1998 IACP article does not contain any new information on police legal advisors that is based on empirical scientific research.

Even more interesting is that police legal advisors within police organizations were adopted at a very slow pace during a time when they were needed the most by police organizations. Since the late 1960s, there have been significant changes in law, and in the way that those laws should be enforced. Because of the changes in law the need for full-time police legal advisors within police agencies presumably should reflect an increased need for specialized legal advice to police organizations.

Types of police legal advisors

In the late 1960s, there was debate over what type of education and professional background legal advisors should have to be effective within police organizations. There are three types of police legal advisors that could be adopted by police organizations: (1) a civilian employee, (2) police officer-lawyer, or (3) prosecutor or city/county attorney. Earlier literature on police legal advising notes both the advantages and disadvantages to all three types of police legal advisors.

Type 1: Civilians as police legal advisors

Some of the legal advising literature reports that the civilian-police legal advisor holds the most promise of all three types of potential police legal advisors (Caplan, 1967). A civilian legal advisor would be someone that has experience practicing law, but does not hold a dual role of police legal advisor and city/county attorney. Civilian legal advisors would have fewer external sources of political pressure when considering changes in department policy within police organizations. Legal advisors that are classified as civilians would also be more open to participating in collaborations with agencies outside of the police department and would most likely consider the needs of agencies and individuals outside of the police organization when making changes that impact the police agency (Caplan, 1967). Moreover, it is suspected that civilian police legal advisors would be more in tune with

community needs and community perceptions of the police. However, civilian legal advisors may not have as much experience working with police officers as a police legal advisor with prior law enforcement experience would have acquired while working in the field.

Schmidt (1972) and the National Commission on Criminal Justice Standards and Goals (1973) also recommended that police legal advisors/units be staffed with civilian employees. It is suggested in the literature that patrol officers might be more comfortable coming to a legal advisor if he/she is not a high-ranking police manager within the organization (Schmidt, 1972). In contrast, it has also been suggested that employing legal advisors that have experience in both law enforcement (without any type of rank within the police organization) and legal training would allow a greater degree of comfort to police officers seeking legal advice (Schmidt, 1972). To date, there has not been any empirical research on this particular debate.

Type 2: City attorneys as legal advisors

Early literature on legal advising notes that in some jurisdictions, city or county attorneys will be placed in police legal advising positions either on a full or part-time basis (Caplan, 1967; Schmidt, 1972). The literature also suggests that city attorney-legal advisors may feel pressure to give in to the demands of either the district attorney or police chief (Schmidt, 1972). There is also a possibility that city attorney-legal advisors would be overly sensitive to the policies of district attorneys and comparatively insensitive to possible areas of difference. City attorney-legal advisors may be insensitive to policing that is not geared toward prosecution (Caplan, 1967). A basic problem with utilizing legal services of city attorneys lies in the fact that most do not have in-depth knowledge of day-to-day police operations. Therefore, the utility of legal services provided by city attorney-legal advisors are somewhat limited in scope compared to the other two types of police legal advisors.

The attorney/client relationship is also different between police officers and city attorney-legal advisors compared to the relationship between police officers and civilian legal advisors. For example, if a police officer approaches the police legal advisor (who also happens to be the city attorney), it is still the city attorney's responsibility to take legal action against the officer if he or she admits some type of

wrongdoing (Becker, 1994). Therefore, police officers may be hesitant to seek out legal advice from police legal advisors for fear that they could have legal action taken against them.

Another concern of adopting city attorney-legal advisors is the fact that their time is also occupied with legal issues for several other local government agents, leaving limited time for police legal issues (Caplan, 1967; Schmidt, 1972). If there are financial reasons why police departments cannot have an in-house police legal advisor, a city attorney-legal advisor may be the only option available.

Type 3: Police legal advisors with law enforcement experience

A third type of police legal advisor would be advisors that have prior law enforcement experience. One of the benefits of having police legal advisors that have prior law enforcement experience is that they will have firsthand knowledge of police liability issues. Additionally, some police officers may feel more comfortable seeking legal advice from someone that has worked in law enforcement compared to a legal advisor that has no prior law enforcement experience (Becker, 1994).

On the other hand, there is also some concern that legal advisors with policing experience may tailor his/her duties around the good of the police department, resulting in isolation from external agencies and community members (Caplan, 1967). Police legal advisors with prior law enforcement experience may also be less likely to collaborate with outside agencies, or be in tune with concerns of the community (Becker, 1994). Legal advisors with prior law enforcement experience may also face extra pressures from the chief of police when making decisions that will impact changes within the organization.

There are several advantages and disadvantages associated with all three types of police legal advisors. To date, there has not been any systematic study of which type of police legal advisor is the most effective in law enforcement settings. The current study does not examine which type of police legal advisor is better than the others. Instead, this study examines the prevalence of each type of police legal advisor in police agencies across the United States.

Responsibilities of police legal advisors

The responsibilities of police legal advisors are as diverse as the legal needs of both police agencies and individual police officers. There is no standard job description that can be generalized to all police legal advisors. Legal advisors responsibilities will vary based on the size and needs of the police department, as well as the management style and organizational objectives prescribed by the police chief or sheriff (International Association of Chiefs of Police-Legal Officers Section, 1998).

Besides serving the needs that are unique to each law enforcement agency, there are some standard duties that police legal advisors can expect to perform while being employed within a law enforcement agency. The following list of responsibilities is based on suggestions from literature written by Gerald Caplan (1967), the American Bar Association (1973), and the *Guidelines for a Police Legal Unit* written by Wayne Schmidt (1972).

1. Provide legal advice to police personnel

Early literature notes that one of the most important responsibilities placed on legal advisors is to be available to give legal advice to police personnel whenever necessary (Caplan, 1967; Lorch, 1969; Schmidt, 1972). Some of the legal advice given by police legal advisors includes providing legal advice on serving warrant, suggesting ways for patrol officers to prepare for court, and suggesting changes to department policies, training, hiring, and promotion of officers as a way to improve police services (Schmidt, 1972).

Legal advisors need to be available to police personnel at all levels within the police organization, ranging from the chief of police to officers on patrol. In fact, it is important that legal advisors maintain a constant level of contact with patrol officers, because a majority of the legal issues of police organizations begin with incidents that occur daily on the streets (Schmidt, 1972).

It is also important to recognize that legal advice is often given to police personnel before, during, and after police action has taken place (Geller, 1991). The legal advice given to police personnel should reflect the defined goals and objectives of the law enforcement agency. The need for constant availability of the legal advisor to police

personnel further emphasizes the importance of having police legal advisors housed within the main police headquarters.

2. Assessing police exposure to risk and crisis management situations

Among other duties, the police legal advisor should also be available to help with the assessment of the level of risk involved in specific police actions (Geller, 1991). Providing potential solutions to handle the identified high-risk incidents would then follow the assessment of risk. Legal advisors within the police organization create potential solutions by collaborating with risk managers or other professional insurance risk assessors.

Police legal advising is an important tool used to deal with legal issues in high risk or crisis management situations. According to Higginbotham (1994), a legal advisor is helpful with “legal issues that arise in crisis situations which includes dealing with search and seizures, the admissibility of statements used as evidence that were made during the negotiation process, the enforcement of promises made by police negotiators during the negotiation process, the use of any electronic surveillance equipment, any type of use of force used during a crisis situation, and control of access and information given to the media during crisis situations” (p. 27-28).

3. Assist in police training and recruitment

Legal advisors are also an important part of law enforcement recruitment and training. By participating on the planning committee for police academy training, legal advisors ensure that the instruction of important legal matters are conducted properly so that every police cadet is aware of the legal issues they may face in their new career (Schmidt, 1972). Legal advising is also a crucial part of police recruitment, because department recruiting standards are often based on the input of legal counsel within the police department. Schmidt (1972) contends that legal advisors can be valuable for in-service training of experienced officers or when officers are promoted to supervisory positions. Legal advisors describe how the added responsibilities that come along with promotion into supervisory positions also carries additional legal issues that need to be considered.

Legal advisors implement continuous legal training of police officers by distributing periodic legal training bulletins, training memos, or short instruction during the course of roll call (Schmidt, 1972). These continuous training methods are helpful in dispersing information to officers when any changes in policy or directive occur within the police organization.

Participation in the planning, implementation, and training of members and supervisors of specialized units is also a task that legal advisors encounter. For example, police departments often assemble special emergency response teams (SERT) to carry out activities, such as serving high risk warrants and dealing with high risk hostage situations. These specialized units are at a higher level of exposure to liability due to the increased level of danger that comes with the tasks they are required to perform. Legal advisors provide guidance to the members of the unit to ensure that quick decisions can be made to effectively complete the task and to minimize the level of exposure to liability risk as much as possible.

4. Creating, implementing, and reviewing department policies

Another significant duty of police legal advisors mentioned in the literature is the continual review of department publications and directives. This continuous review process allows police organizations to keep abreast of changes and developing trends in the laws that influence their ability to provide effective police services. On the same note, legal advisors also need to translate the “legal ease” of judicial decisions into standard operating procedures within police organizations (Caplan, 1967). It is essential that department policies and procedures are kept current because police organizations can be held legally responsible for the actions (and sometimes inaction) of individual officers.

5. Establishing and maintaining relationships with other agencies

The literature also indicates that some police agencies require that legal advisors maintain working relationships with other agencies both inside and outside of the criminal justice system (Caplan, 1967). Juvenile or correctional agencies, social service agencies, schools, housing and zoning authorities, and community groups are among the

various groups that law enforcement officials often collaborate with to enhance police services provided to the community. The IACP (1998) recommends that a “team approach” be taken by police legal advisors when attempting to solve problems that involve the police organization. This team effort and cooperation with other agencies can prevent police departments from becoming alienated from other agencies, as well as the surrounding communities (International Association of Chiefs of Police, 1998).

All of the duties described in the previous sections are basic tasks that police legal advisors encounter in their position. In addition to those basic tasks, some legal advisors also write and submit grant proposals for the adoption of new and innovative programs for police departments, as well as represent police organizations in media events (Becker, 1994). In general, the duties and responsibilities of police legal advisors reflect the needs and organizational characteristics of the law enforcement agencies in which they are employed.

Police legal advisors within the police organizational chart

Early literature suggests that police legal advisors should not be included as an additional part of any existing division or bureau within the police organization (i.e., the Training Division). Instead, Schmidt (1972) suggests that police legal advisors be considered an individual division or unit within the organization, because it will allow police legal advisors to provide a wider range of legal services to all divisions within the police organization. For example, if legal advisors were part of another division, such as the training division, it would narrow the scope of the legal services that are provided to members of the organization. Additionally, Schmidt (1972) and the IACP (1998) suggest that police legal advisors be physically housed within police headquarters. The suggested location would allow police personnel immediate, convenient, and continuous access to legal advice. In addition, the close proximity to the police organization also allows legal advisors to experience daily police operations and procedures firsthand.

Potential sources of resistance against hiring police legal advisors

The idea of employing lawyers to help manage police liability incidents first emerged nearly forty years ago. As indicated in earlier sections of this chapter, only a small fraction of police agencies reported using police legal advisors after the idea first emerged. Early police legal advising literature identifies several potential sources of resistance to the adoption of police legal advisors by law enforcement agencies.

Police legal advising literature from the 1960s and 1970s identifies city or county attorneys as one source of resistance to hiring police legal advisors. Some city attorneys believe that providing legal services to the police is part of their job, and therefore, employing a full-time police legal advisor is unnecessary (Caplan, 1967; Schmidt, 1972). In contrast, the IACP believes that full-time police legal advisors are necessary because city and county attorneys are preoccupied with representing all other local government agencies (1998). Whether or not there is an overlap of legal services provided by city or county attorneys and police legal advisors is still up for debate as the topic has never been fully explored using systematic scientific research.

Another source of resistance for hiring police legal advisors identified in early literature comes from police chiefs or other upper level police managers. The resistance by police managers is based on the idea that there are no benefits of having lawyers without any law enforcement training or experience come into police departments to identify and correct problems in police training or procedures (Caplan, 1967). The literature notes that there can also be resistance if police managers do not fully understand the function or role that police legal advisors play in the organization. For example, some police officials view legal advisors as another police oversight mechanism, similar to an Internal Affairs division or some type of civilian oversight panel.

The literature also cites the legal community as another source of resistance to the adoption of police legal advisors by police departments. Some attorneys that are trained to deal with law enforcement liability issues often have other more prestigious and lucrative job opportunities available to them in either private practice or with large law firms (Caplan, 1967). Schmidt (1972) suggests that one way to overcome this problem would be to define the position of

police legal advisor in a way that would highlight the benefits that such positions could bring to police organizations, as well as members of the community. Additionally, Schmidt (1972) suggests that the importance of the police legal advisor position be reflected in both the salary and formal job description of police legal advisors.

Sources of funding available to create, implement, and maintain police legal advisor positions can also become barriers for police agencies (Caplan, 1967; IACP, 1998; Schmidt, 1972). In small or medium-sized police departments, there are often not enough resources available in the budgets to cover new legal advisor positions. Further, it would be even more difficult to justify an in-house legal advisor if the local city or county attorney maintains that they are readily available to advise police departments whenever legal advice is needed.

Dealing with obstacles and resistance

As previously noted, one of the major barriers that law enforcement agencies face when attempting to adopt a police legal advisor is a lack of resources. Schmidt (1972) suggests that one way to deal with scarce resources is to share the costs associated with employing legal advisors with other nearby law enforcement agencies. In some cases where there are several smaller law enforcement agencies, a regional or district police legal advisor could be an economical alternative to each small agency employing their own legal advisor (Becker, 1994; Schmidt, 1972).

The literature also suggests that another economical alternative to a full time police legal advisor would be employing part-time police legal advisors (IACP, 1998; Schmidt, 1972). A reported benefit of employing police legal advisors on a part-time basis is that the costs are more flexible and relatively reasonable compared to the salary of full-time legal advisors (International Association of Chiefs of Police, 1998). The IACP further suggests that if police organizations' budgets cannot afford to implement legal advisors on a full-time basis, they might consider contracting with a legal advisor to provide 24-hour question/answer service or on-call representation at a predetermined hourly rate (1998).

Risk managers and other insurance assessors could also be used as another practical substitute for hiring police legal advisors

(International Associations of Chiefs of Police, 1998). Risk managers and police legal advisors share common goals in that they both have the same interest in seeing that police organizations, as well as individual police officers, operate in the safest manner as possible. In addition, risk managers could turn to city or county attorneys should the need for legal advice arise.

To deal with the resistance of hiring police legal advisors in the past, the literature suggests that some police departments have masked the position of police legal advisor by providing various titles other than police legal advisor. Some of the alternative titles for legal advisor include “research analyst”, “research director”, “assistant city prosecutor”, “assistant to the manager of safety”, “general counsel”, or “advisor to the chief” (Caplan, 1967; Lorch, 1969).

Prevalence of police legal advisors in the United States

Despite the recommended need for legal advising in law enforcement agencies cited in early literature, the adoption of police legal advisors by law enforcement agencies has been slow. A national study revealed that out of 276 departments responding to a national survey, only 14 departments reported that they employed legal counsel on a full or part-time basis (Bancroft, 1966).

To date, there is not a complete list of law enforcement agencies in the United States that employ police legal advisors or police legal units. An Internet website maintained by Wayne Schmidt of the International Association of Chiefs of Police (IACP) indicates members of the IACP that are employed as police legal advisors in law enforcement agencies across the United States and other countries. The website only includes those police legal advisors that are members of the IACP.

Law enforcement agencies that use police legal advisors have not been surveyed since 1966. The national study presented in this book will provide an up-to-date look at the use of police legal advisors by American law enforcement agencies. The current study will also provide potential explanations for the slow pace of adoption of police legal advisors in the United States since the late 1960s.

The following section will discuss how risk management, similar to police legal advising, is used by some law enforcement agencies to reduce the exposure of law enforcement officials to liability incidents.

More specifically, the following section includes: (1) a definition of risk management, (2) a detailed description of each stage of the risk management process, and (3) case study reports of perceived success of using risk management in law enforcement agencies in the United States. The section concludes by explaining the common goals, roles, and functions shared by both police legal advisors and risk managers within police organizations.

RISK MANAGEMENT AND THE POLICE

Some believe that law enforcement agencies can benefit from employing police legal advisors to aid in the management of police liability. Police legal advisors provide legal guidance to law enforcement personnel before, during, and after liability incidents occur. Similarly, law enforcement agencies have also begun to use the expertise of risk managers to handle the financial aspect of police liability incidents before, during and after liability incidents occur.

What is risk management?

Risk management is a management tool that can be used to identify and control potential risks and liability problems in organizations. In the past twenty years, risk management has been transformed from an insurance-based technical function to a broad, policy-oriented, managerial tool (Young, 2000). Organizations adopt risk management practices due to increasing threats of litigation, to reduce the risk of harm to their clients and themselves, and to provide a higher quality of service to their clients (Wong & Rakestraw, 1991).

Risk management, as defined by Head & Horn (1985) emphasizes the existence of both a decision-making and managerial component. The decision-making component identifies the steps that need to be taken to identify, assess, handle, and monitor risks. The managerial component provides the means to carry out the tasks associated with decisions in handling exposure to risks. Head and Horn (1985) assert that understanding that risk management is based on both decision-making and managerial components makes the process of identifying and managing organization liability easier. Often, the liability problems in organizations are the result of a breakdown in management

and supervision over organization members and failure to use adequate decision-making processes (Head & Horn, 1985).

The following terms are frequently used in discussions focused on risk management by both private and public agencies. The Liability Assessment and Awareness International, Inc. (2001) defines the terms as follows:

- Risk Management - a management tool that can be used to identify and manage potential risks and liability problems in organizations or agencies.
- Risk – The degree of likelihood that a loss will occur.
- Loss – Expenditures (monetary or service-related) as a result of an incident.
- Incident – A situation or occurrence that could result in a loss.
- Claim – Any formal notification that an incident has taken place.
- Liability Loss – This occurs when an individual or organization files a lawsuit alleging wrongdoing. A loss is incurred whenever funds are expended as a result of the lawsuit to investigate or defend the suit, or to pay a settlement, judgment or award whether the suit has merit or not.
- Exposure – An exposure is any circumstance, item, or situation that has the potential to result in a loss.

The risk management process

There is not one “best” risk management process that is suggested to be used universally or for specific types of organizations. “No two local governments have exactly the same risks, and the risks change as the jurisdiction and legal climate changes (Wong & Rakestraw, 1991, p. 1).” Risk management process strategies vary depending on the nature of the organization, including management styles and organizational

goals (Conrow, 2000). However, there are several basic steps in the process that are applicable to most types of organizations. Those basic steps include: (1) risk planning, (2) risk assessment, (3) application of risk treatment, (4) evaluation of risk treatment, and (5) continuous review of changes of risk liabilities (Ashley & Pearson, 1993; Cragg & Kloman, 1985; Wong & Rakestraw, 1991).

1. Risk Planning

The first step in the risk management process is to create a strategy to carry out all of the necessary steps involved in the implementation of a risk management program. “Risk planning” involves the creation of a risk management plan (RMP) to identify and track organizational risk issues, perform continuous risk assessments to determine how identified risks have changed over time, develop ways to handle identified risks, monitor the performance of risk handling actions, and locate adequate resources to be available throughout the entire process (Cragg & Kloman, 1985, p. 20). The RMP will serve as a “road map” to anyone that is participating in the implementation process.

After the RMP is drafted, responsibilities are delegated to particular individuals or groups based on the various tasks involved in every step of the process. Each step of the risk management process involves different levels of involvement by people both inside and outside of the organization (Ashley & Pearson, 1993). For example, risk control and risk financing decisions within risk management programs within police organizations might include input from police executives, city auditors, police legal advisors, risk managers, local attorneys, citizen review boards, and anyone else that has experience or knowledge of liabilities associated with police work. The various sources of input result in several changes to the RMP as the risk management process progresses.

2. Risk assessment

After the risk management plan has been drafted and revised, the next step is to assess organizational risk. Risk assessment includes two components: (1) risk identification – the process of identifying and documenting all risks associated with the organization, and (2) risk analysis - the process of analyzing each identified risk area or process,

isolating the cause of risks, and then determining the effects that the identified risks have on the organization (Cragg & Kloman, 1985). The effectiveness of risk assessment is contingent on the accuracy of risk identification, and pinpointing exactly how those risks impact or affect the organization.

Some of the risk management literature suggests that identifying organizational risk and exposure to liability includes the examination of all property owned by the organization, as well as all of the services provided by the organization.

Most loss exposure can be classified into six broad categories, including: (1) physical property, including buildings, personal property, vehicles, public records, and cash, (2) loss of income, including any disruption in the receipt of fees, charges for service, fines, and budgetary allowances, (3) contingent expenses that include any losses that force state and local government agencies to acquire additional expenses to function as they normally would under normal conditions, (4) all human resources that include losses due to job-related illnesses or injuries to agency workers, (5) any legal liability, that includes any loss resulting from judgment awards and legal costs to defend the organization in legal proceedings, and (6) all perils that include acts of nature or acts of man, such as vandalism, burglary, and human errors that result in organizational loss (Cragg & Kloman, 1985). The preceding list is not an exhaustive list of potential areas of loss for organizations, but it does cover most of the areas where losses occur when members of the organization are exposed to risk.

There are several methods that can be used in the risk identification process. Organizations undergoing risk assessment often use a variation of identification methods including liability assessment checklists; in-depth interviews with organization supervisors; inspections and site visits to organizations; and close examination of any records of incidents, claims, and complaint forms filed within or against the organization over an extended period of time (Young, 2000). Young also notes that current and past budgets, minutes from council or organizational meetings that deal with proposed cutbacks and reforms, and records of property owned or used by the government, also reveals loss exposure that may be overlooked by a casual glance (2000).

The second part of risk assessment is analyzing the impact of financial loss on the organization or “risk analysis”. Potential financial loss is often measured in terms of frequency and severity (Young, 2000). Organizations estimate the frequency and severity of their exposure to liability by looking at any federal regulations regarding local government liabilities and immunities, claims histories for the organization over the past three to five years, and sometimes, liability suits filed in nearby communities (Young, 2000). In addition, recent court cases, awards paid out in settlements and other liability cases, and common defense costs in the surrounding region should also be considered when assessing the potential impact of liabilities.

Once a comprehensive list of potential risks has been compiled, the risks are then categorized and ranked according to the level of seriousness they represent to the organization. Potential risks are often categorized in groupings such as “low frequency/low severity”, “low frequency/high severity”, “high frequency/low severity” and “high frequency/high severity” (Young, 2000). Once risks are identified and then placed into various categories of severity and frequency, an organization makes the determination of which liability areas are of immediate concern.

Organization loss histories often reveal patterns where the most frequent risk incidents are less severe, and the more severe risk incidents are less frequent (Ashley and Pearson, 1993). This assertion is true in law enforcement as more severe incidents (such as use of deadly force) are less frequent, and less severe incidents (such as claims of verbal discourtesies or claims of less serious bodily harm) are more frequent. Risk control efforts become important when dealing with the less severe incidents due to the high frequency of occurrence. The more frequently something occurs (even if it is less severe or minor), the higher the chances that the less severe incident results in a loss for the organization (Ashley & Pearson, 1993). Essentially, this means that organizations should not take the less serious liability incidents lightly, because over time the little incidents add up to a large amount of payouts or organizational loss.

3. Risk treatment/handling

Once the liability risks are identified and categorized according to frequency and severity, the next step is to decide which technique (or

combination of techniques) would be most suitable to control risks and to handle the financing of risk incidents (Young, 2000). This step in the risk management process is important, because it will impact the success or failure of the risk management program (Young, 2000). Deciding which control techniques should be used to deal with organizational risks is the first step in the treatment of risk. There are five basic control techniques that can be used either alone or in conjunction with one another to treat liability risks: (1) risk avoidance, (2) prevention of losses, (3) reduction of losses, (4) segregation of resources, and (5) transfer of risk (Ashley and Pearson, 1993).

Risk avoidance is the decision of the organization to not allow their members to participate in high-risk situations (Ashley & Pearson, 1993). By not participating in high-risk incidents, the probability of loss resulting from exposure to risk is eliminated. An example of risk avoidance for law enforcement agencies could include the implementation of a department policy on non-participation in misdemeanor high-speed pursuits (Ashley & Pearson, 1993).

High-speed pursuits are considered a major area of high-risk concern for law enforcement agencies. Upon realizing the high level of risk involved police pursuits, many law enforcement agencies have implemented policies that forbid officers from pursuing fleeing vehicles, or only allow a pursuit to ensue if clearly defined criteria are present (Alpert et al, 2000). For police officers, risk avoidance is not always a salient solution because there are some high-risk situations that cannot be avoided. Police pursuits are just one example of a police activity that could be completely avoided to decrease the probability of financial loss to the organization.

A second control technique, prevention of losses, requires that measures (either changes in policy, training or both) be taken before any exposure to risk occurs. The goal of prevention of loss techniques is to reduce the frequency of the loss-causing activities (Ashley & Pearson, 1993). An example of a prevention of loss technique used in law enforcement might include mandatory training for "high risk" police actions (Ashley & Pearson, 1993). Two examples of using mandatory training as way to prevent losses include the use of proper physical restraints on suspects (such as the use of various "hog-tying" or restraint mechanisms) (American Civil Liberties Union of Southern California, 1995; Commission on the Accreditation of Law Enforcement Agencies, 1999) or training officers to use "verbal judo"

to de-escalate conflict situations with citizens before the situations become physical or violent (Thompson, 1983). By changing agency policies or requiring mandatory training of law enforcement personnel in the risk areas that have been identified as major sources of financial loss, organizations could prevent future payouts for high-risk liability incidents (Ashley & Pearson, 1993).

A third control technique, reduction of losses, can be implemented either before or after incidents occur to reduce the probability of losses or to minimize the impact of losses. This type of risk control technique does not completely prevent loss-causing events from occurring, but reduces the chances for financial loss if risk incidents occur (Ashley & Pearson, 1993). In law enforcement, reduction in loss techniques might be as simple as requiring that all occupants in police vehicles wear seat belts at all times (Ashley & Pearson, 1993). Reduction of loss techniques are different from prevention of loss techniques in that some risk situations cannot be completely prevented from happening, but there are ways to reduce the amount of loss that occurs.

A fourth control technique, segregation of resources, requires that the resources of the organization are segregated so that the organization continues to function if severe losses occur. There are two ways that segregation of resources is possible: (1) duplication of resources, and (2) separation of resources (Ashley & Pearson, 1993). Duplication of resources involves creating reserves of resources that are only available for use when the original resource supply is diminished or depleted (Ashley & Pearson, 1993). An example of duplication of resources in law enforcement includes maintaining several extra patrol cars in case other patrol cars are damaged or rendered unusable (Ashley & Pearson, 1993). By having extra vehicles available, the police agency still functions to full capacity if there is a situation where several patrol cars become damaged or unusable at the same time.

Separation of resources is similar to duplication of resources in that an alternative or back-up source of funding is created (Ashley & Pearson, 1993). The major distinction between separation of resources and duplication of resources is that the back-up or reserve resource supply is used daily by the agency. The formation of specialized units would be an example of separation of resources in law enforcement agencies. The implementation of gang suppression units, homicide units, and drug task force units separates police organization resources in that members of specialized units often conduct tasks similar to

those officers working on patrol or in the detective division in addition to their specialized tasks. For example, if line officers need back up on calls for service, members of specialized units can be brought on the scene to assist.

Transferring exposure to risks to an outside agency or group is also a risk control technique. By giving up some responsibilities for tasks that can result in losses, organizations can reduce financial losses completely (Ashley & Pearson, 1993). To maximize the benefit of this risk control technique, both legal and financial responsibilities are transferred over to a third party to ensure that no liability will be placed on the agency that is transferring the risk (Ashley & Pearson, 1993).

However, this control technique is not always an option for some organizations, because there are some high-risk tasks that organizations have to handle themselves and cannot transfer to another agency. This would be the case with most police tasks because police officers are given certain powers of authority that other professions are not; therefore, transferring a majority of police duties would be impossible. This control technique is applicable to county or state-based law enforcement agencies that transport or house prisoners. This is one of only a few of law enforcement tasks where risk could be transferred to a third party.

The literature suggests that all five control techniques are designed to be effective when dealing with exposure to risk and liability incidents. The key to successful risk management is choosing the appropriate methods of risk control that meet organizational needs (Ashley & Pearson, 1993).

4. Implementation

This step is important to the risk management process, because it will execute all of the policies and procedures that were created during the planning stage (Cragg & Kloman, 1985). Analysis of loss and exposure to risk alone will not reduce losses for an organization. The success of a risk management program is also contingent on the involvement and level of support by the local government and top officials within an organization (Young, 2000).

The literature notes several ways to ensure that the implementation phase of the risk management process is done successfully. First, it is important to be sure that the basic components of risk management

programs are present, and that adequate people and resources are in place for each component (Crouhy et al., 2001). Some of the components that should be included in any risk management program before implementation takes place include (Crouhy et al., 2001):

- An adequate number of risk management staff members that are properly trained in the area of liability concern.
- A risk management committee that consists of all people that has knowledge in liability issues associated with the purpose of individual agencies.
- A risk management policy statement that presents the guidelines for making decisions about controlling finances, and that also exhibits the commitment of the risk management program by the organization.
- A risk management manual that describes and outlines the policies and procedures of the program.
- An annual report that keeps everyone up to date on the progress of the program, and that reviews standard procedures and policies.
- Both written and verbal steps to ensure employee participation in the program through mission statements, assigned staff responsibilities, training programs, employee manuals, staff meetings, publicity, and enforce policies using discipline, if necessary.

5. Program evaluation/risk monitoring

Once a risk management program has been implemented, risk management staff members conduct some type of on-going evaluation (Ashley & Pearson, 1993). The evaluation is accomplished by establishing performance standards, and then determining if the practices utilized are meeting those standards, and if necessary, correcting any ineffective procedures (Ashley & Pearson, 1993).

Results of risk management program evaluations can be measured in dollars, percentages, ratios, or number of losses or claims over a period of time. Activity standards measuring effort is another way to assess whether or not desired goals have been reached (Ashley & Pearson, 1993). An example of measuring activities or effort could include a requirement that a specific number of safety checks and site visits will be conducted over the course of a year, and also keep records to prove that each site visit or safety check was completed. Therefore, it is important that adequate records are maintained by the organization. Without adequate data on liability incidents and organizational losses, it would be impossible to track any changes in liability claims and payouts (Ashley & Pearson, 1993).

The risk management process is not over after all five steps have been completed. The risk management process is continuous, because organizational risks change over time and continuously require re-evaluation (Ashley & Pearson, 1993).

Risk management in the public sector

It has long been a belief that the philosophies and practices of risk management are not applicable to public or municipal agencies (Esenberg, 1992). This is not the case as most municipal agencies function more efficiently with more resources available to them, which can be accomplished by managing available resources using risk management techniques. Zeckhauser & Viscusi (1996) contend that government agencies, including law enforcement agencies, “should undertake the risk reduction efforts that would best promote the welfare of its citizens” (p. 151). Current risk management literature reports that the use of risk management programs in the public sector is among the fastest growing segments of the risk management profession (Esenberg, 1992).

Risk management and the police in America

In May of 2001, the City of Chicago settled a lawsuit involving the shooting of an unarmed suspect by a Chicago police officer for \$18 million (New York Times, May 9, 2001). In Baltimore, a jury awarded more than \$7 million to a family whose 17-year-old son (unarmed) was fatally shot by a Baltimore Housing Authority police officer (Baltimore

Sun, May 30, 2001). These cases are only two examples of multi-million dollar payouts for improper use of deadly force by police officers in the past few years. The increasing costs resulting from settlements and payouts in police litigation cases, public scrutiny of police work, and increased pressure from public insurance pools to cut losses, are all reasons that some U.S. law enforcement agencies have begun to create and implement risk management programs.

The need for risk management in law enforcement to control the cost of civil litigation is becoming increasingly recognized by both police practitioners and police scholars alike. Walker (2001) reports that “One of the most notable failures of both police departments and other city officials has been their neglect of modern concepts of risk management and in particular, their refusal to examine incidents that result in litigation and seek to correct the underlying problems (p. 100-101).” A discussion on the use of risk management, early warning systems, and citizen oversight as police accountability mechanisms is featured in *Police Accountability: The Role of Citizen Oversight* (Walker, 2001).

The implementation of risk management programs also provides non-monetary benefits to law enforcement agencies. Police executives should also consider how integrity violations of individual officers impact individual officer careers, other officers that work the streets, the entire police organization, and ultimately the relationship between the police and the community. After police managers determine the non-monetary costs of police integrity violations, this information should be incorporated into both internal and external educational and training programs (Gaffigan and McDonald, 1997).

Early Warning Systems as a risk management tool

In recent years, “Early Warning Systems” (EWS) have been adopted by police organizations as a tool to aid in the identification and management of problematic behavior of police officers. Early Warning Systems are computerized programs that track the frequency and pattern of problematic behavior by police officers that often result in citizen complaints, liability claims, or lawsuits filed by citizens. Police executives adopt such programs to enhance the level of police accountability and professionalism within their organizations, as well as part of their effort to improve the relationship with the communities

they serve (Walker & Alpert, 2000). Early Warning Systems have been identified as an important accountability mechanism in the “new paradigm of police accountability” (Walker, 2003).

Early Warning Systems are often used as part of risk management efforts within police agencies as they track and assess the risks of individual police officers (Walker & Alpert, 2002). For example, if an officer receives a certain number of citizen complaints within a specified period of time, the Early Warning System will “flag” that officer. Once an officer is identified by the Early Warning System, his/her immediate supervisors are notified, and at that point, need to decide what type of action will be taken to correct the officer’s problematic behavior. In some cases informal counseling between the officer and their immediate supervisor is used as a first step in correcting the problem (Walker, 2003). If informal counseling fails, the next step includes a training class with other officers identified by the early warning system, a wide range of disciplinary action taken by police supervisors, and in some cases, dismissal of the problem officer (Walker & Alpert, 2000). The idea behind early intervention systems is to identify and correct the problematic behavior of officers before their behavior leads to a more serious situation that could potentially result in some type of loss for the police agency (monetary or otherwise).

For a comprehensive look at the planning and management of Early Warning Systems within police agencies, refer to *Early Intervention Systems for Law enforcement Agencies: A Planning and Management Guide* by Dr. Samuel Walker at the Office of Community Oriented Policing Services Website (www.cops.usdoj.gov).

Risk managers & police executives: Common interests and goals

Police executives and risk managers have comparable interests and goals when it comes to dealing with liability-related incidents. Police executives want their organizations to have higher standards and greater professionalism. Similarly, risk managers’ work toward higher standards and greater professionalism within the organization to reduce the probability of risk. Gallagher (1992) asserts that this relationship can be easily attained at the municipal level in law enforcement compared to the county level because of the variation in roles between chiefs of police and sheriffs. “The police chief is often appointed by

the city manager and may be more amenable to cooperative efforts with other top-level managers, whereas the sheriff, an independently elected official, is the highest law enforcement official in the county and understandably less ready to accept overtures from county government (Gallagher, 1992, p. 65-66).”

Obstacles of risk management in law enforcement

Although limited, the existing literature on risk management in law enforcement identifies several obstacles that potentially hinder the implementation of such programs in police agencies including:

1. The idea that policing has traditionally focused on crime fighting without the worry of financial costs (Ceniceros, 1998). With the increase in litigation against police organizations in the past few decades, more police managers are becoming as concerned with fiscal responsibilities as they are with crime fighting efforts. Police agencies need resources to be able to provide quality police services to the public.
2. Limited resources are another problem police agencies face when they attempt to implement risk management programs. Cities with large populations are able to justify their needs for hiring professional risk managers specifically for reducing costs associated with police litigation (Los Angeles County Sheriffs Office, 2000). In contrast, cities with smaller populations have a harder time justifying the need for risk management. Some of the less expensive alternatives to hiring a full-time, professional risk manager include: (1) expanding the duties of safety directors, (2) employing one risk manager to service an area or region that encompasses several small or medium sized cities, or a risk management committee consisting of municipal attorneys, department representatives or managers, and (3) insurance agents or risk assessors could be used on an “as needed” basis (O’Brien and Wilcox, 1985).
3. Another potential problem with implementing risk management programs in police organizations could be measuring the benefit or the impact of risk management programs to justify its existence in

police agencies. The monetary benefits of risk management are easier to quantify and analyze in regard to impact; however, the impact on the level of police professionalism, and the quality of police services provided to the community, are not always as easily identifiable (Young, 2000). Because resources are often limited in police organizations, being able to justify the need for an in-house risk management program could be difficult if there are no outcome measures for non-monetary benefits.

4. The lack of available information on police risk management programs, as well as training geared specifically toward law enforcement agencies, is another obstacle to the adoption of risk management by police agencies. Currently, there are only a few websites on the Internet that provide information on risk management training for law enforcement officials. There are also training seminars offered by individual risk management lecturers (such as G. Patrick Gallagher and Gordon Graham), and several of the professional risk management organizations across the country (including PRIMA). The problem is that some police executives are unaware of the resources, and often have a difficult time locating the implementation and training resources.

All of the previously mentioned obstacles are not based on any type of empirical research. Instead, the obstacles are suggested in the literature written by risk management experts that have aided in the implementation of risk management programs in police organizations across the United States.

Risk management in law enforcement: Recent applications

Based on the testimony of risk management professionals, the reported benefits of using risk management techniques to manage liability in law enforcement agencies become apparent shortly after the program is implemented (Heazeltine, 1986; Katz, 1998). Past evaluations of the Legal Affairs Division in the Los Angeles Police Department and the Maricopa County Sheriffs Office in Arizona report both monetary and non-monetary benefits of their risk management programs.

Legal Affairs Division - Los Angeles Police Department

The Legal Affairs Division of the Los Angeles Police Department was implemented because of the increase in litigation against the police after the Rodney King incident in 1991. The Risk Management Unit was added to the Legal Affairs Division later on in 1996 (Katz, 1998).

The operation of the LAPD Legal Affairs Unit is both preventive and proactive in that measures are taken both before and after incidents occur. Some of the preventive measures used by Legal Affairs include providing legal training to line officers to prevent them from becoming defendants in civil suits, as well as training in the collection and recording of evidence and information after incidents occur just in case any legal action is taken later on (Katz, 1998). This means that police officers are trained to be able to identify incidents that are likely to result in future litigation. Both legal advisors and risk managers within the Legal Affairs Division in Los Angeles reported success in managing litigation involving the Los Angeles Police Department.

More specifically, personnel from the legal affairs and risk management unit reported a 50 percent drop in liability costs (roughly \$10 million dollars) between 1993 and 1997 (Katz, 1998). In addition to reducing the costs of civil litigation against Los Angeles police officers, the purpose of the Legal Affairs Division is to get LAPD police personnel more involved in handling civil cases filed against them. Before the creation of the Legal Affairs Division, the Office of the City Attorney handled all civil cases. The problem was that most attorneys did not have a working knowledge of the nature of police work. The Legal Affairs Division utilizes the legal expertise of attorneys trained in law enforcement, along with risk managers that have the ability to identify exposure to risk, and ultimately, reduce the cost of unnecessary payouts (Katz, 1998).

Other sources do not report the same kind of success of the Legal Affairs Division in handling civil suits against Los Angeles police officers. In an article in Business Insurance magazine, Joanne Wojcik reported that the LAPD Legal Affairs Division had in fact reduced payouts from civil litigation against the LAPD in 1993. Wojcik (1994) contends that the decrease would not continue in 1994, because "the LAPD had incurred more losses in the first four months of 1994 than for all of 1993" (p. 20). The article reports that the dramatic decrease in payouts by the LAPD in 1993 was the result of police officers

feeling that their actions were being more heavily scrutinized by the public because of the fallout from the Rodney King incident a few years earlier. Wojcik (1994) contends that the short-lived success of the Division was not because of the efforts of the Unit itself; it was the result of increased public scrutiny.

The more recent Rampart Scandal involving Los Angeles police officers also raises questions on the impact of legal and risk management efforts in the Los Angeles Police Department. Chapter 5 of the executive summary report written by the L.A.P.D. regarding the Rampart area corruption incident features a risk management profile of high-risk incidents that took place in that area from 1994-1998. The analysis by the Risk Management Division included an examination of citizen grievances, vehicular pursuits, non-lethal uses of force, officer-involved shootings, and personnel complaints in the Rampart area compared to other neighboring precinct areas (Los Angeles Police Department, 2000, p. 87).

After examining all of the risk management factors, four main areas of concern were highlighted in the LAPD report: (1) lack of supervision over the CRASH unit in the Rampart area; (2) a pattern of an unusually high number of citizens recanting complaints that were filed against police officers in the Rampart area; (3) a pattern of misconduct of officers in the Rampart area, ranging from theft, illegal searches and falsifying reports, and finally; (4) complaints that were filed against Rampart officers were not processed in a timely manner (Los Angeles Police Department, 2000, p. 108).

Based on the Risk Management Division's findings, it is clear that the events that occurred in the Rampart area from 1994-1998 went undetected by L.A.P.D. police managers, as well as the units that were implemented to deal with such issues. As it is clearly stated in the conclusions of the L.A.P.D. report, the Rampart situation was overlooked by the entire police organization.

Risk Management in Maricopa County

The benefits of using risk management in law enforcement agencies was also noted in a 1985 case study of the Maricopa County Sheriff's Department (Heazeltine, 1986). G. Patrick Gallagher of the Institute for Liability Management of Vienna, Virginia spearheaded the application of risk management techniques in Maricopa County.

By using the expertise of the law enforcement personnel, in addition to police legal advisors, and several risk managers, Gallagher was able to identify policies, procedures, training, and previous lawsuits and complaints to identify areas of high liability concern (Heazeltine, 1986). Training was provided for all police supervisors that focused on several areas of liability concern, state tort laws, and federal civil right statutes (Heazelton, 1986). The training of supervisors helped reconfirm the importance of strict supervision over procedures and activities of patrol officers to reduce or eliminate potential liability. After the liability assessment and supervisor training took place, a final report suggesting areas of change (or in some cases elimination of policies and procedures) was drafted and turned over to risk managers and city attorneys to follow-up on all suggestions for change. The entire process in Maricopa County cost the department \$36,100 from beginning to end (Heazeltine, 1986).

Heazeltine (1986) also noted the perceived short-term impact that using risk management techniques produced shortly after implementation. Some of the short-term benefits include a closer working relationship between the Sheriffs office and the county attorney's office, an increase in the number of requests for legal advice by deputies, and an overall improvement in accepting responsibility by supervisors and management (Heazeltine, 1986).

Even with a lack of scientific research, the perceived benefits of using risk management hint that this approach could be adopted by law enforcement agencies as alternative way to manage police liability issues. Also lacking in the police liability literature is the examination of the use of police legal advising and risk management in various combinations in police agencies in the United States. The following section discusses the link between police legal advisors and risk managers, as well as some of the differences between the two groups.

The link between risk managers and police legal advisors

Based on the information found in both the risk management and police legal advising literature, police departments can use police legal advisors and risk managers separately, together, or in some other unique combination depending on the individual needs of the organization. The duties of risk managers parallel those of police legal advisors because both groups are employed by police organizations for

the same reason – to reduce and maintain control over police liability. Both groups use their training to identify, and then examine policies and procedures that often result in legal problems (and sometimes monetary payouts) for the police organization. Even with very different professional and educational backgrounds, police legal advisors and risk managers can achieve similar goals when handling police liability incidents.

Risk managers and police legal advisors share a common purpose within police organizations: to ensure that the organization and its members provide quality service to the community in a safe, legal, and professional manner, while maintaining financial responsibility over police-involved liability incidents. Gallagher contends that it is absolutely essential that police agencies seek out and utilize legal support staff and services as part of their organization. “What is needed are attorneys who are specialists on police legal and procedural matters who are made available through pools and risk management associations (Gallagher, 1992, p. 23).”

A distinct difference between risk managers and police legal advisors is that risk managers are often more narrowly focused on the financial aspects of police liability. In contrast, police legal advisors are more in tune with the legal aspect of police liability. Despite their differences in training, both groups are equipped with the tools to achieve liability management for most police organizations.

As previously mentioned, law enforcement agencies in the United States have only recently begun to adopt risk management programs. To date, there has not been any research conducted on the use of risk management by law enforcement agencies in the United States. The national study presented in Chapter Four of this book is the first systematic exploration of law enforcement use of risk management in liability management. In addition, the national study updates the use of police legal advisors by police agencies, and explores how both risk managers and police legal advisors are used in combination or alone to manage police liability.

CHAPTER 4

A National Study of Risk Management and Police Legal Advising: Methodology and Theoretical Approach

This chapter describes the first national study of the use of risk management and police legal advising by law enforcement agencies in the United States. The main purpose of the study is to explore the use of risk management and police legal advising by U.S. police agencies in their efforts to manage liability within their organizations. More specifically, this study examines the prevalence of the use of risk management and police legal advising by police agencies, the factors associated with the adoption of such programs, the role of such programs within police organizations, and the perceived impact of risk management and police legal advising programs on police liability management.

QUALITATIVE RESEARCH METHODOLOGY

In social science research, there are several methodological approaches that can be used to examine the behaviors and activities of individuals, groups, and organizations. In most cases, the methodological approach (or combination of methodological approaches) used is based on the specific research questions that are under examination. Social scientists often choose between quantitative, qualitative, or some combination of both types of research methods.

In order to choose the appropriate methodology, it is important to understand the differences between quantitative and qualitative approaches. Some of the main differences include: (1) the logic of qualitative research is often inductive rather than deductive, (2) qualitative research designs are often emergent and flexible, and can change throughout the course of the research process, (3) the

qualitative research process is non-linear and non-sequential, (4) samples are smaller in qualitative studies compared to quantitative studies that use larger samples, and (5) qualitative research methods are more appropriate in cases where little is known about a particular topic or problem (Ambert & Adler, 1995; Berg, 2001; Creswell, 1994). These distinct differences in research design result in variations in the presentation of qualitative research findings, and in the evaluation of the reliability and validity of qualitative studies.

The purpose of using qualitative research methods is to learn about how and why people think, behave, or interpret their surroundings as they do (Creswell, 1994). Ultimately, the goal of qualitative research is to turn the data that has been collected into something meaningful and useful (Rossman & Rallis, 1998). When qualitative research methods are utilized, researchers strive for depth and understanding of some phenomenon or problem rather than achieving breadth or generalizability to large populations or groups (Ambert & Adler, 1995). Instead of drawing from a large, representative sample of an entire population, qualitative researchers seek in-depth, intimate information about a smaller number of persons or organizations.

The underlying assumptions of the qualitative paradigm determine the type of data collection methods that can be used in qualitative inquiry. Research methods including open-ended questionnaires, in-depth interviews, ethnographic studies, and participant observation all generate data that describes a social problem or process using the voice of research participants that are directly or indirectly linked to the problem or process (Ambert & Adler, 1995).

The study presented in this chapter utilizes qualitative data collection and analysis techniques, in addition to some basic descriptive statistics (percentages) derived from telephone interviews and survey responses.

RESEARCH QUESTIONS

This study describes how risk management and police legal advising approaches are used to control liability incidents involving police officers. More specifically, this study will explore the following research questions:

1. What is the prevalence of the use of risk managers and police legal advisors in county and municipal law enforcement agencies in the United States?
2. What are some of the factors associated with the adoption of risk management and police legal advising programs by law enforcement agencies?
3. What are some of the characteristics associated with the identified risk management or police legal advising programs?
4. What are some of the roles that risk managers and police legal advisors play within police organizations?
5. According to police legal advisors and risk managers, what is the perceived impact of risk management and police legal advising approaches on department costs related to liability incidents, police professionalism, and accountability within law enforcement agencies?

The examination of these research questions will provide useful information for police executives on the various ways that other law enforcement agencies across the country manage their police liability. Even with an substantial body of literature published on police liability, the issue of how to control or handle police liability resulting in citizen complaints, liability claims, or lawsuits has gone virtually untouched by police scholars.

SAMPLING FRAME, POPULATION, AND RESEARCH SITES

The choice of research populations and research sites that are used in qualitative studies will determine the level of quality and rigor of each study. In qualitative research, “sampling for meaning” often shapes the samples used in each study. Luborsky & Rubinstein (1995) describe the concept of “sampling for meaning” as a technique that attempts to draw a sample that can provide written and/or verbal descriptions

directly related to the research topic or problem. The goal of this sampling technique is not to achieve the highest numerical representation of the population; rather it is to acquire rich, detailed information from individuals or groups that have direct and indirect experiences with that particular research topic. Thus, qualitative research is sometimes referred to as “small-N” research (King et al, 1994; Munck, 1998).

There are several things to consider when choosing samples for qualitative inquiry. Some issues to consider include:

- The sampling frame and sample should be based on the overall purpose of the study, as well as clearly stated research questions (Curtis et al, 2000).
- Qualitative samples are often small (compared to samples used in quantitative studies) but generate large amounts of textual data (Miles & Huberman, 1994).
- Qualitative samples are not always pre-specified in the planning stage of research design. Often, samples are selected in a sequential manner or a “rolling process” that takes place during the data collection process. As a result, sample size can vary from one stage of the data collection process to the next (Miles & Huberman, 1994).
- Qualitative samples are “used to make analytic generalizations (applied to wider theory on the basis of how selected cases fit with general constructs), but not statistical generalizations (applied to wider populations on the basis of representative statistical samples) (Curtis et al., 2000, p. 1002).”
- Cases or samples used in qualitative inquiry should meet the criterion of “unit homogeneity”. Unit homogeneity is the “assumption that all units with the same value of the explanatory variable have the same expected value of the dependent variable (King et al, 1994, p. 91).” In the current

study, unit homogeneity is achieved by requiring that each law enforcement agency included in the sample meet two criteria: (1) the agency must have 200 or more sworn police personnel, and (2) that agency personnel report that they use risk management and/or police legal advising to manage liability in their organizations. These two criteria exclude those agencies that cannot provide direct or indirect experience with using police legal advising and/or risk management to manage police liability.

Each of the five previously mentioned guidelines to qualitative sampling was used in the planning and data collection stages of the national study presented in this book.

Sample of current study

In qualitative research, research populations and research sites are often determined by the specified research questions (Berg, 2001; Crabtree & Miller, 1999; Denzin & Lincoln, 1994; Rossman & Rallis, 1998). Therefore, to study the use of police legal advising and risk management by law enforcement agencies, only law enforcement agencies that use such approaches would be included in the sample and case study research sites.

The literature on police legal advising makes specific suggestions as to which law enforcement agencies should have police legal advisors. O.W. Wilson (1963) hinted at a trend of larger police organizations adopting full-time police legal advisors to handle any legal issues that arise. The National Commission on Criminal Justice Standards and Goals (1973) and the American Bar Association (1967) suggests that police agencies that employ 200 or more officers could easily justify creating positions for police legal advisors.

Similarly, risk management programs would also most likely be used in larger police agencies because of more frequent exposure to risk during police-citizen contacts. Police organizations that have a high number of sworn police officers interacting with citizens will also have a higher probability of exposure to risk incidents that could lead to future litigation.

Guided by suggestions from the literature, all county and municipal law enforcement agencies that employ 200 or more sworn police officers were used for the sampling frame in this study. A list of county and municipal law enforcement agencies employing 200 or more sworn police officers was drawn from the 1999 Law Enforcement Management and Administrative Statistics (LEMAS) report. The 1999 LEMAS report identified a total of 354 county and municipal law enforcement agencies meeting this specific personnel criterion.

Because a triangulated, qualitative methodological approach was used in this study, the sample size varies with each stage of data collection. In the first stage of data collection, all 354 law enforcement agencies with 200 or more sworn police personnel were included in the sampling frame. Representatives from all 354 agencies were contacted by telephone to determine which agencies use risk management and/or police legal advising to deal with police liability issues. Representatives from all 354 law enforcement agencies included in the sampling frame answered interviews questions.

In the second stage of data collection, only those law enforcement agencies that reported any use of police legal advising and/or risk management during initial telephone interviews were included in the sampling frame. Surveys were faxed to 177 of the original 354 law enforcement agencies identified in the LEMAS report.

And finally, in the third step of data collection, four research sites were chosen for case study site visits (Portland, Oregon; Los Angeles, California; Las Vegas, Nevada; and Charlotte-Mecklenburg, North Carolina). These four research sites were chosen because each agency has a unique approach to their use of police legal advising and risk management. The four sites used for case study analyses are described in greater detail in Chapter 6.

Data Collection

Data collection was conducted in a three-step sequential approach. The data collected in the first step of the process determined which agencies would be included in the second step of the data collection process, and so forth.

Step #1: Telephone interviews

The first step of the data collection process began with the identification of law enforcement agencies that use risk management and/or police legal advising to manage police liability. A scan of all 354 county and municipal law enforcement agencies with 200 or more sworn police personnel was conducted by examining police departments' websites to obtain telephone contact information.

Telephone contact was made with police personnel in the administrative offices or internal affairs division at all 354 law enforcement agencies. The telephone interviews inquired about the use of both police legal advising and/or risk management within each police organization. Once it was determined whether or not the agency used risk management and/or police legal advising, agency representatives were informed of the purpose of this study, and were also informed that surveys would be faxed to their agencies within a few weeks.

The purpose of contacting all 354 agencies by phone is to identify the prevalence of the use of risk management and/or police legal advising within police organizations in the United States.

Step #2: National Survey

After using telephone interviews to determine which law enforcement agencies use risk management and/or police legal advising, a cover letter, informed consent form, and survey instrument were faxed directly to police legal advisors and/or risk managers in each agency. The survey instrument contained open-ended questions because little is known about police use of risk management and police legal advising. Devers & Frankel (2000) suggest the use of open-ended survey questions when very little is known about a topic.

Surveys were used to explore the reasons why risk management and/or police legal advising approaches were adopted by the police organizations, what role, purpose, and function risk managers and/or police legal advisors play within each organization, how the use of risk management and/or legal advising has changed each agency, and the

perceived impact of risk management and police legal advising on each agency. Additionally, a request for annual or quarterly budget reports was made at the end of the survey instrument to explore the perceived monetary impact of using risk management and/or police legal advising on liability costs.

The data collected from the survey instrument will not be used in any statistical analyses. Instead, the information on the surveys will provide in-depth, descriptive accounts of how law enforcement agencies use police legal advisors and risk managers to control exposure to liability incidents. As with most types of qualitative inquiry, a greater emphasis will be placed on the quality and richness of the survey data, with less emphasis placed on the quantity or response rate of completed surveys (Ambert & Adler, 1995; Berg, 2001; Crabtree & Miller, 1999; Creswell, 1994; Curtis et al., 2000; Denzin & Lincoln, 1994; Devers & Frankel, 2000; Rossman & Rallis, 1998).

Step #3: Case Studies

The third step of the data collection process included case study analyses of four law enforcement agencies that use risk management and police legal advising. Case studies are designed to bring out rich details of research topics that are often missed by other types of data collection techniques (Tellis, 1997). Site visits to each of the four cities provide thick descriptions of the factors influencing the adoption of risk managers and police legal advisors, the way that these management tools are used within each police agency, and the perceptions of risk managers, legal advisors, and police personnel on the impact of risk management and legal advising on police liability. The findings of the cases study analyses provide greater detail of each program than the results of the survey used in the second step of the data collection process.

Gaining access to each case study site was negotiated through several telephone conversations and email correspondences with the supervisors of each risk management and/or police legal unit. The supervisors or “gatekeepers” within each agency was used to help coordinate site visits, and to provide additional resources (such as annual reports and other records) that would provide detailed

information specific to each agency. In addition, the “gatekeepers” informed other police & city personnel of the purpose of the study, as well as the planned site visits to each agency prior to its occurrence.

Site visits were conducted in Los Angeles California, Portland Oregon, Las Vegas Nevada, and Charlotte-Mecklenburg North Carolina. These four sites were chosen for case study analyses because of the various combinations of the use of risk managers and police legal advisors in each police agency. The following sections provide a general description of how each research site uses risk management and/or police legal advising, as well as where the units or divisions are physically located in reference to each police agency.

Los Angeles Sheriffs Department – California

The Los Angeles Sheriff’s Department uses both risk management and legal advising approaches to control police liability. The Risk Management Bureau is housed within the Los Angeles Sheriffs Department. The Risk Management Bureau consists of specialized units that focus on specific tasks related to risk management. Some of the specialized units include the Civil Litigation Unit, Health and Safety Unit, Risk Impact Unit, Traffic Services Detail Section, Random Drug Testing Program, and the Manuals and Orders Section. The Legal Advisory Unit is housed in a building outside of the Sheriff’s Department because of the lack of space in the Sheriff’s Department. The Legal Advisory Unit handles all of the legal matters of the Sheriff’s Department involving Department employees.

Portland Police Bureau – Oregon

The Portland Police Bureau also uses a combination of both police legal advising and risk management to control liability within their organization. The Police Liability Management Division deals with several liability-related issues including fleet management, and training/policy liability issues. The Police Liability Management Unit is housed within the Portland Police Bureau headquarters. The Police Liability Division also works with the Risk Management Division that provides citywide coverage for Portland. The Risk Management Division is housed outside of the Portland Police Bureau. The Police Liaison, who is also the Deputy City Attorney of Portland, provides

legal advice for police personnel. The Police Liaison's office is located within the City Attorney's Offices.

Charlotte Police Department – North Carolina

The Charlotte Police Department is also unique in the way that it uses risk managers and police legal advisors. The Risk Management Division for the city of Charlotte provides risk management services to the Charlotte Police Department. This Division is located within the Charlotte city offices. Recently, the Risk Management Department adopted a Loss Control Team to assist in the handling of police liability claims. All legal advice is provided by the Police Attorneys Office which is included as part of the Charlotte police organizational structure.

Las Vegas Metropolitan Police Department – Las Vegas, Nevada

The Las Vegas Metropolitan Police Department utilizes both risk management and legal advising in their effort to control liability in their organization. The Risk Management Section is part of the Office of Policy and Planning in the Las Vegas Metropolitan Police Department. Although it is officially consider part of the LVMPD, it is physically housed in city hall. The Deputy District Attorney (Attorney of Record for the LVMPD) provides legal services to the LVMPD. A private law firm (Rawlings, Olson, Cannon, Gormley, & Desruisseaux) takes care of all litigation involving personnel of the LVMPD.

After examining the various combinations of risk management and police legal advising in all four research sites, the unique characteristics of each site become clear (see Table 4.1 on the next page). The result of the case study analyses in Chapter Six provides greater detail of the function and role of risk managers and police legal advisors at each research site.

Table 4.1
Case Study Site Matrix

Research Site	Risk Management	Legal Advising
Los Angeles Sheriff's Department (California)	Risk Management Bureau (in-house)	Legal Advisory Unit (outside of police department)
Portland Police Bureau (Oregon)	Police Liability Management Division (in-house) & Risk Management For city of Portland (outside of police department)	Deputy City Attorney Police Liaison (outside of police department)
Charlotte Police Department (North Carolina)	Risk Management Division for the City of Charlotte (outside of police department)	Police Attorneys Office (in-house)
Las Vegas Metropolitan Police Department (Nevada)	Risk Management Section (used exclusively for police, but housed outside of police department)	Deputy District Attorney & Private Law Firm (outside of police department)

Data Management Tools

The use of some type of data management tool (computer-based or otherwise) is essential in data analysis. Data management tools are important because the tools can ensure a higher quality of data; it makes data more accessible and manageable during analysis; it provides documentation of the steps taken during data analysis, and will retain the data for use in future research projects (Huberman & Miles, 1994, p. 428). If all data is collected and then stored with some type of data management tool, it will be easier to reduce the data down to a point where categorization can take place during the analysis.

The analysis for this study was conducted using “Microsoft Access 2000”. This computer program allows the response of specific survey questions and field notes to be examined simultaneously, which makes identifying categories and themes that emerge from the textual data much easier.

THEORETICAL PERSPECTIVE

The purpose of this study is not to test the diffusion of innovations theory. Instead, this study will use the diffusion of innovations theory to explain the adoption of police legal advisors and risk managers by law enforcement agencies in the United States. The following sections will explain the basic assumptions of the diffusion of innovations theory, provide a brief history of the application of the theory, and will identify characteristics of organizations, innovations, and the environments outside of organizations that impact the expediency of the adoption of innovative programs and techniques.

Definition of terms and basic assumptions

A basic description of the diffusion of innovations theory would be that it is a social process consisting of people (or groups) within social systems communicating to each other about new ideas as they gradually shape the meaning and usefulness of the innovations (Rogers, 1995). To better understand this theory, Rogers defines each of the key terms associated with this theory (1995, pp. 5-12):

- Diffusion is the process by which innovations are communicated through certain channels over time among members of a social system.
- Innovations are ideas, practices, or objects perceived as new by individuals or groups.
- Social System is a set of interrelated units (individuals or groups) that are engaged in joint problem solving to accomplish common goals.

The four basic elements found in the diffusion of innovations theory include innovations, communication channels, time, and social systems (Rogers, 1994, p. 10). Each of the four elements plays an important role in the adoption of innovations by individuals or groups.

Element #1 – Innovations

Innovations are ideas, practices, or objects perceived as “new” by individuals or groups (Rogers, 1995). Some of the characteristics associated with innovations that influence their rate of adoption include relative advantage, compatibility, complexity, trialability, and observeability (Rogers, 1995).

- Relative advantage is the perceived advantages (economic, social prestige, convenience) that the innovation will produce if adopted by a group or individual. The more perceived advantages created by adopting the innovation; the more quickly the innovation will be adopted (Rogers, 1995).
- Compatibility is how well the innovation parallels the core values, philosophies and practices of an organization or individual. An organization is more likely to adopt an innovation that reflects existing practices and ideologies within the organization so that minimal changes will have to be made if the innovation is ultimately adopted (Rogers, 1995).

- The complexity of the innovation is also an important factor in innovation adoption. If the innovation is easy to understand and easy to use, it will most likely be adopted than would a more complex innovation (Rogers, 1995).
- Trialability refers to the degree to which an innovation can be adopted on a temporary or short-term basis (Rogers, 1995). Innovations that can be adopted temporarily are usually adopted quicker than those that are long term because there is less risk involved in the adoption.
- Observeability includes the observable results or impact of newly adopted innovations (Rogers, 1995). If an innovation can provide dramatic results (in the form of efficiency, advantages, or increased monetary or financial gain) that is easily measured or observed, it is most likely that the innovation will be adopted faster than if the results or impact were less apparent or not easily measured.

Rogers (1995) also identifies a general process that describes how innovation development occurs. The “innovation-development process” can be described in six distinct phases. The identification of a problem or need for innovation is the first phase of the innovation-development process. Once the need or problem is identified, research is conducted on the innovation to see how others have used it, and how (if at all) it has benefited other individuals or groups. The next task is to develop a strategy to put the innovation into motion. Innovations can take the form of programs, techniques, approaches, or policies. Rogers (1995) also asserts that “commercialization” takes place when an individual or group packages innovations in “ready-to-use” forms to be adopted by others. However, not all innovations are “pre-packaged”, therefore, the fourth phase of the “innovation-development” process is not a phase that always takes place. Next, innovation diffusion takes place when communication about the innovation occurs between individuals or groups (Rogers, 1995). The adoption of new ideas is often slow in the early stages of the innovation adoption process. Once early adopters of an idea realize and share the benefits of the idea with others, the adoption process increases at a much faster pace (Backer & Rogers, 1998). This slow-

to-fast progression is often referred to as the “S-shaped rate of adoption” (Rogers, 1995, p. 40).

The innovation-development process ends with some kind of change resulting from the adoption of the innovation. In some cases, the consequences of adopting the innovation are so subtle or negative that the innovation is never fully implemented. This is often the case with innovations that have a lagged effect or are categorized as a “preventive innovation” where the consequences of the innovation cannot be predicted before the innovation is adopted (Rogers, 1995, p. 217).

Element #2 – Communication Channels

Communication channels are the means by which information is relayed between groups or individuals within social networks. In the diffusion of innovations theory, communication is defined as “the process by which participants create and share information with one another in order to reach a mutual understanding” (Rogers, 1995, p. 17). Communication channels are an important part of the adoption of innovations because any information transmitted from one group or person to the next will influence the probability of adoption.

The level of homophily between individuals or groups also influences the transmission of information about innovations. Rogers (1995) asserts that groups or individuals that share similar interests, social and personal characteristics, attitudes, languages, and problems are more likely to have meaningful communication exchanges compared to individuals or groups that are heterophilous in nature.

Element #3 – Time

The element of time impacts the diffusion of innovations in several ways. First, time is involved in the innovation-decision process beginning with the time that groups first learn of innovations, and ending with the time that an innovation is either adopted or rejected by others. The innovation-decision process can be conceptualized in five steps: (1) knowledge about an innovation is acquired by an individual or group, (2) that knowledge is used by the individual or group to form a positive or negative opinion of the innovation, (3) a decision is made to either adopt or reject the innovation, (4) after the innovation is

adopted, it is put to use by an individual or group, and finally, (5) the success or failure of an innovation is confirmed by an individual or group (Rogers, 1995).

There are also specific characteristics of organizations and the external environments surrounding organizations that influence the rate of adoption of innovations. Some of the organizational characteristics that impact the adoption of innovations include organization size, available wealth or resources, various organizational structure and management characteristics (including informality, decentralization, and complexity), span of organizational goals, level of professionalism, strength of leadership within an organization, and the absence of a dominant organizational ideology (Downs, 1976; Mohr, 1969).

The environment surrounding the organization can also impact the rate of innovation adoptions by organizations. For example, Mohr suggests that an “organization may be more likely to innovate when its environment is rapidly changing than when it is steady...and innovation should also be more likely when the social environment to which an organization belongs has norms that favor change...” (1969, p. 112). In this case, the external environment includes social, political, and economic conditions, as well as clientele needs and demands placed on an organization or agency (Mohr, 1969).

Element #4 – Social System

Another element of the diffusion of innovation theory is the social system to which an individual or organization belongs. A more formal definition of a social system is “a defined set of interrelated units that are engaged in joint problem-solving to accomplish a common goal...the members of a social system may be individuals, informal or formal groups, organizations, and/or subsystems” (Rogers, 1995, p. 23). In diffusion of innovation research, a social system represents the boundaries in which innovation diffusion takes place.

The way that social systems are structured impacts the level of innovation adoption that takes place within the social system. For example, if a social system is fragmented or loosely structured the diffusion of innovation will be slower than a social system that is highly structured and interconnected (Roger, 1995). Equally important is the idea that a more structured social system will facilitate more

effective and meaningful communication between individuals or groups within the social system.

In conclusion, the four elements of diffusion of innovations theory (social system, time, communication channels, and innovations) all play important roles in understanding, testing, and applying the theory to a wide variety of subjects.

Application of the diffusion of innovations theory

The diffusion of innovations theory has been tested and used to explain the adoption of innovations across a wide range of subjects. In 1977 Everett M. Rogers, Linda Williams, and Rhonda B. West compiled a bibliography of 2,750 publications that either tested or used diffusion of innovations theory to explain some phenomenon. Some of the disciplines that are included in the Rogers et al (1977) bibliography include anthropology, communication, geography, sociology, journalism, public administration, statistics, speech, and industrial engineering. More recently, Musmann and Kennedy (1989) created a bibliographic compilation of publications that focus on the diffusion of innovations theory.

In the last decade, several publications have applied the diffusion of innovations theory to a variety of social and political issues including the adoption of work-site AIDS programs in the United States (Backer & Rogers, 1998), nation-wide health education campaigns (Denard-Goldman, 1994), and policy entrepreneurs and their efforts to promote policy ideas (Mintrom, 1997). Based on the breadth of the literature, it is clear that the diffusion of innovations theory can be used to explain the adoption of innovations across almost any discipline or type of organization.

Diffusion of innovations theory and American policing

One area of study that has not fully utilized the diffusion of innovations theory to explain the adoption of innovations is police studies. To date, there are only a few publications that loosely examine the diffusion of innovations in American policing, with only one study that directly tests components of the diffusion of innovations theory.

One of the earliest studies that examine the diffusion of a police innovation focuses on the growth, extent, and impact of the use of

computers by police (Colton, 1972). The International City Management Association (ICMA) sponsored a study on police use of computers in 1971. Based on information provided by surveys and site visits to U.S. police departments, it was revealed that 38.8 percent of police departments reported computer usage (Colton, 1972). Colton also found that large, urban, southern police departments were more likely to report computer use in their agencies compared to other regions across the United States.

In Colton's study, five organizational variables emerged as influential in the success or failure of computer use within police agencies including: (1) the level of involvement and quality of leadership within the agency, (2) involvement of computer use by most officers within the agency, (3) establishment of priorities within the organization, (4) quality of computer systems available and technical staff available to the officers, and (5) a high degree of emphasis placed on human-computer interaction within the police department (Colton, 1972). This study is important because it was one of the first empirical studies to look at how an innovation (in this case, computers) can impact police organizations.

Another study by Skolnick and Bayley (1986) examined innovative policing strategies in six U. S. police departments. This study focused on changes in organizational structure, administrative leadership, and police performance as a result of adopting community policing practices and philosophies. The results of the study indicate that one of the biggest factors impacting positive changes in policing is strong leadership by police chiefs. The theme of strong leadership in relation to the adoption of innovations within police agencies is found in both early and current studies of police organizations.

And most recently, Alexander Weiss (1997) used the diffusion of innovations theory to examine "how information about innovation is communicated among police organizations and the factors that influence adoption of such innovations" (p. 293). More specifically, this study tests a general model of the communication and adoption of innovations in policing containing four major elements (Weiss, 1997, p. 293-294):

1. Cosmopolitanism – is measured by the degree of contact and communication outside of a police organization.

2. Risk Mediation – “the extent to which police organizations seek to reduce their perceived risk of civil liability (Weiss, 1997, p. 293).”
3. Peer Emulation – is measured by the degree to which innovations are influenced by communication with and imitation of other police organizations.
4. Innovativeness – is measured by the number of innovations that a police organization has adopted (including 911 emergency systems, a variety of computerized programs, and problem-oriented policing techniques and programs), as well as how a police agency’s perceives its own reputation in the policing community.

Several important findings were revealed after testing Weiss’s model containing the previously described elements. In regard to the cosmopolitanism element, Weiss (1997) reports that police executive participation in policy communities would lead directly to the adoption of innovations because they would be provided with information on innovations by others in police organizations, and that participation would lead to peer emulation because there would be increased communication with other police executives (p. 305).

There was also support found for the hypothesis focused on the second element – risk mediation - that “the more risk averse the organization (police), the more likely it would be to engage in peer emulation, and indirectly, be more innovative” (Weiss, 1997, p. 305). Weiss explains this finding by describing how an increase in litigation involving the police impacts how police executives manage their agencies. He uses the example of how some cities are beginning to employ police legal advisors and risk managers to help reduce exposure to risks. This particular finding in Weiss’s study accentuates the importance of further research on the use of alternative management tools, such as risk management and police legal advising, to reduce police liability.

Peer emulation (the 3rd element in Weiss’s model) between police agencies also contributes to the diffusion of innovations in policing. Weiss (1997) asserts that the “calling around” method is often used by police executives because it allows them to gather information about a

particular idea or program quickly, and because the information comes from a source that they view as “legitimate” – other police executives.

And finally, there was also support found for Weiss’s assertion “that an organization’s innovativeness, viewed as an organizational attribute, is a function of both the adoption of innovations and of an organization’s assessment of its innovativeness in respect to its peers (Weiss, 1997, p. 307).” Essentially, the number of innovative programs and ideas used by police organizations influenced their perceptions of their own reputation in the policing community. Weiss’s 1997 study is unique because it is the first study to empirically test some of the elements of the diffusion of innovations theory specifically applied to police organizations.

Current Study

Based on the previous description of some of the elements of diffusion of innovations theory, it is possible that the diffusion of innovation theory can help explain the adoption of risk managers and police legal advisors by law enforcement agencies in the United States. As previously mentioned, the current study will not test any of the components of the diffusion of innovations theory. Instead, this study will use this theory to explain the adoption of risk management and police legal advising by law enforcement agencies.

CHAPTER 5

Results of the National Study

This chapter presents the results of a national study on the use of risk management and police legal advising by U.S. law enforcement agencies. The five research questions listed in Chapter Four are addressed individually as the analyses of each data source are reported in each section.

TELEPHONE INTERVIEWS

Telephone interviews were conducted with 354 county and municipal law enforcement agencies to determine the prevalence of the use of risk managers and police legal advisors by police agencies in the United States. The 1999 Law Enforcement Management and Administrative Statistics (LEMAS) report was used to create the list of all law enforcement agencies with 200 or more sworn police personnel. This report identified 354 county and municipal law enforcement agencies. Representatives from each of the 354 agencies were interviewed on how their organization handles police liability issues, as well as which person or group is responsible for any legal matters involving police personnel. Agency representatives participating in the telephone interviews include risk managers, police legal advisors, internal affairs staff, and in some cases, chiefs of police. Telephone interviews are the primary data source used to explore the first research question.

Prevalence of the use of risk management and police legal advising

Based on telephone interviews with all 354 law enforcement agencies, exactly one half (177) of all police agencies reported the use of either police legal advising, risk management, or some combination of both to manage police liability issues. More specifically, 163 of 354

agencies stated that they utilize only police legal advisors, while another 14 agencies reported the use of some combination of legal advisors and risk managers (see Table 5.1 below). No agency reported that they use only risk managers exclusively to manage police liability issues.

Table 5.1
Prevalence of Police Legal Advisors and Risk Managers
in United States Law Enforcement Agencies

Only Police Legal Advisors (Used exclusively by police department)	163
Only Risk Managers (Used exclusively by police department)	0
Use Both Police Legal Advisor & Risk Manager (either in-house or city-wide)	14
Other (City/County Attorney, that also serves all local and county agencies)	175
Other (Locally contracted private attorney)	2
	N=354 agencies

The other half of the police agencies interviewed (177) reported that they rely solely on city/county attorneys to handle liability issues involving law enforcement personnel. As noted in the police legal advising literature from the 1960s and 1970s, city/county attorneys were viewed as a source of resistance to hiring police legal advisors. At that time, some city/county attorneys claim that providing legal services to the police is part of their job, and therefore, employing police legal advisors is unnecessary (Caplan, 1967; Schmidt, 1972).

In the past four decades, there have been significant changes in the legal and social environment in the United States. The evidence of the changes in the legal environment in the United States is reflected in the fact that the police are named as defendants in civil suits filed by citizens more frequently than they were four decades ago (Franklin, 1993; Kappeler, 1997; McCoy, 1987). There have also been significant changes in police procedures because of important court case decisions, including *Miranda v. Arizona* (1966), *Mapp v. Ohio* (1961), and *Tennessee v. Garner* (1985).

Another indication of the changes in the legal environment includes the creation of the Special Litigation Section within the Civil Rights Division of the United States Department of Justice. The Special Litigation Section is responsible for enforcing federal civil rights statutes regarding civil rights of institutional persons, conduct of law enforcement agencies, access to reproductive health clinics and places of religious worship (United States Department of Justice website, 2002). This Litigation Section enforces the police misconduct provision of the Violent Crime Control and Law Enforcement Act of 1994.

The Department of Justice website notes the impact that the Special Litigation Section has already had on enforcing police misconduct in the United States:

The Section has already obtained significant relief under its police misconduct authority. For example, in 1997, the Section obtained two consent decrees to remedy systemic misconduct in municipal police departments in Pittsburgh, Pennsylvania and Steubenville, Ohio. The decrees require the police departments to implement widespread reforms, including training, supervising, and disciplining officers and implementing systems to receive, investigate, and respond to civilian complaints of misconduct. The decrees have had a

widespread impact and are being used as models by other police departments. The Section also has used its police misconduct authority to reform restraint practices in a Louisiana jail and to obtain systemic relief in juvenile correctional facilities. The Section is investigating other systemic problems in law enforcement agencies, including excessive force; false arrest; discriminatory harassment, stops, searches or arrests; and retaliation against persons alleging misconduct.

The decrees obtained by the Special Litigation Section requires that police departments implement widespread reforms including training, supervising, disciplining officers, and implementing systems to investigate and respond to citizen complaints, parallel the risk management and police legal advising efforts that some law enforcement agencies have adopted to manage liability.

Because of these changes in the social and legal environment over time, it would be reasonable to assume that the adoption of in-house police legal advisors and risk managers over the past four decades would reflect the increase in need for specialized legal and risk assessment services to police organization. Survey data in the next section provides additional information on the reasons why some police agencies have adopted police legal advisors and risk managers.

SURVEY DATA

The second data source used in this study is a national survey of county and municipal law enforcement agencies that reported the use of police legal advisors and/or risk managers in initial telephone interviews in the first step of data collection. These interviews revealed that 177 of the 354 law enforcement agencies reported using a police legal advisor, a risk manager, or both in some combination. Surveys were faxed out to all of the agencies a total of three times, and were also accompanied by two rounds of “reminder” letters. A total of 53 surveys (29.94%) were returned out of the 177 agencies that were identified through telephone interviews.

The data from all 53 returned surveys were entered into Microsoft Access for thematic data analysis. Each of the open-ended questions was examined for emerging themes and categories of both similar and

contrasting ideas between each of the participating law enforcement agencies. The textual data from the surveys directly responds to research questions 2, 3, 4, and 5. The following sections are organized according to each of the research questions that correspond with the analyzed survey data.

Factors associated with adoption

Date of adoption

The data indicate that the adoption of police legal advisors and risk managers has been occurring at a slow but steady pace from the early 1960s through 2000. Five agencies reported adoption of police legal advisors in the 1960s. Thirteen agencies reported the adoption of such programs in the 1970's, 12 agencies in the 1980s, 18 agencies in the 1990s, and 3 police agencies since 2000. Two agencies did not identify the date of adoption for their programs. It is important to note that the survey data only represents one third of all agencies (53 of 177) that reported using a police legal advisor and/or risk manager in initial telephone interviews.

Reasons for adopting police legal advisors and/or risk managers

A variety of factors were reported by police agencies regarding why they decided to adopt police legal advisors and/or risk managers. The most common factor involved adopting a legal advisor or risk manager out of necessity. Several of the police agencies (14 of 53) reported that an increase in lawsuits (and payouts resulting from those lawsuits) prompted them to implement liability-related programs.

“There was an increase in third party lawsuits, which made the Sheriff concerned. The sheriff wanted to become more proactive instead of reactive responses that had taken place in the past.”

“We adopted an in-house police legal advisor because of the costs of outside claims management. A private law firm was handling all liability claims for the Sheriff's office. Cost was

reduced by 50% when the risk management department was established.”

“The chief of police was concerned about risk and liability issues among police managers, and instituted a plan for quality assurance that involves risk management.”

A second factor reported in the adoption of risk managers and police legal advisors stems from the changes in the legal and social environment surrounding law enforcement agencies. Some of the agencies reported that the need for full-time legal advice had become necessary because of the complex changes in laws that have occurred in the past three decades.

“The sheriff realized that as more and more laws were passed, it was becoming difficult to comply with and ensure compliance. The basis for creating the position was to assist deputies in enforcing the law and to aid in complying with law governing our employees.”

“To help officers understand statutes, ordinances, search and seizure, and civil liability issues. Also, forfeiture litigation and legislation.”

“There was a significant need to have in-house council for the police department in order to ensure timely and appropriate responses to law enforcement legal issues.”

A third factor for adoption was due to a liability incident resulting in negative publicity by the media. This was the case with some of the agencies responding to the survey, as they reported that several highly publicized police-related incidents prompted the hiring of legal advisors and/or risk managers.

“The risk management program was implemented when the police department began self-criticism and evaluation in the wake of an incident that resulted in the beating death of a citizen by the police. The police departments top management

recognized the need for change in the police department's approach to police misconduct and the management of risk."

"We have had legal advisors sporadically for a long time, but have never thought of them as risk managers. There was concern over consent degrees in other cities. Also, there were two large payouts in civil suits over a police shooting and fatal traffic accident."

The first three factors given for the adoption of risk managers and/or police legal advisors can be categorized as reactive. In contrast, the survey data also indicates that only a few police agencies added police legal advisors and/or risk management to improve the quality of police services provided to citizens. Only 3 of the 53 police agencies surveyed mentioned an anticipated improvement in providing better services to citizen by creating a police legal advisor and/or risk manager position within their organizations. Thus, 5 percent of the police agencies that responded to the survey adopted risk managers or police legal advisors in a proactive manner to improve police service to the public.

Persons or groups responsible for adoption

Survey data also revealed that the decision to include additional personnel within a police organization to manage police-related liability incidents derives from a variety of sources. Almost half of the police agencies (25 out of 53) reported that the person responsible for initiating the adoption of a police legal advisor and/or risk manager was the chief of police or sheriff. This finding is especially interesting since early literature identifies police chiefs and sheriffs as one source of resistance to hiring police legal advisors. The literature explains that there can be resistance to adopting such positions if police managers do not fully understand the function or role that police legal advisors will play in the organizations. Some police managers may view legal advisors as a police oversight mechanism, similar to an internal affairs division or some type of civilian oversight panel.

Sixteen of 53 (30%) police agencies reported that it was the initiative of either the city/county attorney alone, or a combination of the city/county attorney and local police chief/sheriff that prompted the

adoption of such programs. The early literature also identifies city/county attorneys as another source of resistance to adopting police legal advisors and/or risk managers. Some of the less frequently mentioned people and groups that initiated the adoption of police legal advisors and/or risk managers include county executives, risk managers, city managers, city council members, and county commissioners.

Modeling risk management and police legal advising programs

Often police agencies adopt programs and innovations used by other law enforcement agencies (Weiss, 1997). In the current study, 20% of the surveyed police agencies reported that they modeled their police legal advising and risk management program after one or several other law enforcement agencies programs. One program that was mentioned by several police agencies in survey responses was the Los Angeles Sheriffs Department Risk Management program. The case study analysis in Chapter Six provides a more in-depth look at the organization and operation of the Risk Management program within the Los Angeles Sheriffs Department.

Program evolution

Over half (28 of 53) of the agencies that responded to the survey indicate that their risk management and/or police legal advising program has changed since its inception. The most common change reported was the addition of more personnel to the legal advising/risk management program. Expanding the program includes both the addition of more staff members and changing part-time legal advisor and/or risk manager positions into full-time positions. Several agencies stated that the program had to expand in order to deal with the increase in need of legal and risk assessment services within police agencies.

Another transformation mentioned by 11 of the 28 (39%) agencies was an expansion of responsibilities and duties. In most cases, the additional duties were the result of increases in payouts for litigation or changes in laws.

“Our program was initiated in 1998. Originally, it was limited to general legal advice, subpoena issues, and coordination of information gathering for the law department defending the claims against the department. In 2000, the program expanded to include all police disciplinary matters including prosecution of charges and advice to the professional standards unit.”

“The police department houses the legal advisor position staffed by the city attorney. This position has taken on roles of preparing departmental roll call training bulletins, legal updates, teaching at the police academy, representing the police department at some court hearings, answering questions by police management regarding civil and job related issues. Due to growing demands, the police department has created a separate legal liaison unit to process all subpoenas, court orders, injunctions, public information requests, etc.....”

“The calculated payouts (from lawsuits against the police department) have become specific to certain types of incidents, such as false arrest. False arrest was categorized into several sub-categories such as civil rights, lack of probable cause, and so forth.”

Several agencies reported that their programs have become more elaborate and sophisticated because of the addition of computer systems to help them better manage the documentation and case files associated with liability-related incidents. Computer systems were also credited as a way that police legal advisors and/or risk managers could track citizen complaints and lawsuits filed against their police departments (including both past and pending cases). The computerized tracking system helps identify police procedures and behaviors that most often result in complaints or lawsuits filed against the police by citizens.

Computer technology

Less than half of the agencies surveyed said that they use some kind of computer system to assist them in their work. Several of the agencies

that reported that they did not use some kind of computer program in their work noted that another agency within the city or county government used a computer system to keep the records that they needed, and would be available to them upon request.

The most common computer software used by police legal advisors/risk managers responding to the survey is Microsoft Access and Excel. These programs are used to track lawsuits, citizen complaints, and insurance claims filed against their departments. Several legal advisors/risk managers reported that these programs aided in the creation of reports that are often requested by police management and other city or county agents. A few police agencies reported the use of commercial computer program packages, including "Risk Master", "Stars 5.0", and "MT/Imanage".

Several agencies also reported the use of computer programs that were created specifically for the needs of their organization. It was often the case that an officer(s) within the organization that also has computer skills was tasked with the job of building a computer program that parallels the duties of the in-house legal advisor or risk manager.

Characteristics of identified programs

Survey data were also used to explore some of the characteristics associated with the identified police legal advising and risk management programs. Some of those characteristics include where the legal advisor/risk manager is physically housed in relation to the police organization, the training and background of risk managers and police legal advisors, and the extent of collaboration between risk managers/police legal advisors and other agencies outside of the police organization.

Location of police legal advisors and risk managers in police agencies

The physical location of police legal advisors and risk managers is an issue that has been discussed in both past and recent literature. Schmidt (1972) and the IACP (1998) suggest that police legal advisors be physically housed within police headquarters. The close location would allow all police personnel immediate, convenient, and continuous access to legal advice. Survey data reveals that 64% of

police legal advisors and/or risk managers maintain offices within police headquarters. Another 28% of the risk managers and/or police legal advisors reported that they maintain two offices: one office within the police department and one office either in the city/county attorneys' offices or an independently owned office.

Education and experience of risk managers and police legal advisors

The education and experience of the risk managers and legal advisors consists of a mix of legal experience, risk management, accounting, insurance assessment/adjustment training, and law enforcement.

Over one third of the police agencies (38%) reported that employees that work with police liability within their organizations have both experience in law enforcement and in practicing law. A recent police legal advising publication notes that the benefits of having police legal advisors that have prior law enforcement experience is that they will have experience and knowledge of police liability issues, and that police officers may feel more comfortable seeking legal advice from someone that has prior law enforcement experience (Becker, 1994).

In contrast, early literature states that police legal advisors with policing experience may tailor his/her duties around the good of the police department, resulting in isolation from external agencies and community members (Caplan, 1967). In addition, early literature also comments that police legal advisors with prior law enforcement experience may also be less likely to collaborate with outside agencies, or be in touch with concerns of the community (Becker, 1994). After analyzing survey data on the background and reported collaboration by police agencies with other agencies, there is no indication that police legal advisors or risk managers that have prior law enforcement experience are less likely to collaborate with other agencies. Of the 30 agencies that reported that they do not collaborate with other agencies, 15 agencies reported having prior law enforcement experience. Of the 23 police agencies that reported collaboration with other agencies, 12 agencies reported that their employees have some prior law enforcement experience.

Another 28% of police agencies reported employing police legal advisors and risk managers with law experience only. Although it has never been empirically tested, it is important to note that some of the

early police legal advising literature suggests that the police legal advisor that holds the most promise would be those advisors with experience practicing law, except for the people that have a dual role of police advisor and city/county attorney (Caplan, 1967; National Commission on Criminal Justice Standards and Goals, 1973; Schmidt, 1972).

Fifteen of the 53 (28%) agencies reported that they had training in risk management. The survey respondents described their risk management training as seminars and workshops over a two or three day time period. Most of the speakers at these training seminars are practitioners who have extensive experience in risk management in a variety of organizations other than police organizations. Three of the risk management speakers that were most often noted on the surveys were G. Patrick Gallagher of the Gallagher-Westfall Group, Inc. in Indian Valley, Virginia; Randy Means of Thomas & Means, LLP in Huntersville, North Carolina; and Gordon Graham of Graham Research Associates in Long Beach, California.

Collaboration between risk managers/police legal advisors and other agencies

Further analysis of the survey data indicates that 23 of 53 (43%) risk managers and police legal advisors work in collaboration with a wide variety of agencies outside of the police agency. Some agencies mentioned in survey responses include health departments, claims agents, fiscal affair agencies, risk assessment agencies, insurance agencies, social service agencies, and victims advocate groups.

Of the 23 agencies that reported collaboration with other agencies, 9 (39%) agencies noted the importance of working with insurance-based groups within their communities. Police legal advisors and risk managers described the importance of seeking help from agencies that specialize in handling and managing claims, assessing risks within organizations, and creating strategies to change exposure to liability for police officers. Several legal advisors and risk managers also mentioned that they seek advice from and train with legal advisors/risk managers from surrounding law enforcement agencies.

Relationship with police oversight boards

Police legal advisors and risk managers were also asked about their collaborative efforts with local law enforcement oversight boards. Less than half (41%) of the police agencies surveyed (22 of 53 agencies) reported that some type of law enforcement oversight board exists in their cities. In the cases where police agencies reported the existence of a law enforcement oversight board, there was little evidence of collaboration between the two groups. In fact, over half of the agencies (54%) stated that they have never collaborated with the local oversight board.

Police legal advisors and risk managers that did report some collaboration with the local oversight board usually did so regarding citizen complaints filed against police officers within their organizations. None of the police agencies commented that local law enforcement oversight boards had any input on police liability issues directly related to hiring, training, or police procedures.

Role of risk managers and police legal advisors in police agencies

The current study also explores the role and duties of police legal advisors and risk managers within police organizations. The survey questions focus on the extent to which legal advisors and risk managers influence changes in department policies, police officer training, supervision of police officers, and promotion decisions within police organizations.

Table 5.2 illustrates the results of the survey that focuses specifically on the impact of police legal advisors on police department policies, training, supervision of line officers by police managers, and promotions within police organizations. The most striking finding presented in Table 5.2 is that police legal advisors and risk managers play a significant role in the administration and alteration of department policies, training, and supervision over line officers. In contrast, the table indicates that police legal advisors and risk managers have little to do with the promotion process within police agencies.

Table 5.2
Perceived impact of Police Legal Advisors and Risk Managers
on Department Policies, Training, Supervision, and Promotion

	Impact	No Impact
Department Policies	47	6
Police Training	45	8
Supervision of Line Officers	34	19
Promotions	6	47

Changes in department policies

As previously mentioned in Chapter Three, police legal advisors and risk managers maintain and alter department policies and procedures to reduce or prevent police-related liability incidents. This task is one that is constant as there are always changes in laws and the social environment in which the police work. This means that it is the responsibility of police legal advisors and risk managers to keep abreast of any changes that might influence police officers' ability to enforce laws with the least amount of exposure to risk.

A majority of police legal advisors and risk managers that responded to the survey (47 of 53 or 89%) reported that their positions/programs had direct and significant impact on any changes in police department policies. Only 6 out of 53 agencies surveyed reported that they had no impact on department policies. In those cases, the position or program was described as being "too new" to draw any conclusions about its influence or impact on policies and procedures.

The type of department policies that risk managers and police legal advisors reported that they most often influence can be

categorized into two groups: (1) police organizational issues, and (2) citizen-related department policies.

The survey data suggests that police legal advisors and risk managers make changes that impact liability costs associated with work-related injuries and motor vehicle incidents involving employees, loss or damage to department property, as well as sexual harassment and discrimination suits filed by employees within law enforcement agencies. There are also separate units or people within police organizations that handle specific employee-related liability incidents, such as fleet managers that handle all motor vehicle related incidents that result in property or financial loss for the organization. The case study analyses presented in Chapter Six provide several examples of people within legal advising and risk management programs whose job is to reduce or prevent unnecessary monetary payouts for claims filed by employees within their organizations. Examples include a fleet manager in the Police Liability Unit in the Portland Police Bureau, and a risk specialist that works specifically with employee-related liability in the Risk Management Unit in the Los Angeles Sheriffs Department.

“Almost all of the general orders in our policy and procedures manual, which is about 3 inches thick, are reviewed by me. I make many changes. Often the changes involve labor laws to reduce suits against the department by our own employees.”

“There has been change in our work related injuries and motor vehicle accident/incident and loss of property.”

Policies that impact people outside of the police organization (such as citizens) are also a major concern of police legal advisors and risk managers. Some of the most common policies mentioned in returned surveys include policies on use of force, field contacts with mentally ill or disabled persons; vehicular pursuits; searches and frisks; property seizures; arrest and custody procedures; and most recently, racial profiling policies.

“We have made changes to our policies on use of force and police pursuits. Also this position headed up CALEA accreditation and we re-wrote the entire policy manual three times during my tenure.”

“I review or write policies to minimize high risk incidents. Also, I changed the policy so that there is no shooting from moving vehicles, no strip searches without a warrant consent or arrest, and no racial profiling.”

“Our RMS section will occasionally suggest procedural changes to general orders to facilitate timely reporting and tracking. These changes are generally subtle and of little consequence to the daily operation of the sheriffs office. Upon occasion we may be asked to look at specific operational policies to suggest improvement for the sake of reducing a particular type of loss. For example, we were asked to look at the emergency response policy, which required agency units responding to a call to adhere to state law regarding intersections. State law requires the exercise of "due care" when approaching an intersection with a red light or stop sign. We recommended a change requiring out units to come to a full stop under these conditions and ensure all traffic had stopped before proceeding. Our intersection collisions under emergency response mode dropped significantly.”

“Agency attorneys evaluate draft policies for legal sufficiency. For example, the written directive on arrest and search procedures is regularly updated to reflect new state statutes and case law.”

The importance of keeping department policies and procedures current to the standards required by local, state, and federal law is a common theme that emerges from the survey data. It is also clear from the survey responses that the maintenance of department policies and procedures is one of the best ways to prevent future litigation for cases involving officers using outdated techniques during field contacts with citizens, (including arrest, search and seizure of property, and physical restraints).

Influence on police officer training

As Table 5.2 indicates, most agencies responding to the survey indicated that police training is a big part of police legal advisors and risk managers role within police organizations. According to several survey respondents, each stage of police training is affected by the work of police legal advisors and risk managers in relation to police officer exposure to liability beginning in the academy and all the way through in-service training.

“We teach classes at the local and regional training academies to new recruits and within our agency to experienced officers. We also endeavor to keep our officers current on the law through regular issuance of legal bulletins and similar updates.”

“Extensive changes in our Field Training Officer (FTO) program to reflect a variety of state and federal law changes such as pursuits and use of force.”

“Risk Management routinely receives the training schedule for all training (basic to advanced) for the police department. Suggestions are routinely made which are acted upon to change or improve training.”

The list of training topics that are covered by police legal advisors and risk managers across all phases of training includes (but is not exclusive to) the following list: incidents related to workmen’s compensation and employee injury; defensive driving training; search and seizure of property; vehicular pursuits; racial profiling; civil rights; cultural diversity; sexual harassment training; custody and arrest practices; handling domestic violence situations, and use of force.

The survey data also revealed several creative ways that police legal advisors and risk managers train officers to keep up with the constantly changing laws that also often require a change in procedures. For example, one survey respondent commented that they use streaming videos during roll call to update officers on any important changes that might impact field contact with citizens. Several other survey respondents stated that they distribute legal

bulletins via paper or over mobile data terminals. One respondent described how legal advisors and risk managers play a role in the content of training videos that are produced and sometimes distributed to other law enforcement agencies.

Impact on the supervision of patrol grade officer

Over half (64%) of the legal advisors and risk managers stated that they had some level of impact over the supervision of line officers by police managers. Most legal advisors and risk managers commented that they receive additional training tailored to police managers in order to adequately supervise line officers. A common topic of supervisory training mentioned in the surveys includes civil liability-related issues (such as the importance of recording all incidents that could end up in litigation in the future, and how to prepare for trial if you are named as a defendant in a civil liability case). Other training topics include Section 1983 liability, sexual harassment, use of force, search and seizure, racial profiling, forced entries, and recording and protecting evidence. Legal advisors and risk managers also use police supervisors to ensure that all line officers receive, understand, and put into practice any changes in department policy.

In all but two of the returned surveys, police legal advisors and risk managers noted that they impact the supervision of line officers through police managers by providing more supervisory training when there was some change in department policies.

“Supervisors receive training and education which enhances their ability to provide direction on report writing and completion of contact cards. Training is provided to sergeants, lieutenants, and watch commanders prior to their moving into a new position.”

“Nearly all program changes are reviewed by our office. The office also initially reviews civil suits and disciplinary proceedings. Police supervisors call us 24 hours a day when they encounter legal issues.”

“We train new supervisors proactively and on an ongoing basis. Supervisors often call us from the scenes of potential

liability incidents. We also initiate change upon the review of all forced entries and use of force incidents. It is our job to spot potential problems.”

The analysis of the survey data indicates an important relationship among the various duties of police legal advisors and risk managers, specifically with regard to altering or adding to department policies and officer training. Essentially, this means that any changes in department policies could potentially result in changes to department procedures.

Influence on promotions within the organization

Through data analysis, it was revealed that a majority of police legal advisors and risk managers (89%) have no impact on the promotion process. Most survey respondents indicated that promotions within their agencies were based on seniority ranking within the organization, or that promotions are based on state civil service laws that rely on exam scores to determine promotion.

The few police agencies that reported some impact on promotions within their organizations noted that their influence in the promotion process was limited and indirect.

“Our officers cannot be promoted within two years of a sustained complaint (internal or external complaint). It is my job to track and report complaints”

“Some of our recommendations include a penalty for officers who are involved in ‘at fault’ accidents. This could indirectly affect promotions.”

“When there is a test in promotional process, my training of officers could have an impact. I do review procedures to insure fairness, and I also represent the dept in civil service appeals stemming from promotions.”

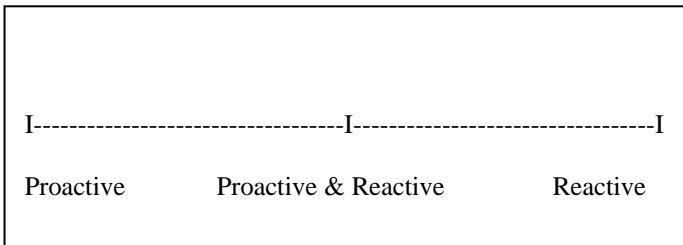
Some of the police legal advisors and risk managers also reported that they review the grammar and content of written portions of exams that are used as part of the promotion process. They examine the questions for legal accuracy, as the questions will change over time as

laws and procedures change with time. Other agencies reported that they have been active in negotiations on behalf of the city with police unions in contract modifications regarding the methods used for testing and selection of supervisory officers. Both of these tasks result in an indirect impact on promotions within police organizations.

**Nature of police legal advisor/risk manager role:
Proactive vs. reactive role**

After reviewing the reasons why police agencies have adopted police legal advisors and risk managers, it is clear that there is wide variation in the nature of the police legal advisor/risk manager role. The wide variation in the nature of the legal advisor/risk managers' role within police organizations can best be described using a continuum (see Figure 5.1 below).

**Figure 5.1
Proactive-Reactive Continuum**



In placing the role of risk managers and police legal advisors on the Proactive and Reactive continuum, proactive positions include those positions implemented, because some person or group became aware of the rising costs related to police exposure to liability, and wanted to prevent future liability problems within their organizations. Police legal advisor and risk manager positions that are reactive in nature are those positions that are created as the result of an incident or series of incidents, resulting in high monetary payouts for the

department. The proactive and reactive role includes those agencies that reported that they adopted police legal advisors and risk managers because of monetary loss related to police liability incidents, and also because they became aware of the rising costs of police liability.

In the current study, survey data revealed that 27% (14 of 53) of the law enforcement agencies reported that they adopted a police legal advisor or risk manager because of an increase in litigation involving their employees, as well as the costs associated with police-related liability incidents. These agencies represent the positions that were adopted with a reactive role within the police organization. One agency commented that their role within the police agency could be paralleled with a “banking ATM machine,” because it is their responsibility to make monetary payouts in police-involved liability incidents that could otherwise result in lengthy, more expensive litigation.

On the opposite end of the continuum, 40% (21 of 53) of the surveyed police agencies stated that they adopted a police legal advisor or risk manager to serve as a proactive measure against increasing police-related liability incidents. Some agencies commented that they have become concerned about increasing exposure to liability risks by observing other law enforcement agencies. And still other agencies reported that they recognized changes in the surrounding legal and social conditions within their own communities and decided to take a proactive approach to handling police liability.

“This position was created to respond the rapid growth of the city, more complex legal issues, and to provide easier access to legal assistance.”

“It was created due to an increasing awareness of the liability associated with issues including vehicle accidents, use of force, claims, pursuits.”

“In 1997, the Sheriffs office created a risk management section separate from the county and housed it within the Human Resources Division. It was created to meet the needs of a rapidly growing population. Some of the duties include drafting legal bulletins, responding to requests for information about agency members, conducting forfeiture litigation,

reviewing contracts, handling nuisance abatement actions, evaluating department policies, teaching instruction blocks, and researching various issues of law.”

Police agencies that mentioned both proactive and reactive reasons for why they adopted a police legal advisor or risk managers only comprised 6% (4 of 53) of the agencies surveyed in this study. These agencies noted that there was some precipitating event (such as a large monetary payout for lawsuits) that prompted them to react by adopting a liability position or unit within the police organization, in addition to recognizing the need to take proactive measures with police-related liability issues in their departments. The remaining 27% (14 of 53) of the surveyed agencies provided responses that could not be classified as proactive, reactive, or both proactive and reactive.

Regardless of the nature of the circumstances that surround the adoption of police legal advisors or risk managers, it would be reasonable to assume that some police legal advisors and risk managers eventually take on both proactive and reactive roles within police organizations over time. This assumption is based on the idea that most police legal advisors and risk managers that responded to the survey noted that their current duties in relation to liability within the police organization are both proactive and reactive in nature.

An example of the proactive/reactive dual role over time would be that a majority of the survey respondents reported that their role within the police agency has significant impact on training, policies, and supervision of line officers, because they have to keep up with the constantly changing social and legal environment. By keeping abreast of changes, police legal advisors and risk managers are proactively preventing future exposure to liability incidents. On the other hand, police legal advisors and risk managers also have to react or respond to liability incidents after they occur. This was the case as some police legal advisors and risk managers reported that they are on-call 24 hours a day, and are often called to the scene when liability becomes an issue for their police department. Future research on the evolution of the role of police legal advisors and risk managers would provide a solid understanding of the proactive and reactive components of their role within law enforcement agencies.

Perceived impact on department costs related to police liability

The survey for the current study also contained questions that inquired about the perceived impact of employing police legal advisors and risk managers within police agencies to manage police liability issues. Again, it is important to note that the perceived impact is based solely on the survey responses of police legal advisors and risk managers, and not on any official financial documents provided by each of the participating law enforcement agencies.

Data analysis revealed that 81% (43 of 53) of the police legal advisors and risk managers surveyed thought that their positions or programs had some impact on the liability-related monetary payouts of their police organizations. Several of these agencies provided testimonial evidence of their impact on financial payouts by their police organizations.

“Yes, by denying frivolous lawsuits. The Sheriff’s office has three in-house attorneys. This alone has reduced our costs by 30%.”

“The number of civil suits within the last six years or so has been significantly reduced. The major part of the fact was at the time we elected a new sheriff who has implemented and reinforced training of supervisors and on-line officers which has greatly reduced the number of incidents giving rise to civil suits.”

“We have been instrumental in early claims resolution saving literally millions of dollars. We are on 24-hour call and roll onto shootings, accidents, and other incidents for early liability assessment. Those are the kind of things that help us save money.”

In the cases where police legal advisors or risk managers reported an impact on financial payouts, only 38% reported that they keep official data on the financial impact they have on their police agencies financial payouts. Further, only 30% of those agencies reported that they publish a report either monthly, quarterly, or annually. This finding is surprising given that most law enforcement agencies have to

justify having such specialized programs within their organizations. One way to justify the employment of police legal advisors or risk managers within police organizations would be to have records of the financial impact they have on police-related liability. The significance of this finding will be discussed in further detail in Chapter Seven.

Other police legal advisors and risk managers claimed that they do have some impact on financial payouts, but stated that they could not produce evidence of the impact, because it is impossible to quantify incidents or payouts that have been prevented.

“The police legal advisor is often able to provide "prevent" advice that diminishes the potential for civil action. Additionally, if an event has happened, the police legal advisor becomes involved as soon as possible in the process of obtaining statements, evidence, and preparing for future civil litigation. As an experienced officer, the police legal advisor is also able to interpret police actions as they would apply to civil suits and look for information which an attorney with no prior police experience would be aware of.”

“Proactive claims, as well as earlier and better investigations have helped lead to fewer lawsuits, claims, and infractions. This is true even in the wake of a pending Department of Justice suit against the division.”

“While we can document a marked decrease in collisions during emergency pursuits, we are unable to quantify the number of collisions that have been prevented due to time constraints. Neither our data tracking is not sufficiently sophisticated nor our data of such depth to allow us to be able to document our success at this point. As we mature and as we employ more sophisticated software, we will eventually be able to better demonstrate our victories.”

Some police legal advisors and risk managers assumed that their position or program had some impact because of the important duties they are tasked with every day. About 47% of the surveys respondents assume that their input into police training, changes in policies and procedures, and being available to answer any questions from line

officers and supervisors will have an impact on the financial loss of their police agencies

“Our program has significantly reduced payouts by better managing the cases. Prior to our arrival, everything was shipped immediately to an attorney. This method caused our department to pay more for claims because the people handling those claims were making a high hourly wage. By handling everything in-house, we have reduced the initial costs and improved our ability to respond quickly to situations. As a result, minor problems are solved immediately and are prevented from becoming major problems.”

“By reviewing various reports (internal and external) and through discussions I identify potential liability issues and work through training or police suggestions to correct the problem. I operate preventatively and proactively.”

The remaining 20% of the police legal advisors or risk managers that reported that they did not impact monetary payouts gave a variety of reasons for not knowing about the financial impact of their role within their police organizations. Some of the reasons given include that they were just unsure of the impact of their positions, that it would be difficult to make successful claims because prevented liability incidents could not be quantified, or that their programs were “too new”, which would make it impossible for them to draw any conclusions about their impact.

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CHAPTER 6

BEST PRACTICES & MODEL PROGRAMS

The third data source used in the study presented in Chapter Four are case study site visits to four cities where the police use various combinations of risk management and police legal advising to manage liability within their organizations. The information presented in each of the following sections is based on face-to-face interviews conducted with both risk managers and police legal advisors at each of the sites, and also from a variety of documents and literature provided by risk managers and police legal advisors in each city during each site visit.

The purpose of conducting cases study site visits at each of the four cities was to collect detailed information about the organizational structure of each program, to explore the role of the position in relation to police agencies in each city, and the perceived impact of these programs on managing police liability, professionalism, and accountability from the perspective of risk managers and police legal advisors. The purpose of the case study analyses is not to evaluate the effectiveness of each program.

CHARLOTTE-MECKLENBURG, NORTH CAROLINA

Description of the program

The Charlotte-Mecklenburg Police Department utilizes the services of the Risk Management Division that also serves all other city agencies, Mecklenburg County, and the Charlotte-Mecklenburg Board of Education. Legal advice comes from the Police Attorney's Office housed within the police department.

The Risk Management Division is physically housed within the Finance Department in the city offices. Some of the specialized positions within the Risk Management Division include property and casualty claims workers, workers compensation, insurance management, financial coordination, and risk control.

Recently, the Risk Management Division added a Loss Control Team. The Loss Control Team's main responsibility is to track the history of claims of every city and county agency in the Charlotte-Mecklenburg area. Once a pattern of specific types of liability claims are identified by the Loss Control Team they contact the city or county agency to discuss the identified pattern. The next step is to meet with the agency to come up with a strategy to reduce or eliminate exposure to the identified pattern of risk. The four employees of the Loss Control Team have a variety of training and experience including risk management training, insurance assessment, loss control experience, and one employee has prior law enforcement experience.

The Loss Control Team has employed one individual that works directly with police liability issues. Currently, the Loss Control Team is working with the police department to reduce the number of claims related to traffic accidents. One of the solutions recently implemented to reduce the number of traffic related claims includes advanced training in defensive driving skills. It is hoped that the enhanced defensive driving courses will train the officers to become more aware of traffic situations that could potentially result in financial loss for the department.

The Charlotte-Mecklenburg Police Attorney's Office is housed within the Charlotte-Mecklenburg Police Department. There are five lawyers on staff that handle police-related liability cases. One of the five lawyers holds the title of "Deputy City Attorney". This person serves as the supervisor and manager of the Police Attorney's Office.

Chief Counsel for the Charlotte-Mecklenburg Police Department provides overall supervision and management of Police Attorneys Office including four attorneys and support staff. People working within this office interact with internal and external customers, and the public in general. They also provide legal advice and training to the police department in a variety of areas including basic law enforcement curriculum, police legal issues, and constitutional and personnel law. The Police Attorneys Office also ensures adherence to applicable state and federal employment law practices in hiring, promotion,

disciplinary practices, and terminations, analyzes existing departmental policies, and modifies department policies as needed.

The Police Attorneys Office is considered part of the Office of the Chief within the Charlotte-Mecklenburg Police Department. The Deputy City Attorney that manages this office answers directly to the Chief of Police, and is also accountable to the City Attorney. The Police Attorney's Office handles only legal matters that involve the police department. This office does not provide legal coverage to any other city or county agencies in the Charlotte-Mecklenburg area.

Processing claims

The process of handling police-related claims was also discussed during interviews with both the Property and Casualty Claims Manager and the lead Police Attorney. The process of handling claims involving Charlotte-Mecklenburg police personnel is as follows:

1. An incident occurs involving police personnel from the Charlotte-Mecklenburg Police Department.
2. Risk Management can be informed about the incident from a variety of sources including someone from the police department, citizen(s), or media sources. In serious cases (such as police shootings or police pursuits), the Risk Management Division is contacted immediately after the incident occurs. Citizens that file a claim with the city of Charlotte can do so by telephone, the Internet, or by stopping by the division in person.
3. The filed claim is then entered into the risk management database, and is assigned a claim number.
4. Claims assistants send out a letter to the citizen that made the claim explaining that it will be investigated.
5. The Risk Management Division requests a police supervisors report from the police department. Risk management personnel investigate this report and the claim filed by the citizen.

6. Next, Internal Affairs is notified of the claim filed against the officer(s). Internal Affairs then investigates the claim. Next, they then send evidence and investigation report to the Police Attorney's Office. The Police Attorney's Office reviews the case, summarizes the findings, and then researches the appropriate case law if settlements are necessary. They use old cases/claims to help determine the dollar amounts that have been paid out in the past for specific types of claims.
7. The Police Attorney then makes a recommendation to the Risk Management Division to either pursue or drop a claim. The recommendation given by the Police Attorney weighs very heavily in the decision of how claims will be handled.

In some cases, Risk Management will settle claims without the input of the Police Attorney. This is possible because Risk Management keeps track of every claim involving police personnel, and it is sometimes easier in cases where they have dealt with similar claims involving police officers in the past. However, representatives from both Risk Management and the Police Attorney's Office agree that consultation between both groups about claims is important because it keeps both parties informed about the status of claims involving the police. As stated in an interview, "continuous communication between risk management and the police attorney is essential to get the job done right".

There are also cases when Risk Management will send risk assessors out immediately after incidents have occurred to try and settle claims on the spot. "On-the-spot" settlements usually take place in instances where the police department is legally liable for any injuries or property damages to another party. Outside of property damage incidents, "on-the-spot" settlements are somewhat rare. The adjuster is authorized to settle liability incidents for up to \$5,000. This amount can go up to \$12,000 for property damages and \$10,000 for bodily injury if Risk Management supervisors authorize it.

Interviews with Risk Management personnel also revealed that the types of claims that are dealt with most often in regard to the police are auto-related (fleet) incidents. As soon as Risk Management identifies patterns of frequent auto-related claims, innovative strategies are created and implemented to reduce those types of claims.

“One way that we have worked together to reduce the costs related to fleet is to make changes to the police pursuit policy. Essentially, we made the policy more stringent so that the officers are more cautious when they are making their decision to pursue a suspect that is fleeing by car. Other than that we also have fender-benders and various other incidents with unmarked police vehicles, and motorcycles.”

The strategies to reduce or manage police-related claims require that both Risk Management and police personnel track past and pending claims involving police personnel. All claims involving police liability incidents are entered into the risk management computer system. Summary reports are sent out each month to every city department. The claims that are entered into the risk management database are kept separate from any databases on citizen complaints against officers that Internal Affairs might keep because of state laws on confidentiality of police officials.

Risk management and police legal advisors working together

Even though the Risk Management Division is located in a building outside of the police department, both groups work together on a consistent basis. Interviews with both groups revealed that Risk Management and the Police Attorneys Office has contact with each other an average of two to three times per week. The two groups work together to decide how claims should be handled (whether it has been falsely filed or should be let go, overlooked, or dismissed). They also discuss tracked liability claims involving police officers that have resulted in payouts, or that have emerged as a patterned problem over time. The two groups also review police department policies and training standards/issues to make sure that they reflect the guidelines provided by state laws.

Personnel from both the risk management division and the police attorney's office expressed that their jobs are significantly impacted by the efforts of the other group's involvement in managing police liability. The police attorney stated, "we rely on Risk Management to identify 'hot spots' in areas of our work that generate the most claims. They analyze claims and cases in order to point out patterns that emerge from specific procedures we use every day on the job. They also tell us which areas we should consider changing in regard to police training. It is then our job to make the changes and to disperse the information about the changes throughout the police organization." Both groups also agree that they probably could not have the same impact on police-related liability if they did not have help from each other.

Benefits to the community

By working together, the Police Attorney's Office and the Risk Management Division provide several benefits to the citizens in the Charlotte-Mecklenburg area. First, the Risk Management Division identifies potential exposure to risk that can impact both the safety of citizens and police officers. This activity can provide a safer environment for both citizens and police officers. In situations where exposure to risk cannot be avoided, Risk Management can alter police department policies and procedures to reduce the frequency and sometimes the severity of the exposure to risks that could end up as claims filed to their office.

Both groups agree that the alterations made to police department policies and procedures results in improved police services to citizens. Some examples of the changes made to policies and procedures included changes in the procedures that are used in the county jail facilities, changes in evidence protection, property control, and traffic-related losses. It was reported in an interview with Risk Management that "motor vehicles accidents went down by 50% in the last few years because of the changes made to the procedures used in handling city or county motor vehicles." In some cases, additional training in handling motor vehicles was prescribed to some police personnel that had records of incidents that resulted in department losses resulting from traffic-related accidents.

A second benefit to citizens comes from an effort by the Risk Management Division to process claims filed by citizens as efficiently as possible. Risk Management also makes sure that the claims that are filed with their division are processed in a fair manner by conducting thorough investigations of every claim. “Our actions end up saving tax dollars for the citizens in the long run. We work hand-in-hand with the police department to resolve liability matters that involve police officers and citizens as quickly and effectively as possible.”

The tasks carried out by the Police Attorney’s Office in Charlotte-Mecklenburg also result in benefits to citizens in the community. The Police Attorney’s Office assists police officers in carrying out some of the problem-oriented policing activities that they use to provide services to citizens (for example, nuisance abatement incidents). The help of the Police Attorneys Office becomes important in cases where there are complaints that are not criminal in nature, but instead could be handled through existing or newly created ordinances and city codes.

This office also practices an “open door” policy with Charlotte-Mecklenburg police officers by answering questions on criminal law and criminal procedure that the officers might have before they become involved in a situation that could end up as a liability incident. One example would include police officers asking the police attorney questions about the legality of serving search warrants where they are looking for evidence, guns, drugs, and other illegal items in private homes. In these cases, it is crucial that police officers follow the specific details provided on the warrant (such as what areas of the home may be searched, etc.). Being housed within the police department increases the chances that police officers will ask questions before they do something that could result in complaints, liability claims, or litigation with citizens. The Police Attorney’s Office believes that this “open-door” policy enhances the quality of police service provided to the citizens of Charlotte-Mecklenburg.

Impact on police professionalism and accountability

By working together, the Risk Management Division and the Police Attorney’s Office also believe that they have an impact on the level of police professionalism and accountability. Both groups assert that improved police professionalism and accountability result when

changes are made to police department training, policies, and procedures. In most cases the changes that have been made were done so to reduce exposure to liability-related incidents. The Police Attorney stated that this means that police officers become more aware of their actions and behaviors, specifically in instances where exposure to liability is eminent.

“Professionalism and accountability is enhanced every time that Risk Management recognizes a problem with police procedure, policy, or training and recommends changes to the department. The constant alteration of procedures, policies, and training allows the police officers to give better service to the citizens, and it keeps everyone safe and happy. Risk management can tell the police department what they could be doing better, and then follow up on any changes that they have suggested to the department to ensure that the changes are being made.”

Risk Management personnel also believe that their efforts to reduce exposure to risk and liability incidents involving the police have an impact on police professionalism and accountability. By identifying patterns of liability claims that could be reduced or eliminated by making changes to police policy, procedure, and training, Risk Management directly contributes to liability control. An example of this would be identifying the need for more advanced drivers safety and defensive driving classes for police officers in an effort to reduce police-related traffic liability claims.

According to Risk Management, the issue of building trust between the Risk Management Department and Charlotte police officers is also an important part of improving police professionalism in Charlotte.

“By handling police liability claims in an effective and consistent manner, Risk Management reassures the police officers that they have the support of Risk Management and the City behind them. This support allows the officers to do their jobs without the fear that they will not be supported if they make an error in judgment.”

LOS ANGELES COUNTY, CALIFORNIA**Description of program**

The Los Angeles Sheriff's Department utilizes a combination of an in-house Risk Management Bureau used exclusively for police liability issues, and a Legal Advisory Unit located outside of the Sheriff's Department that handles only police-related liability cases. The Risk Management Bureau was created in 1993 to provide a department-wide effort in reducing the loss of department resources, to control police liability costs, improve law enforcement services provided to citizens, and to raise police accountability within the Sheriff's Department.

The mission of the Risk Management Bureau describes how it strives to "contribute to providing the highest quality service law enforcement and public safety services by enabling Department employees to perform their duties in a risk-reduced work environment. The Risk Management Bureau will accomplish its mission by: 1) Continually identifying and evaluating activities that have a high risk and liability potential; 2) Aggressively managing personnel health and safety issues, and 3) proactively managing claims and lawsuits, including an immediate response to incidents with a high liability potential (L.A.S.O Risk Management Bureau brochure, 2001)."

The Risk Management Bureau is comprised of several units including the Civil Litigation Unit, Health and Safety, Risk Impact Units, Traffic Services Detail, Random Drug Testing, Wellness programs, and the Manuals and Orders Section.

The Civil Litigation Unit is responsible for managing the Departments civil claims and lawsuits. The primary task of this unit is to reduce the Departments financial liability and exposure to incidents that result in costly litigation. Investigators are on 24-hour call to respond to claims-related incidents that could result in litigation. In some cases, the Civil Litigation Lieutenant can resolve liability incidents on site for up to \$2,500. "With this process the unit has reduced the Department's financial exposure compared to previous years. From 1995 to 1997, there has been a 60% reduction in claim settlements. This can be credited to expedited claims for damages such as inmate over detentions and property damage (Los Angeles Sheriff's Department website, 2002)." This Unit is also in charge of a civil

litigation-training program for all employees of the Sheriff Department.

The other units within the Risk Management Bureau also have specialized areas in which they strive to reduce costs for the Department. The Health and Safety Unit is responsible for minimizing costs associated with any injuries or illnesses of Department employees. This unit also arranges funeral services for Sheriff's Department personnel. Additionally, this unit is responsible for worker's compensation subrogation.

The Risk Impact Unit coordinates a reporting system for the Department's unit-level risk management plans each quarter. Recently, the Risk Impact Unit created the Sheriff's Critical Issues Forum (SCIF), which is an innovative accountability management approach used to examine areas of liability concern. SCIF deals with more than one hundred topic areas within the categories of crime analysis, risk management and unit fiscal accountability. Police managers at the division level are given the opportunity to present innovative programs that have improved the productivity or responsiveness to liability issues within their divisions.

The Traffic Services Detail is responsible for handling all on-duty employee related traffic incidents involving property damage and/or injuries. This unit is also responsible for providing training that is related to traffic including investigations of traffic scenes and safety issues involving police officer use of motorized vehicles.

The Manual and Orders Unit maintains and updates the Sheriff's Department's Policy and Procedures Manual. This Unit also preserves a historical library of all of the Department's policy and procedure manuals.

The Random Drug Testing Program is responsible for administering periodic, unannounced, random drug tests throughout the Department. By administering random drug tests, the Random Drug Testing Program will ensure a drug-free work environment. Members of this unit believe that random drug tests of Department employees will increase the public's trust of the law enforcement officials affiliated with the Sheriff's Department. Employees of this program lecture at all training academy classes about the consequences of using drugs either on or off-duty. This unit also provides management level training of police personnel from other agencies that are interested in implementing a random drug-testing program in their agencies.

All of the units that comprise the Risk Management Bureau work in conjunction with the Los Angeles Sheriff's Department Legal Advisory Unit to manage police liability incidents related to the Sheriff's Department's employees. The Legal Advisory Unit is located in a building that is separate from the main Sheriff's headquarters.

The Legal Advisory Unit employs several Deputy County Counsels that are assigned to work with specialized legal issues related to the Sheriff's Department including custody, court services, labor, personnel matters, department records and compliance with state and federal laws, and patrol related issues. Some of the main functions of the Legal Advisory Unit include:

“Serving as a Department liaison and providing coordination with County Counsel; Interpreting and defining the impact of newly passed legislation on Department Operations; Responding to Department telephonic requests for legal assistance pertaining to law enforcement problems encountered during day-to-day operations; conducting research projects which address Department questions on a variety of law enforcement operations; Assisting Department personnel in the instruction of sworn personnel at Department Advanced Officer Training Programs and Cadet Training; maintaining a legal library for use by Department personnel; and maintaining and updating and distributing a publication of County Ordinances relevant to the Department's law enforcement responsibilities (County of Los Angeles Sheriff's Department Legal Advisory Unit, 1999).

Even though the Legal Advisory Unit and the Risk Management Bureau are two separate entities, they work closely with one another to handle liability issues for the Los Angeles Sheriff's Department. An interview with a representative of the Legal Advisory Bureau revealed that the primary reason that the Legal Advisory Unit is located in a building outside of the main Sheriff's headquarters is because of the large size of the Sheriff's Department. The Los Angeles Sheriff's Department is the largest Sheriff's Department in the United States (Bureau of Justice Statistics, 1999).

Processing claims

Each of the specialized divisions described in the previous section play a unique role in the process of handling liability claims related to the Los Angeles Sheriff's Department. The steps in processing claims is as follows:

1. A claim is filed with the Board of Supervisors within the Sheriff's Department. The Lieutenant of the Civil Litigation Unit is also authorized to accept claims on behalf of the Board of Supervisors. This would include those situations where the Lieutenant of the Civil Litigation Unit shows up on the scene of an incident and attempts to resolve the incident by cutting a check for up to \$2,500 to cover any expenses related to the liability incident.
2. After a claim is filed with the Board of Supervisors, it is forwarded on to County Counsel (Legal Advisory Unit). At this point, County Counsel determines if the claim is related to traffic, medical liability division (Risk Management Bureau), or police liability (Civil Litigation Unit).
3. Once County Counsel categorizes the claim and forwards it to the appropriate division, a recommendation is made to either deny the claim or to pay the claim. If the claim is denied, the case will either die or turn into a formal lawsuit (depending on the decision of the party that filed the claim). If the claim is to be paid, the next decision is to determine which source of funds will be used to pay the claim.
4. If it has been determined that the claim will be paid, there are a variety of funds that payment can be taken from including the Contract Cities Liability Trust Fund or the Sheriff's Judgment and Damages Fund. Once the claim is paid, the claims process is officially over.

It is the responsibility of the Risk Management Bureau to track claims and the financial losses resulting from police-related liability incidents. The Civil Litigation Unit (which is part of the Risk

Management Bureau) manages and tracks the claims that end up resulting in civil suits filed against the Sheriff's Department. The Civil Litigation Unit can also expedite the claims process if the costs of the claim is \$2,500 or less. And finally, the Legal Advisory Unit takes on the responsibility of researching some of the claims that results in lawsuits against the Department, and also provides legal advice to members of the Sheriff's Department that are named as defendants in civil suits filed against the Department. Each of the divisions plays an important role in the processing of claims that ultimately result in lawsuits against the Sheriff's Department.

Risk management and police legal advisors working together

The unique approach taken by the Los Angeles Sheriff's Department to manage liability issues within their organization incorporates the expertise of both legal advisors and risk managers. Through interviews with employees at the Legal Unit, it was revealed that most of the employees are "cross-trained" to ensure that every case is dealt with in the most effective and efficient manner possible. Some of the members of the Civil Litigation Unit have received training in risk management. It was explained by one legal advisor that, "the program has evolved immensely over time. Today we are better organized as a Unit in regard to our workloads. Having people with multiple talents in multiple types of liability cases (in regard to dealing with certain types of liability cases, such as patrol or custody issues) allows us to spread the workload out among everyone in the department instead of just a few people with limited expertise in a specific area." In this case, a team approach seems necessary in handling the workload of police-related liability cases in the Los Angeles Sheriff's Department.

The Legal Advisory Unit works closely with both the Civil Litigation Unit and the Risk Management Unit in the Sheriff's Department. These two groups discuss strategies about how to handle certain types of cases. For example, the Legal Advisory Unit will often check with the Civil Litigation Unit about specific Department policies and procedures, and also any questions about officer training that may or may not contribute to police-citizen interactions that can result in liability claims or even lawsuits. One of the major responsibilities of the Civil Litigation Unit is to track liability cases with the use of a computerized data management system. The patterns and trends that

are generated by the Civil Litigation Unit using the data on claims and lawsuits filed against the Department is extremely useful to the Legal Advisory Unit when they are examining current cases filed against the Department. Members from both the Legal Advisory Unit and the Civil Litigation Unit agreed during interviews that this cooperative effort between the groups is an essential part of their jobs.

The specialized units that are part of the Risk Management Bureau also work with the Legal Advisory Unit. The Risk Impact Unit serves as the “research arm” of the Risk Management Bureau. It is responsible for researching police-related liability incidents in areas both inside and outside of Los Angeles County in order to create strategies to prevent similar incidents from occurring in the Los Angeles area in the future. An example of this would be monitoring how other law enforcement agencies handle volatile situations that expose officers to high levels of risk such as the riots that occurred a few months earlier in Seattle involving the WTO protesters and the Seattle police department, as well as the riots that occurred in Cincinnati Ohio after a police-shooting incident. The idea is that the Los Angeles Sheriffs Department can learn from the actions (or inactions) of other law enforcement agencies in case the situation arises later on in Los Angeles County.

The exchange of information between the Legal Advisory Unit and the Risk Management Bureau is another example of how each group works together in managing liability issues in Los Angeles. An example of this exchange of information would be identified need of improved documentation by police officers and other police personnel. The Legal Advisory Unit and Civil Litigation noticed that the Department was losing a number of use of force cases because officers were not collecting and recording all of the important information necessary to successfully win the case if it would end up in court later on. The lack of documentation resulted in the lack of proof on the part of the accused officer in the courtroom. Together Risk Management, the Civil Litigation Unit, and the Legal Advisory Unit worked together to make changes to the procedures of documenting and reporting incidents that involve any use of force by officers.

Benefits to the community

Employees of the Los Angeles Sheriff's Department identified several ways that the use of both risk management and legal advising can benefit citizens in Los Angeles County. First, both groups mentioned that a reduction in liability incidents would mean a safer environment for both citizens and police officers. By working together to identify patterns of liability in police procedures, training, or policies, both groups agreed that high-risk interactions involving both police officers and citizens could be minimized or eliminated to keep everyone involved safe. A specific example of this would be creating and implementing adequate screening intake tools used in the county jail. By using appropriate in-take tools in the jail, Department personnel can identify inmates who may need specific medical or psychological treatment during their time served in the jail. For example, cases involving the treatment of inmates with diabetes or some form of psychiatric problems were mentioned by several of the Risk Management personnel that were interviewed during the site visit. By identifying problems early on during in-take, problems that could result in injury or in some cases death can be prevented.

A second benefit expressed by Risk Management employees was that a reduction in payouts for liability claims would also mean a reduction in the use of tax dollars to make pay-outs for those incidents. This would provide a financial benefit for citizens of Los Angeles County. The growing expense of liability for the Sheriff's Department is described in the introduction of the "County of Los Angeles Sheriff's Departments Guide to Risk Management" (2001). This guide indicates that the Risk Management Bureau was implemented because of the rising costs of police liability in the Sheriff's Department, and that its overall goal is to reduce the costs associated with liability.

"The number of cases going to trial in some areas more than doubled, and total liability costs increased over 251% in three years. Between 1985 and 1992, attorney's fees and expenses for auto and general liability cases rose 923% alone. Settlements, court awards, and legal expenses for fiscal year 1991-1992 were over \$143 million, up from \$53.6 million in fiscal year 1988-1989. Of that \$134 million, \$61 million (46%) was for legal defense costs alone. Total legal defense

costs for the County of Los Angeles accounted for nearly half of all liability expenditures. These escalating costs demanded alternative solutions for containing costs of tort liability judgments, settlements and litigation. The Department realizes that it will eventually suffer some losses through litigation. At the same time, it is recognized by focusing attention on reducing risks in its daily operations, the Sheriff's Department can become a less costly and more efficient organization (County of Los Angeles Sheriff's Department Guide to Risk Management, 2001, p. A1)."

A third benefit to citizens would be an improved level of police service provided by employees of the Los Angeles Sheriff's Department. Employees of both the Legal Unit and the Risk Management Bureau expressed that there is an overall improvement of the quality of service provided to citizens since the inception of the Risk Management Bureau in 1993. It is believed by both groups that any change in department policies, officer training, and police procedures results in an improvement in service. The continuous tracking of Department losses by the Risk Management Bureau directly impacts any of the changes made throughout the organization. The changes made within the organization are believed to result in improved police services to citizens in Los Angeles County.

Impact on police professionalism and accountability

The improvement of police professionalism and accountability is a main theme that is present throughout the entire contents of the "Guide to Risk Management", which is written and distributed by the Risk Management Bureau in the Los Angeles Sheriff's Department. The risk management plan proposed by the Risk Management Bureau is based on the idea that "Departmental risk management efforts are aimed at improving the quality of our law enforcement service by making it more efficient and effective (Guide to Risk Management, 2001, p. B1)." Part of this effort is to manage risk control efforts at the unit level within the Sheriff's Department. Managing risk control at the unit level is believed to ensure accountability of all of the members working within each unit.

Programs to enhance professionalism and accountability

Two of the risk management programs used by Sheriff's Department employees are additional accountability measures created by the Risk Management Bureau. The first program, Command Accountability Reporting System (CARS), requires that each unit in the Department enter its own data (regarding use of force, collisions, shootings, illnesses, and complaints) into the CARS database system. Once the data is entered into the database system, each unit can compare its own risk issues with other units in the Department. Monthly reports containing data entered by each unit is also used to examine management performance at the unit level. This program allows each unit to be constantly aware of risk issues within their units, and can also allow units with similar risk issues to cooperatively create strategies to reduce or eliminate specific types of risk.

The second risk management program that adds to the culture of accountability within the Sheriff's Department is the Sheriff's Critical Issues Forum (SCIF). This forum meets every month to discuss crime stats, fiscal management, and CARS data base information of every unit. This meeting requires that Divisional leaders including the chief, commanders, and unit commanders come together to discuss the progress of each unit. It requires that unit leaders identify risk-related issues within their units, and also create strategies to reduce exposure to risks specific to the problematic incidents previously identified in SCIF meetings. Both the SCIF and CARS program hold each unit leader accountable for risk related issues that are unique to their divisions.

Department-wide efforts using risk management techniques

In addition to the SCIF and CARS programs, there are several units within the Department (outside of the Risk Management Bureau) that have been identified as having a significant role in risk management efforts. First, the Training Bureau is active in managing Department risks related to the recruitment, hiring, and training of all deputy sheriffs'. This also includes testing each candidate and conducting thorough background investigations. This aspect of risk management is vital to the Department because this Bureau is responsible for adequately training deputy sheriffs' in all potential high risk situations

including use of firearms, driving skills, defensive tactics, and understanding Department policy and procedures.

A second bureau within the Department that plays an important role in risk management is the Field Operations Support Services Unit. This unit is responsible for the development and coordination of training for the three field operations regions, and also the detective division. This unit conducts inspections of all training related records, as well as all jail operations records. It is also responsible for examining current patrol techniques, equipment used by deputies, and the development and dispersion of updated training videos. If there were any changes in law that would also require a change in department policy or procedure, this unit would identify and make changes to department policy and procedure to make them compliance with the law.

The Custody Division Training Unit is another unit that contributes to risk management within the Department. This unit is responsible for developing and researching job specific updated (or in-service) training for Department personnel. The enhanced training courses meet state mandated training requirements, and also are believed to enhance the efficiency, professionalism, and effectiveness of all Department personnel.

Accountability Enhancement Committee

In November of 1995, Under Sheriffs and Assistant Sheriffs in the Department sent out a memo to all Division Chiefs outlining plans to enhance accountability within the Los Angeles Sheriff's Department. The memo explained that the Department would create and implement an Accountability Enhancement Committee. The Accountability Enhancement Committee would consist of commanders that will explore various methods of reinforcing accountability within the Department, and will develop guidelines for auditing and reporting that will further enhance accountability. The memo also outlined several broad areas that should be focused on by all Department members in regard to enhancing accountability, managing risks associated with law enforcement activities, and maintaining high levels of service to the public. Some of those areas include use of force management, public complaint process, administrative investigations of personnel, discipline, and performance evaluations. The Accountability

Enhancement Committee is another way that the Los Angeles Sheriff's Department is trying to improve the culture of police accountability and professionalism within its organization.

PORTLAND, OREGON

Description of program

The Portland Police Bureau utilizes three separate groups to manage police liability involving employees of their agency. The three groups include the Police Liability Management Unit, the Risk Management Department for the city of Portland, and a Police Legal Advisor housed within the City Attorney's Office.

The Police Liability Management Unit is part of the Management Services Division in the Portland Police Bureau. This unit's primary responsibility is the management of liability and costs associated with liability incidents involving Portland police officers. More specifically, "the mission of Police Liability Management Unit is to increase citizen's and employee safety while reducing the Police Bureau's civil liability exposure and monetary losses due to civil claims resulting from Police Bureau operations and practices (Portland Police Bureau, 2000, p. 1)."

The Police Liability Management Unit employs a police liability manager, two risk specialists/claims analysts, and a fleet claims specialist. The training and experience of employees of the Police Liability Management Unit are both extensive and diverse. Some of the types of training and experience in this Unit include insurance assessment, investigation, risk and claims analysis, and law enforcement experience. One member of the Police Liability Unit contributed over 25 years of service to the Portland Police Bureau before becoming employed within the Police Liability Management Unit as a civilian employee.

All positions within the Police Liability Management Unit are responsible for any notice of tort claim and/or lawsuit alleging misconduct on the part of Bureau employees, which is filed against the city of Portland and the Bureau of Police. Some of the more specific duties of Police Liability employees include the following:

- Review and analyze tort claims to determine investigative requirements and to form initial opinions as to liability exposure.
- Perform investigative activities, including conducting interviews, site visits, photography when necessary, and obtaining additional relevant documents.
- Review and analyze claim files to ensure an investigation is complete and as thorough as possible to provide a valid judgment as to liability exposure and make effective recommendations.
- Summarize investigations results in written or verbal form to Risk Management/City Attorney along with recommendations.
- Participate in meetings for consultation regarding status, strategies, and degree of liability exposure that may exist in individual claims.
- Consult with Command Staff, supervisors, officers and/or other regarding policies, practices, or procedures, or regarding incidents that may have potential for liability exposures (includes individual counseling and in-service training).
- Review and analyze reports received from involved officers or supervisors who have concerns about liability exposure based on events as they occurred during specific police actions.
- Review and analyze documents received from Risk Management and City Attorney staff related to on-going investigations, requests for additional information and progress of claims that have entered the court process; also attending trials, conferences and hearings.

Another group that is responsible for managing police liability in Portland is the Risk Management Department. Risk Management is part of the Office of Finance and Administration for the City of

Portland. This Department is responsible for managing the liability and costs associated with loss for all city agencies in Portland, including the Portland Police Bureau. Responsibilities with the Risk Management Department can be categorized into several specialized topic areas including Liability, Loss Prevention, and Workers' Compensation.

The Liability Claims Manager works closely with the Police Liability Management Unit in its effort to manage police-related liability incidents. The Liability Claims Manager runs monthly reports that identifies any patterned problems related to police liability. At that point, the Liability Claims Manager brings this pattern to the attention of the Police Liability Management Unit. Alterations can be made to reduce or eliminate the identified liability pattern by making changes to department policies, procedures, and improved police training/re-training.

The Police Legal Advisor is another vital part of managing police liability in Portland. The Police Legal Advisor is part of the Office of City Attorney. Personnel in the Portland Office of City Attorney includes a city attorney, two chief deputy city attorneys, twenty-two staff attorneys, one project manager, six paralegal assistants, nine legal assistants/secretaries, and several people providing administrative support.

The Office of City Attorney is responsible for providing legal services to all city agencies in the city of Portland. Staff Attorneys are assigned to provide specialized legal service to a variety of city agencies, including the Police Bureau. The Attorney assigned to the position of Police Legal Advisor focuses solely on providing legal service to employees of the Portland Police Bureau.

The duties of the Portland Police Legal Advisor are numerous and diverse. The Police Legal Advisor gives pre and post-incident legal advice to the officers involved in any liability-related incidents. This includes answering questions of officers before they take part in situations that will expose them to risk, as well as preparing the officer before he/she goes into court. The Police Legal Advisor also goes to the scenes of more serious incidents that could potentially end up in court. By going to the scene, the Police Legal Advisor can collect important information that could be used in court later on, and can assess the situation to see if similar incidents could be prevented in the future by making changes to policy, procedure or training.

Another duty of the police legal advisor includes the creation and distribution of training bulletins when there are changes in law, policy, or procedures. These training bulletins are dispersed in a variety of ways including placing them in police officer mailboxes, paychecks, and during roll calls. He also teaches at the training academy, and at the advanced training level (police supervisors and managers).

An interview with the Police Legal Advisor revealed that he had prosecutorial experience, but no prior law enforcement experience. He said that he believes that this does not hinder his ability to do a good job. When he first started the job, he went to roll call so that the police officers would get to know who he was and what his purpose was in relation to their jobs. Attending roll call and doing ride-alongs with the officers also helped him learn the day-to-day operations of policing.

Another program used by the Portland Police Bureau to reduce department losses related specifically to traffic is the “Collision Review Board”. Once a month, the Board examines all collisions involving police vehicles with other vehicles, objects, or people. This board is also responsible for making recommendations to improve department fleet safety and practices. This board serves as an investigative body, and also as a “checks and balance mechanism” to ensure that police personnel involved in traffic-related incidents are treated fairly.

The Chief of Police appoints the members of the Collision Review Board. The 7-person board is comprised of sworn law enforcement representatives from each of the precincts across the city of Portland. All of them have some experience in handling issues related to auto incidents and liability. The Collision Review Board hears roughly 15-20 auto collision cases per month.

Members of the Collision Review Board get together to review the cases that have occurred over the course of the previous month. The process of hearing cases is as follows:

1. The individual involved in some kind of auto-related incident sits in front of the Board members and tells them their version of what happened involving the damage to the department vehicle.

2. Next, Collision Review Board members ask the individual questions about the incident for clarification, and to learn more specific details about what lead up to the collision.
3. The individual leaves the room while the board members discuss the incident. The board members votes on the incident to determine whether it was “preventable” or “not preventable”. They use the criteria established by the National Traffic Safety Council. The guidelines created by this Council ask the question “Did the person do everything possible to avoid the situation that has occurred?”
4. After the vote takes place, Collision Review Board members make recommendations to the individual’s supervisor or commander in regard to some kind of discipline. The individual’s supervisor can override the recommendation of the Collision Review Board, and determine punishment (if any) on their own. Some of the punishments that individuals can face includes written reprimands, counseling, re-training, days off with and without pay).

Processing claims

Any claim that is filed that involves an employee of the Portland Police Bureau goes through the following process:

1. A claim is filed with the Risk Management Department.
2. A copy of all liability claims that involve Portland Police Bureau employees are sent over to the Police Liability Management Unit.
3. The Assistant Risk Specialist logs the claims into the computer system.
4. Next, risk specialists in the Police Liability Management Unit collect all pertinent information on the claim. The information is collected from police reports (including police supervisor reports) linked to the incident, interviews with all

parties and witnesses involved in the claim, and in some cases, a visit to the scene of the incident for further investigation.

5. Once the investigation is complete, the Police Liability Unit gives the risk adjuster in the Risk Management Department a recommendation for handling the claim. The recommendation is based on any of the information collected during the investigation of the claim, and in some cases, the decision to either pay or reject a claim comes from the handling of similar claims in the past.
6. Risk Management will send out a letter to the person(s) that filed the complaint explaining that their claim has either been “denied” or “paid”.
7. The claim will “die” after being rejected by Risk Management, or it will end up in court.

There are two main financial sources that claims filed against Portland police officers can be paid from: (1) the General Fund, and (2) The Law Enforcement Medical Liability Account (LEMLA). The purpose of LEMLA is to provide a source of money “to reimburse medical providers for medical expenses incurred from injuries sustained by someone as a result of law enforcement activity. Injuries related to law enforcement activities includes any injuries sustained prior to booking, citations in lieu of arrest or release instead of booking that occurs during and as a result of efforts by law enforcement officer to restrain or detain, or take or retain custody of the individual. Examples of this would include dog bites sustained during apprehension, gun shot wounds inflicted by officer in attempt to apprehend the individual, and injuries sustained during police pursuits (Law Enforcement Medical Liability Account, 1999, pg 1-3)”. Claims are only paid out of the LEMLA account when recovery from the injured party’s insurance company fails. LEMLA is established separate from the General Fund. The LEMLA Account is funded solely from assessments added to fines and bail forfeitures, and not from any tax dollars.

Risk management and police legal advisors working together

Interviews with personnel from Risk Management, the Police Liability Management Unit, and the Police Legal Advisor revealed that collaboration efforts between all three groups is the key to effectively managing police liability in Portland.

All three groups agreed that the diversity in the training and goals of all three groups does not pose as a problem when deciding how to handle police-related claims. A Risk Management representative stated that “this is a unique situation because you have three groups that have three different agendas, but it still works out for the most part...there is a sense of balance between the three groups. Risk Management efforts to control police-related liability would not be as effective as it is today if the level of communication between all three groups was not what it is today.” He also expressed that “it was not difficult to be accepted by members of the Portland Police Bureau.” He said that he “learned more about policing operations as he has been working with the Bureau, and dealing with a wide variety of police-related liability claims over the years.” The Risk Management representative also mentioned that he works directly with the Police Legal Advisor as he assists and supports in defense against police-related claims that end up in court.

An interview with the Police Legal Advisor uncovered a perspective similar to that of Risk Management in regard to collaboration between all three groups responsible for managing police liability in Portland. He stated that “my office, the Risk Management Department, and the Police Liability Unit compliment each other because they all have the same goal: the prevention of lawsuits against the Police Bureau.”

An example of these groups working together includes representatives from the Police Liability Management Unit and the Police Legal Advisor contributing to lesson plans for various levels of police training focused on police liability. An example of this is a course titled “Civil Liability Based Upon Law Enforcement Activities” that was created and instructed by both the Police Legal Advisor and personnel from the Police Liability Management Unit. The purpose of the class is “to make police officers aware of police activities that may create liability exposure, and to provide methods make defensible police actions in litigation; to make officers more aware of

constitutional, statutes, and federal regulatory processes and procedures in civil litigation; and what to do before, during, or after an incident occurs which may create liability exposure.”

Another example of the Risk Management Department, the Police Liability Management Unit, and the Police Legal Advisor working together to manage police liability in Portland is creation of the Liability/Loss Control Committee. Liability/Loss Control Committee Team members include representatives from southeast and northeast police precincts, police legal advisor from the city attorney’s office, personnel from the training division, two employees from the Risk Management Department, and three reps from the Police Liability Management Unit.

The goals of the Liability/Loss Control Committee includes reducing claim frequency by 10%, reducing claim closure time by 25%, eliminate case backlog, reduce financial exposure by immediately responding to high profile situations, target improvements for police training based on the results of the survey’s distributed to Portland Police Officers and claim trends identified by the Risk Management Department, and attempt to increase liability awareness throughout the entire Police Bureau. This Committee is also in the process of creating a “Liability Response Team”. This team would be responsible for disposing of menial claims for smaller dollar amounts by carrying a checkbook and “cutting checks” on the scene of the incidents.

Benefits to the community

The management of police liability in Portland results in several benefits in the Portland community. The benefits identified through interviews with representatives from all three groups can be categorized as improved police services provided to citizens, and also financial management over the costs that are associated with claims and lawsuits filed against employees of the Police Bureau. Each of the three groups responsible for police liability management in Portland directly contributes to those benefits.

The Risk Management Department plays an important role in improving the quality of police services that are provided to the citizens of Portland. This is achieved when Risk Management identifies patterns in claims and lawsuits, and then works with the

Police Liability Management Unit and the Police Legal Advisor to make changes to reduce or eliminate exposure to risk situations. A Risk Management representative stated, “once police officers are informed of ways to reduce or eliminate exposure to risk, they can try to make smart decisions every day on the job to avoid becoming part of a claim or lawsuit. We monitor the financial aspect of their (the police) job and try to keep the costs down.”

The Police Legal Advisor in Portland expressed similar ideas about the benefits to the citizens of Portland that come from the management and control of police liability.

“Anything that helps the police officers do their jobs better is a benefit to the citizens of Portland. Better service can be the result of improved and advanced police training, more clearly defined department policies that are also followed up and enforced by police management within the Bureau. All of these things benefit the citizens of Portland in the long run.”

The importance of the management of police liability in regard to benefits to the citizens is described in a memo written by a representative of the Police Liability Management Unit. “There is no greater potential financial and public impact for the City than the loss of money and public faith as the result of an allegation of in improper police action. It is incumbent upon the Bureau, the Police Liability Manager, Risk Management, and the City Attorneys Office (Police Legal Advisor) to ensure that the truth about an incident be known. If there is fault (on the part of the Police Bureau) it should be admitted, and if there is no fault, the community should have access to that information.”

Impact on police professionalism and accountability

Liability management efforts by the Police Liability Management Unit, the Police Legal Advisor, and personnel from the Risk Management Department contributes to the improvement of police accountability and the level of police professionalism in the Portland Police Bureau. The importance of police professionalism and accountability resulting from liability management is evident as both items are specifically incorporated into the Bureau’s goals and objectives. The assumption

of having Bureau-wide objectives and goals is that every member of the Bureau will strive to achieve them. Thus, if liability management is part of the Bureau's stated goals and objectives, it is going to have some effect on the individual members of the Bureau that are striving to achieve the Bureau's goals.

The collaborative efforts of the Risk Management Department, the Police Liability Unit, and the Police Legal Advisor directly contribute to several of the objectives and goals outlined in the Portland Police Bureau Community Policing Strategic Plan, 1998-2000:

GOAL 3 – OBJECTIVE 3.2 – Improve Police Bureau's responsiveness to employee performance; Review and analyze trends of Bureau incidents and losses from resulting liability claims; Develop and implement policies and practices and training to control losses.

GOAL 3 – OBJECTIVE 3.6 – Improve employee training; Provide improved training to all employees; Provide specialized training to meet the needs of specific groups of employees.

GOAL 4 – OBJECTIVE 4.2 – Improve fiscal practices and policies; Ensure that budgeting and fiscal policies are aligned with the Bureau's missions and reflect the community's needs.

Some of the programs and committees that have been implemented to reduce and manage the level of exposure to risk situations also contribute to improved police professionalism and accountability within the Portland Police Bureau. One example would be the Collision Review Board. The Police Bureau requires that all police personnel be held accountable for all auto-related damages and losses, by requiring them to appear in front of the Board. This Board also contributes to increased police professionalism, as it will often require re-training as part of the discipline to those employees that cause damage and financial loss to the organization.

The Liability/Loss Control Committee represents another example of the Bureau's effort to increase police accountability through liability management. As described in an earlier section, this committee has set

goals to reduce claim frequency and closure time, eliminate case backlog, reduce financial exposure by immediately responding to high profile situations, target improvements for police training based on the results of the survey's distributed to Portland Police Officers and claim trends identified by the Risk Management Department, and attempt to increase liability awareness throughout the entire Police Bureau. By creating strategies to achieve their goals, the Bureau is reaching toward a higher level of professionalism throughout the entire organization, and is also making people become more accountable for their part in the level of liability claims that result in financial or property loss.

LAS VEGAS, NEVADA

Description of the program

The Las Vegas Metropolitan Police Department (LVMPD) utilizes both risk management and legal advising in their effort to control liability in their organization.

The Risk Management Section is part of the Office of Policy and Planning in the Las Vegas Metropolitan Police Department. Although it is officially consider part of the LVMPD, it is physically housed in city hall. At the time of the site visit, the Risk Management Section consisted of six positions, which includes both sworn law enforcement officials and civilians. A Lieutenant of the LVMPD serves as the supervisor of the Risk Management Division. There are four civilian positions that assist the supervisor in assessing who should handle the various types of cases, the processing of all correspondence, and several other administrative duties. There is also a claims investigator position that is covered by a sworn police officer.

The Deputy District Attorney (Attorney of Record for the LVMPD) provides legal services to the LVMPD. The role of the District Attorney is to defend the police department in lawsuits that deal with police procedure (such as a wrongful death suits, etc). The District Attorney also provides input into any changes that are made to department policies and officer training. A private law firm takes care of litigation involving all personnel of the LVMPD.

To assist in the management of liability associated with police vehicles, the LVMPD created an Accident Review Board. The purpose of this board is to identify, monitor, and make changes to the amount

of organizational loss resulting from damages or loss of police vehicles. The Risk Management Supervisor provided a list of the duties of the Accident Review Board. Some of the duties include the following:

- Close accident files after recovery of monies or inactivity.
- Prepare an Accident Review Board Report once a month.
- Enter all LVMPD involved accident into the computer using the “Stars system”.
- Set up claims for all LVMPD accidents.
- Act as a liaison between the LVMPD and insurance adjusters, vehicle services division, and citizen insurance companies. This includes faxing copies of requested accident reports to insurance adjusters as requested each week.
- Contact officers and command staff when LVMPD vehicles are not repaired in a timely manner.
- Process subrogations to citizen insurance companies. This includes typing letters and memos, ordering photos of accident scene and vehicles involved in accidents, obtaining insurance information, and sending packet of information to Accounting for collection of monies. Once this is completed, the payments from insurance companies are entered into the computer and the file is closed.
- Process repairs to citizens’ vehicles which includes receiving estimates of damage, requesting checks for payment of damages, typing and processing of releases for claimants, and distributing checks for repayment of damages.

The Accident Review Board is an important part of liability management for the Las Vegas Metropolitan Police Department as

it identifies patterns of organizational loss involving police vehicles, implements appropriate training and re-training of officers in regard to vehicle safety and operation, and recommends changes to department policies that outline how department vehicles should be operated and cared for by LVMPD personnel.

Processing claims

All liability claims filed with the Las Vegas Metropolitan Police Department are processed using the following procedure:

1. Claims are filed with the Risk Management Division using standardized forms.
2. Information from the liability claim form is entered into the Risk Management database. A hard copy (paper) of the claim is kept on file with the Risk Management Division.
3. Once the data from the form is entered into the computer database, the claim is assigned to the appropriate person for processing. The claim is sent to someone dealing with property claims or claims that are categorized as “non-litigation” cases.
4. Next, all of the reports related to the liability claim are collected for an investigation. The nature of the claim determines who will conduct the investigation. In some cases the Bureau does the investigations, whereas the Risk Management Division handles other types of claims.
5. Once the investigation is completed, a letter is sent out to the person/party responsible for filing the claim. The letter states whether or not the claim will be paid or denied, and also provides a brief description of why the claim will or will not be paid. If the claim will be paid, the person/party filing the claim will be required to sign a release form stating that no further action (legal) will taken in regard to the claim.
6. If the claim is denied and the person/party responsible is not satisfied with this outcome, they have the right to go forward with

legal action. If the claim is paid, and the person/party signs the release upon payment of the claim, the process is over.

A report of all claims is generated every month. The report details the numbers of claims both closed and open, a brief synopsis of any cases in litigation, a total for the money paid out each month, and a running balance of all payouts over the course of a fiscal year.

Risk management and police legal advisors working together

Through interviews with personnel from the LVMPD Risk Management Division, the District Attorney's Office, and the private law firm that handles litigation for the LVMPD, clear and effective communication was mentioned as the key factor to working together effectively. Having regularly scheduled meetings involving personnel from all three groups facilitates this communication.

Each group also mentioned that cooperation from other divisions within the police organization is also needed to maintain an effective liability management team. The Risk Management supervisor identified the Training Division, Internal Affairs Division, and Human Resource Division as valuable resources for information in regard to police liability. These groups are especially important once changes are made to department policies and procedures.

The management of liability in the Las Vegas Metropolitan Police Department is enhanced by the education and experience of the personnel working in the Risk Management Division, the District Attorneys Office, and the lawyers from the private law firm. Each of these groups recognize the importance and necessity of the other groups in order to achieve the ultimate goal - managing the exposure of risk to police officers and the costs resulting from such incidents.

Benefits to the community

The efforts of the Risk Management team, District Attorneys Office, and the lawyers from the private law firm result in several benefits to the citizens of Las Vegas. First, by making changes to police procedures and policies, a higher quality of police service is provided to the citizens. Most of the changes that are made to police procedures revolve around safety issues – for both the citizens and the police

officers. This benefit is one that citizens will see most often as they interact with LVM police officers on the streets. Second, the efforts of Risk Management keep the cost of litigation and liability claims down, which results in less money or support needed from the taxpayers. And finally, the degree of trust between police officers and citizens will increase as the citizens notice the level of professionalism that is exerted by LVM police officers.

Impact on police professionalism and accountability

The basic philosophy of the Risk Management Division is that “if something has gone wrong, we need to identify it and then fix it so that it doesn’t happen again.” Part of the process of “fixing” things that go wrong within the police organization is to acknowledge that there is a problem, and then be accountable for whatever results from the problem.

Accountability and professionalism are enhanced in the LVMPD through the use of two programs. First, the LVMPD utilizes an early intervention system that can identify patterns of officer behaviors and practices that result in the most citizen complaints, liability claims, and lawsuits. This system is one way that LVM police officers are held accountable, and also a way that the organization can monitor the level of services being provided to citizens. A second program that contributes to professionalism and accountability within the LVMPD is the Accident Review Board that was described in a previous section. This board holds every employee within the LVM PD responsible for any damages or loss associated with organization vehicles. If a LVMPD employee is identified as someone who repeatedly causes damages to vehicles, they are offered additional training or retraining to correct the problem. This program holds the employee directly responsible for their actions.

COMPARISON OF FOUR PROGRAMS

After examining each of the case study sites individually, the similarities and differences between the four programs becomes clear. The following section summarizes the similarities and differences between the organizational structures of each program, the procedures used to process claims, the various ways that risk managers and police

legal advisors work together, the benefits to the communities, and the perceived impact on police professionalism and accountability according to risk managers and police legal advisors in each of the four case study sites.

Organizational structure and location

Each of the case study sites uses a unique combination of risk management and police legal advising to manage liability within their police agencies (see Figure 6.1 on the following two pages).

As illustrated in Figure 6.1, all four case study sites have both a risk management component to handle the financial aspects of police liability, and a legal advisor or legal unit to handle the legal aspects of police liability. The difference between the programs is that risk managers and legal advisors are physically located both inside and outside of the police department. Early police legal advising literature specifically noted that police legal advisors should be housed within the police agency so that they would be readily available to provide legal advice to police personnel at all times.

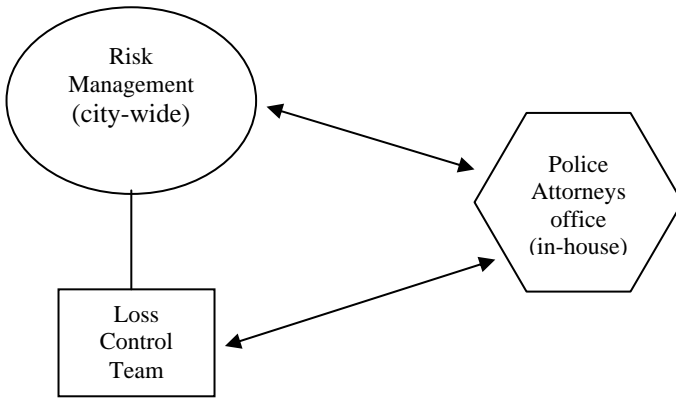
Another similarity across all four case study sites is that each program has adopted specialized units beyond risk managers and police legal advisors to assist in managing police liability. For example, the Risk Management Department in Charlotte recently adopted a Loss Control Team that focuses their efforts specifically on police-related liability issues. As noted earlier, the Loss Control Team has been focusing on reducing auto-related losses for the police department. The Risk Management Bureau in Los Angeles has also adopted a Civil Litigation Unit that focuses primarily on handling lawsuits filed against the Sheriff's Department. In Las Vegas an Accident Review Board is used to manage liability related to all department vehicles. And in Portland, they use the Police Liability Management Unit to handle all police-related liability incidents, in addition to the citywide Risk management Department and a Police Legal Advisor from the City Attorneys Office.

In conclusion, each of the four programs shares the same goal, to manage police liability within their agencies. Each agency uses a unique combination of risk management and legal advising to achieve that goal. The unique combinations result from the variety of

specialized needs of the community, management styles, and the amount of resources available in each site.

Figure 6.1
Organizational Structure of Case Study Sites

Charlotte, North Carolina



Los Angeles County, California

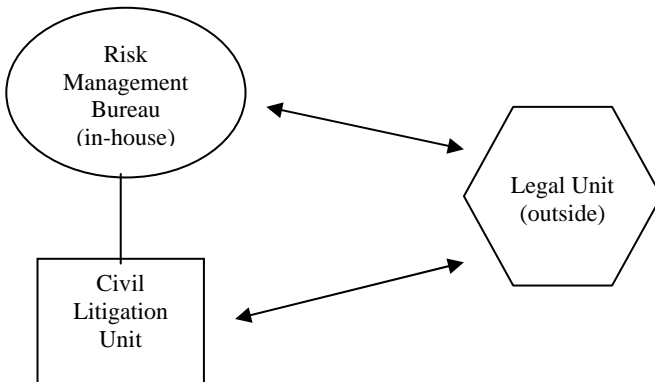
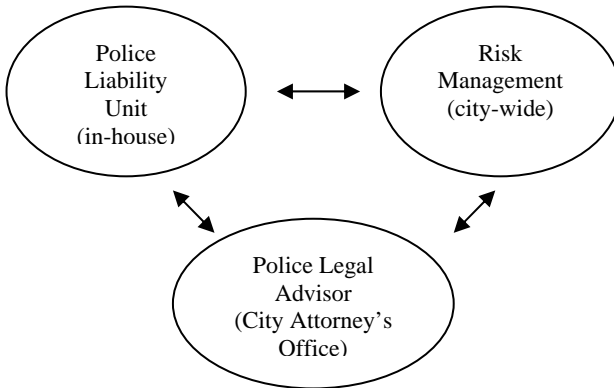
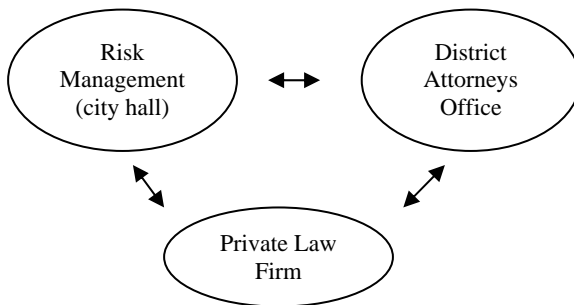


Figure 6.1 (continued)
Organizational Structure of Case Study Sites

Portland, Oregon



Las Vegas, Nevada



Claims processing

There is also variation in the process of handling claims involving police-related liability incidents. In Charlotte, Portland, and Las Vegas all claims involving police personnel are filed with Risk Management. In Los Angeles, claims are filed with the Board of Directors of the Los Angeles Sheriff's Department. Once claims are filed, an investigation has to take place. In Charlotte and Los Angeles, Risk Management is responsible for investigating all claims. In Portland, the Police Liability Management Unit investigates all claims involving Portland police officers.

The option of an expedited process for handling less serious claims is used in both Los Angeles and Charlotte. Portland is still in the process of creating a Liability Response Team that will be responsible for handling less serious liability incidents on the spot by issuing checks to cover less serious damages and injuries. The main difference in the expedited claims processes of Los Angeles and Charlotte is the dollar amount that can be issued "on-the-spot". For example, in Los Angeles, a member of the Civil Litigation Unit can issue a check for up to \$2,500, while a Risk Assessor in Charlotte can issue checks for damage and injuries up to \$5,000. In interviews, both agencies believe that the expedited claims process has saved their agencies a significant amount of money.

Working together

Risk managers and legal personnel in all four agencies expressed the importance of working together in order to effectively manage police liability in their cities. More specifically, agents in all four cities reported that frequent and continuous communication is a vital part of working together. This was an especially important thought expressed by risk managers and legal personnel in cities where they are physically located in different buildings from one another.

Another major theme that emerged from the interview data was the importance of information exchange between risk managers and legal personnel. In all four cities, claims information is collected and maintained by one agency (usually risk management), and then is shared on a regular basis with the other agencies that are involved in police liability management. In all four cities, Risk Management

personnel are tasked with collecting, managing, and analyzing claim data. They are also responsible for notifying other agents (including police legal advisors) about the identified patterns that emerge from the claims and lawsuit data. At that point, the groups work together to create strategies to reduce or eliminate police officer exposure to the identified risks.

In all four cities, risk managers and legal personnel work together to examine, analyze, and alter changes to police department policy, procedures, and training to make an impact on the level of police liability. There was a consensus among representatives from all four cities that they needed the expertise of the other group (either risk management or legal personnel) in order to be effective at making those changes. Representatives from all four sites also reported that they believe that those changes have impacted liability in their cities.

Benefits to citizens

The case study site visits also provide specific examples of ways that citizens can benefit from police agencies adopting both risk managers and legal advisors to manage liability incidents. Once again, there were similarities and differences in the benefits of using risk management and legal advising mentioned in all four case study sites.

Representatives from all four cases study sites stated that a benefit to citizens would be an improvement in police services that are provided to them. Legal advisors and risk managers in all four sites commented that their efforts result in police officers being more conscientious when they are providing services to citizens. Further, risk managers and legal advisors assert that any changes they make to police training, policies, and procedures will result in some kind of change in the services that are provided to citizens in each city.

A benefit to citizens that was mentioned specifically by Risk Management personnel in Charlotte and Los Angeles was the efficient and effective handling of the claims that are filed against the police. By handling each claim as efficiently as possible, a backlog in claims can be avoided.

“If a citizen files a claim where they were injured, they will most likely have medical bills and other bills to pay. If the City is clearly at fault in that situation, and the claim is not

handled quickly, the citizen will end up angry and frustrated. To avoid that, we try to keep the turn-around time on each claim reasonable. The turn-around time on a claim will vary according to the special circumstances surrounding the incident, the extent of injury or loss, etc....”

An important factor in handling claims efficiently depends on the resources that are available for staffing. In Portland, the importance of having adequate staffing and resources was part of a discussion on handling backlogged cases. This discussion grew out of one of the stated goals made by the Liability/Loss Control Committee.

Two of the four case study sites also expressed that by monitoring risk exposure in each city, both the citizens and police officers are living and working in a safer environment. An example of this would be how Portland, Los Angeles, Las Vegas, and more recently Charlotte, have implemented programs and committees that focus their efforts on reducing auto-related liability claims. Re-training and changing the ways that police automobiles are handled is believed to result in a decrease in auto-related incidents. This is also believed to result in a decrease in injuries to both citizens and police officers involving auto-related incidents.

Risk managers and legal advisors in all four sites also mentioned the financial benefits to citizens in interviews. Since the goal of risk managers is to reduce frequency of exposure to high-risk situations and to reduce costs associated with exposure to liability incidents, part of the goal is to save money. In all four case study sites, the financial losses of law enforcement agencies are paid either partially or in full from tax dollars. Some sites have alternative funding sources that will cover some types of loss, such as medical bills resulting from injury inflicted by police officers. But in most cities, there is a General Fund that contains money from tax revenue.

Perceived impact on police professionalism and accountability

Each of the case study sites have programs and committees set up with the goal of increasing police accountability and professionalism within each of the law enforcement agencies. Portland has recently adopted the Loss Control Team within the Risk Management Department which has one person that specifically tracks police-related claims

(currently auto-related claims). Las Vegas has a similar program that monitors loss resulting from misuse or accidents of motorized vehicles. Los Angeles also has both the Command Accountability Reporting System (CARS) and the Sheriff's Critical Issues Forum (SCIF) in place to make police personnel more aware of the importance of liability management within the Sheriff's Department.

The nature of both the CARS and SCIF programs is to make sure that there is division-level accountability for liability-related incidents involving law enforcement personnel. And finally, Portland has both the Collision Review Board (CRB) and the Liability/Loss Control Committee in place to ensure accountability on a Bureau-wide level, and more accountability for auto-related losses by Bureau employees. By having these kinds of programs in place, each agency is taking extra steps to increase police accountability specifically related to police liability issues.

Interviews with risk managers and legal advisors at all four sites also revealed that police professionalism is enhanced by their efforts in regard to police liability. All four agencies reported that they believe that any changes that they make to police department policies, procedures, and training result in increased professionalism within their police agencies. Representatives from each agency in every case study site also remarked that it would be hard to quantify or measure an increase in police professionalism.

In conclusion, the case study data provides more detailed information about the various ways that each police agency uses both risk management and legal advising in their liability management efforts. The deviation among the different types of programs is easily identifiable when each site is compared to one another. The variation in risk management and police legal advising programs reflects the differences in liability concerns in each police agency, and also the resources available to police agencies to create and implement such programs.

CHAPTER 7

Conclusions, Policy Implications, and Future Research

This chapter provides a discussion of the principal findings of the national study presented in Chapter Four. More specifically, this chapter presents the significance of the use of risk managers and police legal advisors by police agencies, some of the factors associated with the adoption of such positions within police agencies, and the perceived impact of risk managers and police legal advisors on police liability, professionalism, and accountability. This chapter also presents a discussion of the lagged adoption of risk managers and police legal advisors by police agencies since the 1960s in the context of the diffusion of innovation theory. Limitations of this study, and suggestions for future research on the use of risk management and police legal advisors by police agencies are also included at the end of this chapter.

PRINCIPLE RESEARCH FINDINGS

- **Half of all U.S. law enforcement agencies that employ 200+ sworn officers employ a person or group with legal advising and/or risk management experience to manage police liability within their police organizations.**

After making telephone contact with all county and local law enforcement agencies that employ 200 or more sworn police officers, it was discovered that exactly half of all large police agencies (177 of 354) use police legal advising and/or risk management to manage police liability. The other half of the police agencies still relies solely on local city or county attorneys to handle police-related legal issues. This finding identifies the prevalence of the use of such programs by police agencies, but also sparks an interesting discussion about assertions made in early police legal advising literature.

Early literature identifies city and county attorneys as one of several sources of resistance to hiring police legal advisors in police agencies in some U.S. cities. Both Caplan (1967) and Schmidt (1972) noted that city and county attorneys believe that providing legal services to the police is part of their job, and that by hiring police legal advisors they are creating an “overlap” in legal services provided to the police. This “overlap in service” theory proposed four decades ago could explain why half of the largest law enforcement agencies in America still rely solely on their city or county attorneys for legal advice. Additional research on the police agencies that do not employ police legal advisors or risk managers is needed to get a more complete picture of why some agencies do not use such programs.

In contrast to early literature, one third of agencies surveyed in the current study identified city and county attorneys alone, or in combination with police chiefs or sheriffs as the person(s) responsible for initiating the adoption of such programs. This finding casts some doubt on the “overlap in service” theory proposed in earlier literature. It is possible that the changes in the legal environment resulting in an increase in liability claims and civil suits against the police have left city and county attorneys overwhelmed as they also have to provide services to all other city and county agencies. Because of the increase in liability claims and lawsuits, the need for hiring police legal advisors and risk managers to help with police-related liability issues has become necessary because of the changes in the legal environment in which police officers work. In fact, adopting police legal advisors and risk managers out of necessity because of changes in the legal environment was the most common response given by police agencies in survey data used in the present study. Again, future research should focus on the other half of large law enforcement agencies that do not use risk managers and police legal advisors in order to have a better understanding of the reasons why such programs are not used by those agencies.

- **Most law enforcement agencies have implemented police legal advisors and/or risk managers out of necessity in order to respond to the changes in the legal environment.**

Survey data also revealed that most police agencies have adopted police legal advisors and risk managers because they feel that it has become necessary in order to respond to a more complex legal environment. The complexity of the legal environment was most commonly described by (1) an increase in the number of liability claims and lawsuits involving police personnel, (2) an increase in the costs associated with the rising number of liability claims and lawsuits filed against the police, (3) highly publicized police-related liability incidents that have resulted in tarnished images for their agencies, and (4) the changes in law that directly impacts police procedures.

This finding is important because it begs the question of why the adoption of risk managers and police legal advisors by police agencies has been relatively slow considering the reported changes in the legal environment in which police officers work. This point is discussed in greater detail in a later section of this chapter.

- **The chief of police or sheriff is most often responsible for initiating the adoption of risk management and police legal advising programs in law enforcement agencies in the United States.**

Almost half (48%) of the police agencies identified their Chief of Police or Sheriff as the person that initiated the adoption of police legal advisors or risk managers. This finding contradicts assertions made in early literature that identifies police supervisors, including chiefs of police or sheriff's, as a source of resistance to hiring police legal advisors (Caplan, 1967; Schmidt, 1972). Early literature explains that there can be resistance if police managers do not fully understand the function or role that police legal advisors will play within the organization (Caplan, 1967). Some police managers may view police legal advisors as a police oversight mechanism, similar to an internal affairs division. This perception is believed to contribute to the resistance of the hiring of police legal advisors in the early literature.

Results from the present study contradict the idea that police chiefs or sheriff's are major sources of resistance in hiring legal staff to help manage liability within their agencies. In most cases, it was the chief of police or sheriff that recognized an increase in liability claims and lawsuits in their own police agencies or neighboring police agencies, and then sought the expertise of risk managers and/or legal advisors as a solution to the problem. This finding is important because it suggests that police managers are becoming aware of police activities that can be unsafe for both citizens and police officers, and are also taking steps to prevent or reduce those unsafe activities. This finding also suggests that police managers are becoming more concerned with fiscal responsibility within their organizations.

- **Police legal advisors and risk managers work together with police management to alter department policies, police training, and supervision over line officers to manage officer exposure to liability risks.**

Both survey and case study data reveal that police legal advisors and risk managers work closely with police managers to create management strategies to handle police-related liability incidents. Most police managers believe that they could not be as effective handling their liability issues without the assistance of their police legal advisors or risk managers. It was reported by those same agencies that effective liability management is not possible unless there is some assistance from people with legal and/or risk assessment or insurance experience. Specialized training in law and/or risk assessment is needed in order to identify potential risks that police officers can encounter on the job, identify patterns of risks by examining old liability claims and lawsuits, and be able to keep department policies and procedures in compliance with state and federal laws.

The purpose of adopting police legal advisors and risk managers into law enforcement agencies is to maintain control over police-involved liability incidents, as well as the costs associated with those liability incidents. Police legal advisors and risk managers contribute to liability maintenance by altering department policies and police training to respond to the changes in the legal environment, and also when they identify patterns of police activities that often result in high

monetary payouts from liability claims and lawsuits. Some of the police liability literature recognizes the importance of maintaining clear department policies and training (Fyfe, 1998; Newell et al, 1992), but does not specifically suggest the assistance of police legal advisors or risk managers.

In the current study, over 80% of the agencies surveyed report that their risk managers and/or police legal advisors have a significant impact on department policies and training. Some of the examples of changes to department policies and training include changing the use of law enforcement vehicles (including police pursuits and transporting detainees), and the use of physical restraining techniques on people that are taken into custody (including the use of “hog-tying”, and placing seatbelt restraints on detainees during transportation). Every time that there is a change in department policy or procedure, there is usually some type of mandatory training or training bulletin issued to all police employees within the organization about those changes. This finding is important because it suggests that training and experience has to go beyond that of police executives in order to have effective police liability management.

- **Police legal advisors and risk managers serve both proactive and reactive roles within law enforcement agencies.**

There is wide variation in the level of reactivity and proactivity in the role of police legal advisors and risk managers in the United States. The reactive nature of their role comes from those instances where officers have already been exposed to liability risks, and as a result, claims or lawsuits have been filed against them. In those situations, police legal advisors and/or risk managers have to determine the best way to handle the financial aspects of the incidents after they have occurred. There are always going to be risks that officers will be exposed to, and that cannot be avoided because of the nature of police work. Due to the inherent risks in police work, there will always be some reactive component in the role of police legal advisors and risk managers.

The proactive nature of the role includes identifying on-the-job risks for police officers, and then creating strategies to reduce or prevent police officer exposure to the identified risks. As a result, police legal advisors and risk managers can make changes to department policies and procedures in an effort to avoid litigation or liability claims filed against them by citizens. Ultimately, the role of a police legal advisor and risk manager is determined by the individual needs of law enforcement agencies. The current study provides examples of this by featuring four case study sites that use police legal advisors and risk managers in ways that reflect the needs of each law enforcement agency.

- **Most risk managers and police legal advisors believe that they have some kind of financial impact on department costs related to police liability incidents.**

A majority (81%) of police legal advisors and risk managers believe that they have some kind of financial impact on police liability within their agencies. The survey data revealed that some police legal advisors and risk managers assumed that their position or program had some impact because of the important duties they are tasked with every day. The survey indicates that 47% of police legal advisors and risk managers assume that their input into police training, changes in policies and procedures, and being available to answer any questions from line officers and supervisors will have an impact on the financial loss of their police agencies. However, very few of these agencies maintain a formal record of this impact.

- **Most risk managers and police legal advisors reported that they do not keep records of their impact on police liability management.**

Only 38% of the police agencies that reported a financial impact on police liability stated that they keep records of their financial impact on liability claims and lawsuits. And of those agencies, only 30% reported that they actually publish reports outlining the financial impact on police-related liability claims and civil suits.

This finding on perceived financial impact is surprising given that most law enforcement agencies have to justify having specialized programs and units within their organizations that cost extra money to operate. One way to justify the employment of police legal advisors and risk managers within police agencies would be to have records of the financial impact they have on police liability. The records could also provide some kind of “proof” that such positions within police organizations are useful and necessary. These records could also help police agencies justify adding additional legal or risk management staff to help control police liability within their agencies.

Survey data also reveals that some police legal advisors and risk managers believe that they cannot measure all of the instances that they save their police agencies money. In most cases, the survey respondents commented on how it is impossible to quantify or measure those liability incidents and civil suits that are prevented because of their efforts. The problem is that those police legal advisors and risk managers neglected to mention the ways that their efforts can be measured and tracked over time to determine their financial impact on police liability incidents.

Three ways that police legal advisors and risk managers can track their financial impact on police liability within their agencies includes: (1) trend data over a specified length of time, (2) compare liability across agencies by using cross sectional data, and (3) track the rates and trends of specific high risk liability incident categories (such as use of force, false arrest, etc.). Contrary to what was reported by some surveys respondents in the current study, various evaluation research techniques could be used to track the financial impact of risk managers and police legal advisors.

In regard to trend data, some risk managers and police legal advisors in the current study reported that they could track their financial impact by examining cases and liability claims that did not reach the courtroom. Each time that police legal advisors and risk managers settle claims that do not result in lawsuits, they are saving their law enforcement agencies money by avoiding court costs, as well as large monetary settlements that are sometimes awarded to citizens by the court.

Several police legal advisors and risk managers commented that the court costs alone could be very expensive depending on the circumstances surrounding the liability incident (such as those liability

incidents that involve serious injury or even loss of life). Survey data from the current study also indicates that in most cases, settlements made outside of the courtroom result in lesser financial losses for police agencies that have been involved in liability incidents. These are examples of the way that trend data can be used to track financial impact.

Police legal advisors and risk managers could also track the number of claims and lawsuits filed against their agencies both before and after they alter department policies, procedures, and training for high-risk situations. If there is a significant decrease in the number of claims and lawsuits associated with a specific type of liability incident after changes have been made to policy, procedures, and training, it would be reasonable to assume that those alterations have at the very least contributed to the decrease in the frequency of a particular type of liability incident.

It is important that law enforcement agencies that have police legal advisors and/or risk managers on staff at least attempt to keep records of their efforts. Since police liability will always be a concern for police agencies, it will be necessary for the people that are tasked with handling police liability incidents to provide some kind of evidence that they are taking steps to manage liability within their agencies. Records would also be a good way to justify hiring additional staff to help with police liability management efforts. And finally, the records could be useful in determining some of the organizational factors that impact the probability that police personnel will be named as defendants in lawsuits.

The Los Angeles Sheriffs Department (LASD) in California provides a good example of how to track and publish the efforts of risk managers and police legal advisors in their effort to manage police liability. In June 1993, Merrick J. Bobb was appointed to be the Special Counsel to the Board of Supervisors. The Special Counsel is responsible for monitoring and reporting the progress of the LASD's efforts to make changes to their use of force against citizens, community sensitivity of deputies, and the handling of complaints filed by citizens against the LASD. Since October 1993, the semi-annual reports written by Merrick Bobb & his staff have detailed the efforts made by the LASD to improve police services provided to citizens, police accountability, and police professionalism.

Each semi-annual report provides information on the number of lawsuits and claims that were filed against the LASD, and also the various programs and training efforts implemented by the LASD to reduce the number of lawsuits and claims involving LASD employees. For example, in the 14th Semiannual Report (October 2001), Merrick Bobb identifies LASD litigation activity from 1992 – 2001. The report identifies the number of lawsuits involving LASD deputies for police malpractice, traffic, general negligence, and personnel cases. The report also indicates that use of force-related judgments and settlements have dropped from \$17 million in 1995-1996 to \$2.9 million in 2000-2001.

Each of these reports details the efforts of both the Risk Management and Legal Advisory Unit in managing police liability within the LASD. The semi-annual reports are accessible in paper form, and are also available to the public on the Los Angeles County website.

The principal findings discussed in the previous section provides a basic understanding of the prevalence of the use of risk managers and police legal advisors by large law enforcement agencies in the United States, and also provides descriptive information about the adoption, role, and characteristics of such positions within police agencies. These findings indicate that some police managers are taking steps to manage and control police liability incidents involving employees of their police agencies.

A SLOW DIFFUSION OF INNOVATION IN AMERICAN LAW ENFORCEMENT AGENCIES

A recent study by Alexander Weiss (1997) found support for the innovation of diffusion theory among police organizations. Weiss found that the degree of contact outside of police organizations impacts the degree to which police agencies adopt innovations from other police agencies. Weiss also found that an increase in litigation involving the police impacts how police executives manage their agencies. He used the example of how some cities employ police legal advisors and risk managers to help reduce police officer exposure to risks that lead to litigation. Weiss's findings contrast with some of the findings of the current study on the adoption of police legal advisors and risk managers by large law enforcement agencies.

In the current study, the diffusion of innovation theory is used as a way to understand the prevalence of the use of police legal advisor and risk manager positions in large law enforcement agencies in the United States. Even though the study presented in this book does not test any of the components of the diffusion of innovation theory, the findings of the study indicate that the diffusion of police legal advisor and risk manager positions within large police agencies has been slow over the past four decades.

By applying the basic ideas of the diffusion of innovation theory and the findings from Weiss's 1997 study to the current study, we would predict that the adoption of police legal advisors and risk managers by police agencies would have become more common in police agencies since the 1960s. We would assume widespread diffusion of such positions in police agencies because of the following factors within the social system surrounding law enforcement agencies:

- The adoption of such positions were recommended by important national criminal justice commissions including the 1967 President's Commission on Law Enforcement and the Administration of Criminal Justice, and the 1973 National Advisory Commission on Criminal Justice Standards and Goals.
- In 1973, the American Bar Association stated the importance of adopting police legal advisors within police organizations to deal with changes in the legal environment in a publication titled, *Standards relating to the urban police function*. O.W. Wilson (1963) also discussed the importance of having a police legal advisor within law enforcement agencies in his text, *Police Administration*. Both pieces of literature note the changes in the legal environment as the primary reason that police legal advisors should be adopted into police agencies.
- The services of police legal advisors and risk managers have become necessary because of the complexity of the legal environment in which police officers work. Some of the changes in the legal environment have resulted from court case outcomes that have changed police procedures (such as *Miranda v. Arizona* (1966), *Mapp v. Ohio* (1961), *Escobedo*

v. Illinois (1964), *Tennessee v. Garner* (1985)). In addition, citizens have become more litigious in regard to the police since the 1960s. There is evidence of this in the increased number of lawsuits filed against the police since the 1960s (Franklin, 1993; Kappeler, 1997, 2001; McCoy, 1987), as well as increasing monetary payouts by police agencies for settlements in liability claims and lawsuits.

- Weiss (1997) found that police agencies often borrow innovations and programs from other law enforcement agencies. Additionally, Weiss found that “the more risk averse the organization (police), the more likely it would be to engage in peer emulation, and indirectly, be more innovative” (Weiss, 1997, p. 305). Weiss explains this finding by describing how an increase in litigation involving the police impacts how police executives manage their agencies. He uses the example of how some cities are beginning to employ police legal advisors/units and risk managers to help reduce exposure to risks.

Findings from the current study are not consistent with the diffusion of innovations theory or the findings of the 1997 Weiss study, as only half (177 of 354) of the largest police agencies have adopted police legal advisors and/or risk managers since the 1960s. The diffusion of innovations theory would have predicted that this innovation would have diffused much quicker because of the level of importance that was placed on such positions by groups within the social system, and because of the identified changes in the legal environment in which police officers work (including changes in law and increased litigation involving the police). Additional research on this topic is needed to determine why the other half of the largest law enforcement agencies in the United States does not employ risk managers and/or police legal advisors.

Possible explanations for slow adoption

Some of the findings from the current study and early police legal advising literature provide possible explanations for the slow adoption of risk managers and police legal advisors by police agencies since the 1960s.

Lack of standardized training and resources for positions

One possible reason why police legal advisors and risk managers have not been adopted as quickly by law enforcement agencies in the United States could be the lack of formal training opportunities. Currently, there are no formal police legal advisor training programs that are affiliated with law schools or universities that offer instruction specifically geared toward police liability issues (Goldstein, 2001, and Schmidt, 2001).³ Throughout the 1960s and 1970s, there were formal legal advising programs offered both at Northwestern University and at the University of Wisconsin Law School. Both programs had dissolved by the mid 1970s because of the dissipation of resources and funding provided for those programs.

Today, there is only limited training available for police legal advisors through professional associations, such as the International Association of Chiefs of Police (IACP) Legal Section, which offer only periodic training seminars on police civil liability issues.⁴ Similarly, risk management training specifically directed at law enforcement liability and exposure to risk are only available through seminars presented by professional speakers. Risk Management seminars last anywhere from eight hours, up to two or three days. There is no standardized training that results in some kind of certification or degree in risk management aimed specifically at law enforcement issues. Future research should examine the content of the training that is offered by the professional associations.

³ Telephone interviews with both Herman Goldstein of the University of Wisconsin-Madison, and Wayne Schmidt of the International Association of Chiefs of Police in 2001.

⁴ Revealed through telephone interviews with Herman Goldstein and Wayne Schmidt, and also through exhaustive searches on the Internet (specifically websites geared toward law enforcement personnel).

The lack of formal police legal advising and risk management training that results in certification becomes obvious when you attempt to locate such training programs on the Internet. For example, www.officer.com serves as one of the most comprehensive websites for law enforcement practitioners on both a national and international level. This website provides no information on formal risk management and police legal advising training. It would be difficult for police agencies to adopt such programs if training is not easily accessible.

The lag in adoption of police legal advisors and risk managers by police agencies could also be the result of a lack of resources or funding available for such positions. Other law enforcement programs, such as community oriented policing, have government grants readily available for police agencies that are interested in implementing these kinds of programs. Perhaps legal advisors and risk managers would be more common in police agencies if financial resources were available to them to contribute to the costs of adopting such programs.

Lack of information on the role and benefits

A second possible explanation for the lag in adoption of police legal advisors and risk managers by police agencies would be the lack of available information or literature on the topic. If police scholars and practitioners are not researching or writing about police legal advising and risk management, there is not going to be any type of manual or “how-to” guide that explains the benefits of having such programs, or how to proceed in setting up such a program within police agencies. The lack of information available on risk management and police legal advising is apparent as the topic is not discussed in most of the leading textbooks on police administration and management. In the texts where the topic is mentioned, it is usually in relation to the specific types of liability incidents related to police work, not in the context of liability management or risk assessment within police organizations.⁵

⁵ A scan of the table of contents of ten leading police management and police administration textbooks revealed that risk management and police legal advisors were not mentioned as an important part of modern police management. This observation is important because it reflects the lack of information available for police practitioners.

The lack of available information to police managers also became apparent during initial telephone interviews conducted with police personnel for the current study. Most of the police agencies that already have risk managers or legal advisors in place wanted to know how other police agencies use risk managers and police legal advisors to manage liability within their agencies. Some of the police agencies that do not employ risk managers or police legal advisors were interested in the results of this study in case they decide to adopt a risk manager or legal advisor in the future. The current study serves as the first step at filling the gap in the literature available to both police practitioners and scholars on the use and perceived benefits of risk managers and police legal advisors in police liability management.

“Overlap in services” theory

A third possible explanation for the lag in the adoption of police legal advisors and risk managers is the “overlap in service” theory mentioned in early legal advising literature. Literature from the 1960s and 1970s identifies city or county attorneys as a source of resistance to hiring police legal advisors. The literature explains that some city/county attorneys believe that providing legal services to police agencies is part of their job, and therefore, employing police legal advisors is unnecessary (Caplan, 1967; Schmidt, 1972).

In the current study, telephone interviews revealed that exactly 50 percent of all of the largest law enforcement agencies in the U.S. still rely on their city/county attorneys for legal services. This finding could mean that the half of police agencies that do not employ police legal advisors or risk managers do not because they believe that their local city or county attorney already provides those services to the police. As stated earlier, future research on this topic should explore the reasons why half of the largest police agencies in this country do not use police legal advisors or risk managers to manage their liability issues.

All three of the possible explanations of the slow adoption of police legal advisors and risk managers by police agencies in the past four decades are based on assertions from earlier police legal advising literature, and from some of the findings from the current study. In order to get a better understanding of why some large police agencies

have not yet adopted police legal advisors and/or risk managers, additional research is necessary.

CONTRIBUTION TO POLICE LIABILITY LITERATURE

Police scholars and practitioners have not examined the topic of police legal advisors and risk managers in police liability management in several decades. A review of the police liability literature presented in Chapter Two reveals a void in the literature on the use of risk management and police legal advising by police agencies in the United States. In fact, there has never been any empirical exploration of the use of both risk managers and police legal advisors by law enforcement agencies. The study presented in this book serves as the first empirical exploration of the use of both police legal advisors and risk managers by law enforcement agencies to manage police liability.

Descriptive information on the use of police legal advisors is sparse in existing police liability literature. Dating back to 1966, there have been less than ten articles and books that focus specifically on police legal advisors. Of these few books and articles, only one article (Bancroft, 1966) attempts to explore the prevalence of police legal advisors. It is important to note that Bancroft's 1966 study was a general study of police management strategies in which he only included two survey questions on the use of police legal advisors. All other early police legal advising literature is not based on any kind of empirical research or evaluation. The study presented in this book updates the prevalence of the use of police legal advisors by law enforcement agencies, and also provides detailed information on reasons for adoption, some of the roles and characteristics of police legal advisors, and the perceived impact of such programs on police liability, professionalism and accountability.

Literature on the use of risk management by law enforcement agencies is even more scarce than police legal advising literature. To date, there has only been one book and six magazine and journal articles written by professionals that have experience working with risk management in law enforcement agencies. It is important to note that the published books and articles are not based on any data collection or analysis of data from police agencies. The current study is the first of its kind on the use of risk management by police agencies as a police liability management tool. This study serves as the first step in filling

the gap in the police liability literature that focuses on the way that police organizations try to manage police liability involving their employees.

IMPLICATIONS FOR PROFESSIONAL PRACTICE AND APPLIED SETTINGS

In addition to filling the void in the academic literature on police liability, the study presented in this book can also serve as an informative resource tool for police managers, city/county attorneys, risk managers, and various other city/county agents that are interested in learning about an alternative way to manage police liability. The present study provides descriptive information on how risk managers and/or police legal advisors are used as liability managers within police organizations, and the perceived impact and benefits of legal advising and risk management programs. This information could be valuable to police managers that are trying to figure out how to deal with police liability incidents. The case studies presented in Chapter Six provide four ways that police legal advisors and risk managers can be used in police liability management efforts.

The findings from this study suggest that adopting risk managers and police legal advisors to manage police liability can contribute to creating a culture of accountability and professionalism within law enforcement agencies, as well as more effective police management. Future research on police legal advisors and risk managers could examine the ways that such positions contribute to the culture of police accountability and professionalism within law enforcement agencies.

LIMITATIONS OF THE PRESENT STUDY AND SUGGESTIONS FOR FUTURE RESEARCH

There are several limitations to the study presented in this book. Several suggestions for future research emerge from the limitations identified in the present study.

First, the perceived impact of police legal advisors and risk managers on the costs resulting from police liability claims and lawsuits, benefits to citizens, police accountability, and police professionalism presented in this study are based solely on the information provided by police legal advisors and risk managers. It is

possible that the police legal advisors and risk managers only provided the information that reflected them in a positive light. Future research should evaluate the impact or effectiveness of risk managers and police legal advisors on police liability. Evaluation-based studies could be conducted as longitudinal studies in one or a few sites, or a comparison of several sites could be useful in measuring the effectiveness or impact of such programs in police agencies.

A second limitation of the present study would include the lack of generalizability of the findings from the case study analysis. The original purpose of including case study analyses in this study was to provide three examples of the ways that risk managers and police legal advisors are used in law enforcement agencies to control police liability. The addition of more case study site visits to other police agencies that use risk managers and police legal advisors would strengthen the case study portion of the current study. In addition, the case study portion of this study does not include an evaluation of each program. Future research could focus on evaluations and assessments of the use of police legal advisors and risk managers in each of the case study sites.

A third limitation of the current study would be that the number of returned surveys (53 of 177 or 29.94%) was too low to conduct any type of statistical analysis. Since the present study is exploratory and qualitative in nature, the original purpose of the surveys was to acquire descriptive information about the characteristics, use, role, and perceived impact of police legal advisors and risk managers on police liability. Future research on this topic should attempt to include survey research that uses more than 53 of the 177 agencies that utilize police legal advisors and risk managers. In addition, surveys could be sent out to the other 177 agencies that do not use police legal advisors and/or risk managers in order to compare organizational characteristics of police agencies that use and that do not use such programs in their liability management efforts.

A fourth limitation of the present study is that no information was collected on the reasons why the other half of law enforcement agencies (177 of 354) do not use police legal advisors and risk managers. Future research should include the reasons why the other half of the largest law enforcement agencies in the United States does not employ police legal advisors or risk managers. In addition, future research could also compare the effectiveness of police liability

management in law enforcement agencies that use and that do not use the expertise of police legal advisors and risk managers in liability management.

CONCLUSION

The study presented in this book serves as a good starting point for studying the use of police legal advisors and risk managers in an effort to reduce police liability in some of the largest law enforcement agencies in the United States. By contacting some of the largest law enforcement agencies in the country, this study revealed the prevalence of the use of risk managers and police legal advisors in the United States. This study also provides descriptive accounts of the use, perceived impact, and benefits of such programs within four law enforcement agencies. Police liability will continue to be a heavily discussed topic by police scholars and practitioners in the future. Future research on police liability should focus on programs and management techniques that can aid police managers in their efforts to manage and control liability within their agencies.

APPENDIX A

Survey Instrument

The Use of Risk Management (RM) and Legal Advising (LA) Programs by Police Organizations

****Please read and respond to each of the following questions. Each question will refer to risk management and legal advising programs with the phrase “RM/LA”.**

SECTION I – Origin and history of your program

What year was your risk management/legal-advising (RM/LA) program implemented?

Briefly explain *why* your RM/LA program was implemented. (For example, a controversial incident resulting in civil suit).

Explain *how* your RM/LA program was implemented. (For example, ordinance, initiative of police personnel, executive order, etc.)

Which person or group of people *initiated* the implementation of your RM/LA program? (For example, Mayor, Police Chief, City Attorney, etc.)

Is your RM/LA program modeled after another RM/LA program in another city? If “yes”, which program?

Does your RM/LA program use a computer database system? If “yes”, please describe the computer system. (For example, names of software packages, etc.)

Has your RM/LA program changed since it was first implemented? If “yes” please briefly explain any changes that have occurred.

SECTION II – Characteristics of the RM/LA program

What is the official title of your RM/LA program?

What is your official title/position within the RM/LA program?

How many people are employed in your RM/LA program? (Including both clerical and professional positions)

What types of training, education or certification do you and others in your department have?

(For example, law degree, risk management training, police training, college degree, etc.)

Is your RM/LA office housed within the police department, or elsewhere?

If “no”, please indicate which of the following locations best describes the location of your office:

___ Mayors office

___ Independent office

___ City attorneys’ office

___ Other: If other, where?

Is your RM/LA program used exclusively for the police department, or does it cover other agencies within the local city government?

If your program serves other agencies, please list the other agencies that your RM/LA program covers.

SECTION III – Role of the RM/LA program

Does your RM/LA program suggest changes to the police department in regard to their **policies** to prevent or reduce civil suits and citizen complaints against the police? If “yes” please provide examples of changes in policies.

Does your RM/LA program suggest changes to the police department in regard to **police officer training** (academy, FTO, or in-service training) to prevent or reduce civil suits and citizen complaints against the police?

If “yes” please provide examples of changes in training.

Does your RM/LA program impact change in the way that **police supervisors** oversee line officers? If “yes” please provide examples of the changes in police supervision over line officers.

Does your RM/LA program impact promotion decisions within the police department? If “yes” please provide examples of changes in promotion. (For example, promotions for those officers that have had none of few complaints or civil suits filed against them, etc...)

SECTION IV – Impact of RM/LA program on police departments, individual police officers, and other local city government agencies

In your opinion, has your RM/LA program reduced the amount of payouts to citizens as the result of civil suits? Discuss how your RM/LA program has reduced police department pay-outs.

What type of data/documentation does your RM/LA program keep to track the impact or progress of your program?

Does your RM/LA publish annual or quarterly reports on its progress? If so, who or departments receive the reports?

Does your RM/LA program collaborate with other local agencies (such as social services, citizen oversight agency, insurance companies, etc....) in an effort to reduce costs of the police department? If “yes”, please describe the collaboration with other local agencies.

Is there a civilian oversight agency for the police in your city? If “yes”, please explain how your RM/LA program collaborates with the civilian oversight agency.

***If you have any supplemental information, such as annual reports, operations manuals, formal descriptions of your program, etc....please feel free to mail them to Carol Archbold’s university address on the cover letter. Any additional information is appreciated.

APPENDIX B

Telephone Interview Questions

1. What person(s) or group is responsible for liability management in your police agency?
2. Does your police agency use risk manager(s) or police legal advisor(s) in its effort to control liability involving police personnel?
3. If risk managers and/or police legal advisors are used by your agency, how do these positions fit into the police organizational structure?
4. Could you provide me the name and phone number of the risk manager and/or police legal advisor employed by your agency?

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