

## QUALITY TRAINING

The foundation of a quality police department is the hiring of quality officers and providing quality training. With the pool of applicants shrinking the importance of training has become more important. Effective law enforcement and reducing liability risk depends mostly on legal training. Around 60 years ago Arnold Markle and Milton Fishman created non-profit training entities to expand on police academy legal training to provide in-service constitutional training in Connecticut. Their training was limited to law applicable to Connecticut officers. Focusing on what officers in Connecticut need to know has been adhered to by these non-profits and at MPTC / POST since the 1960's.

With the expansion of the quantity of training, commercial training courses have been certified by POST to provide legal training. POST does not have the resources to monitor the content of training which makes it incumbent on those who administer and authorize training to select amongst the various options. Two essential legal principles control the selection process.

### 1. THE STANDARD FOR TRAINING LIABILITY IS DELIBERATE INDIFFERENCE:

This Standard was established by the United States Supreme Court in Canton v. Harris and further defined by the Second Circuit in Walker v. New York. These cases require officials to train officers on the tasks which will “likely lead” to constitutional violations if training is not provided. Canton provided an example of such constitutionally deficient training. The Supreme Court analyzed the ***Deliberate Indifference Test*** in the context of the law applicable to the fleeing felon rule. The analysis is simple. Does failure to train on the new constitutional standard articulated in Tennessee v. Garner amount to “deliberate indifference?”

**Task analysis:** Do officers chase felons? Do officers carry guns? The answers “yes” lead to the obvious conclusion that armed officers may engage in the act of trying to stop felons.

**Law:** Garner established law allowing the use of deadly force against “dangerous” fleeing felons **only**.

*Likely Constitutional harm:* If officers are not trained on this new Constitutional standard, an officer pursuing a non-dangerous felon and not knowing the current standard may foreseeably use deadly force.

The message is clear. Departments must train officers on new law that is specifically applicable to their tasks. Failing to train officers on the law in their jurisdictions is deficient. Such deficient training may lead to liability for the officer and the governmental entity. The officer is not shielded from liability by claiming defective training, as ignorance of the law is no excuse. Therefore, the officer may be held liable for the particular constitutional violation in question. The agency that failed to provide training on the new law may also be held liable for failure to train.

Applying this analysis to Connecticut training is also simple. The law establishing standards for Constitutional training in Connecticut is based on caselaw from, the United States Supreme Court, the Second Circuit Court of Appeals, and the Connecticut Appellate Courts. Legal training should be limited to or *almost exclusively* focused on such law. Apply the Canton/Walker test by asking two questions. Do officers conduct investigative stops, searches, arrests, use force and other tasks limited by Constitutional standards? Is it likely that officers not trained on the law applicable to Connecticut policing will commit constitutional violations?

## **2. DUTY TO INTERVENE:**

An officer with knowledge that a constitutional violation is or is about to occur has a duty to attempt to stop another officer from committing the unconstitutional act. If an officer knows another officer is conducting an illegal search, arrest or using excessive force, they have a duty to intervene so that the individual's rights are not violated. The consequences of failing to intervene to prevent unconstitutional training is far greater.

If legal training consists of training pertaining primarily of out of jurisdiction cases and excludes most of the law controlling officers' actions in Connecticut, officers may act in a manner inconsistent with clearly established law applicable in our state. One officer using excessive force against one person is bad: one department providing constitutionally

deficient training to dozens of officers who have encounters with numerous people exponentially creates the risk of violating the rights of countless individuals. Like the officer who wrongfully shoots the non-dangerous felon, ignorance of the law and blaming the deficient training is no defense and those administering and authorizing such training may be held liable for deliberately allowing and condoning such training.

**QUESTIONS TO BE ASKED WHEN SELECTING LEGAL TRAINING:**

To determine which training is best the following questions should be honestly considered in evaluating a training program.

- 1) Is the training limited to clearly established law creating the guidelines for Connecticut policing from the United States Supreme, Second Circuit and Connecticut Appellate Courts?

OR

- 2) Does the training summarize out of jurisdiction cases which may be inconsistent with law applicable in Connecticut? Does the training fail to include much or all the caselaw from the Second Circuit or Connecticut Appellate Courts?<sup>i</sup>

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- 1] Is the training “interactive” providing the opportunity for the:
    - i. students to ask questions?
    - ii. students to challenge the instructor’s comments allowing for the correction of erroneous content?
    - iii. students to offer information to the entire class providing collective knowledge from experienced officers?
    - iv. the instructor to ask questions to ensure an understanding of the subject and to engage the students to maintain interest?
    - v. the instructor to monitor the class to ensure the students are not on their cell phones, or otherwise engaged in activities unrelated to class?

OR

2] Is the class in the “talking head” video format where:

- i. there is no interaction, shared inquiries or collective knowledge allowing for misunderstanding or worse the spread of misinformation where students may not participate?
- ii. no one knows if the student is listening or watching the video?
- iii. the student may be engaged in other activities or not in the room?
- iv. the student is allowed to turn the volume off and still get full credit while the video runs?

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1] Assuming there is some value in training in helping officers more effectively perform their duties and avoid misconduct by staying abreast of legal standards applicable to Connecticut, do you want to provide training that:

- i. helps officers more effectively and legally enforce the law to properly stop, investigate, search and arrest violators and ensure fewer applications of the exclusionary rule, thereby better protecting communities and reducing the costs of crime?
- ii. reduces mistakes and misconduct due to deficient legal training to avoid the costs of disciplinary actions up to and including termination with the added cost of replacing the officer?
- iii. reduces liability costs due to a lack of applicable legal training and erroneous reliance on out of jurisdiction standards.

OR

2] Is your only consideration whether officers get certification credits? Do you believe that:

- i. the content and quality of training is irrelevant?
- ii. the up-front cost of the training is the primary consideration?

- iii. the downstream costs of less effective performance and misconduct is irrelevant?
- iv. It doesn't matter if your training meets the deliberate indifference standard creating liability for your governmental entity.

Obviously selecting 2s would amount to deliberate indifference supporting a failure to train claim. For approximately 60 years Connecticut officers have received **in class** (or at the very least during COVID, ZOOM) **interactive** legal training **focused exclusively on USSCT, 2<sup>nd</sup> Circuit and Connecticut case law** establishing the proper foundation for police practices. This training has shielded departments from liability in failure to train claims. Pre-recorded video training ignoring Second Circuit and all Connecticut law is a recent phenomenon. Such training is the epitome of deliberate indifference as explained by the Supreme Court.

Plaintiffs seek training records during discovery. Explaining that we saved some money, or we did not know what our officers were getting or doing during training will not save the day.

Our officers deserve pertinent quality training. They and all those they protect should be afforded the best interactive training on information directly relevant to their tasks.

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<sup>i</sup> Over the past 17 months one program has provided numerous out of jurisdiction case summaries but no Connecticut Appellate cases, only one Second Circuit case, and no Connecticut Federal District cases.