

The California Command College Class XV

The Impact of Civil Liability on Law Enforcement by the Year 2002

An Independent Study Project
Submitted to
The Commission on Peace Officer Standards and Training

By

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This Command College Independent Study Project is a FUTURES study of a particular emerging issue in law enforcement. Its purpose is NOT to predict the future, but rather to project a number of possible scenarios for strategic planning consideration.

Defining the future differs from analyzing the past because the future has not yet happened. In this project, useful alternatives have been formulated systematically so that the planner can respond to a range of possible future environments.

Managing the future means influencing the future--creating it, constraining it, adapting to it. A futures study points the way.

The views and conclusions expressed in the Command College project are those of the author and are not necessarily those of the Commission on Peace Officer Standards and Training (POST).

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Section One:

A Futures Study

INTRODUCTION

"Those who run police departments are going to have to make some major changes, or else we are going to get very rich!"

These are the words of John C. Burton, a plaintiff's attorney in the field of police civil liability.(1) He was referring to the growth industry in the field of police civil liability.

Municipalities are perceived by many attorneys to be some of the "deepest pockets" in their quest to obtain judgments for their clients. Daily newspapers and legal reporters are indicating that damage awards continue, at times with significant difficulty to the paying agency. Los Angeles County Supervisor Michael Antonovich has said, "Los Angeles County taxpayers are drowning in a sea of lawsuits." Antonovich noted that during this year's budget crisis, the entire shortfall in the Sheriff's Department could have been offset by the costs of civil litigation in 1991.

Imposing civil liability on municipalities for the unconstitutional acts of police officers is one action that the federal government has taken to prevent municipal police officers from violating the constitutional rights of citizens, under Title 42, United States Code, Section 1983. Section 1983 prohibits any person acting under color of state law from violating the federal constitutional rights of a citizen. The United States Supreme Court has ruled that municipalities can be sued under the provisions of section 1983 if the injuries complained of were inflicted pursuant to a government "policy or custom".(2)

With the high level of publicity about federal civil rights actions against police officers, such as with the Rodney King

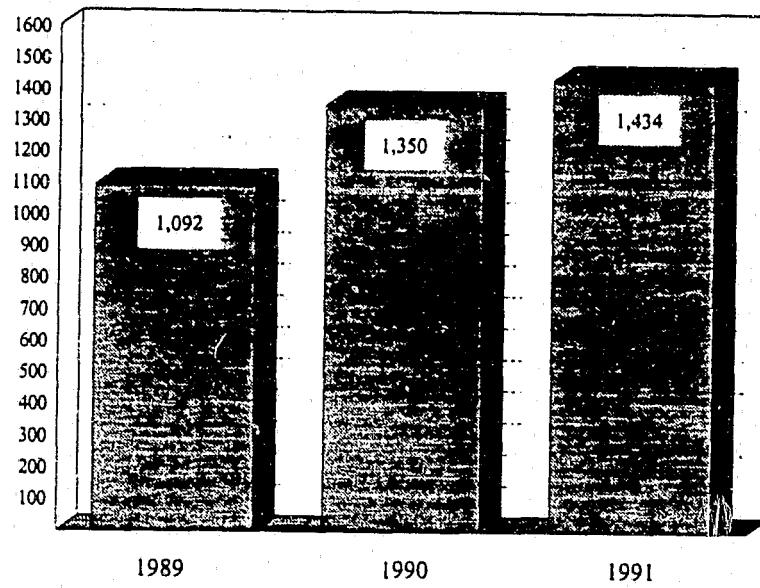
incident, it should not be forgotten that these occupy only one segment of the police civil liability field. Common-law torts, as defined by the California Appellate and Supreme Courts, are just as significant for the risk of liability to which they expose police agencies.

The potential liabilities are as varied as the daily activities of a modern police department; just a few examples run the gamut from ordinary motor vehicle accidents, to collisions in high speed chases; for negligent use of excessive force, to the failure to protect victims of crimes; and from delay in responding to emergency calls, to sexual assaults by police officers.

Many police agencies are finding that claims and lawsuits against them are increasing. For example, claims against the Los Angeles Sheriff's Department have increased from 1,092 in 1989 to 1,434 in 1991.(3) This is an increase in claims filed of 31% in only two years.

Table I

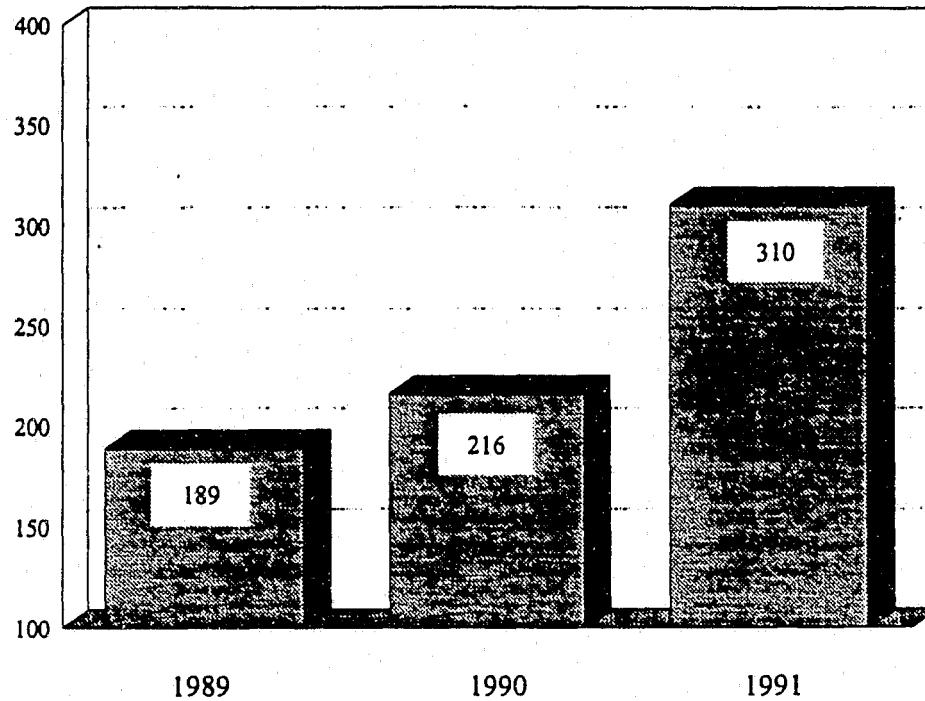
Claims Against
Los Angeles County Sheriff's Department



Secondly, lawsuits have risen some 64% over the same period of time. If these trends continue, the eventual cost to the county could exceed any reasonable ability to pay damage awards and still continue providing vital services.

Table 2

Lawsuits Against Los Angeles County Sheriff's Department



The Los Angeles County Sheriff's Department is not the only agency to experience such an increase in claims and legal actions. Fontana Police Department is a midsized police department located in San Bernardino County. In the six months following the arrest of Rodney King, the number of allegations of police brutality

against Fontana Police Department doubled. Mike Sokol, the Risk Manager for Fontana, said, "Everybody thinks it is the newest lottery."(4) Gordon Davis, General Manager of Independent Cities Risk Management Authority, has also expressed that he feels the current status of police civil liability is like a lottery system.(5)

George Felkenes, a Criminal Justice Professor at the Claremont Graduate School, offered three explanations for the trend of increased allegations and claims against police officers;(6)

- 1) People are more aware of their rights.
- 2) They are more aware they may have been treated improperly.
- 3) Attorneys may be more prone to represent people who claim to have been mistreated.

Indeed, in the past, lawyers who initiated lawsuits against police agencies were not deemed worthy of much attention in the public eye. Recently, they are given almost celebrity like notoriety. They have public sentiment and media attention, complete with news conferences and photographers, running in their favor.

Not all police agencies have seen an increase in the number of claims and lawsuits against them. Until the Rodney King incident, the number of law suits against the Los Angeles Police Department had declined steadily since 1987. Tom Hokinson, Managing Assistant City Attorney for the City of Los Angeles, attributes the decline to awareness among Los Angeles Police of civil liability risks, and the increased judgments. Hokinson

also feels that the likelihood of punitive damages being a substantial amount gave reason for officers to avoid liability risks.(7) However, the stinging reality is that while the number of claims and lawsuits may be down 1,296 in 1977 compared to 1,124 in 1991, juries are granting much higher damage awards, \$400,000.00 in 1977 compared to \$14,700,000.00 in 1991. (8)

Table 3

Claims and Lawsuits Against
Los Angeles Police Department

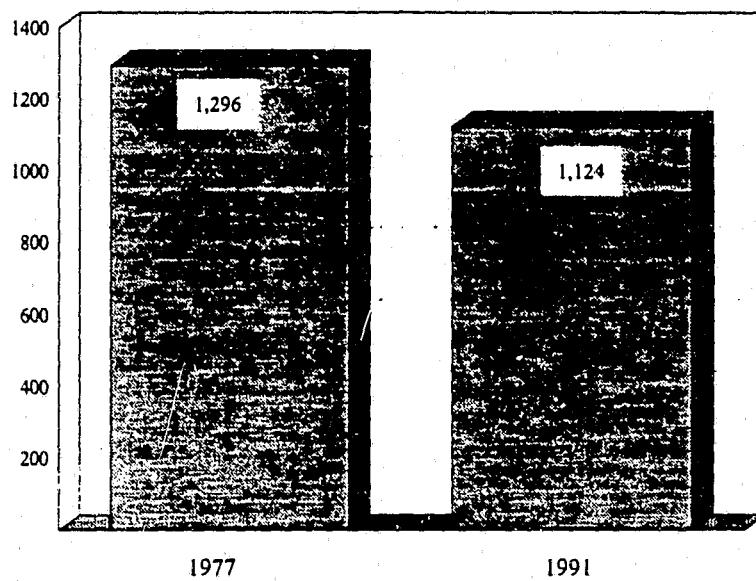
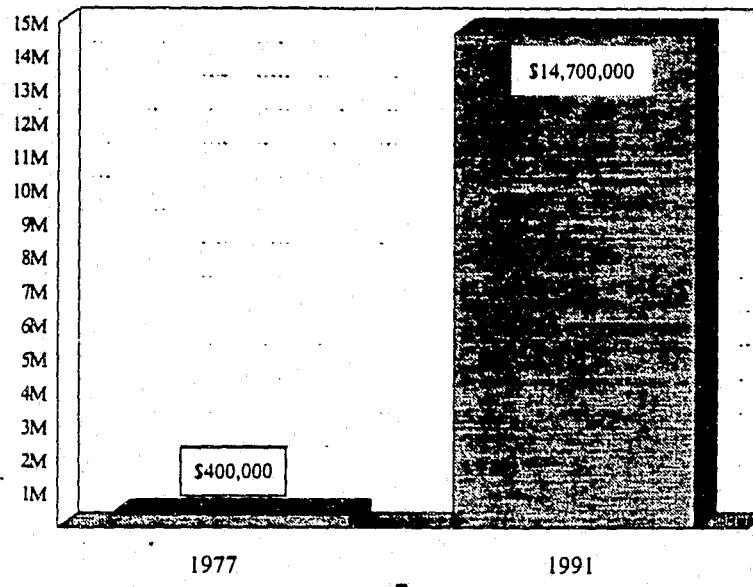


Table 4

Judgments Against
Los Angeles Police Department



And juries are finding in favor of plaintiffs much more than in the past. Attorney Hugh Manes took his first excessive force case to court in 1958. He lost, of course. "No one ever won in those days," Manes says.(9) The dean of the police defense bar in Southern California, George Franscell, had been winning police misconduct cases for 30 years. Now he refers to that era in the past tense when he says, "Winning was a piece of cake."(10)

Steven Manning, another police defense attorney in Los Angeles, has said the first brutality cases his firm ever lost came after the King beating, and he feels this case could have been won at another time.(11) Juli C. Scott, Chief Assistant City Attorney in Burbank, notes that certain preconditioned negative attitudes towards police officers among jury members have always been expected. In the past, they were based more on fear of the uniform or gun, or having received a ticket they didn't feel they deserved. Today, Scott believes this attitude seems to attach to the fundamental credibility of every police officer who testifies.(12)

Nationwide, litigants are hoping to strike it rich with lawsuits against police agencies. In 1990, The International City Management Association (I.C.M.A.) and the Wyatt Company conducted a nationwide survey. One of the findings pointed out that demands for settlement were 50 times greater than the median settlement.(13) Clearly police professional liability cases are viewed by many as having big award potential.

Most times, cases do not turn out to be as financially rewarding as the plaintiffs may have hoped. The I.C.M.A. and Wyatt Company survey revealed that nationwide, 75 percent of all settlements are below \$10,000.00.(14) Collectively, those "nominal" awards can create economic problems. The City of Los Angeles budgets \$6.5 million for awards under \$15,000.00.(15) A major reason being, under 42 United States Code, Section 1988, lawyers who win civil rights cases may petition courts for reasonable fees as part of their costs.

The amounts paid in settlements in verdicts constitute only a fraction of the actual cost incurred in connection with police civil liability, because of the high cost of defending these cases. In addition to the amount paid out for settlement, there is the cost of defending the lawsuit prior to settlement, including the cost of defense attorneys. In some cases in which damages are sought against individual members of a department, there is additional cost of separate counsel to represent those individuals. Other defense costs include court costs, expert witness fees, and the cost of private investigators.

Retired Los Angeles Chief of Police Daryl Gates has summed up the situation, saying, "It's a growth industry. Lawyers are getting rich, and the public - you're robbing yourselves."(16)

Training courses have been particularly responsive to the question of decreasing or preventing conduct that creates liability. A research panel believed training for police officers has increased 25% over the last five years, and forecasted a 100% increase still to come in the next five years,

for the primary reason of avoiding civil liability.(17) However, repetitive court claims seem to indicate police administrators have not been able to stop the improper behavior that leads to tort damages. Some persons believe they haven't tried. Even George Franscell, known informally as "a cop's best friend", says, "The time has come for police administrators to realize that if there is improper front line supervision, those supervisors should be disciplined. Yet discipline of front line supervisors nationally is practically nonexistent."(18) Segments of the public have been calling for civilian review and involvement in police management. They are now aided by the continual civil judgments against the police.

IDENTIFICATION OF ISSUE AND SUB-ISSUES

The issue and sub-issues emerged after monitoring various related trends and events throughout 1991, from different media and professional journals and periodicals, such as daily newspapers, news magazines, The Police Chief, Law and Order, California Peace Officer, The Law Enforcement Liability Reporter, and the Daily Journal. The issue identified for study in this research project is:

WHAT WILL BE THE IMPACT OF CIVIL LIABILITY ON LAW ENFORCEMENT BY THE YEAR 2002?

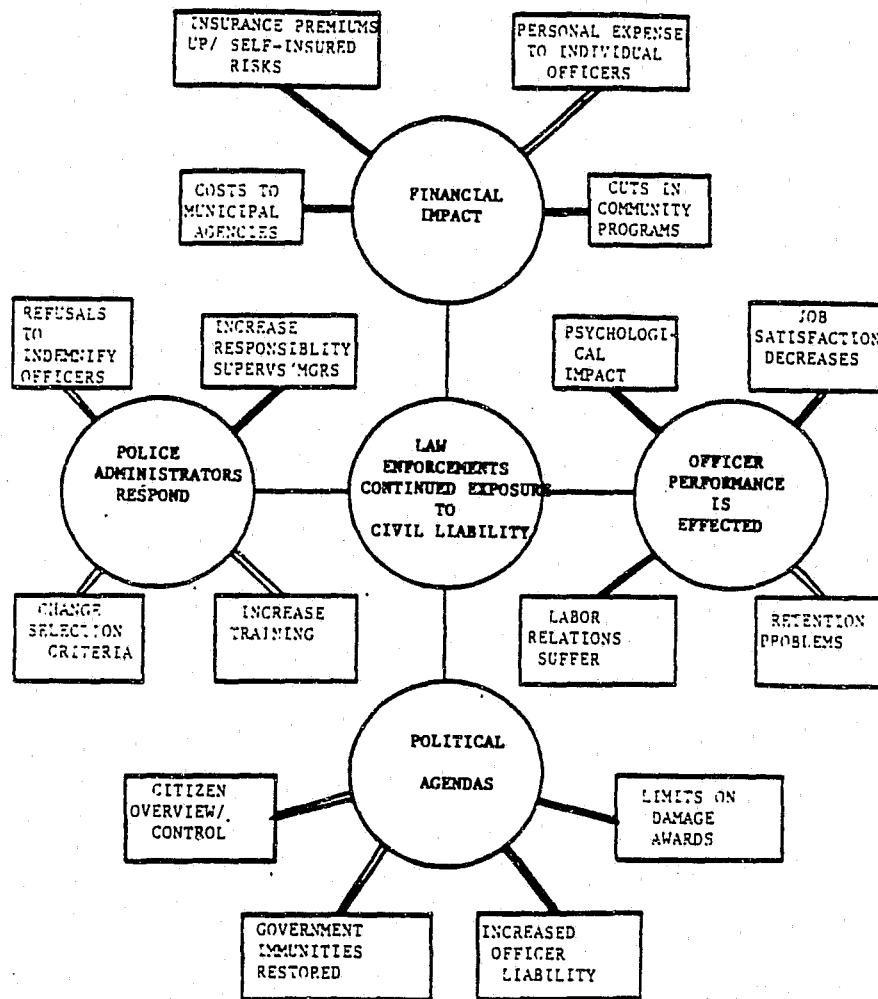
Discussions with colleagues, consultants of the Commission on Peace Officer Standards and Training (Post), and legal practitioners helped to identify and expand the following sub-issues, in order to further refine the study process and to more clearly define the parameters of research:

1. What are the political agendas of individuals and groups connected to the civil liability process?
2. What policy and procedural changes will police management make?
3. What changes will occur in the performance and behavior of police officers?

To further clarify the study, a "Futures Wheel" was developed to focus the issue. A Futures Wheel aids in recognition of impacts and relationships of the related issues. Placing the critical issue of Law Enforcement Exposure to Civil Liability in the center of a wheel, one can visualize and place,

relevant second and third level issues in a relational framework. It also provides a perspective on the impact of the specific issues under consideration.

TABLE 5
FUTURES WHEEL



The issues and sub-issues were recognized for their potential influence on efforts towards tort reform and police agency effectiveness. This was completed through independent research in the form of literature review, as well as input from

colleagues at El Monte Police Department, including Assistant Chief Peter Mireles, Captain Bill Ankeny, Lieutenants Jack Coleman, Ken Jeske, and Craig Sperry, Sergeant Ken Alva, and past president of the El Monte Police Officers Association, Ed Pawasarat.

This issue of the impact of civil liability affects all law enforcement agencies within California, regardless of size. In regard to some of the related trends and events, smaller agencies may be affected later and may have the luxury to follow the lead of the larger departments. But some trends and events will tend to affect the smaller agencies sooner, such as financial difficulties and the threat of bankruptcy. This is why the smaller and midsize departments should not wait to see what larger departments are doing. Because large departments are being politically strangled, George Franscell believes they will not be setting the pace in techniques to avoid civil liability. Franscell thinks innovation and change will come from small and midsize departments.(19)

IDENTIFICATION OF TRENDS AND EVENTS IMPACTING THE ISSUE

After defining the issue and sub-issues, a seven member panel of individuals with various backgrounds related to the issue was convened. Members of the panel were from the City of El Monte and included Pete Mireles, Assistant Chief of Police, Captain Bill Ankeny, Lt. Jack Coleman, Lt. Chuck Fullington, Debbie Turner, Coordinator of "New Directions" program for the El Monte City School District, Marv Cichy, Assistant City Attorney, and Matt Weintraub, Assistant City Administrator. Following a discussion of the issue and sub-issues, a Nominal Group Technique (NGT) was used to identify trends and events relative to the issue of what impact civil liability will have on law enforcement by the year 2002. NGT is a small-group technique for achieving agreement on the answer to a single, usually complex, question by a process that alternates individual work and open discussion. NGT includes the individual generation of ideas in writing, a round-robin recording of ideas, a serial discussion to clarify ideas, a preliminary vote on items, discussion, and a final vote on selected items.

TREND IDENTIFICATION

The NGT panel first identified twenty-one related trends. Appendix - page 96. The panel next voted privately and individually in a process to prioritize and narrow the trends to the five most important, in light of their value for study with relation to the issue. The top five trends selected are:

T-1 AMOUNT OF TRAINING FOR LAW ENFORCEMENT PERSONNEL -

Traditionally, administrators and risk managers seek to avoid civil liability by an increased emphasis on training.

T-2 FREQUENCY OF OFFICERS PROACTIVE ENFORCEMENT EFFORTS -

Faced with increasing scrutiny, officers may seek to avoid administrative and even criminal sanctions by reducing their number of high risk contacts.

T-3 LEVEL OF COMMUNITY BASED POLICING - Police

administrators attempt to be responsive to community demands and interests by instituting a change in the delivery of police services towards community oriented policing.

T-4 CONCERN FOR PROPER PERSONNEL SELECTION -- More time and effort is placed on screening applicants with a purpose toward avoiding future liability by eliminating high risk characteristics, including propensity for violence or volatile temper.

T-5 INTERPERSONAL SKILLS AS CRITERIA FOR ENTRY LEVEL

PERSONNEL - Paramilitary skills and attitudes are de-emphasized and replaced by an emphasis on social qualities of interpersonal, communication, and problem solving skills.

EVENT IDENTIFICATION

In a manner similar to that used in trend identification, the NGT panel developed a list of nine events for study by the group, Appendix page 97. The NGT panel arrived at this list of nine events after being instructed to project possibilities for the future, and to imagine things that might happen and have an impact on the study issue. After a brainstorming effort to list panel ideas, a discussion took place to ensure each listed event was framed within the context of being a single occurrence, as opposed to the qualities of the identified trends.

The panel then voted to identify the five most critical or important events. Each panel member voted privately as an individual. The results were collated for a group response. During this process, the NGT panel deadlocked on the elimination of a sixth event. The members of the NGT panel felt that the fifth and sixth ranked events were of equal importance and emphasized the desirability to maintain a list of the six most important events, identified as:

- E-1 LEGISLATION PASSED TO HOLD OFFICERS PERSONALLY LIABLE WITHOUT INDEMNIFICATION
- E-2 POLICE PERSONNEL FILES ARE OPENED TO PUBLIC REVIEW
- E-3 REPORTING POLICE MISCONDUCT BY OFFICERS IS MANDATED
- E-4 LEGISLATION LIMITS PUNITIVE DAMAGE AWARDS
- E-5 MUNICIPALITY GOES BANKRUPT
- E-6 CIVILIANS PERMITTED TO MANAGE POLICE DEPARTMENTS

FORECASTING OF TRENDS AND EVENTS

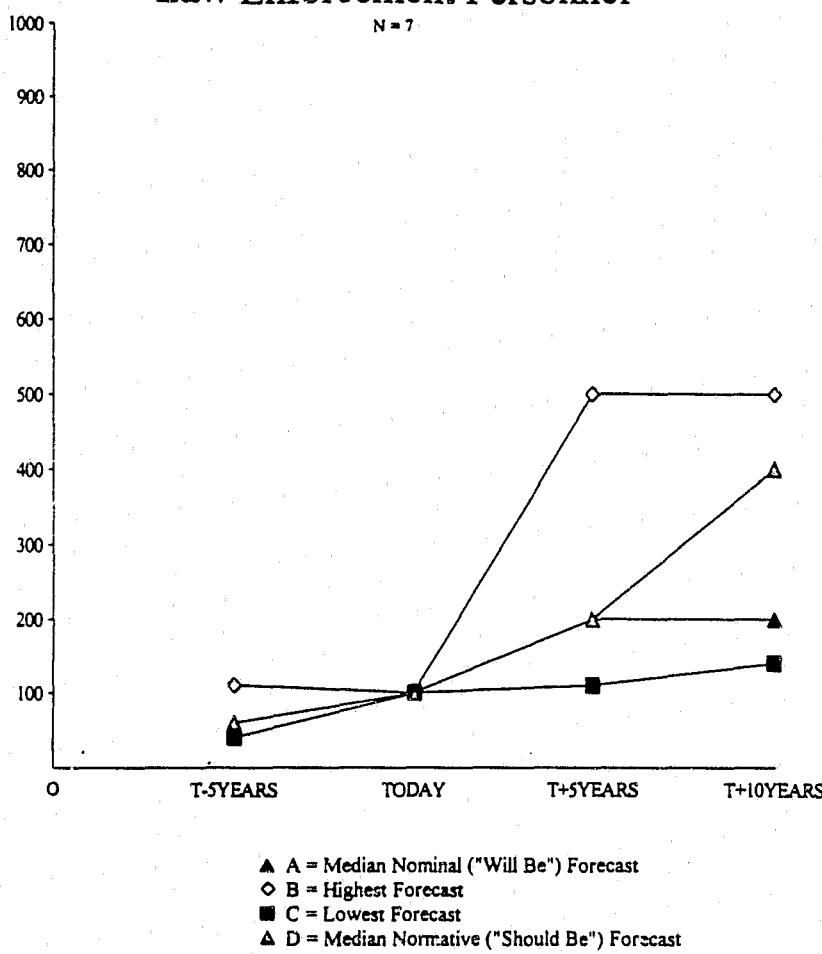
TREND FORECASTING

Forecasting each of the identified five most important trends, T-1 through T-5, was accomplished by use of a Trend Evaluation Form. A forecasting panel, made up of the same members of the NGT panel, first estimated the level of the trend five years ago, then forecast the level of the trends five and ten years from today. All trend forecasts were based on the current status of the trend being assigned a value of one hundred today, to give a common frame of reference. The lower limit of the scale is zero, representative of when the trend ceases to exist, or had yet to begin. The upper end of the scale has no limits. The panel was asked to provide an "exploratory" (will be) and "normative" (should be) forecast.

Table 6

Trend #1

Amount of Training for Law Enforcement Personnel



There was a consensus of thought as to the value of additional training of law enforcement personnel. Not only is the training a necessity to the proper delivery of police service, it becomes much more important when it reduces the risk of civil liability. For the same reason, it becomes cost effective. Panelists felt there will be a significant increase in the amount of training aimed at avoiding liability over the next five years. After that, it was agreed that there will be a leveling off, since the time devoted to training will eventually reach a saturation point where it may begin to interfere with the primary purpose of the police agencies in delivering police service.

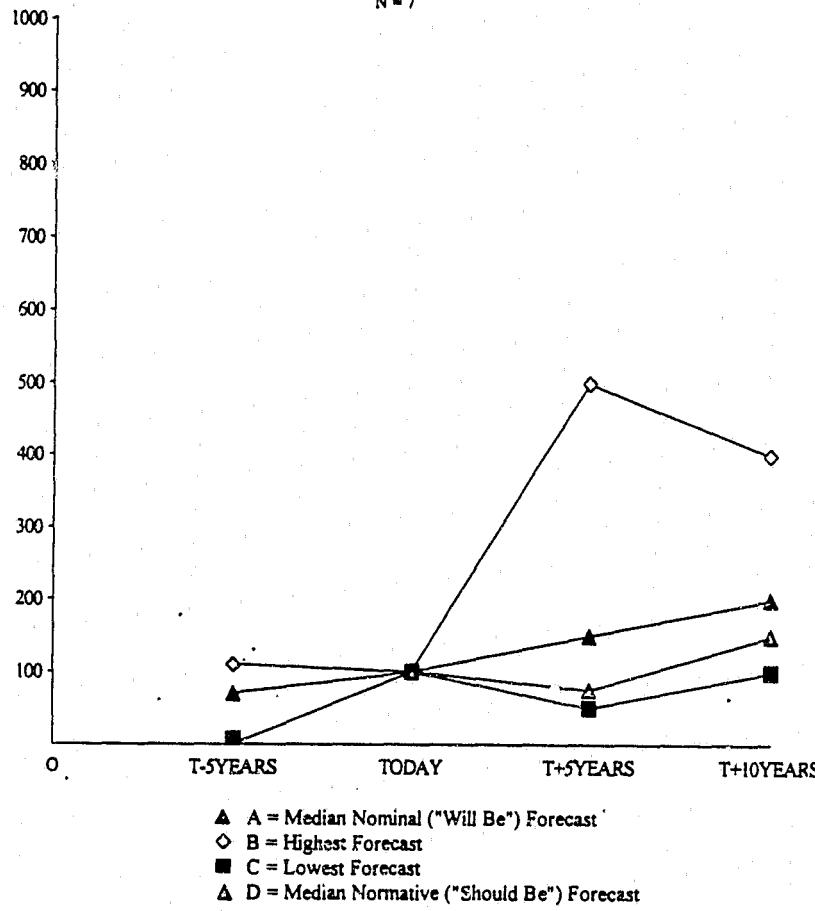
The forecasting panel believed training will increase considerably, in response to events such as the Rodney King beating, but will level off too soon. Training time should continue to increase and will not reach a saturation level anytime in the next ten years. It has already been reported that the L.A.P.D. Police Academy, inspired by the Rodney King incident, has increased training in cultural awareness, use of force, discipline, and respect for individual rights. The academy curriculum has increased from six to seven months.(20)

Table 7

Trend #2

Frequency of Officer's Proactive Enforcement

N = 7



The forecasting panel believed that four of the five trends were a positive movement to try to eliminate or at least reduce exposure to civil liability in mutually acceptable manners for both police agencies and the communities they serve. The exception to this was Trend Two, in which officers reduce their proactive enforcement efforts in order to reduce their own personal exposure to civil liability. Panelists felt that this trend has been increasing since five years ago and that it will be at an even increased magnitude in both five and ten years from today. This was a trend that troubled the panel and it was agreed that this trend warranted much attention to avoid or reduce it.

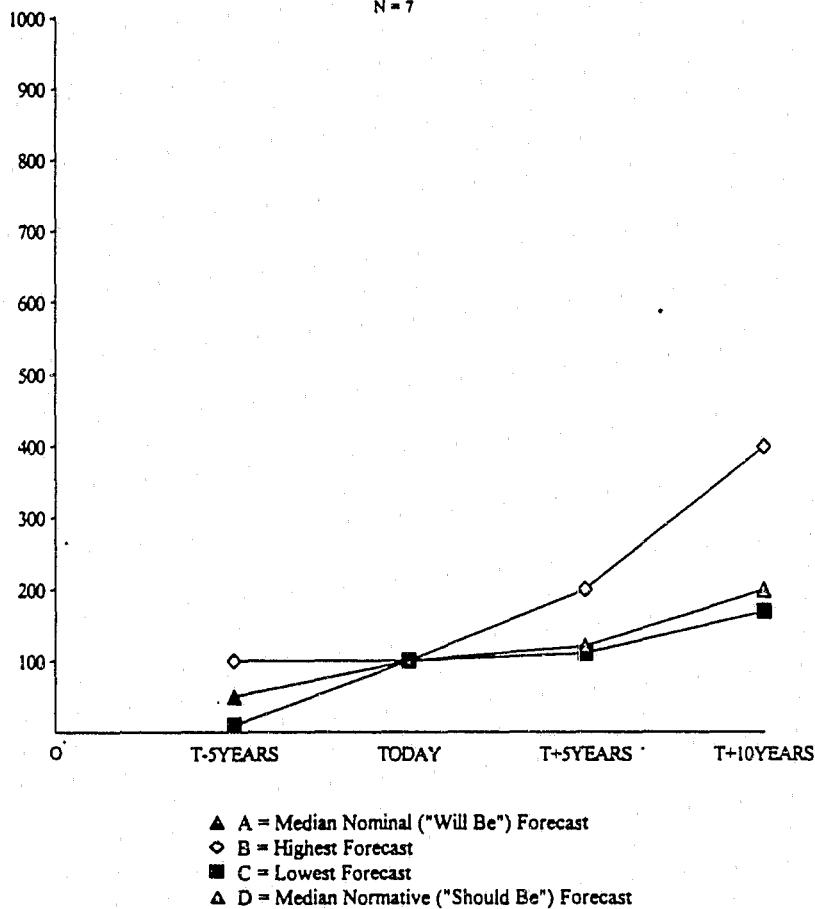
The frequency of officers proactive enforcement efforts should not reduce at all over the next five years, this being a primary responsibility of officers, as well as an integral part of delivering community based policing program. Still, because of human nature seeking self preservation, society can expect to see proactive enforcement efforts reduced over ten years.

Table 8

Trend #3

Level of Community Based Policing

N = 7



Community based policing efforts will continue to increase over the next ten years. The crimp that police agencies feel from being stung with severe civil liability awards will make them more amenable to working closely with the public. For the same reason, as the public becomes more concerned with the loss of public revenue to damage awards, it will become increasingly more interested in working with the police agencies to offer solutions toward avoiding civil liability. "The Los Angeles County Sheriff's Department," a report by Special Counsel James G. Kolts, said that in order to begin to immediately deal with excessive force issues, it becomes even more critical that there be citizen participation and involvement at three levels in the Sheriff Department's affairs:

- 1) In the process for review of citizen complaints
- 2) At the level of the station house
- 3) By way of general monitoring and auditing. (21)

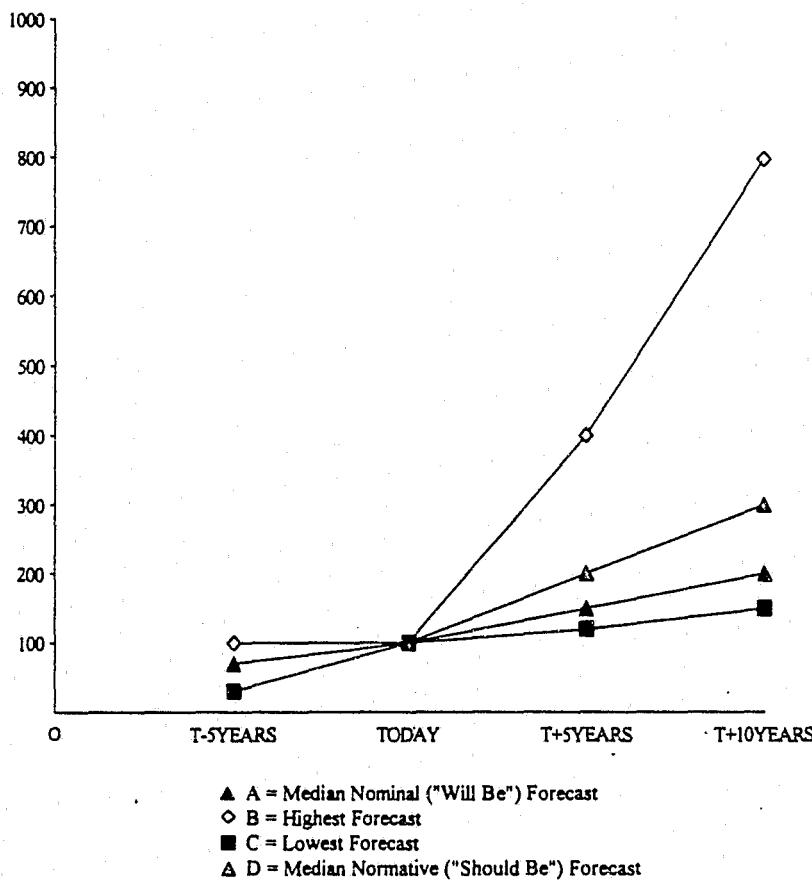
Efforts toward community based policing and selection criteria changing toward social qualities are two trends that the panel felt exploratory forecasts paralleled the normative.

Table 9

Trend #4

Concern for Proper Personnel Selection

N = 7



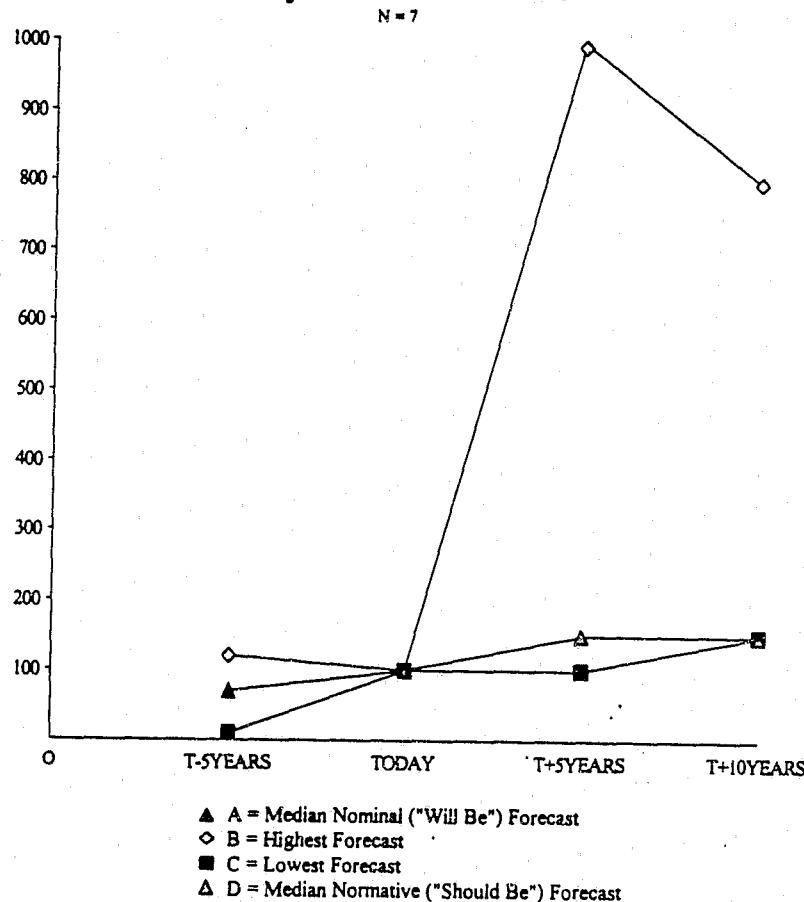
Concern for proper personnel selection will lead to more time and effort being placed into background investigation and screening of applicants, in an effort to avoid future liability by eliminating high risk individuals. Even with a shrinking pool of candidates, applicants will be expected to fit a tighter mold.

It is not so much an individual's learned behavior as it is his/her personality and temperament characteristics that will prevail in a stressful situation. Even the best trained person, if psychologically unsuitable, is likely to use bad judgement when placed in critical situations. The best time to reduce such risks is before hiring takes place.

Table 10

Trend #5

Interpersonal Skills as Criteria for Entry Level Personnel



Related to the trend of concern for proper personnel selection, was an increasing trend of interpersonal skills as criteria for entry level personnel. This is in response to both avoiding civil liability and in delivering community based police services which require a more self reliant problem solving officer. Panelists felt this trend is on the increase but will not level off by five years as the proper adjustment to community requirements is completed.

The concern for proper selection of personnel is a trend that the panel believed should be increased. The consensus was that added time and effort was justified, and cost effective, in light of the benefit of warding off costly damage awards. The panel felt that more could be done to develop screening processes that eliminated high risk candidates, perhaps even using certain psychological and legal profiles.

Each panel member made their individual forecast on a trend evaluation form, the same as Table 11 below. The researcher then ranked the forecasts of the seven panel members and determined the median forecast. The median forecasts from the panel are displayed in Table 11.

Table 11

Trend Evaluation

* Panel Medians

Trend Statement		Level of the Trend (today = 100)			
		* 5 Years Ago	* Today	* 5 Years From Now	* 10 Years From Now
Amount of Training for Law Enforcement Personnel	T-1	75	100	200 200 400	200
Frequency of Officers' Proactive Enforcement	T-2	75	100	150 100	200 150
Level of Community Based Policing	T-3	50	100	150 150	200 200
Concern for Proper Personnel Selection	T-4	80	100	150 200	200 300
Interpersonal Skills as Criteria for Entry Level Personnel	T-5	75	100	150 150	150 150

N = 7

Legend

Nominal "Will Be"	Normative "Should Be"
----------------------	--------------------------

EVENT FORECASTING

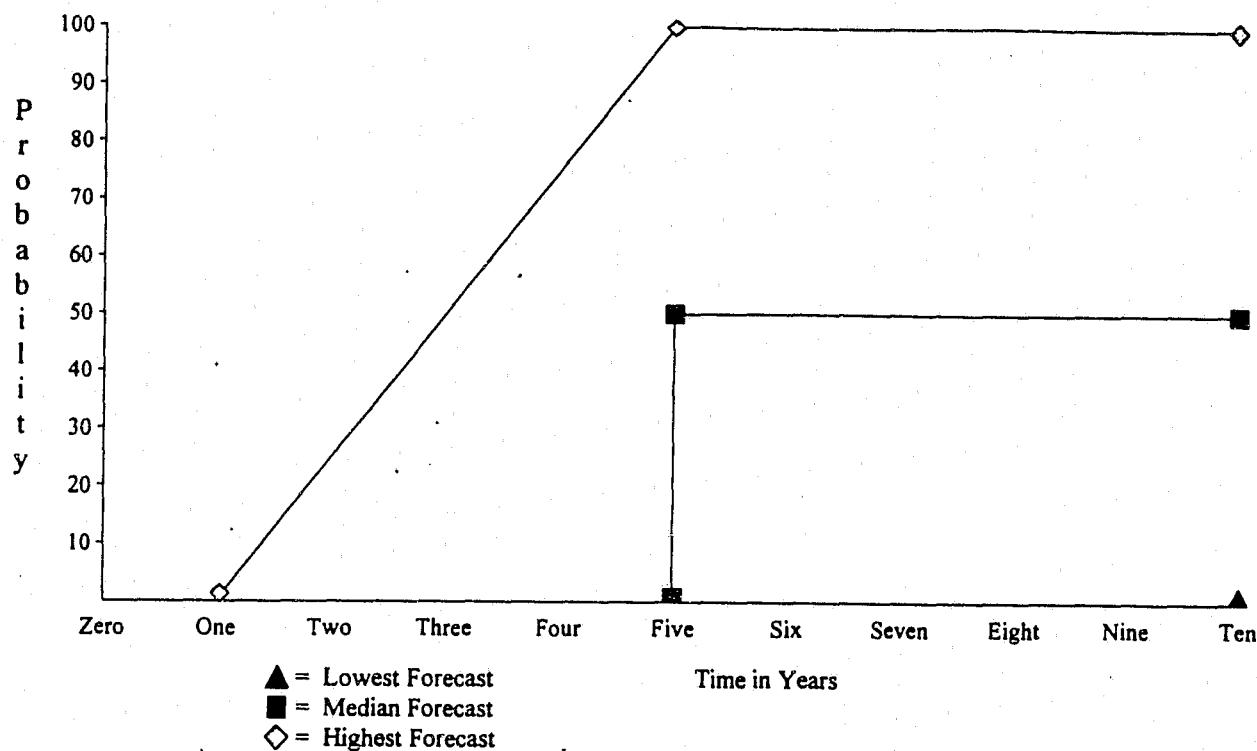
The forecasting panel next forecast the probability of occurrence for the six most important events identified, in a manner similar to that used for trend forecasts. The forecasting for each event included the number of years until probability first exceeds 0%, the percentage probability of occurrence, both five years from now and ten years from now, and the positive and/or negative impact on the issue should the event occur, using a zero to ten scale.

Each of the six events forecast were opined to not have a high degree of probability of occurrence in the next ten years. In fact, for each event forecast, at least one member of the panel thought the probability of occurrence first exceeding 0% was beyond the ten year timeline. These forecasts were from varied panel members, not the same panel member. The lowest forecast for each event was therefore "0%" after ten years. Panel members expressed that both police management and legal reform have at least one thing in common; changes occur very slowly.

Table 12

Event #1

Legislation to Hold Officers Personally Liable/No Indemnification



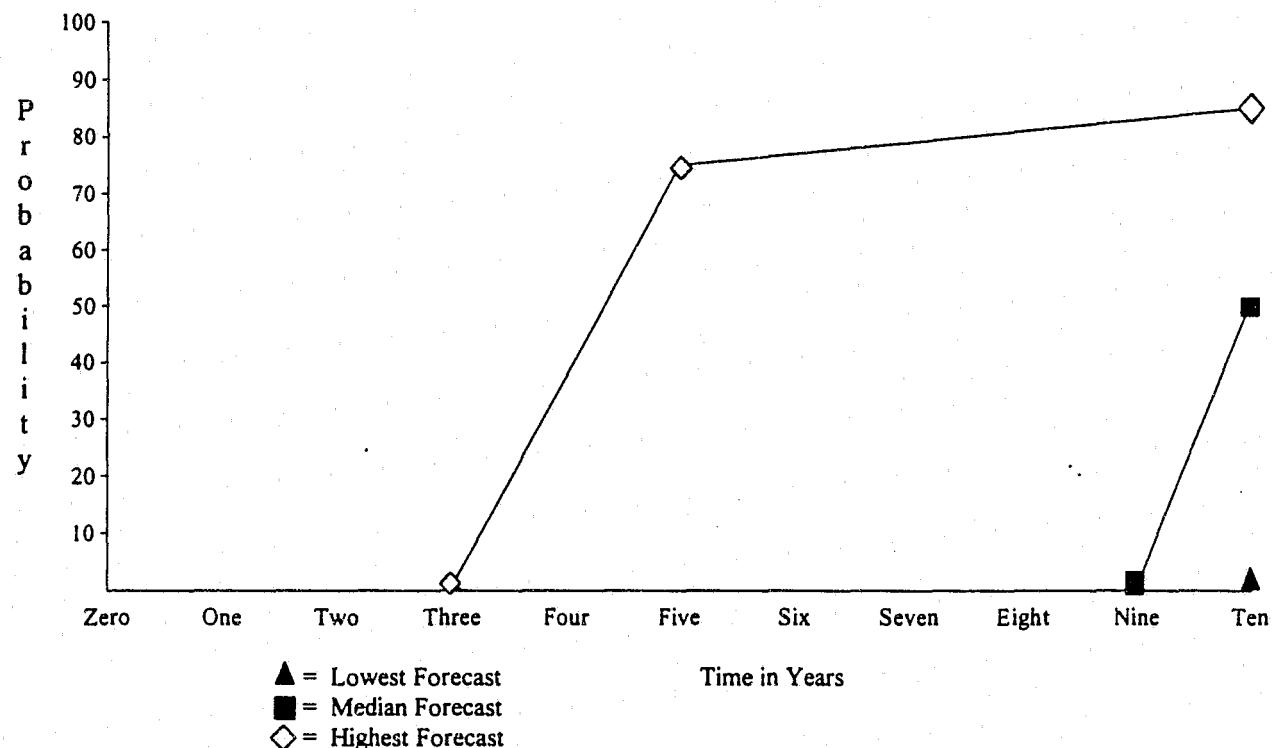
Each forecast begins at the point in time where the probability of occurrence first exceeds 0%

Legislation to prevent indemnification of officers was given a fifty percent degree of probability. It is more likely to occur within five years from today, but its chances of occurring after that will not increase. Panel members felt this would be strongly pursued by community groups seeking to instill greater accountability for officers as well as supervisors and managers. Some attorneys believe that state laws which shield law enforcement officials are to blame for the increase in police civil liability. They argue that making the individual defendants, rather than the tax payers, responsible for paying the bills would help police think before they strike and would wake up unresponsive officials.(22)

Table 13

Event #2

Police Personnel Files Opened to Public Review



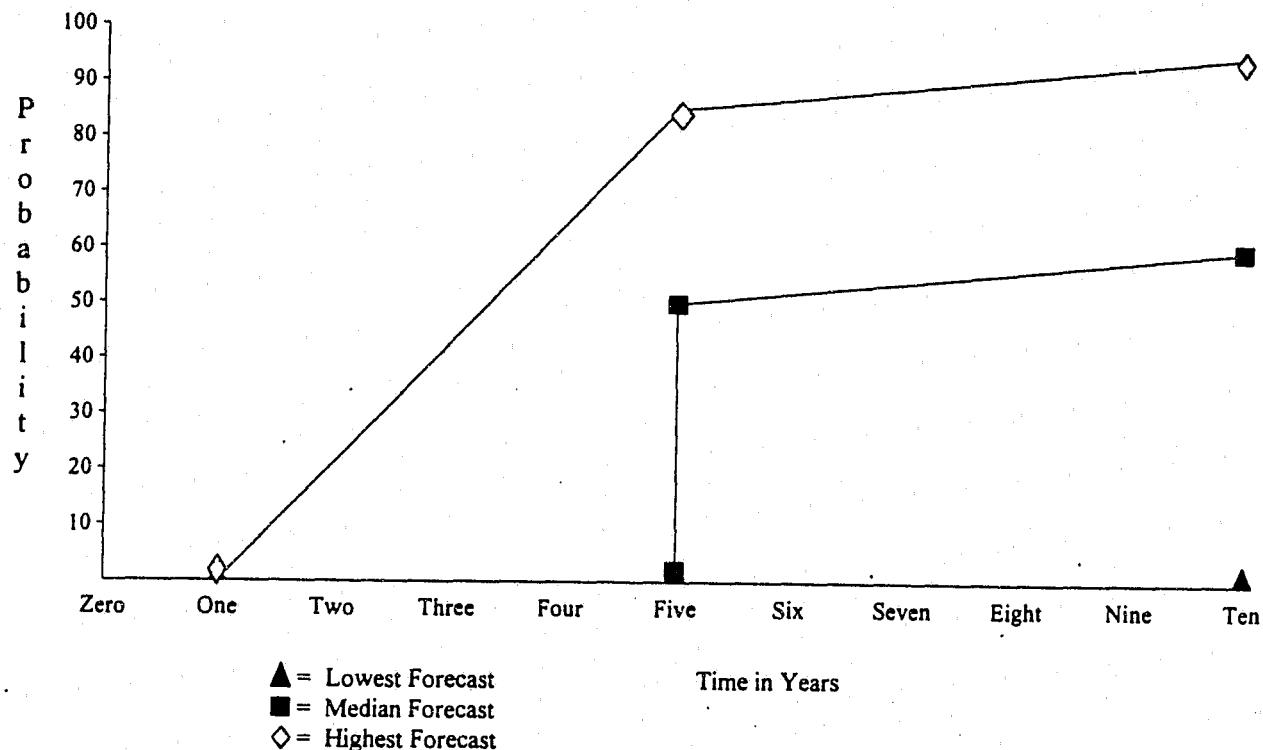
Each forecast begins at the point in time where the probability of occurrence first exceeds 0%

It will take some time more than five years before police personnel files would ever be opened to public review. Although some groups seek to allow greater public scrutiny, most panelists felt this would have a tremendous negative impact on police operations and would be aggressively fought by police managers and labor organizations.

Table 14

Event #3

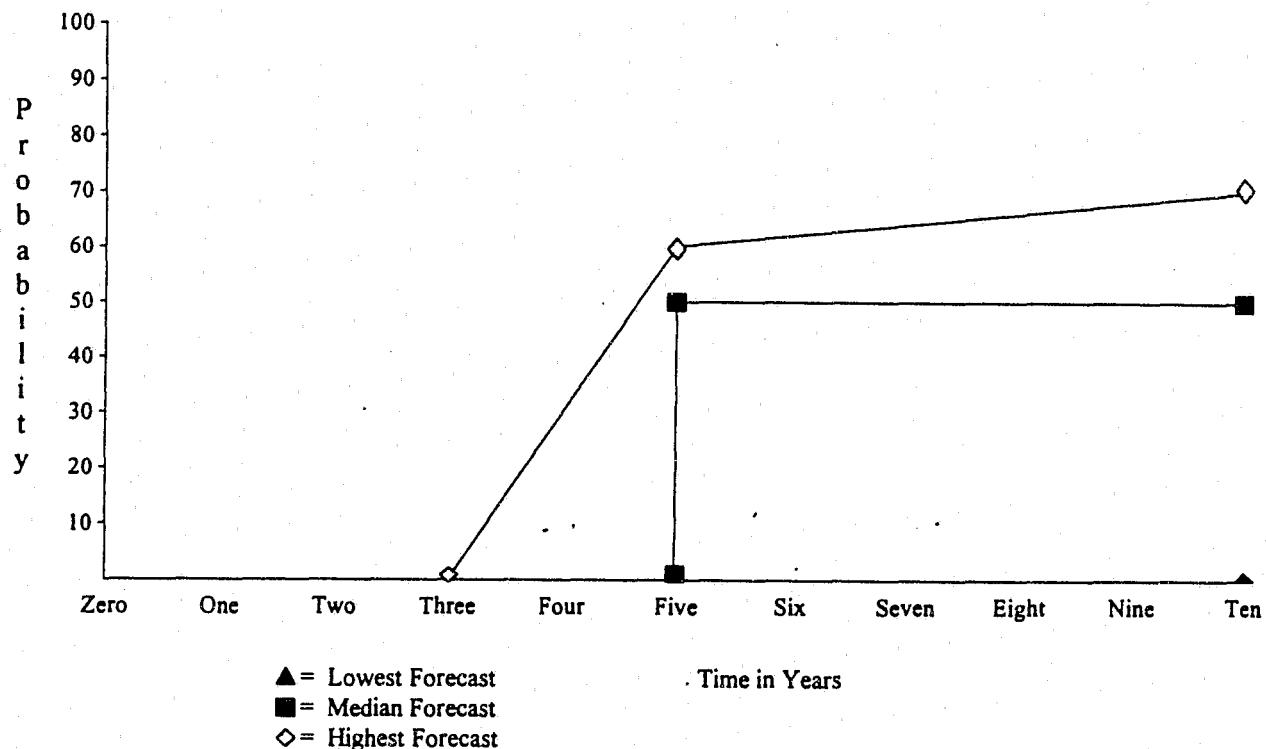
Reporting Police Misconduct Mandated



Having police officers mandated to report the misconduct of their fellow officers was thought to have an increasingly higher percentage of probability occurring from today on. Panel members recognized both positive and negative impacts the event would have. On the direct issue of civil liability, it would have a positive impact toward reducing risk. At the same time it would create uncomfortable working conditions and tremendous conflict over ambiguous issues of just what is reasonable force.

Table 15

Event #4
Damage Awards Limited

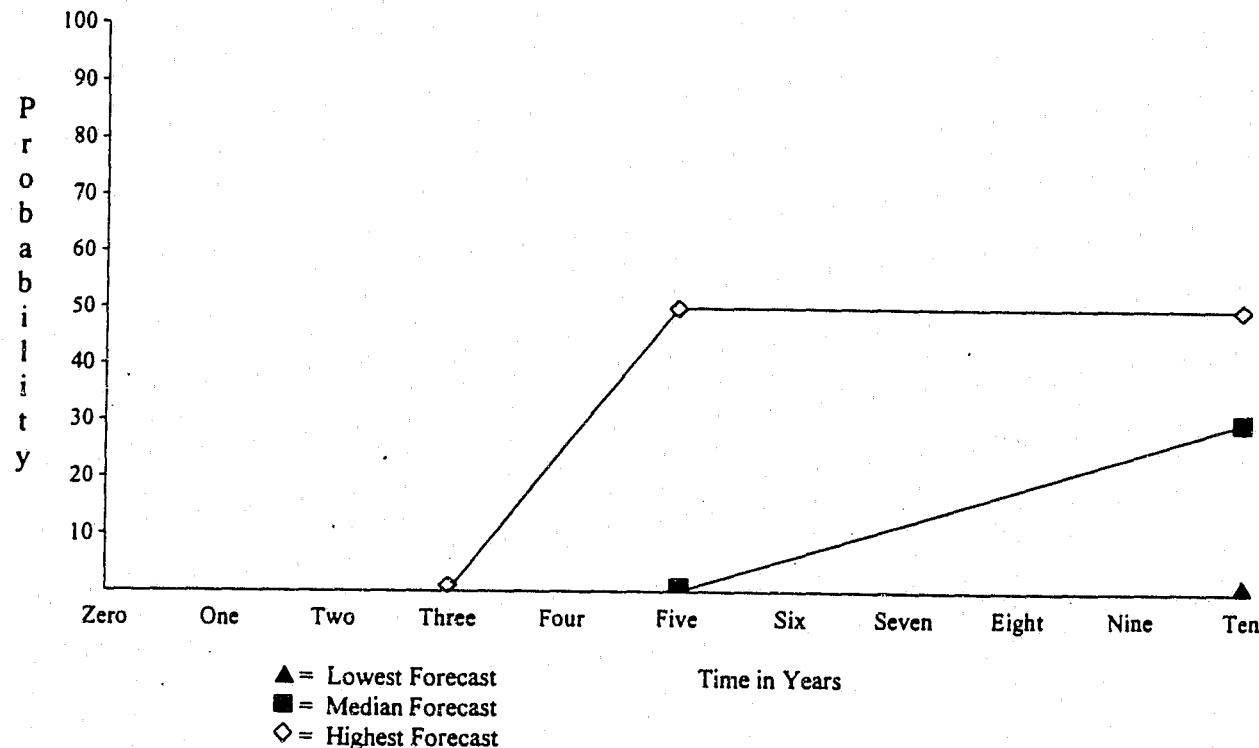


An event that would have a very positive impact on civil liability would be creation of limits on punitive damage awards. Most panel members agree that legal reform such as this would be several years away before its probability of occurrence exceeded zero, and with the effective lobbying efforts of attorneys, through such groups as the Trial Lawyers Association, they gave it no more than a fifty percent degree of probability.

Table 16

Event #5

Municipality Goes Bankrupt

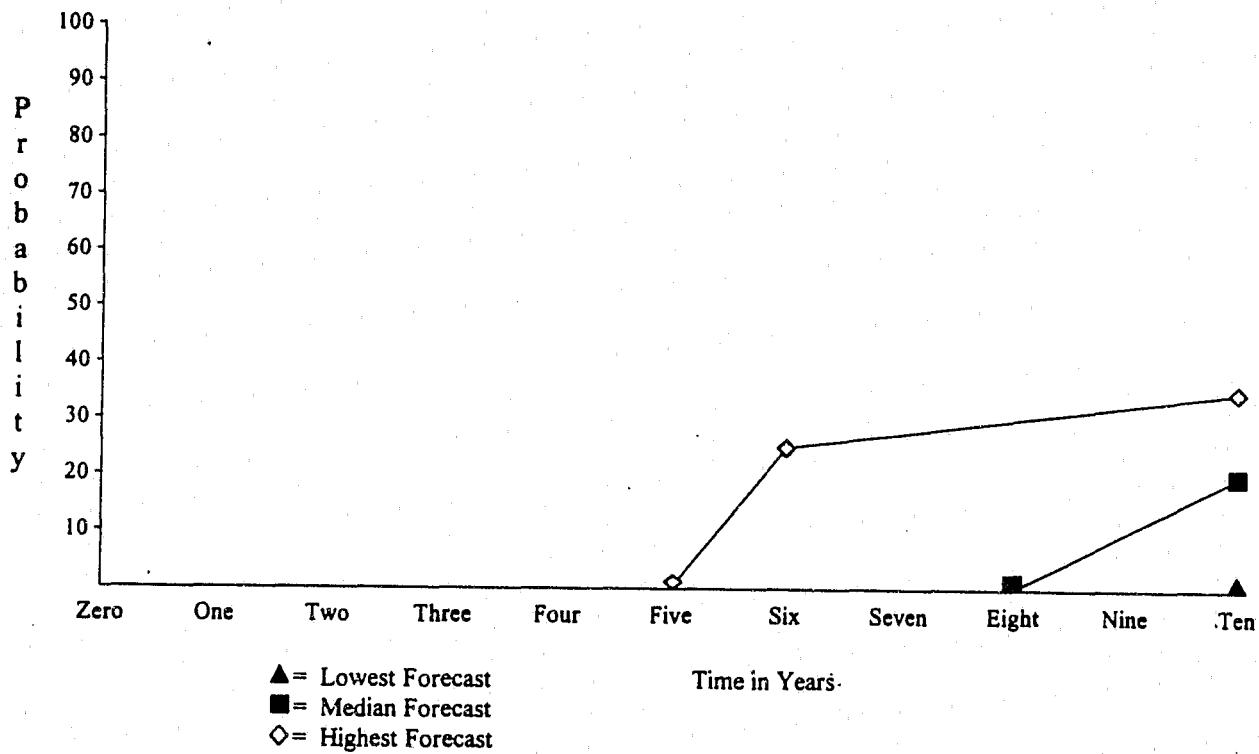


The events of a municipality bankruptcy, and civilians being permitted to manage police departments, were not given high degrees of probability, especially not within five years. The event of bankruptcy offered nothing but negative impact. Civilian managers were thought to likely create a resentment among officers and especially police managers who may face the added competition.

Table 17

Event #6

Civilians Manage Police Departments



Still, an event of having civilian management offers some positive impacts, such as greater resources in candidate pools from which to choose managers, and fresh ideas and approaches. The idea was expressed that an excellent manager can perform in any kind of organization. It was also felt that an influx of civilian managers would be more likely to institute policy changes that would reduce the risk of civil liability and not be so entrenched with maintaining the status quo in police management.

Each panel member made their individual forecast on an event evaluation form, the same as in Table 18. The researcher then ranked in numerical order, the forecasts of the seven panel members and determined the median forecast. The median forecasts from the panel are displayed in Table 18.

Table 18

Event Evaluation

• Panel Medians

Event #	Event Statement	* Years Until Probability First Exceeds Zero	* Probability		Impact on the Issue Area if the Event Occurred	
			Five Years From Now (0-100%)	Ten Years From Now (0-100%)	* Positive (0-10 Scale)	* Negative (0-10 Scale)
1	Legislation To Hold Officers Personally Liable/ No Indemnification	5	50%	50%	5	9
2	Police Personnel Files Opened to Public Review	9	0%	50%	0	8
3	Reporting Police Misconduct Mandated	5	50%	60%	5	5
4	Damage Awards Limited	5	50%	50%	7	0
5	Municipality Goes Bankrupt	5	0%	30%	0	10
6	Civilians Manage Police Departments	8	0%	25%	2	5

N = 7

CROSS-IMPACT ANALYSIS

A separate panel performed a cross-impact analysis of the trends and events used in forecasting. The panel consisted of

experienced members of the El Monte Police Department, including Lt. John Burkhart, Lt. Craig Sperry, Sgt. Ken Alva, and Agent George Hopkins, President of EL Monte Police Officers Association. The occurrence of each event was individually assumed at a point in time of its greatest impact on each of the other events and of the trends. Starting with this assumption, the analysis was completed by use of a cross-impact matrix. The maximum impact of each event on each other event and on the trends was estimated in terms of percentage change (plus, minus, or zero). Table 19 displays the impact medians of the panel.

Table 19
Cross Impact Evaluation

**	Matrix												Maximum Impact (% change ±)	
	(Panel Medians)						Years to Maximum						"Impact"	
	E1	E2	E3	E4	E5	E6	T1	T2	T3	T4	T5		E1	8
E1	X	+20	-10	+30	-20	--	+70	+75	-25	-10	--		E2	9
E2	--	X	+10	+10	-10	+30	+10	+40	-10	+40	+25		E3	9
E3	--	+30	X	+20	+25	+20	+10	+50	-30	+20	+30		E4	10
E4	+30	+20	+40	X	-30	+10	-20	-30	+20	-10	-10		E5	10
E5	+40	+10	+20	+75	X	+20	+50	+80	-75	+60	+50		E6	9
E6	+30	+20	+30	+20	-20	X	--	+20	+75	+20	+60			
"Impacted Totals"														
E1	E2	E3	E4	E5	E6		T1	T2	T3	T4	T5			
3	5	5	5	5	4		5	6	6	6	5			

** Legend

- E1 Officers Personally Liable
- E2 Files Open to Public
- E3 Reporting Misconduct Mandated
- E4 Damage Awards Limited
- E5 Bankruptcy
- E6 Civilians Manage Police Departments

- T1 Amount of Training
- T2 Proactive Enforcement
- T3 Community Based Policing
- T4 Concern for Selection
- T5 Selection Criteria

The completed analysis matrix indicates all of the events to be nearly equally significant. E-4 and E-5 would have the most impact on other events or trends, should they occur. They both relate directly to financial conditions of agencies. E-5, bankruptcy, needs to be recognized, even if the actual event itself were not to occur, due to the extreme financial hardships that would be occurring preceding such an event. E-4, damage awards being limited, would work with an opposite effect, by reducing the loss of funds from agencies.

The trends which were forecast to be most impacted by the occurrence of events, were T-2, T-3 and T-4. The most likely approach to stopping the negative effect of T-2, reduced proactive enforcement, would be to mandate standards for expected number of contacts for officers and to maintain statistics. However, that approach would be in conflict with the concepts of T-3, community based policing, which places less emphasis on statistics.

SCENARIO DEVELOPMENT

Three brief scenarios were developed as "windows" to the possible future. The scenarios were constructed by bringing together and synthesizing the data input and projections of the panels. The scenarios call attention to the large range of possibilities that must be considered in the future.

Each scenario is written from a historical perspective, looking at the forecasted events and trends as if they had actually occurred. The three types of scenarios are:

- #1 NOMINAL/EXPLORATORY - A "play out" or "surprise free" future. The forecasted events did not happen. Rather, issue-related events that have been occurring will probably continue with a potential for influence. Medians of the "will be" trend forecasts complete the scenario.
- #2 NORMATIVE - A "desired and attainable" future. It concentrates on positive actors and positively impacted events from trend and event forecasts, and blends in "good news" data from the future file.
- #3 HYPOTHETICAL - This is a "what if" scenario with a hypothesis of, "what if" a select number of events all actually occurred.

SCENARIO #1 (nominal mode)

MUNICIPALITIES STILL UNSUCCESSFUL IN ACHIEVING TORT REFORM

LAW SCHOOLS OFFER CLASSES IN PURSUIT OF POLICE CLAIMS

POLICE REFORM IMPROBABLE

Police civil liability has been a growth industry. The breakdown of government tort immunities opened a floodgate of litigation, exposing police departments to extensive liability. The repudiation of sovereign immunity by judicial mandate has stimulated dramatic increases in civil actions. This has served the purposes of righting the wrong to plaintiffs injured unjustifiably or negligently or who have had civil rights violated. It has proven to be a specialty area for attorneys to carve out a niche and work environment that didn't exist a short time ago.

For police departments and municipalities, it has become a high risk area, causing concern for unexpected expenses. Parallel with the increase in tort actions, is the staggering magnitude of damage awards. Awards have been major drains on budgets and can not be easily anticipated. Insurance coverage has become unavailable for many government entities. Police agencies have recognized this leak of revenue and have responded by increasing training aimed at avoiding civil liability, but the trend continues.

By the year 2002, issue-related trends that have continued during the previous ten years include: proposed legislation to help mitigate the impact of the "deep pocket" theory having

failed to pass during the 1990's, inspite of repeated efforts. The reality of government entities having to pay out major awards is firmly rooted with the support of the California Trail Lawyers Association, for their own best interest and within the judiciary, which views the process as a social remedy, rather than assessing liability: injured persons continue to be compensated through a theory of "who best can pay"; police administrators have continued to accept civil damage awards as a "cost of doing business"; Municipalities continue to pay punitive damage awards assessed against individual officers.

Training of law enforcement officers has been the primary area of concentration for administrators to try and stop or reduce their exposure to civil liability. This is a trend which has increased during the late 1980's, to where it nearly doubled during the first five years of the 1990's, before leveling off. The wide area of responsibilities for officers requires a great deal of time in training, both pre-service and in-service. The scope of the training aimed at avoiding liability has begun to take a bigger chunk of the overall training time, because of the cost effectiveness idea of "an ounce of prevention is worth a pound of cure".

Officers who have been found negligent, have a natural tendency to retract from proactive efforts for crime prevention. When the incidents are of such notoriety as the Rodney King incident or the Don Jackson reverse "sting" in Long Beach, the resulting publicity and media coverage helps to spread that tendency to officers throughout California law enforcement.

While the typical case of police civil liability brings with it demands for police reform, police agencies, for the most part, have continued with a status quo management system. Even the Los Angeles experience in the wake of the Rodney King incident showed how slowly police reform takes. In spite of citizen groups' demands for civilian review or control and for changes in top police management, police agencies maintain a status quo in management make up and style.

Police agencies primarily engage in delivery of services in a professional manner, being highly reactive and investigating and making arrests after the occurrence of reported crime. With a trend started in 1990, more money has been budgeted for community relation programs and visibility of the police within the community. These efforts provide forums for community members and groups to sound off and make suggestions or complaints, but are essentially made at the response to public demand. Police agencies continue to be managed to the exclusion of citizen involvement or review. Damage awards are viewed as the cost of doing business. Money that could be spent on community based policing programs is lost.

SCENARIO #2 (normative mode)

DAMAGE AWARDS LIMITED FOR POLICE LIABILITY

PUBLIC SUPPORT OF POLICE AT ALL TIME HIGH

LIABILITY SAVINGS SUPPORT COMMUNITY PROGRAMS

The 1990's were particularly difficult for California municipalities due to police civil liability. The number of lawsuits against law enforcement increased steadily. It was more and more common for plaintiffs to win their lawsuits. Officers had lost their credibility. Juries were both skeptical of police explanations for their actions and generous with compensating plaintiffs for their damages.

For most of the 90's, municipalities suffered the burden of being seen as having "deep pockets". Society assumed that an individual who was injured deserved to be compensated by someone. Often times, that someone was a municipal agency. The only "someone" with the budget to be able to compensate. Courts rationalized that cities were better equipped to pay damages than other liable individuals, even when the other individuals were mostly to blame.

However, the adversities proved to be a catalyst for change. The twenty-first century brought a renewed respect for police agencies. California emerged from its financial depression with citizens supporting changes to insure there would never be a repeat of its financial troubles. State bailouts of bankrupt municipalities had caused California citizens everywhere in the

state to be concerned with the troubles of any municipality. At the start of the new century, Californians had goals to see financial accountability throughout the state and to not allow government waste. Accountability for government leaders became the rule.

Insurance for police agencies was an impossibility. Nearly every city participated in one of the numerous risk management associations within the state. These larger associations gave rise to greater evaluation of risk assessment for all agencies, no matter how small. An even greater benefit of the risk pool associations, was the stronger unified voice it created. This was of particular benefit in lobbying efforts.

The call for tort reform reached a fever pitch by the year 2000. Citizens were ready to support legislation that would help to put an end to the deep pockets search. Through the combined efforts of risk pool associations, The League of California Cities, and individual police agencies, the public came to view high jury awards as unrealistic losses to their own budgets.

This public support was fortified by the exceptional public relations that existed with police agencies by the late 1990's. City Councils never did relinquish authority of Police Department control to civilian review boards as had been proposed by a vocal minority of citizens, but the desire for public involvement was channeled into volunteer services that reached all time highs. Police departments operated with an openness for all citizens to see they had nothing to hide. Citizens felt assured they had accountability from elected leaders and throughout police management ranks.

Citizen complaints became an opportunity for agencies to prove their responsiveness with thorough and impartial investigations. Complainants were able to appeal adverse findings to an independent authority. Citizens no longer felt lawsuits were the most appropriate means to create positive changes in law enforcement.

Legislation was enacted to place limits on pain and suffering damage awards and on punitive damage awards in police liability cases. Claims and lawsuits against police agencies dropped dramatically. Local authorities turned projected savings into necessary police budget increases. Equipment that increased accountability was no longer unaffordable luxuries. Personal audio recorders and video cameras became the common place. Staffing levels increased. Training increased considerably for officers who had been out of basic training for some time, as well as supervisors. Funding for community based programs increased.

By the year 2002, police agencies became professional organizations that the general public respected and protected.

SCENARIO #3 (hypothetical mode)

LEGISLATION HOLDS POLICE OFFICERS INDIVIDUALLY LIABLE-NO INDEMNIFICATION

CALIFORNIA OPENS DOORS FOR CIVILIANS TO MANAGE POLICE DEPARTMENTS

LEGISLATURE PUTS HALT TO "SKY HIGH" POLICE LIABILITY AWARDS

Hypothesis:

What if police officers were held personally liable for individual damage awards and indemnification by municipalities was forbidden by law? What if punitive damage awards were limited by a maximum amount, and if civilians were permitted to manage police departments? What if all three of these events actually occurred?

By the year 2002, due to the combined effort of citizen groups demanding individual accountability of police officers, and municipalities trying to avoid bankruptcy or other financial hardships, the legislature annulled the authority of municipalities to pay punitive damage awards on behalf of their officers. Because of this extreme hardship to the individual officer, as well as financial benefits to municipalities, tort reform laws were finally enacted that would limit police liability damage awards. After significant social and organizational culture change, civilians were permitted, and even invited to manage police agencies.

Municipalities have long recognized that police work is an extremely high risk profession, and that to have officers individually liable for damages would have a chilling effect on law enforcement efforts. It would reduce the proactive

enforcement efforts of officers who would be unwilling to risk financial ruin.

A concession by government allowed the event to come about. Affordable liability insurance became available to individual officers, mandated for all police officers in the State of California. Rates are tied to individual records of officers with respect to lawsuits and misconduct complaints, and agency training efforts in regard to avoiding civil liability. Rates were kept affordable by the related occurrence of the tort reform laws putting a limit on police liability damage awards.

Another result of efforts to avoid civil liability was increased concern for proper personnel selection and changing selection criteria for applicants toward social qualities. As a result of input from attorneys and psychologists, in the year 2002, police applicants complete a screening test that indicates risk factors for civil liability. The overall profile of a qualified applicant has evolved to a person who reflects the make-up of the community. This standard first began to evolve in 1991, when the Los Angeles City Council began an initiative to increase its percentage of women police officers to 49% of the total officers. It recognized that of all the claims that had been paid out as a result of police misconduct, none had involved a female officer. The opposing viewpoint is that a female officer is more inclined to avoid confrontation, thereby avoiding situations that produce claims.

By the year 2002, police agencies had made such an effort to avoid civil liability that they have maximized community based

policing efforts to an extent that civilians are an integral part of the operation and control of police agencies. The legislature has mandated the licensing of civilians as police executives, after completion of a training program.

In 2002, modeling after a Swedish Police Commissioner Training Program, (23) the Commission on Peace Officer Standards and Training (POST), initiated a training program for police executives and managers that did not require existing police officer status for admission. Qualifications for applicants include U.S. citizenship, driver's license, good moral character, possession of a post graduate degree, and demonstration of distinguished service to their community.

The members of the training program complete a lengthy phased training program that alternates classroom training with assignments to field/station work for in-service training. Graduates of the program are certified for police management and executive positions and return for frequent in-service training.

The entire social environment has changed to allow for preservation of public revenues for the benefit of the general welfare instead of a source to draw from deep pockets in order to make selected individuals wealthy. Social concern has turned toward a recognition that the needs of the many outweigh the needs of the few or of any one.

This attitude has also brought about an expectation that police departments are a part of communities and exist to serve community needs. And as such, they are much more open to citizen review and control than they once were.

POLICY CONSIDERATIONS

Policy development will be based on the normative scenario because it represents a future that is highly desirable and attainable. In order to mitigate the undesirable trends and events described in the normative scenario, and to allow the positive trends and events to occur, the following policies were considered for implementation. Policy considerations were suggested and discussed by a panel of El Monte Police Department officers; Lt. John Burkhart, Lt. Craig Sperry, Sgt. Ken Alva, and Agent George Hopkins, E.M.P.O.A. President.

1. It should be a policy of law enforcement to support efforts toward police liability tort reform.

RATIONALE: To help bring about tort reform that could include limits on damage awards, would help to reduce liability risks and protect municipal finances.

2. It should be a policy of law enforcement to screen applicants by completion of a battery of tests, supplied by POST, developed with assistance of the State Bar of California and psychologists.

RATIONALE: A test developed by the Trial Lawyers Association and licensed psychologists, reduces the number of individuals with a high risk for civil liability. Implementation avoids damage awards and is offered in exchange for legislation limiting damage awards.

3. It should be a policy of law enforcement to require officers to report to supervisors, any form of

misconduct or violation of department rules.

RATIONALE: Mandatory reporting will help to increase individual accountability among officers and maintain high ethical standards. Implementation is also offered in exchange for legislation limiting damage awards.

The criteria for focusing on these policies was that implementation of each policy, although difficult at first, was opined likely to succeed in addressing the desired future. Although not the primary responsibility of any police department, tort reform is a valuable reform, worthy of police department support. As for more selective screening of applicants, the desired outcome of reducing exposure to civil liability would be a worthwhile exchange for the additional effort. Mandatory reporting of misconduct would be expected to be unpopular with officers at first, with questions of responsibility and definitions of "misconduct". The major desired outcome of stopping budget losses to damage awards, would result in more programs within the department, to not only increase effectiveness, but also improve morale.

CROSS-IMPACT EVALUATION

In order to analyze the effectiveness of the policies, the most significant events and the most impacted events and trends from the event/trend cross-impact evaluation, Table 19, were selected for a basic cross-impact evaluation with the proposed policies. This evaluation was done by the researcher and is displayed in Table 20.

Table 20

Cross Impact Evaluation

**	Matrix												Maximum Impact (% change ±)	
	(Panel Medians)						Years to Maximum							
	E1	E2	E3	E4	E5	E6	T1	T2	T3	T4	T5		"Impact Totals"	
E1	X	+20	-10	+30	-20	--	+70	+75	-25	-10	--	E1	8	
E2	--	X	+10	+10	-10	+30	+10	+40	-10	+40	+25	E2	9	
E3	--	+30	X	+20	+25	+20	+10	+50	-20	+20	+30	E3	9	
E4	+30	+20	+40	X	-30	+10	-20	-30	+20	-10	-10	E4	10	
E5	+40	+10	+20	+75	X	+20	+50	+80	-75	+60	+50	E5	10	
E6	+30	+20	+30	+20	-20	X	--	+20	+75	+20	+60	E6	9	
"Impacted Totals"														
E1	E2	E3	E4	E5	E6		T1	T2	T3	T4	T5			
3	5	5	5	5	4		5	6	6	6	5			

** Legend

- E1 Officers Personally Liable
- E2 Files Open to Public
- E3 Reporting Misconduct Mandated
- E4 Damage Awards Limited
- E5 Bankruptcy
- E6 Civilians Manage Police Departments

- T1 Amount of Training
- T2 Proactive Enforcement
- T3 Community Based Policing
- T4 Concern for Selection
- T5 Selection Criteria

Support for tort reform should create a recognition among police managers of the need for responsibility and accountability, thereby increasing efforts toward additional assessments of applicants for liability risks. Support for tort reform will reduce the risk of police personnel files being opened to public review. Having police department support to educate the public and citizen leaders would greatly aid the chances for limiting damage awards and at the same time, reduce the risks of bankruptcy. Officers would not feel the need to reduce their enforcement activity if they knew there were efforts being made to bring about tort reform in their favor. If supporting tort reform brought success, community based policing programs would have hope of additional funding.

A policy of employment risk assessment would have little impact on mandatory requirement of officers reporting misconduct. However, after several years of implementation, with more officers on the force that have gone through such an assessment, it would be more likely to go along with and support mandatory misconduct reporting. The risk assessment would go a long way toward lobbying for limiting damage awards and would reduce the probability of bankruptcy, as well as the significant factor in increased concern over officer selection.

Mandatory reporting of misconduct would make officers less willing to support tort reform. By helping to instill an ethic of accountability, mandatory reporting of misconduct should help to establish a limit to damage awards and thereby reduce the probability of bankruptcy. Mandatory reporting of misconduct may initially create a hostile working environment and reduce officers' enforcement activity. This impact would likely be diminished by community based policing efforts and the resulting de-emphasis on enforcement statistics.

Section Two:

Strategic Planning

STRATEGIC PLAN

Strategic planning is the process of formulating and implementing decisions about an organization's future direction. A strategic plan is essential as a leader looks to the future and makes decisions today that are consistent with the direction a leader intends to take the organization. Strategic planning recognizes that organizations are shaped by outside forces at least as much as by internal ones.

This section of the paper includes a situational analysis of the effects of civil liability on law enforcement. Specifically, the role of the El Monte Police Department.

El Monte is an urban community located twelve miles east of Los Angeles. El Monte is home to 111,000 people within ten square miles. The population is 72% Hispanic, 15% White, 11% Asian, and 1% Black. The city is a general law city with a council administrator form of government. The city budget is approximately \$35 million with 390 full time employees and 250 part-time employees.

In the development of a strategic plan, the overall mission of the agency must be kept in mind so as not to conflict with the agency mission.

Macro Mission Statement:

The mission statement of the El Monte Police Department is: "The prime mission of the Police Department is to provide community security, performing duties faithfully and diligently, for anything less violates the trust of the people which we have willingly accepted."

For the purpose of addressing the issue of the effect of civil liability on law enforcement, the following micro-mission statement for inclusion has been developed:

Micro-Mission Statement:

In carrying out the duties and responsibilities of the law enforcement function, all personnel of this agency must recognize the potential high costs of civil liability and take actions to reduce such risks through training, selection, promotion, and use of effective interpersonal skills during all community contacts.

SITUATIONAL ANALYSIS

The assessment of a situation in which a proposed change is to occur is crucial in the planning process. A panel of experienced members of the El Monte Police Department conducted a two step situational analysis. The panel included Lt. John Burkhart, Lt. Craig Sperry, Sgt. Ken Alva, and president of the El Monte Police Officer's Association, Agent George Hopkins. The first step was to examine the external environment, identifying opportunities and threats. An "opportunity" is a situation that is favorable to the proposed plan, while a "threat" is a situation that is unfavorable. A second assessment was made of the department's capability, including its internal strengths and weaknesses. A "strength" is a resource or capability the department can use to reach its objective. A "weakness" is a limitation or defect in the organization that would impede the attainment of its objective.

Environment:

Several trends and events have been identified which will either impede or enhance the achievement of the goals contained in the aforementioned mission statement. The following are considered opportunities as they support the department's efforts to reduce the risks of liability.

Opportunities:

The desire to properly fund police departments is increasing.

The level of concern for proper personnel selection is increasing, bringing additional funding commitments.

Efforts are beginning to lobby for legislative relief from liability.

Public expectation of accountability of officers at all levels is increasing.

Community based policing allows more opportunities to educate the public about job demands and requirements.

Those trends and events which are considered to be threats are those which do not support the attainment of the stated mission:

Threats:

Publicity of incidents like Rodney King beating, make it popular to be critical of police.

Media is on campaign to reveal shortcomings of police.

Police civil liability is popular specialty for attorneys.

The pool of qualified job candidates is shrinking.

Citizen complaints are increasing.

There are some trends and events which could be considered both threats and opportunities, depending on the actual impact they have on the issue and stakeholders:

Opportunities and/or Threats:

Public demand that criteria for entry level selection change toward social qualities.

Citizen groups are demanding participation in complaint review process.

More agencies are forming risk management associations to share payment of damage awards.

Using the input of the panel, together with literature research and interviews of experts, the researcher offers the following analysis based on the foregoing lists of opportunity and threats.

It has become all to frequent to see headlines across California proclaim, "Million Dollar Lawsuit Filed Against Police". Litigation resulting from the performance of almost every police action has become commonplace. Morale suffers. A paralysis afflicting line officer initiative and motivation has developed. Gone are the days when jurors had an ironclad belief that police officers could do no wrong, and believed that they would never lie on the stand, or attempt to cover up any wrong doing. Perhaps the social opinions began to change during the Watergate era. If the President of the United States could be part of a cover-up, perhaps a police officer might be too.

Still, the public has not lowered it's expectation that police officers be judged by a higher standard of conduct. The nature of a police officer's work and his/her responsibilities justify a higher standard of conduct. Too often, when a police officer breaches that standard of conduct, the end result includes a financial settlement or judgement paid out by a municipality. Of late, law enforcement is seeing not only the

financial loss, but citizen groups calling for police reforms that they believe are necessary to eliminate the damages.

Presently, when a damage award is assessed against a police officer as an individual, even punitive damages, the officer's employing municipality may elect to pay the damage award.

Plaintiff's attorney Thomas Beck has said, "The law should be changed to require the police officer defendants to pay their own costs. Then they would feel the sting of their misconduct".

Attorney Stephen Yagman acknowledges that he is not trying to force individual officers to personally pay punitive damages as much as he is trying to force cities and counties that employ them to settle cases before trial. He believes local governments allow civil rights cases to go to trial. But if officers were threatened with having to pay punitive damages awards themselves, that would provide their employers with a strong incentive to settle before trial.

Even members of the police defense teams have expressed opinions that one way to instill greater accountability within police departments would be to have damage awards and settlements paid from the police department budgets, rather than general funds. This opinion was expressed by Thomas Hokinson, Managing Assistant City Attorney for the City of Los Angeles, (24) and Gordon Davis, General Manager of Independent Cities Risk Management Authority, (I.C.R.M.A.). (25)

To compound matters, police agencies have to contend with a current trend of the media working to try and reveal negligence or even criminal behavior in any noteworthy police action. At

best, the media efforts put a particular "slant" to the news, and at times, it amounts to misrepresentations. El Monte Chief of Police Wayne C. Clayton feels that police, being the most visible and available extension of government, take the brunt of any frustrations of the public, and that the media have abandoned principles for economic gain.(26).

Dave Foreman, former Executive Editor of KFWB News 98, a Los Angeles radio station, believes the L.A. news media, have gone absolutely out of control with their criticism of law enforcement. Foreman said " What L.A. news media is collectively putting in front of the public is distorted and reflects a naive uninformed version of the facts."(27)

On the other hand, the challenges and demands being made on police departments by citizen groups, are accompanied by efforts to work hand in hand with police departments. Citizens are willing to volunteer hundreds of hours to work in whatever opportunities are made available. Efforts to deliver more community based policing programs, not only satisfy the community's desire to be integrated into the delivery of law enforcement services, but also provide an excellent forum to educate and inform the public about the difficulties and demands on the law enforcement profession. Police administrators can take advantage of the audiences to enlighten them as to necessary legal reforms that could make police reform more likely.

An educated public could make a considerable difference toward political pressure on legislatures that are slow to make reforms in the legal system. The California Trail Lawyers

Association, CTLA, has considerable lobbying influence on the legislature. CTLA naturally has a financial consideration in not seeing any changes come about, such as restoration of governmental immunities or limits on damage awards in police liability cases.

Legislation has created legal reform before. When the public alarm over physicians insurance rates led to a cap on medical malpractice awards and attorney fees. There is no reason to believe that such reform cannot be accomplished for the municipalities that deliver police services.

Last year, Vice President Quayle began crusading for sweeping changes in America's civil justice system, including limiting punitive damages. Recently, retired Supreme Court Justice John Arguelles unveiled proposals for tort reform in California in a report commissioned by the Los Angeles County Board of Supervisors. Arguelles reported, "Due to the extreme financial crisis facing public entities, it is necessary to find a rational means to conserving public funds while fairly compensating injured parties." Arguelles recommended such changes as greater immunities for emergency professionals and reasonable caps on jury awards.(28)

ORGANIZATION CAPABILITY:

Weaknesses

The El Monte Police Department has a sworn compliment of 128 and serves a ten square mile community with a population of 111,000 in the greater Los Angeles metropolitan area. Having had one of the lowest ratios of officers to citizen population within

the state, this year the City Council increased the sworn compliment from 113 to 128. This condition, combined with the situation of El Monte having a high ratio of serious crimes for its population, created a condition of high risk for civil liability due to the demand for services placed on officers. There is an increased risk of negligence for failure to perform a required service.

The overall budget for the department has been cut due to the shrinking revenues of the city in this time of recession. Training classes and seminars have been cut and reduced. City Council approval is required for each class or seminar request. One position of a front line supervisor has been frozen in what was already too small a compliment of supervisors. A quarterly meeting of Field Training Officers and Sergeants, for the purpose of discussing policy and procedures, has been made optional, since overtime can no longer be paid for that purpose. These are all conditions that increase the department's exposure to liability.

The department has also had its share of recent administrative grievances and civil lawsuits. Officers have taken grievances over assignments, promotions, and disciplinary actions, as far as the city's personnel commission and litigation is possible on some. There have been increased employee claims for permanent disability due to stress related injuries. The city recently entered into a consent decree with the Department of Justice after a lawsuit filed against the City for discriminatory hiring and promotional practices in its police and

fire departments. The City had elected to defend against the lawsuit, until considerable financial defense expenses coupled with a considerably lowered demand made settlement reasonable.

Strengths

The chief of police balances the heavy work load placed on officers with a humanistic approach to management. The chief follows a philosophy of discipline that says, "as severe as necessary and as lenient as possible". The chief's open door policy is just one example of the care and concern that is shown for the individual officers. Chief Wayne C. Clayton has been recognized as an executive of the year by state and national police organizations that represent the rank and file officers.

The chief maintains a passionate lobbying effort for policies which he becomes convinced are necessary for the benefit for the law enforcement community. Chief Clayton and the former city attorney for El Monte sponsored and lobbied for the legislation that amended the California Government Code to permit municipalities to pay punitive damage awards for individual officers. The chief also lobbied extensively to have Governor Wilson reverse his stand on cutting funding to the department of Alcoholic Beverage Control, which would have eliminated more than half of the department's investigators.

Because of the tight budget restraints, the El Monte Police Department has initiated efforts to supplement its reserve force and to begin a civilian volunteer program.

Although it puts its own demands on officers' time, training has had an emphasis for several years. In-service training

programs as well as outside POST approved classes are approved and encouraged for advanced officer training as well as supervision and management.

The City of El Monte, through the recommendation of the police department, has taken a stance to not settle "nuisance suits". In instances of lawsuits against the department or its officers, the chief's stance is to assure citizens that only the highest standard of officer conduct is acceptable, and that the agency vigorously supports professional conduct. He emphasizes the existence and importance of a citizen complaint procedure to demonstrate the commitment by the police to investigate allegations of misconduct, and to take remedial measures when improper activities are discovered.

Stakeholder Analysis:

The panel proceeded to the next phase of situational analysis. The process identified stakeholders related to the issue. Stakeholders are individuals, groups, or organizations who:

1. Impact what is planned; or
2. Are impacted by the projected plan; or
3. Care about the changes that are planned.

A snaildarter is an individual or entity not viewed originally as a stakeholder and though seemingly insignificant, has the ability to drastically impact the organization's policy or action. Assumptions of stakeholders are based on basic, deep rooted, and often unstated beliefs that individuals or groups have about the world.

Listed below are the identified stakeholders in the issue of the impact of civil liability on law enforcement. After each identified stakeholder are the assumptions they hold about the issue.

1. THE GENERAL PUBLIC:

- A. Primary concern is for a feeling of security within their community. They are not too concerned with the methods used as long as they seem effective.
- B. As taxpayers, they are very concerned with the appropriate use of public funds. They do not want to see waste or needless expense. For this reason they can't see the value of reducing exposure to civil liability when it is specifically brought to their attention.
- C. They hold police officers to a high standard of conduct and responsibility.

2. THE CITY COUNCIL:

- A. They are very cognizant of current budgetary problems and do not want any losses that can be avoided.
- B. They are very concerned about the image of being pro police and want to have endorsements of the Police Officers Association in elections. Therefore, they are concerned that voting to uphold disciplinary action, or to not indemnify or defend a police officer in civil litigation, could be interpreted as going against the police and thereby lose their support and endorsement.
- C. They want the police department to operate within the limits of the laws and not to arouse the complaint of citizens who will bring their complaints to the City Council.

3. THE POLICE OFFICERS' ASSOCIATION:

- A. They are primarily not concerned with exposure to liability that the city may face, and consider judgements and settlements for the city a cost of doing business.
- B. They expect the city to indemnify individual officers in case of litigation and judgement.

4. THE JUDICIARY:

- A. They believe individual civil rights violations are appropriately addressed through a civil trial process.
- B. When a plaintiff prevails, the municipality is in a far better position to compensate a victim for injuries than the individual officer is. Hence, they will stretch the justification to find an officer is acting within the course and scope of his employment duties at the time of any misconduct.

5. THE LEGISLATURE:

- A. Must be concerned about overall public approval rating in order to be reelected. Usually want to be seen as tough on crime and pro-police.
- B. In order to gain police association endorsements, will sometimes support association sponsored legislation that hinders police management in the discipline process.
- C. They are heavily influenced by lobbying for the California Trial Lawyers Association, and are hesitant to pass legal system reform legislation.

6. PLAINTIFF'S ATTORNEYS:

- A. They believe they are serving the community by looking out for the freedoms of individuals as guaranteed by the Constitution. They are setting limits for what government can do to inhibit people in a free society.
- B. They believe individual officers should be held liable for punitive damage awards.
- C. If they can win their case, even if their client has minimal damages, they believe their fees should be compensated by the defending municipality.

7. THE AMERICAN CIVIL LIBERTIES UNION:

- A. A police department is a necessary nuisance, at best, and the number one source of interference with civil liberties, deserving of constant monitoring and legal challenges.
- B. Police departments cannot oversee themselves. They must have civilian review and control.

8. POLICE SUPERVISORS AND MANAGERS:

- A. Primary focus is towards effective criminal investigations. They do not believe aspects of civil

litigation are part of their job.

B. They do not believe they will be held accountable for actions of subordinates unless they specifically approved or participated.

C. They believe strong criticism of police procedures is unwarranted and unfounded. They are not receptive if recommendations are too critical.

9. AGGRIEVED EMPLOYEES (*SNAILDARTER):

A. They believe the department is operating with complete indifference to legal guidelines and policy and procedures should be changed.

B. They feel they are no longer part of the organization, that they are outsiders.

C. They believe that aggressive personalities generally rise to the top to run organizations, and prevail over passive personalities, regardless of the appropriateness of the decision.

10. REVIEW COMMITTEES (i.e. The Christopher Commission):

A. Police reform is necessary and overdue.

B. Existing police management is not able or unwilling to make corrective changes.

11. POLICE DEFENSE ATTORNEYS:

A. Police departments could reduce exposure to civil liability by holding supervisors and managers more accountable.

B. In case of civil litigation, multiple defendants need to maintain a joint defense and not assess blame on each other.

Stakeholder assumptions have been mapped on an Assumption Map, shown below. Consideration was given to the certainty of the assumption, as well as its amount of importance, placing it in a quadrant to show relationships visually.

TABLE 21

ASSUMPTION MAPPING

		CERTAIN		
		5A	6A	
		2A	1C	6C
		7A	1B	
			10A	
9B			7B	
1A		8C	5B	
10B				
<hr/>				
VERY				
<hr/>		4A	IMPORTANT	
UNIMPORTANT			2B	3A
		8A	11A	8B
			4B	10B
			6B	
		3B		9A
<hr/>				
UNCERTAIN				

DEVELOPING ALTERNATIVE STRATEGIES:

A modified policy delphi was used to identify potential strategies. The primary object of the modified delphi process is to insure that a variety of alternative strategies, designed to address the strategic issue, are identified and explored.

A panel of seven individuals, all knowledgeable in the issue area, were invited to participate in the process. The panel included El Monte Police Department's Assistant Chief of Police

Peter Mireles, Captain Bill Ankeny, Lieutenant Ken Jeske, Training Manager Joel Everett, President of El Monte Police Association George Hopkins, and El Monte Assistant City Attorneys Marv Cichy and Suzanna Alcala. The panel was given the previously prepared mission statements and asked to generate a list of strategy alternatives that would help the El Monte Police Department attain this mission. Each potential strategy alternative was rated on its feasibility, desirability, cost and stakeholder support. The following is the list of potential strategies.

1. Establish a civilian Police Commission. The commission would have the responsibility to review the operations of the police department, and make recommendations concerning policy to the chief of police.
2. Screen applicants with a battery of tests designed to eliminate applicants who are a high risk for liability. Tests would be designed by both psychological and legal experts and would concentrate on passing persons with strong interpersonal communication and problem solving skills.
3. Establish policy of mandatory reporting of misconduct by police officers. - Under threat of discipline to themselves, police officers would be required to report to supervisors, not only any criminal act, but also any violation of department Rules and Regulations.
4. Make officers individually responsible and liable for their actions. - Punitive damage awards would not be paid for officers. This would be a trade off for other legal reforms, such as limits on damage awards, and availability of insurance for officers.
5. Increase the accountability of police supervisors and managers. - Not only in cases of supervisors own actions resulting in damages to third parties, but to institute a practice of discipline in cases such as negligent retention, failure to train and failure to adequately supervise.
6. Lobby for legal reforms. - Identify the most important reforms for the law enforcement community such as limits on damage awards, and equalization of attorney's fees being paid by the prevailing party, and coordinate a unified effort with other agencies, to persistently try to educate the general public and legislature to actively reform legislation.

7. Training programs - provide adequate training to police officers in areas aimed at limiting civil liability.
8. Fight Back - issue guidelines on acceptable behavior and conduct for officers. Take disciplinary action when conduct is outside of the guidelines, but support officers who operate within guidelines. Vigorously oppose obviously harassing lawsuits by counteraction.

Through a rating process, the panel narrowed the strategies to three, for closer analysis as contained in the following discussion, with a goal to recommend one strategy for implementation

Alternative #1 - TRAINING PROGRAMS - a considerable amount of training already takes place for a police officer. Stakeholders support should be unanimously high, since the result would be a more professional organization. Training has both immediate, short term benefits, and long term benefits. Cost would be compensated by savings in liability judgements.

In the survey conducted by I.C.M.A. and The Wyatt Company, the three most frequently cited causes of loss were:

- 1) Undue use of force
- 2) False arrest
- 3) Failure to follow due process (29)

These can all be readily controlled through effective loss control activities, particularly education and training.

***PROS:** Creates more professional organization.
Immediate benefits.
Proactive effort to avoid problems.
Could reduce or avoid exposure to liability.

***CONS:** Takes away from time spent on primary mission.
Increased budget expense.
Effectiveness could be limited if officer is not supportive.

ALTERNATIVE #2 - LOBBY FOR LEGAL REFORM - This strategy is low in short term desirability, since progress could not be expected for several years. Beneficial results would occur if at all in the long term and would likely remain unchanged for a lengthy period of time, making this high on long term desirability. The cost would primarily be in the man hours spent on the specific activity. This may be hard to justify, particularly in these difficult financial times. Stakeholders support would doubtlessly be divided on the strategy. Those who could be expected to support would include the police officers associations, police supervisors and managers, attorneys for the defense of police, and the city council. Although the council would be expected to support for reasons of seeking to reduce the city's risk of exposure to liability, they would also be cautious of police management involved in political activity. Those stakeholders that would be expected to oppose the strategy would be plaintiff's attorneys and the ACLU. The general public would be divided as individuals on this issue, which underscores the need to educate and inform as part of the strategy.

PROS: Possibility of significant long term benefit
Budgetary relief.
Spin-off benefits to other programs in need of funding.

CONS: May be hard to justify time spent to significant stakeholders outside of the organization.
Stakeholders support would be divided.

ALTERNATIVE #3 - INCREASE THE ACCOUNTABILITY OF POLICE SUPERVISORS AND MANAGERS. This strategy had one of the highest ratings for feasibility. It was felt that this strategy was both appropriate and efficient. It was high on both short term and

long term desirability. The cost factor was considered negligible. Stakeholders support is expected to be high from almost every group. The police officers association as well as the supervisors and managers themselves would probably have some hesitation to support a strategy that has a principal factor of increased discipline. There could be a backlash among supervisors and an alignment with rank and file labor groups.

PROS: Stakeholder support high from most.
Requires no significant budget expense.
Strong community support and expectation.

CONS: Supervisors/managers likely to be suspicious or resistant.
Could cause closer alignment to rank file officers.
Strained labor relations between management and mid-managers.

RECOMMENDED STRATEGY

The panel was not able to reach consensus on any one strategy. As a preferred strategy, they chose to recommend the key elements from strategies #1 and #3, training and increased accountability for supervisors and managers. The panel was in agreement with the Kolts Report which said management must demonstrate their personal presence and commitment that excessive force and impermissible conduct will simply not be tolerated. (30)

The recommended strategy is to reduce the department's exposure to liability and to increase the accountability of supervisors through implementation of a risk management program. The risk management program will utilize training programs as one of its key elements. The researcher has added elements of several key strategies discussed earlier.

The panel felt that although there is a budget factor in creating a new program, it will be cost effective in the long term and help to satisfy the public's demand for efficient use of public funds. It will have little resistance from any stakeholder and has nearly immediate short term benefits. While a risk management program will involve training programs, it is much more comprehensive than just training. All employees will be held accountable, with a special emphasis on the responsibility of supervisors and managers.

IMPLEMENTATION PLAN

For a strategy to be successful, an implementation plan must be properly formulated. The specific steps involved in the implementation of this strategy are listed below, followed by an estimated time for implementation.

1. The chief of police appoints risk management coordinator/one month
2. Risk management committee formed/two months
3. Risk management policy statement developed/three months should include policy of accountability and requirement to report misconduct of officers to supervisors.
4. Committee and coordinator identify loss exposures/six months
5. Coordinator and committee review proper techniques for risk control/six months - ongoing
6. Monitor progress of decisions for desired results/six months - ongoing
7. Establish test to screen applicants to eliminate high liability risks. Include input of psychological and legal experts/one year
8. Risk management coordinator is responsible for lobbying efforts on behalf of department/one year - ongoing

One person should be appointed the risk management coordinator. This individual will oversee the risk management process and make sure the program runs smoothly, and that the various tasks are accomplished. The risk management coordinator should be someone who is in the position of authority, at the rank of lieutenant or above. He or she must be willing to do the job and have an interest in controlling losses. This person should not have the extra duties of this assignment thrust on him/her if he/she already has insufficient time to complete the tasks of his/her regular job. The assignment may require the approval of a new position.

It will be necessary to have a risk management committee, the purpose of which is to give guidance to the risk management coordinator, assist in determining risk management goals and write policy statements. The committee should be composed of representatives of all employee work groups and divisions.

The coordinator will be responsible for assisting the risk management committee in recommending policies, carrying out policies once adopted by the chief of police, and coordinating the risk management process.

A risk management policy statement must be developed, which authorizes the risk management coordinator and the committee to perform the risk management function. A document must be adopted and signed by the City Council and the Chief of Police. A document along with a management manual or policy directives will be distributed to all employees and reviewed at a training session. The manual and policy statement will become part of

orientation training for new employees. Employees will be held accountable for any breaches of the policy statement.

The policy statement should include a proposal to reduce future risks of liability by screening new applicants. An emphasis should be placed on hiring candidates who not only pass certain minimum requirements, but also have an aptitude for the varied police functions. An individual with interpersonal skills that will be of benefit in problem solving situations is preferable to an individual who views physical aggression as a standard of conduct. Candidates with violent tendencies must be eliminated through psychological screening and a thorough background investigation.

Reducing risks of liability can be accomplished with management providing guidance to employees. The overall mission statement and organizational values should include recognition of the desire to perform the law enforcement function with a financial responsibility that includes avoiding civil liability. Department policy should include accountability, individually and collectively. Officers should be required to report to supervisors any misconduct they may witness.

In order to assist in ascertaining the continuing emotional and mental fitness of the department's officers to carry out their duties, all employees should be alert to any indication that an officer may not be emotionally or mentally fit. Any employee who observes behavior or circumstances that gives question as to an officer's mental or emotional fitness for duty, should report this to any supervisor. Such indications include, but are not necessarily limited to, the following:

- A. One or more civilian complaints.
- B. An abrupt change in customary behavior.
- C. Excessive lateness and/or absenteeism.
- D. Sleeping on duty.
- E. Overeating or failing to eat.
- F. Apparent inattention to personal hygiene.
- G. Inappropriate and/or excessive use of alcohol.
- H. Symptoms of use of drugs, including memory losses.
- I. Impatience or loss of temper.
- J. A pattern of conduct indicating the possible inability to defuse tense situations and/or a tendency to escalate such situations or to create and/or escalate confrontations.
- K. Irrational verbal or other conduct.
- L. Involvement in incident resulting in death or serious injury.
- M. Expression by the officer of doubts concerning his/her own mental or emotional stability.
- N. Any other reason giving rise to a concern as to an officer's fitness to occupy the position of peace officer.

The risk management committee and coordinator must identify loss exposures in the area of liabilities. The program can only be successful when all the loss exposures have been discovered. The procedures to identify loss exposures will include personnel inspections, interviews with personnel and review of past incidents giving rise to liability, both within the El Monte Police Department and other police agencies. Once the identification of loss exposures has been completed, the risk management coordinator will then present an overall plan to eliminate such exposures.

The next step will be to analyze and evaluate the loss exposures that have been discovered. The overall evaluation will include determination of the severity of the loss and its frequency during a specific period of time. The purpose of evaluating risks is to target those that demand greater attention and determine if risk management efforts had the desired results.

The coordinator and committee next review the proper techniques for risk control of the loss exposures discovered and evaluate them. The techniques to be considered are avoidance, loss reduction, and loss prevention. The technique of avoidance would be to eliminate the possibility of all loss because the exposure is abandoned or the activity never undertaken. Loss reduction involves steps to make the adverse consequences of a loss have a less devastating impact on the organization. Loss prevention prevents an incident of loss from ever occurring, through a technique such as training.

The most appropriate risk control technique available must be selected by the coordinator. His decision will be a balance between the effectiveness of the techniques, the probability of achieving the desired goals and the economic reality of the implementation of the technique. The risk management coordinator must implement the technique. The one chosen must be one that can be successfully implemented and then evaluated for its effectiveness.

After the appropriate techniques have been implemented, the next step is to monitor the progress of the decisions to determine if the desired results have been obtained. Should the

results be less than desired, the technique selection process should be continued until the desired outcome is reached.

Tort reform is an area that offers great hope for positive impact on the future of police civil liability. A five year moratorium on the introduction of tort legislation has just expired in the legislature in December, 1992. It should be the Risk Management Coordinator's responsibility to lobby on behalf of the police department to help bring about tort reforms such as limits on awards for pain and suffering and punitive damages, limits on plaintiffs' attorneys fees, and an English Rule system that would allow defendants to collect attorney's fees from unsuccessful plaintiffs.

Tort reform has been continually opposed by trial lawyers. However, there is a growing awareness of the dire financial straits of every level of California government. Add to that the new legislators who will be taking office as a result of reapportionment and term limits, and the prospects of tort reform in the coming years has never looked better.

The police department's lobbying efforts should be coordinated with other police agencies and organizations with common goals, such as the League of California Cities and the California State Association of Counties. The Risk Management Coordinator, as well as the Chief of Police, should avail themselves of events such as Legislative Day, to be held in spring of 1993, sponsored by the California Police Officers Association, CPOA. Legislative Day is a program designed to give training on how members can influence legislation and the

opportunity to meet with legislators and government officials in Sacramento.

The Risk Management Coordinator should have the responsibility of developing public awareness programs to convey the need for tort reform, since a community's perception may not be in accord with objective reality. While there is growing sentiment for tort reform, the shape the reform might take remains to be seen. Law enforcement organizations must recognize the power of information, and rather than watch reform take place, make the effort to influence it for the benefit of the law enforcement community. It is law enforcement's responsibility to educate the public about the circumstances that call for tort reform. The media, service clubs, and schools are a few examples of vehicles that can be effectively used to provide the community with an appreciation of the financial drain from municipal budgets due to litigation costs.

NEGOTIATING ACCEPTANCE OF THE STRATEGY

For a successful implementation of the strategic plan, it is necessary that the stakeholders support and accept not only the policy, but the course of action in the planning phase. This is accomplished through a negotiation process. To assist in delineating and operationalizing this plan, the alternative strategy has been divided into several key components.

City Council/public approval for risk management program.
City Council approval of new position for risk management coordinator.

Support of employees for concept of greater accountability.
Determining necessary training programs and methods for delivery.

Determining monetary impact/expenses and savings.

AGENCY POSITION:

The department must consider some key components which are critical to the implementation of the plan. These most critical components include:

Support of the Chief of Police.

Time allotment for risk management coordinator and committee to function.

Committees decisions for risk control must be required (not suggestions) with approval of chief of police.

Training needs identified must be mandatory.

Accountability of all employees.

Appointment of risk management coordinator is management prerogative.

Additionally, there are some components of the strategy which are not as critical, and could become areas of compromise during negotiations, especially with those stakeholders critical of the alternative strategy.

The components include:

Coordinator's position means an increase in compliment.

Methods of delivering required training.

Public's participation in risk management committee optional.

Make up of committee members.

Final decision maker as to discipline - Chief, Committee, Administrative officer or Citizen review committee

STAKEHOLDERS POSITIONS:

Five stakeholders were selected because of their interest and involvement in negotiating a strategy. Consideration of the following stakeholders positions were:

GENERAL PUBLIC

FIRM:

Demand efficient use of public funds
Proof of program cost effectiveness

FLEXIBLE:

Management decision for accomplishment of mission goals
Hours spent on training

P.O.A.

FIRM:

Method to appeal discipline actions
Input to suggested policy from risk management committee
No additional restrictions on officers conduct/authority

FLEXIBLE:

Make-up of committee
Required training
Situations of obvious gross misconduct

A.C.L.U.

FIRM:

Involvement in policy making
Citizen review of performance
Openness of disciplinary process

FLEXIBLE:

Risk management committee make up
Training recommendations/requirements
Time spent on risk management process

POLICE SUPERVISOR/MANAGERS

FIRM:

Fair implementation of discipline
Program for recognition of exceptional performance
Support for necessary disciplinary decisions

FLEXIBLE:

Support of overall strategy
Final authority for disciplinary actions
Training functions/methods of delivery

AGGRIEVED EMPLOYEES; (SNAIL DARTER)

FIRM:

Satisfactory address of individual grievances
Disciplinary review based on individuals circumstances
Approachability of risk management committee

FLEXIBLE:

Make up of risk management committee
Outline of grievance procedure
Solutions offered for individual grievances

Generally most stakeholders should be very supportive of a risk management program due to the benefits from the improved allocation of resources. It would be a more efficient use of public funds and reduced losses to the community, thereby freeing funds for more community based policing programs.

NEGOTIATION STRATEGY

In order to successfully negotiate the alternative proposed, each stakeholder must be anticipated in the negotiating strategy. The proponents of the strategy should move forward with a plan to employ a "win-win" negotiation strategy, or at least an effort to gain compromise with stakeholders. This is the best approach since the primary stakeholders involve the general public and the employees of the department, the most valued resource for the department.

However, some stakeholders do not enjoy a feeling of mutual trust. For them the use of a win-lose approach will be necessary when dealing with critical components of the strategy. Some specific techniques which could be employed with the identified stakeholders include:

THE GENERAL PUBLIC:

PERCEPTION. - The proponents of the strategy should put themselves into the shoes of the general public, not blame them for the existing problems or risks. The proponents should discuss each other's perception with the general public and make proposals consistent with the values of the public.

COMMUNICATION. - The proponents should speak with a purpose and attempt to build a working relationship.

POLICE OFFICERS ASSOCIATION:

FOCUS ON INTERESTS - Make interests come alive when approaching the P.O.A. with the strategy. The proponents of the strategy must reconcile their interests with the P.O.A. and not look at taking positions. They should invent options for mutual gain.

A.C.L.U.:

INSIST ON USING OBJECTIVE CRITERIA - Principal negotiation produces bias agreements. Proponents should look to develop objective criteria with fair standards and procedures. Due to the seriousness of the positions of such groups as the A.C.L.U., the proponents of the strategy should be prepared for a worst case scenario in the event that the A.C.L.U. or similar citizen group should be able to exert their influence. In that case the proponents should be prepared with B.A.T.N.A. (best alternative to a negotiated agreement).

POLICE SUPERVISORS/MANAGERS:

ASSOCIATION - The stakeholder would be important in supporting the proposal, not only because of their influence, but also because of their crucial role in the strategy.

BUILD WORKING RELATIONSHIPS - The stakeholder has developed a successful relationship with many of the involved stakeholders and is trusted and respected. The proponent would be greatly served by taking advantage of these developed relationships and its influences on other stakeholders.

If the stakeholder at times hesitates and does not want to support the alternative strategy, the proponent should use Negotiation Jujitsu, by not defending ideas and strategies, but inviting criticism and advice.

AGGRIEVED EMPLOYEES:

ACKNOWLEDGE THEIR INTEREST - this negotiating strategy is critical to the stakeholders. Proponents must be able to show them how they will be affected by the success or failure of the strategy.

DON'T REACT EMOTIONALLY - The stakeholder may attempt to introduce emotion into the negotiation. Certainly it is safest to avoid such a confrontation and focus on the facts.

The risk management program will seek to reduce exposure to liability in all areas, and this would include relations with employees. The program would include training programs for supervisors on employee relations and should eliminate or greatly reduce instances of aggrieved employees filing law suits against the department. Before starting implementation of the risk management strategy, an understanding for its value needs to be developed in the stakeholders responsible for its success. This can be accomplished by beginning with training programs of techniques to avoid civil liability, for employees, supervisors,

and city council. The same message can be delivered to the general public through community based policing programs.

An effort must convince employee groups that not only will effective risk management mean efficient use of public funds, but it will also free up funds to be used for other items and programs, and this can mean a more pleasant working environment.

A risk management program will make the department a more appealing organization for which to work, attracting high level candidates for new job openings. The department will have better morale and productivity.

Section Three:

Transition Management

TRANSITION MANAGEMENT PLAN

This portion of the paper presents a Transition Management Plan for implementation of a Risk Management Program aimed at limiting exposure to civil liability for the El Monte Police Department.

The El Monte Police Department shares a threatening environment with all of the law enforcement community. All over the country, police officers are under fire. Never has so much attention been focused on police actions. Police agencies are suffering the negative impacts of civil lawsuits, criminal prosecutions, special commission investigations, federal civil rights investigations, and damaged media relations.

Efforts toward a war on drugs and a war on crime increase the calls for service that expose a police agency to the risks of civic liability. The El Monte Police Department has a very low ratio of officers to population and a very high ratio of serious crimes to population. The ratio of civilian support staff to sworn officers is also quite low. This combination places a heavy burden on the police department. The department can either do less, thereby avoiding liability risks (not an acceptable option), or it can do things differently, in an effort to bring about that desirable future described earlier in Scenario #2.

That future will be one in which citizens demand financial accountability of their government leaders and no longer offer public funds as deep pockets to satisfy court judgments. Legislative changes will limit damage awards in police liability cases for agencies that demonstrate accountability. Savings from

litigation costs are returned to police department budgets. Staffing, training, and equipment purchases will reach new highs.

The Risk Management program is to consist of a coordinator and a committee, who will have the responsibility of determining risk management goals and recommending policy statements. These will become part of the Department manual and policy directives. The manual will be distributed to all employees and reviewed during training sessions. Employees will be held accountable for any breaches of the policy statements.

The Risk Management Committee and Risk Management Coordinator will identify loss exposures in the area of liability of police officers and an overall plan to eliminate such exposures. They are to employ techniques of avoidance, loss reduction, and loss prevention.

An effective risk management program will allow for more efficient use of public funds. It will decrease the overall costs of everyday operations of the police department, but will also increase productivity by reducing the waste of capital and human resources. The cost of liability for the police department will be reduced by implementing risk management techniques. This reduction of risk will be reflected in the department's budget by freeing up funds to be used for other budgeted items.

DEVELOPMENT OF COMMITMENT STRATEGY

CRITICAL MASS

A number of key persons and groups has previously been identified as having impact on, are impacted by, or who care

about the topic issue. From this original list of stakeholders, five actors have been identified who comprise critical mass. The critical mass is defined as the minimum number of people who, if they support the desired change, it will likely be successful; and who, if they oppose the change, it is likely to fail.

The following actors are viewed as comprising the critical mass:

Chief of Police Wayne C. Clayton

El Monte Police Officers' Association - POA

Police Department Supervisors and Managers

El Monte City Council

The Public

COMMITMENT CHARTING:

Table 22, reflects the critical mass actors in their present level of commitment to changing policies and procedures, including a projection of the minimum level of commitment required from each actor to insure success of the desired change. An assessment of the critical mass actors and the appropriate intervention strategies necessary to accomplish the required commitment level for success of the transition plan follow the chart.

Table 22

Commitment Chart

<u>Commitment ></u> Critical Mass Actors	Block Change	Let Change Happen	Help Change Happen	Make Change Happen
Police Chief		O <<<< <<<<<<	<<< X	
POA	X >>>>>>>>	>> O		
Supervisors Managers		X >>> >>>>>	>>> O	
City Council		X >>> >> O		
Public		X >>> >> O		

X = Current Level of
Commitment

O = Desired Level of Commitment

POLICE CHIEF WAYNE C. CLAYTON - Clayton is the veteran chief of the El Monte Police Department, a position he has held for fourteen years. Having had a harmonious working relationship with the majority of the City Council during his tenure as Chief, Clayton has also served as interim City Administrator. Although having been offered that position on a permanent basis, Clayton declined in favor of remaining Chief. As might be expected with having such a long tenure as Chief, Clayton has now seen the tenured City Council majority retire. Chief Clayton now faces the uncertainty of directives from a new City Council, including a Mayor and one Councilman who do not favor his remaining as Chief.

Chief Clayton recognizes the tremendous impact that civil liability awards have on the Department and City in general. Clayton has been named personally in law suits and had his policies and procedures questioned and examined under the microscope in Federal Court. As a result, Clayton has taken action to modify procedures that have even the perception of being wrong or inefficient. His current level of commitment is at the level to make change happen. He wants to block any financial leaks.

Clayton is also keenly aware of the problem of asking individual officers to shoulder the full responsibility of actions taken in a profession that is inherently high risk. Clayton helped to sponsor legislation that resulted in changing the California Government Code to permit municipalities to pay the punitive damage awards assessed against officers. He is generally considered a fair disciplinarian. His management style has been described as "humanistic".

Since the Chief is the ultimate decision maker on questions of discipline, the idea of a Risk Management Committee aimed at increasing responsibility may be perceived by rank and file officers as meaning increased discipline in the future, if it comes from the Chief. For this reason, it would be desirable to have the Chief withdraw from such a prominent position of making change happen, to a position of letting change happen, so as not to draw the opposition of the POA, another critical mass actor. Proposal of the Risk Management Committee should be made a critical mass actor who is less likely to elicit opposition from

other critical mass actors. Therefore, Chief Clayton should take a lesser role in the onset of the proposal and development of the Risk Management Committee.

THE POLICE OFFICERS ASSOCIATION (POA) - The POA is the representative body for the rank and file police officers and the sergeants. The POA's position is to represent the officers and sergeants in matters of wages, benefits and working conditions. While this is most commonly related to financial matters of compensation and benefits, it also includes trying to avoid the imposition of discipline. The P.O.A. also provides legal defense benefits in disciplinary matters.

The idea of increased responsibility will automatically initiate thoughts of increased discipline in the minds of the POA. For this reason, the current level of commitment of the POA has been assessed at the level to block change. While the POA alone may not be in a position of sufficient strength to stop the change, their considerable lobbying influence, if applied to the City Council and to the Public, could be enough to sway those critical mass actors to take a position to block change. And even if the POA was not successful in blocking the change, their resistance to the operation of the risk management committee, could limit its success.

Moving the POA from a level of blocking change to a level of helping change happen, can be accomplished by convincing the POA leadership of the necessity and even the benefits to establishing the Risk Management Committee. First and foremost, this would include the President of the P.O.A. A more professional

organization, through increased responsibility, will result in better working conditions for everyone. Should that alone not be sufficient to motivate the POA to help the change happen, once convinced that by helping to eliminate financial loss to damage awards will translate into maintaining or even increasing salary and benefits, the POA should be ready to help establish the Risk Management Committee.

As stated earlier, the Chief would not be the best person to try and sell the idea to the POA, due to the likelihood that if interpreted as being his idea, an assumption of increased discipline would cause resistance. Instead, mid-management, captains and lieutenants should look for a few senior respected officers, and introduce them to the plan. Any that are convinced of its benefits should be recruited to help sell the idea to the rank and file and the POA leadership. While not absolutely necessary, it would help if one of these officers were either a member of the POA board or a shift representative to the board. In addition, the City Council should help to influence the POA by stressing the importance of eliminating budget losses to liability awards. The council could draw a relationship to the budget losses to the risk of future compensation and benefits. A bonus plan for participation in the risk management program might be introduced through negotiations with the POA in order to help garner support.

CITY COUNCIL - The Council has seen a considerable change in its makeup. The mayor and one councilman have served merely two years. The other three Council members were just recently

elected. The direction this new council wants to take the city is still unknown. Their techniques and methods of operating are also unknown.

The one thing that the Council is well aware of, is a tremendous shortfall in budget revenue. Projections show a complete loss of the budget reserve in just three years, without a change of current conditions. The Council could be expected to be supportive of any change that would help to eliminate financial loss, namely civil damage awards. Many of the council members draw some amount of support from the POA, either directly by endorsements from the POA, or indirectly, as by showing their support for the police to the favor of the public. For this reason, the council could be expected to proceed very cautiously with any issue involving the POA. Therefore, the City Council's level of commitment has been assessed as letting change happen. At this time, while they might see the value of having a risk management committee aimed at increasing responsibility, they would not be expected to make the change happen, or even help it happen, if they saw the possibility of drawing disfavor from the POA.

However, the City Council is the likely critical mass actor to be able to move the POA from blocking change to helping change happen. Therefore, the City Council will need to be moved to a level of helping change happen, in order to successfully influence the POA. This could best be accomplished by recommendation of the City Attorney. The City Council can also play a pivotal role in helping to influence the public to help

change happen, by educating the public as to financial conditions and effects of damage awards against the city. The City Council, in a united effort with other municipalities, could influence the Public support for limits on liability awards.

THE PUBLIC - The public in El Monte is representative of the residents in any California community. They abhor the type of actions that lead to civil damage awards, yet they generally support the men and women that make up their police department. While there are proportionately few who are outspoken and calling for any type of reform, as a whole they are quite apathetic and tend to let change happen. But the public is the one actor among the critical mass actors that has the most power to make change happen. The power and influence of the vote, is the one action that can control future scenarios.

Every actor, working to bring about a change in the effects civil liability has on law enforcement, needs to recognize that the most powerful actor in critical mass is the Public. It is the Public who ultimately decides what is and isn't acceptable. Every other actor named in critical mass, the Chief, POA, Command Staff, and City Council, must act to involve the Public in any reform efforts. At the same time, it will force the Department to listen to the desires and expectations of the Public. Together, they can form an alliance to make worthwhile and lasting change.

First, the other actors must act to inform the Public of conditions and future worst case scenarios that may occur unless the public acts to intervene. Not only can the Public be

expected to let a risk management program be implemented, but with the right amount of education and sufficient motivation, the Public could be moved to help change happen by supporting bonus programs for officers recognized by the risk management program for exemplary conduct, and by voting to enact legislative reform in civil liability of municipalities.

GOVERNANCE PLAN

The future state planned for is one in which a risk management committee instills and maintains a high level of individual responsibility among rank and file officers and supervisors alike.

The Chief of Police is probably not the person to take on the responsibility of coordinating the change effort. This is not to say that the Chief will not be closely involved, but general day to day operations are much too critical for him to delegate to another, which is what the Chief would have to do in order to give the change effort its required attention. The Chief, if working as the project manager, would also likely cause resistance from the POA, another critical mass actor.

While the implementation plan calls for a risk management coordinator to be appointed, the transition state is much too delicate to rely on the functioning of one person to bring about the change. One person, no matter what his rank or position, would also likely run up against the same obstacles expected if the Chief of Police acted as project manager, as outlined above.

The transition will be affecting persons and organizations outside of the police department itself. In order to be successful, the transition will need to involve these outside groups and individuals. To rely on line-management hierarchy positions being "job enriched", would be limiting the necessary resources and risking failure by not being broad enough.

Natural leaders will have to be relied on to help sell the transition, but can not be expected along to be a suitable change-management structure. The overall risk management program must be authorized by the City Council and will involve issuance of a manual and policy directives. The rank and file officers will need to recognize some higher authority as being involved before being expected to support changes.

A "kitchen cabinet" is another structure that could not be utilized to make this transition. In this instance, the Chief of Police would still be acting as project manager, but relying on two or three internal colleagues whom he could trust and consult on an informal basis. This structure would have the same obstacles as described above for the Chief acting as project manager and for natural leaders.

The most appropriate management structure for this planned transition is a group consisting of representatives of constituencies. The major constituencies involved are the Police Department Command Staff, the Police Officers' Association, City Council, and the Public. The Chief of Police should take the lead in calling together a meeting of the Department's Command Staff, the POA officers, and the City Administrator, acting as

the representative of the City Council. The Public would not be included at this stage, so that a consensus among the other critical mass actors could be obtained. Then, once a shared vision was in place, the Public would be called in to support and help change happen.

METHODS TO SUPPORT IMPLEMENTATION

Civil liability for both common-law torts and the unconstitutional acts of police officers has been a reality for municipalities for many years now. The damage awards have become more frequent and for increasingly greater amounts. Before taking any action to avoid civil liability, the El Monte Police Department, and any police agency, should conduct a confrontation/goal setting meeting. The purpose of such a meeting is for the organization to confront itself through introspection. More than any other issue, civil liability calls for that introspection.

Because this is such a large issue, involving so many individuals and groups, it will actually require a series of meetings. The first, called by the Chief of Police, will involve command staff, managers, and first line supervisors. The next meeting would include the POA and rank and file officers. Each meeting would be for the purpose of identifying problems or barriers to the implementation of a risk management program. Mixed subgroups would prepare lists of desired changes and identified barriers. After the subgroups' reports were presented to the total group, subgroups would once again meet with their

own managers to select their course of action, by identifying what they can and can't do. The total group would reconvene and present action plans and recommendations. Command Staff would then make final decisions for action.

Once the police department had made its own serious introspection toward avoiding civil liability and implementing a risk management program, further meetings should be conducted and expanded to include the City Council and the Public. The higher goals toward tort reform would be explained to them and their roles for change identified.

For the continued success of the goal, responsibility charting should be done by the critical mass actors. This mechanism clarifies role relationships, reduces ambiguity, wasted energy, and adverse emotional reactions. Following a form, displayed in Table 23, the critical mass actors would meet and develop a list of actions or decisions, and then individually identify the role for each actor concerning each action. Their roles being either; R-RESPONSIBILITY to see that decisions or actions occur, A-APPROVAL of actions or decisions with right to veto, S-SUPPORT of actions or decision by provision of resources but with no right to veto, or I-INFORMED of action or decisions but with no right to veto.

Table 23

Responsibility Chart

Decision	Chief / Command Staff	Actors			
		POA	Supervisors/ Managers	City Council	Public
Goal Setting Meeting	R	I	I	A	-
Risk Management Program	S	S	S	R	I
Training	R	I	S	S	I
Budgeting	A	S	S	R	I
Foster Responsibility	R	S	S	A	S
Legal Reforms	S	S	S	S	R
Bonus Programs	A	S	S	R	I

LEGEND

R = Responsibility (not necessarily authority)
 A = Approval (right to veto)
 S = Support (put resources toward)
 I = Inform (to be consulted)
 - = Irrelevant to this item

Then, working as a group, an agreed version of the responsibility chart must be arrived at by consensus decision. Responsibilities may need to be reassigned. Table 23 displays what a final responsibility chart may look like.

The tools that will be used to foster communication strategy for the transition will include the following:

During the initial goal setting and introspections, newsletters of the City employees and the POA will carry articles that help to identify the need for confrontation of the problem. Special announcements will be posted and distributed to announce the goal setting meeting and to invite participation. When progress has developed to the point of requesting public

involvement, press releases will be issued inviting attendance at public meetings.

At the time the risk management program is in place, the coordinator will serve as the press relations manager. For the purpose of working toward tort reform, the coordinator will be available for local cable TV channel appearances, as well as other TV stations. He will act to communicate to the public, respond to concerns, and collect input and feedback.

The critical mass actors must continue to meet and evaluate progress until the risk management program is in place, even after that new structure is in place, evaluation of the larger community goal of tort reform must continue.

Conclusions

This study has attempted to answer the question, "What will be the impact of civil liability on law enforcement by the year 2002?" It began with a prediction of a plaintiff's attorney that there is going to have to be some major changes within police departments. At first, it is easiest to recognize the negative impact civil liability has on a police agency. Loss of revenue does not have a positive aspect. However, if we look past the initial incident and resulting lawsuit, civil liability can cause positive reactions as well.

Dire financial conditions for government is one of the leading influences for tort reform. The need for prudent fiscal management will motivate law enforcement management to implement risk management training and accountability among police department employees. Savings from litigation will supplement police budgets with additional staffing and equipment. Training to avoid civil liability will increase, as will funding for community based programs.

The political agendas of individuals and groups connected to the civil liability process are related through the results they are seeking, even though their motives may be different. The various groups desire a community in which they can feel a sense of security. They seek a police department that does not tolerate abuse of authority, misuse of force, denial of due process, or discrimination. They want police departments with officers who have concern for their welfare and their constitutional rights.

In order to deliver the service communities are demanding, law enforcement will adopt various forms of community based policing. Police changes will include increased training in cultural awareness, use of force, accountability, and respect for individual rights. The result will be an understanding between police and community which establishes mutual accountability.

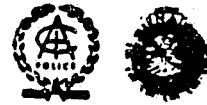
Change in police policy and procedure will take place. When the community feels its police department is not functioning in accordance with its authorized mission and is not responsive to the community, the community will affect change from outside the department. Recent state and federal legislation proposals have included prohibition of violation of constitutional rights under color of authority(31), and creation of a statewide Police Review Commission under the Department of Justice(32). The "Police Accountability Act" would have permitted the United States Department of Justice to sue local police agencies to implement or modify policies.(33)

The police departments which attempt to maintain the status quo will have the most difficult transitions, for they will have change imposed on them. Departments that participate in meaningful planning with their communities will find the future offers more opportunities for the professional delivery of law enforcement services.

Performance and behavior of police officers is effected by the threat of civil liability. The tendency to avoid enforcement actions that risk exposure to liability will be temporary and brief. Although police officers must know they will be held

accountable and will not be indemnified for damages they cause acting outside the course and scope of their duties, they must also know that they will be supported when carrying out the law enforcement mission with appropriate and authorized methods. Proper guidance and training will guarantee police officers will not neglect their duties.

Appendix



POLICE DEPARTMENT • 11333 VALLEY BLVD.
EL MONTE, CALIFORNIA 91731
(818) 580-2100 • FAX (818) 444-2206

WAYNE C. CLAYTON
CHIEF

WALTER H. MANTE
ASST. CHIEF

PETER MIRELES
CAPTAIN

BILL ANKENY
CAPTAIN

October 23, 1991

Matt Weintraub
Assistant City Administrator
City of El Monte
11333 Valley Blvd.
El Monte, California 91731

Dear Matt,

I am a member of the POST California Command College, a two year training program for police managers. Part of the program includes my completion of an Independent Study Project.

I would like to request your participation in a meeting to help me gather data for my project. I believe you would have important opinions and information to contribute. The issue which I have selected for study is, "The Impact of Civil Liability on Law Enforcement by the Year 2002".

I have scheduled this meeting for Tuesday, November 5, 1991 at 2:00pm in the conference room of the Police Department. I anticipate the meeting to last approximately four hours. Please confirm your attendance plans with me as soon as possible.

Sincerely,

Mark Gibboney, Lieutenant
Detective Bureau Commander

TRENDS

(top five are listed in order of importance as determined by the NGT, the remainder are in random order.)

1. Amount of training for law enforcement personnel.
2. Frequency of officers proactive enforcement efforts.
3. Level of community based policing.
4. Concern for proper personnel selection.
5. Criteria for entry level selection changes toward social qualities.
6. Citizen groups demand participation in review process
7. Pool of qualified candidates shrinks.
8. Citizen complaints.
9. Accountability of supervisors/managers.
10. Lobbying to reduce liability.
11. Associations forming to pay damage awards.
12. Workers comp claims increase - stress related.
13. Retirements occurring earlier - retention problems.
14. Internal affairs investigations more intense.
15. Changing workforce - social workers/people oriented.
16. Increased responsibilities for officers - risk management for all departments.
17. "Stings" on police officers to measure accountability.
18. Increasing punitive discipline.
19. Efforts to eliminate probable cause arrests.
20. Increasing effort to educate public about job.
21. Increased budget demands for public relations.

EVENTS

(top six are listed in order of importance
as determined by NGT, remainder are in random
order.)

1. Legislature/Judiciary hold officers personally liable for damage awards - no indemnification by Cities.
2. Police personnel files opened to public review.
3. Reporting (by officers) police misconduct mandated.
4. Punitive damage awards limited by maximum amounts.
5. Municipality goes bankrupt.
6. Civilians permitted to manage police departments.
7. State Board or Commission created to oversee police.
8. Individual liability insurance mandated.
9. Decertification of officers permitted by civil lawsuits

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