

Introduction

Since 1996, the United States Department of Justice (DOJ) has reported that the use of force threatened or used by a law enforcement officer (LEO) occurs in about two percent of the citizen contacts (Tapp and Davis, 2024; et al.). Over the reporting period, an average of 60 million contacts between the police and citizens occurred annually. Predominately, these incidents involve the application of empty-hand control techniques and non-deadly force options, and citizen injuries are infrequent. While rare, given the number of police and citizen contacts and arrests, high-profile use of force incidents, where a citizen was killed, have spawned public protests, riots, and creating tension between the public in some communities and law enforcement.

Commonly, a use of force incident will generate civil litigation consistent with Title 42 U.S.C. Section 1983 (§1983). Claims are filed against involved LEOs for using excessive force and allegations are also filed against agency administrators claiming unconstitutional policies, deficiencies in hiring, failing to train and supervise, and allegations of failure to discipline the involved officers and/or supervisors. The City of Minneapolis, MN settled the civil action for \$27 million on claims of excessive force of the four involved officers stemming from the George Floyd incident (Fadel, 2021). Further, the City of New Haven, CT, settled an excessive force case involving five officers which resulted in paralyzing an arrestee, amounting to \$45 million dollars (Wadweker, 2023).

Additionally, involved officers are also subject to potential criminal prosecution. Berman, et al. (2020) reported that between 2015 to 2020, 110 of law enforcement officers involved in 5,500 citizen shooting incidents, were prosecuted (2%). Officers may be criminally prosecuted in the respective state court on state charges as well as in federal court in accordance with Title 18 U.S.C. Section 242. For example, former Minneapolis officer Derik Chauvin was convicted for the murder of George Floyd in 2021, in state court and sentenced to 22½ years in prison. In July

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2022, Chauvin was sentenced to federal prison for 21 years for violating Floyd’s civil rights, and the sentences are running concurrently. The three on-scene LEOs were also convicted and sentenced to prison on federal charges for depriving Floyd of his constitutional rights; two were convicted on charges of failure to intervene; and one for denying Floyd medical attention (Levinson and Kirkos, 2022).

Calls for reforming many areas within the police use of force have been legislated by several states. Miller (2023) reported that since the George Floyd incident, 3,800 bills in various state and local jurisdictions were filed but only 565 (15%) were passed which were related to the police use of force. Concerns about the reliability of investigating use of force incidents have emerged from many of these incidents. Reforms to improve and expand use of force investigations have been enacted by 16 states (NCSL, 2022), including: California; Florida; Louisiana; Illinois; Maine; Massachusetts; Minnesota; Nevada; New York; Vermont; Delaware; Colorado; Connecticut; North Carolina; Maryland; and Iowa. Some of the legislation created standards and protocols for conducting the investigation, empowered Attorneys General to pursue pattern of practices regarding claims of excessive force, requiring external agencies to perform the investigation, and require submitting annual reports on conducting use of force investigations.

Recommendations for investigating use of force incidents have been developed by professional associations and entities like: the International Association Chiefs of Police (2025); Community Oriented Policing (2008); and Police Executive Research Forum (2025). Several states have published use of force investigation guidelines (i.e., GA, NC, OH, WI). For several years, the DOJ has required agencies under federal consent decrees to revise their force investigation policies and guidelines (PERF, 2013; Ross, 2023). Researchers and practitioners have also published helpful texts on investigating varying aspects of the use of force (Artwohl and Christenson, 2021; Davis, 2021; Hatch and Dickson, 2007; Miller, 2021; Ross and Vilke, 2018).

Use of force incidents and subsequent investigations have gained increased public scrutiny and plaintiffs frequently assert claims in civil actions for failing to investigate the officer's conduct. Little research has been published which identifies the emerging liability issues associated with use of force investigations. The focus of this assessment is to describe the emerging liability issues associated with claims for failing to perform an adequate use of force investigation. Beyond asserting claims against the administrator for hiring deficiencies, failure to train and supervise, and failing to discipline the involved LEO, a plaintiff will also allege that the administrator failed to investigate the incident. The objective of the civil action is to prevail on a claim of deliberate indifference by proving the theories of administrative liability, as evidenced in the failure to investigate the incident. Additionally, allegations are filed that a custom and practice of tolerating misconduct and violations of agency policy by the agency administrator, ratified the LEO's excessive force, which violated the constitutional rights of the subject.

This assessment reviews the trends of published §1983 case decisions for claims of failure to investigate a use of force incident. The assessment will describe the applicable United States Supreme Court (hereafter, the Court) decisions and their impact, the federal appellate court decisions pertaining to the allegations, the mechanics of how the courts assess the factors, and describes and reviews the patterns of case decisions. Recommended strategies to defend against a claim of a failure to investigate the force incident are also described.

Data Set

Using a content analysis methodology, use of force cases with allegations of failing to investigate were accessed through Westlaw® database and reviewed. Each case comprised allegations of excessive force and allegations of inadequate investigations or a failure to investigate in addition to administrative liability claims. Except for three cases, only reported §1983 Federal Circuit Appellate Court (hereafter, Circuit) decisions were assessed, and 200 cases from all the federal circuits were examined from 1989 to April, 2025. Of these cases, 72 percent represent

law enforcement incidents and 28 percent represent jail incidents. These cases involved the following types of force options: deadly force, 65%; empty-hand control and/or intermediate weapons, 20 percent; and 15 percent involved multiple force options applied. Where qualified immunity was denied on the excessive force claim, 2 percent of the decisions reported that the involved officer (s) were criminally prosecuted, which also was a factor in the court's decision to deny qualified immunity.

Review Process

A court begins its review of the plaintiff's version of the force incident from the non-movant party's perspective. The Court held in *Anderson v. Liberty, Inc.* (1986) that the evidence of the plaintiff is to be believed and all justifiable reasonable inferences are to be drawn in his/her favor.

As the review progresses, the court will review the specific facts of the case and assess the LEO's response in accordance with the Court's decision in *Graham v. Connor* (1989) and the precedential progeny. Applying the objective reasonableness standard, consistent with the Fourth Amendment, the review is not to be performed in hindsight but from the on-scene LEO's perception. The Court reemphasized in *Mullenix v. Luna* (2015) and in *Kisela v. Hughes* (2018) that the use of force is an area of law in which the results depend on the facts of each case, examined from the LEO's perception, and the LEO is entitled to qualified immunity unless existing precedent governs the specific facts at issue, placing the LEO on fair notice of unconstitutional force.

In *Barnes v. Felix* (2025) and *City of St. Louis, MO v. Lombardo* (2023), the Court further ruled and emphasized that the use of objective reasonable force is to be assessed within the "totality of circumstances." The Court stressed in *Barnes*, that determining objective reasonableness requires careful attention to the facts and circumstances relating to the incident, based on the officer's

perception, as then known to the officer. The Court also ruled that the inquiry into the totality of circumstances has no “time limit.

A consensus of the federal appellate courts acknowledges that the evaluation factors from the *Graham* decision are not exhaustive. The most important single factor considered by many of the courts is the threat level posed by the subject (*Chew v. Gates*, 1994). Generally, the courts review the factors in this order: (1) whether the subject posed an immediate threat; (2) whether the subject is actively resisting the seizure; (3) whether the totality of circumstances are tense, uncertain and rapidly evolving; (4) the severity of crime at issue; and (5) whether the subject is attempting to evade arrest by flight (see *Scott v. Harris*, 2007; *Graham* progeny to present, not cited herein). In *Scott*, the Court opined that where a party’s version of the incident is contradicted by the record (video evidence), a court should not adopt it merely for the purpose of ruling on a motion of summary judgment.

Moreover, in *Kingsley v. Henderickson* (2015) the Court determined that the force used to control and restrain a pre-trial detainee is to be examined in accordance with the Fourteenth Amendment. To prevail, it need only be shown that the force applied was purposely and knowingly used and was objectively unreasonable. The Court included the review factors from their decision in *Graham* and include the following factors: (1) the need to use force; (2) the relationship between the need to use force and the amount of force used; (3) whether the detainee was actively resisting; (4) the severity of the security problem at issue; (4) the extent of the injury sustained by the detainee; (5) the threat reasonably perceived by the officer; (6) and whether the officer made any attempts to temper the amount of force used. The Court emphasized that the LEO’s perception is to be considered, at the moment the officer used force, within the totality of circumstances, and the factors are not exclusive.

Courts have combined the *Graham* and the *Kingsley* factors in their use of force analysis. For example, in *Estate of Nunis v. City Chula Vista* (2023) and *Frank v. Parnell, Alexander, Spillman, City of Markville, and Sheriff Anderson* (2023), the courts determined the force applied by the

involved LEOs were excessive, violating the rights of the decedents, and denied qualified immunity. The Third Circuit considers additional factors beyond the *Graham* factors including: whether the subject is violent or dangerous; the duration of the action; whether the LEO's action was during an arrest; whether the subject was armed; and the number of subjects the LEO is confronting (*Capps v. Dixon & Capps v. Joyce*, 2024). Further, the Ninth Circuit also considers additional factors, including: whether less intrusive alternative force options were available; whether warnings were provided; the number of LEOs on scene; and whether the diminished capacity of the subject was considered by the LEO (*Scott v. Smith*, 2024).

Administrative Liability

The first level of claims filed alleges the involved LEO (s) used excessive force, irrespective of the force option (s) applied. If the court awards qualified immunity to the involved LEO on the excessive force claim, the court may use their discretion to consider claims filed against the agency administrator and/or supervisors of the LEO (*Green v. City of St. Louis*, 2025). In *Green*, an LEO was accidentally shot by a fellow officer and filed a civil lawsuit. The Eighth Circuit affirmed the lower court's decision, finding the LEO used objective reasonable force. The court emphasized that an LEO is often forced to make a split-second decision under rapidly evolving circumstances. Also, an LEO's use of force is to be examined from the perception of the on-scene officer and even a mistaken perception is to be considered in a tense circumstance, such as what the LEO encountered in this incident.

The court further held, that the LEO is not be judged or held to a demanding standard of whether he or she could have taken a different course of action. Since the LEO used objective reasonable force, the court rejected claims of failure to investigate as the plaintiff failed to show evidence of a widespread and continuing and persistent pattern of unconstitutional officer misconduct, namely officer involved shootings, and a failure to adequately investigate.

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The second level of claims are lodged against administrators, supervisors, and prospective internal affairs investigators. Assertions lodged are focused on five theories of potential administrative liability including: deficient or unconstitutional policies; deficiencies in hiring the involved LEO (s); failing to train; failing to supervise; and failure to discipline the LEO. Based on these theories, independently or in combination, the objective is to provide evidence that they support a claim of deliberate indifference on the part of the agency administrator and/or supervisors, resulting in liability. These claims are more likely to be reviewed by the court, when qualified immunity was denied on the excessive force claim.

Using the Court's decision in *Monell v. Department of Social Services of NY* (1978), the claim against the agency administrator attempts to demonstrate that the agency's policy or custom caused the violation of the subject's constitutional rights. A policy exists when a decision maker has final authority to establish agency policy with respect to the action of a final proclamation or edict. In *Board of County Commissioners of Bryan County v. Brown* (1997) the Court described a custom is an act that has not been formally approved by the appropriate administrator, but is so wide spread as to have the force of law. To prevail on a "*Monell*" claim, it must be established that the policy or custom was the "moving force" behind the misconduct of the LEO (s).

In a claim asserting deficiencies in the hiring process of the involved LEO (s) it must be proved that the hiring administrator deliberately ignored obvious information in the background of an applicant, failed to adequately evaluate the person's background, and hired the person anyway (*Board of County Commissioners of Bryan County v. Brown*, 1997). The allegation attempts to show that "but" for the hiring the employee, the plaintiff's constitutional rights would not have been violated, and in doing so, demonstrated deliberate indifference. Deliberate indifference is a rigorous standard of liability, requiring evidence that an administrator or supervisor disregarded a known or obvious consequence of the action or inaction.

The Court has established that deliberate indifference is required to prove a claim of failure to train (*City of Canton, OH*, 1989; affirmed in *Connick v. Thompson*, 2011). The Court determined

that agency employees must be provided with realistic and ongoing training to “obvious” recurring job functions. The Court held that deliberate indifference can mean a callous disregard of known risks and failing to take steps to abate them. The Court has held that in consideration of the assigned duties of the employee, the need for more or different training is so obvious, and the inadequacy of failing to train resulted in a constitutional rights violation, could be characterized as deliberate indifference. An agency cannot escape liability when the conduct of the employee is a “highly predicable consequence” of the alleged training deficiency or supervision. To prove training liability, the claim must identify the deficiency in the training program. A plaintiff must show that the unlawful agency practice caused the unconstitutional misconduct. Generally, one incident claiming a failure to train is insufficient to support liability.

In *Ashcroft v. Iqbal* (2009) the Court acknowledged that the statutory language contained in §1983, “that every person, who violates another’s constitutional rights,” applies to an agency administrator or supervisor for purposes of potential liability. The Court determined that a claim of a failure to supervise must prove that the individual supervisor personally participated in violating the constitutional rights of another, directed or encouraged others to the violate the rights, or as the person in charge had knowledge of and acquiesced in the subordinate’s unconstitutional conduct.

Most of the federal circuit courts have interpreted this to mean that when the administrator or supervisor failed to act to remediate or correct an employee when they had knowledge of misconduct as well as allowed the misconduct to continue, and there is supporting evidence to demonstrate the action or inaction of the supervisor, evidence of deliberate indifference is sufficient to support supervisory liability. Further, many courts have maintained that when a history of widespread abuse puts a supervisor on notice of the need to correct the alleged misconduct and he/she fails to do so, or when the custom and policy of the agency results in deliberate indifference, or when the facts supports an inference that the supervisor directed the employee to act unlawfully or knew that the employee would act unlawfully, and failed to stop them from doing so, liability may attach.

Allegations the supervisor failed to discipline the LEO are also filed with the goal of linking it to a claim of a failure to supervise the LEO. The inference is that the supervisor failed to take meaningful action against the LEO, or failed to punish the LEO, in light of prior misconduct.

The plaintiff must show that prior incidents deserved discipline, and discipline was not provided. In their collective totality, these administrative theories represent the potential of being inextricably intertwined with one another to support further allegations of failing to investigate the use of force incident.

Claims of a failure to investigate may elevate the likelihood of liability when a supervisor possessed knowledge the LEO's prior excessive force, failed to investigate it, and the LEO violated an arrestee or detainee's constitutional rights. To prevail on a claim of a failure to investigate or a claim of inadequate investigation, the plaintiff must show that there was a persistent practice and pattern of not performing the investigation, supporting a custom of tolerating excessive force, ratifying the LEO's misconduct, and ultimately supporting deliberate indifference (*King v. City of Columbus, OH*, 2024). Ratification of an LEO's misconduct may be defined as: inaction or silence where the administrator is fully informed of all the material facts of the LEO's actions, and if aware of the acts, took a position inconsistent with non-affirmance (*Coley v. Lucas County, OH*, 2015). To prove a claim of ratification of an LEO's misconduct, a widespread pattern and practice of inadequate investigations must exist with repeated violations.

Allegations for Failing to Investigate the Use of Force

Failing to Perform an Investigation

There are two primary components associated in the plaintiff's complaint regarding failing to investigate. As a result of the use of force incident, the first allegation cited, is that the agency administrator "failed to investigate" the involved LEO's conduct or relied exclusively on an external agency's investigation. Beyond the alleged excessive force issues, the incident may

include a failure for the LEO to report the use of force, made false statements, failed to provide access to medical care, failed to retain evidence, and if multiple officers were on scene, a claim of failure to intervene may also be submitted (Ross, 2025).

In *Ingraham v. Kubik* (2022) the Eleventh Circuit found that the LEO's force of slamming a compliant arrestee to the ground resulting in neck and back injuries violated the constitutional rights of the arrestee, and denied qualified immunity. During discovery, the plaintiff requested employee disciplinary records. It was discovered that no records existed and no investigations of the LEOs or other LEOs use of force were ever performed, and no LEOs were disciplined, even though the Sheriff's policy was to investigate use of force incidents. It was further discovered that six previous detainee deaths from beatings occurred in the jail and no investigations of the deaths were performed.

The court found that the plaintiff stated a valid claim, finding that: the department maintained a custom and policy of known repeated incidents of misconduct which were not investigated; there was a wide-spread pattern of condoned LEO misconduct ignored by supervisors sending a message that LEOs were not accountable for violating the constitutional rights of arrestees and detainees; supervisors failed to discipline LEOs showing a causal connection between their failure and LEO misconduct; Internal Affairs investigators did not conduct investigations; incidents were approved as a matter of routine; and such failures amounted to deliberate indifference, and the court denied summary judgment for the Sheriff.

In *Rodriguez et al. v. Los Angeles County Sheriff's Dept.* (2018) correction officers performed cell extractions of detainees who were injured after the applications of conducted energy weapons, concussion grenades, non-deadly projectiles, and after being kicked and struck by the officers. At trial, 19 officers were found liable of excessive force, and misuse of force equipment. The jury found the County liable and awarded \$740,000 in compensatory damages, \$210,000 in punitive damages, and awarded \$5,378,175 in attorney fees.

The Ninth Circuit upheld the jury findings and the monetary awards. The court found the plaintiff stated valid claims on: failing to retain video evidence (5 videos missing); the evidence supported deliberate indifference of a wide spread practice of repeated constitutional violations; supervisors directed the officers in the application of abusive techniques during cell extractions; several supervisors ignored the conduct of aggressive officers; 100 force incidents were not investigated, which supported a culture of excessive force; supervisors encouraged and openly joked about officer misconduct; supervisor liability was affirmed as they promoted a practice of no investigations and a failure to discipline officers; and the Sheriff repeatedly failed to investigate force incidents.

In *Forrest v. Parry* (2019) the Third Circuit reversed the lower court's award of summary judgment for the Camden, New Jersey police department. During an arrest, two LEOs kicked in the door of a residence looking for drugs. The LEOs falsely arrested Forrest for drugs, dragged him down a flight of stairs, and beat him causing significant injuries, which were treated at the hospital. The LEOs threatened Forrest if he filed a complaint and they filed false reports. Forrest filed a complaint that he was beaten and the Internal Affairs investigators did not investigate the complaint. Forrest later pled guilty to possession of drugs within a thousand feet of a school and was sentenced to three years in prison.

Forrest filed a §1983 action on claims of excessive force, conspiracy, failing to train and supervise officers, and a failure to supervise through the internal affairs investigation process. After 18 months, Forrest was released from prison as one of the arresting officers admitted that the arrest charges were falsely reported. The DOJ performed a civil rights investigation and the arresting officers, two other officers, and a sergeant pled guilty to charges of conspiracy. Prior to the DOJ's investigation, the NJ Attorney's General office investigated the Camden police department. It was discovered that there were over 350 officer misconduct complaints that were never investigated by IA, that IA sustained 99 percent of citizen complaints about officers' use of excessive force, improper searches, false arrests, and commanders were warned by the Attorney General that there were widespread patterns of officer misconduct, a lack of oversight by

supervisors, officers were arresting subjects falsely, and submitting false reports. The Attorney General warned commanders to provide supervision and to monitor the officers' conduct.

The court concluded that the chief failed to train officers and supervisors and that supervisors failed to supervise officers, when they possessed knowledge and were on notice of officer wide spread practice of misconduct, which supported deliberate indifference. The court concluded that acting contrary to the knowledge of officer misconduct and failing to follow up on citizen complaints with investigations, ratified the officer's misconduct, and failed to follow the AG's guidance, tolerating misconduct, and acting with constructive knowledge violated the constitutional rights of arrestees.

In *Peatross for the Estate of Vanterpool v. City of Memphis* (2016), the Sixth Circuit found that deficiencies in hiring, a failure to train, supervise, monitor, and failure to discipline LEOs supported a claim of failing to investigate incidents of excessive force, which supported deliberate indifference. An LEO shot and killed a fleeing motorist. The court determined that the LEO used excessive force and denied summary judgment.

The court further determined that the chief had actual knowledge of the increasing frequency of deadly force incidents within the department and attempted to cover up the recurring incidents, accepted LEOs word regarding the incidents, and rubber stamped their conduct. The plaintiff showed evidence that within 18 months, there were 54 officer involved shooting incidents that were not properly investigated, that training was lacking, and supervisors failed to monitor, discipline, and punish errant LEOs. The chief made public comments acknowledging improvements were needed but did not follow through with any changes. The court denied summary judgment and held that there was a causal connection between the constitutional violations and the wrongful conduct of LEOs, the chief knowingly acquiesced in training and supervising LEOs to avoid using excessive force which supported allegations of failing to investigate the ongoing excessive force incidents.

Further, in *Salvato v. Miley* (2015) an arrestee died during an arrest after one deputy applied a conducted energy weapon and another deputy fired his firearm, killing the arrestee. The Sheriff did not investigate the incident. Rather, the incident was referred to the Florida Attorney General and the Florida Department of Law Enforcement (FDLE) performed the investigation. The district attorney decided not to prosecute the deputies. Relying on the FDLE's investigation, the Sheriff did not perform an internal investigation, did not discipline the deputies, and reassigned them to duties in the jail.

The Eleventh Circuit affirmed the lower court's decision, ruling that one deputy used excessive force by shooting the arrestee and found the second deputy liable for failing to intervene. The court reversed the denial of summary judgment against the Sheriff, holding that there was no evidence the Sheriff ordered the deputy to fire his firearm, and there was no evidence of a policy or custom, or practice of approving excessive force. The court also held that it was appropriate for the Sheriff to rely on the external investigation conducted by the FDLE, and such reliance did not support a claim of ratifying a deputy's use of force or support a claim of deliberate indifference.

Inadequate Investigation

The second and more common claim filed by the plaintiff is that the agency administrator performed an "inadequate investigation." This claim can include numerous components including: the investigation was not meaningful, watered down, and was lax; lacked consequences, or there were sufficient gaps in the investigation; there was a failure to collect and consider all evidence, including body worn camera videos or other videos; failing to follow agency policy and protocols; failing to review citizen complaints or detainee grievances; failing to interview witness and the involved LEOs; failing to review LEO's reports; relying on an external agency's investigation and results; supervisors recommended remediation but never followed up; a persistent practice of sustaining policy violations; discipline was inadequate to the conduct; and supervisors routinely tolerated and ignored policy violations. These components are

filed to show in their collective totality the investigation was inadequate, the process was unreliable, or was a cover-up, which would likely lead to a highly predictable consequence of violating the rights of others, all supporting deliberate indifference.

The Third Circuit’s decision in *Capps v. Dixon; Joyce v. Dixon* (2024) exemplifies many of the previous identified components. In two separate arrest incidents, two women sustained significant injuries from the LEO’s unapproved takedown maneuver. After an investigation, officer Dixon resigned from the police department, admitted that he could have used a lower form of force on both arrests, and ultimately pled guilty to two counts of third-degree aggravated assault. Dixon agreed to a lifetime ban of public employment.

The use of force incidents generated a §1983 lawsuit for claims of: excessive force; failure to supervise; performing an inadequate investigation, maintaining a custom and a culture of excessive force, and indifference among supervisors; and claims that the chief of police was personally liable for the LEO’s continued application of excessive use of force. Over Dixon’s 3 ½ year career, department supervisors tracked his use of force incidents, and some rose to the concern of the Internal Affairs Unit. Concerns over Dixon’s fitness of duty were raised, as well as the frequency of acquiring eight citizen complaints in four years. Dixon was exonerated on each complaint and he completed required training on verbal judo.

A dispute emerged about the quality, the adequacy, and the frequency of supervisors performing investigations and the continuing frequency of Dixon incurring citizen complaints. An independent investigation of Dixon’s record performed by the New Jersey Office of Public Integrity and Accountability (OPIA) found that: he filed more use of force reports than any officer in the state of New Jersey, submitted 80 reports; earned the moniker of “glass hands” for injuring his hands when he struck arrestees; incurred 8 citizen complaints; and filed a use of force report every 28 days. The report showed that Dixon was exonerated on most of the complaints and were determined as unfounded. One investigator/supervisor wrote that Dixon was a “problem waiting to happen.”

The plaintiff hired an expert witness who reviewed the use of force reports, and citizen complaints, and supervisors' response. The expert concluded that Dixon's use of disproportionate force on numerous occasions demonstrated a pattern of excessive force, in which supervisors did not fully review his reports or body worn camera videos, and did not follow through with meaningful remediation, which resulted in a lack of intervention and tacit approval of his conduct. The expert also opined that sporadic investigations were performed and were watered down, allowing Dixon to continue his pattern of abusing use of force measures.

The court determined that the plaintiff presented sufficient evidence to support a claim of deliberate indifference. The court allowed the presentation of the use of force statistics by the expert, explaining that the number of reports filed provided a sufficient number to place supervisors on notice to intervene with Dixon. The court denied Dixon qualified immunity on the excessive force claims, as he pled guilty to assault.

Further, the court held that: there was sufficient evidence presented that supervisors were on notice about Dixon's abusive use of force measures required intervention but failed to act; the chief was on notice about Dixon's behaviors as he informed Dixon that his behavior was not the image of a police officer; supervisors failed to consistently review Dixon's reports; and there was recognition that Dixon was a problem waiting to happen and the logical extension of being undertrained resulted in Dixon assaulting two subjects. The court concluded that there was sufficient evidence that the chief and supervisors were on notice, ignored a pattern and practice of excessive force applied by Dixon, the investigations performed were less than adequate, and lacked follow-up intervention, supervisors failed to monitor Dixon, and Dixon escaped meaningful intervention, which supported deliberate indifference.

In *Purcell v. City of Fort Lauderdale* (2024) two LEOs responded to a vandalism call which turned into a domestic dispute. An argument developed between a subject and responding LEOs for taking too long to respond. While the LEOs were attempting to ground and control one subject, the subject's brother interfered with the arrest and he was pushed back by a second LEO.

The brother resisted and claimed that he was punched and kicked by the officer and was handcuffed. The brother claimed that the LEO used such force that it dislodged his dentures.

Purcell filed a complaint with internal affairs two years after the incident alleging excessive force, false arrest, and false statements. Investigators took a statement from Purcell, reviewed the LEOs reports, reviewed information from the criminal investigation of Purcell, reviewed a statement from a responding on scene sergeant, but did not interview witnesses provided by Purcell. The investigators did not investigate the claim of excessive force or the complaint of not providing medical attention to Purcell and closed the investigation.

Purcell filed a §1983 lawsuit claiming among other issues: excessive force; failing to train, supervise, and discipline the officers, and a failure to investigate the incident, including failing to maintain accurate investigation records, and failing to review LEOs force reports. The Eleventh Circuit denied summary judgment on claims of excessive force. The court determined that the force applied against Purcell was excessive as the LEOs lacked reasonable suspicion that he had engaged in criminal conduct.

The failure to investigate claim focused on the assertion that the agency maintained a custom and practice of persistently failing to investigate claims of LEOs excessive force which led to constitutional rights violations. To support the failure to investigate excessive force incidents, the plaintiff submitted statistics of selected incidents over two years, showing that 99 percent of incidents investigated by IA, showed no policy violations when the reports showed the force policy was violated. The plaintiff argued that the high percentage of no policy violations did not result in any LEO being discipline, showed evidence of a “smoking gun,” supporting the claim of a wide spread practice of allowing LEOs to violate policy and supporting deliberate indifference to the constitutional rights of arrestees, including Purcell.

The court granted summary judgment to the City holding that selectively assessing a small number of investigations statistically which did not result in discipline, failed to show anything

about the quality of the investigation. According to the court, a proper use of force investigation does not automatically need to result in disciplining the involved LEO (s). The court commented that the number of citizen complaints does not say anything about their validity. The court reviewed the investigations of six citizen complaints of LEO use of excessive force selectively produced over 15 years by the plaintiff which they argued supported their deliberate indifference claim. The court ruled that each incident, per agency policy, was adequately investigated by IA investigators and noted that on each occasion the responding LEO used objectively reasonable force, and that none of the identified cases were close to the facts involved in this incident.

In granting summary judgment on the inadequate investigation claim, the court noted that the plaintiff used decontextualized statistical data, which failed to provide sufficient evidence to show a long standing and widespread pattern of failing to investigate or discipline LEOs. Finally, the court ruled that the investigators also properly investigated the LEOs use of force involving the plaintiff. Claims of failing to train officers and failure to supervise also failed.

In *Finch v. Rapp and City of Wichita* (2022) LEOs responded to a hostage call, which turned out to be a false call (Swatting). An individual exited the residence, an LEO provided commands to show his hands, believed that he reached for a weapon, fired, and killed him. It was later shown that the person was unarmed in the criminal investigation by the Kansas Bureau of Investigation. The prosecutor declined to indict the LEO and the department's Professional Standards Bureau exonerated the LEO of the shooting. The decedent's estate filed a §1983 action on a claim of excessive force and the Tenth Circuit denied summary judgment, holding that shooting an unarmed subject not threatening the LEO or another was excessive force.

Further, the estate filed *Monell* claims alleging the agency's policies were the "moving force" behind the use of excessive deadly force, that the agency performed an inadequate investigation into the incident which failed to result in the LEO's discipline, which supported a practice of using deadly force against citizens. The estate claimed that the internal investigation was meager and nonresponsive to the incident and that any discipline decided was light. The estate further

claimed that the investigation was inadequate as the Professional Standards Unit re-used the evidence collected by the KBI and the prosecutor, rarely conducted interviews, and the practices make the investigation process unreliable. Additionally, the plaintiff attempted to show six officer involved shootings out of 20 incidents (which were isolated), demonstrated a widespread custom and practice of tolerating excessive force which sent a message to LEOs that such behavior was condoned.

The court granted summary judgment to the agency holding that the plaintiff failed to provide specific and sufficient evidence which supported a pattern or a policy of excessive force and inadequate investigations. The court concluded that producing 6 force incidents failed to demonstrate causation and failed to meet the rigorous standard of deliberate indifference which is required in claims of failure to investigate.

In *Coley v. Lucas County, OH* (2015) the Sixth Circuit concluded that an investigation into a deputy's use of force was inadequate. A deputy was sentenced to 36 months for violating a pre-trial detainee's constitutional rights for applying a chokehold in which the detainee later died, falsified documents, and actions showed deliberate indifference to the detainee's medical needs, in accordance with Title 18 U.S.C. §242 and §1519. The deputy attempted to cover up the incident and was aided by the Sheriff.

Applying the assessment factors in accordance with the *Kingsley* decision, the court concluded that the officer used excessive force. The court concluded that the Sheriff failed to train and supervise officers to avoid the use of excessive force which led to the misapplication of the chokehold. Further, the court agreed that the incident was not properly investigated. The court denied summary judgment to the Sheriff finding that the plaintiff sufficiently showed evidence that attempting to cover up the homicide with less than a complete investigation and doing so implicitly authorized, approved, and knowingly authorized unconstitutional conduct of officers which supported deliberate indifference.

The court awarded summary judgment to the City of Pittsburgh, Pennsylvania holding that investigators performed an adequate investigation into an LEO's use of deadly force. In *Blakely v. City of Pittsburgh* (2011) a LEO shot a fleeing subject in the back of the head. He was prosecuted under federal charges, pled guilty, and was sentenced to 180 months in prison. A §1983 action was filed, claiming excessive force and a failing to conduct a meaningful investigation into the incident. The plaintiff alleged that he was never interviewed by investigators.

The Third Circuit separated the excessive force claim from the claim of failing to investigate the incident. The court denied qualified immunity on the excessive force claim, ruling that the subject did not pose a threat to the LEO or anyone at the time he fired his firearm. The court further affirmed the lower court's award of summary judgment to the City as the incident was adequately investigated by agency investigators. Referencing their decision in *Groman v. Township of Manalapan* (1995) the court acknowledge that the standard of deliberate indifference can apply to claims of failure to investigate charges of a constitutional violation. However, the court ruled that the plaintiff's assertion was insufficient to state a claim and he did not present sufficient evidence showing the investigation performed by investigators rose to the level of deliberate indifference. The plaintiff did not present evidence showing a custom or practice that the City failed to perform adequate investigations on allegations on excessive force and the court affirmed the lower court's decision.

Summary

From a review of these selected case examples, several themes emerge. First, the most common claim filed by the plaintiff is that the agency performed an inadequate investigation which resulted in an unreliable process. The outcome flows into the second theme suggesting that the agency failed to follow their own policies, and failed to train, supervise LEOs, resulting in no discipline or discipline that was less than adequate to the misconduct, supporting deliberate

indifference. Claims showing the supervisor participated, encouraged, overlooked, and directed the LEO (s) in the excessive force incident heighten supervisory liability. These claims lead to a third theme, showing the administrator's failure in these areas ratified the LEO's conduct showing an implicit authorization or knowingly acquiesced in supervising the LEO's conduct.

Fourth, the courts are more likely to award summary judgment to agency administrators and supervisors when it is demonstrated that there was no evidence of supervisory inaction supporting a widespread custom, practice, or pattern of failing to investigate the use of force incident. This assessment component applied by the courts in granting summary judgment was also evidenced in: *Hunter v. City of Leeds, et al.* (2021); *Waller v. City and County of Denver* (1999); *Perkins v. Hastings and Little Rock City* (2019); and *Gold v. City of Miami* (1998).

Fifth, the investigation does not have to be perfect. For example, in *Underwood v. City of Besser et al.* (2021) the court ruled that the law was not clearly established and granted qualified immunity to the LEO who shot a subject while in a vehicle. The plaintiff claimed that the investigation was flawed and the city had a history of poor investigations. The court determined the claims failed as there was no evidence of a failure to train, supervise, investigate, or discipline LEO conduct, holding that there was no evidence of a custom or widespread practice amounting to deliberate indifference. Further, in *Mettler v. Whitley* (1999) the court also found that a few shortcomings in the use of force investigation did not amount to deliberate indifference.

Sixth, like the decision in *Salvato*, the courts in *Harper v. McAndrews* (2020) and *Bussey-Morice v. Gomez* (2014) also ruled that an agency relying on an external agency to perform an investigation of an excessive force claim does not establish deliberate indifference regarding supervision and discipline. Seventh, in some cases, the plaintiff will attempt to support the failure to investigate claim by producing statistics from reviewing prior use of force reports. The court ruled in their decisions in *Finch*, *Waller*, and *Perkins*, that when evaluating past force reports, they must be on point to the case under question, and prove that the administrator

ignored a wide spread practice of multiple excessive force incidents. Conversely, when there is sufficient evidence showing similar instances and a prior history of force incidents like the nature and context of the case in question, the courts may find that statistical analysis from multiple reports support a claim of a widespread practice of failing to investigate, supporting deliberate indifference in prior incidents, as shown in *Peatross*, *Dixon*, and *Forrest*. The court decisions are determined on the specific context of the submitted claims.

Recommendations

Managing the use of force in law enforcement and corrections agencies presents opportunities for administrators and supervisors to execute their leadership skills. Supervisor liability is at the core of failure to investigate use of force claims and many of the cases described, focused on the mismanagement of LEOs. As shown in the case assessments, liability attached because supervisors failed to perform their duties and ignored LEO repeated violations of policy and the law. To mitigate potential supervisory and organizational liability, administrators are encouraged to consider the following recommendations.

First, agency administrators should check their respective state's statutory requirements for investigating use of force incidents. Many states require force investigations, particularly in deadly force incidents, in arrest-related deaths, and in-custody deaths, some require an external agency perform the investigation, and specific reporting and investigating protocols are generally defined and described. Reviewing the statutory requirements can assist in keeping the department operating within the law and can assist in developing and implementing applicable policy and procedures. Keeping abreast of additional state statutory requirements impacting the department's use of force policy, force options applied, and field techniques should be performed on a regular basis.

Second, administrators should keep abreast of the Court's use of force decisions, their respective federal circuit court, and state court decisions. Based on this analysis, administrators are encouraged to review and revise their use of force policies consistent with the Court's decision in *Graham*, the criteria for review, and its progeny decisions. Including language that an LEO's use of force will be evaluated in accordance with the objective reasonableness standard, based on the LEO's perception, and within the totality of circumstances encountered, should be considered. Distinguishing between legal standards from guidelines and describing the consequences for violating the force policy should also be addressed (Brave, 2020; Brave and Ross, 2025).

Third, department administrators are encouraged to collect and analyze department use of force data on a regular basis (PERF, 2021). As LEOs submit use of force reports, administrators are encouraged to develop mechanisms which capture critical information about the use of force incident. This practice can be used to determine the patterns of what circumstances force options are being used, evaluate whether the option was appropriate consistent with the behaviors of the arrestee or detainee, and determine whether the policy and the training match during field implementation. Analyzing use of force data can serve to identify the competency of LEOs using force options, allowing supervisors to remediate incorrect application of the force option, provide additional training as warranted, and reward the appropriate application of the force option which is consistent with department policy and training.

Collecting and analyzing force data can serve as a viable performance indicator to assist supervisors in effectively supervising LEOs in a high profile and critical job task. Administrators should recognize that the court may allow a plaintiff to review several years of force incident reports to determine how LEOs are trained, supervised, and the application force options in the field to determine whether there was a failure to train, supervise, and a failure to investigate incidents of misconduct.

Fourth, as described in this assessment, supervisors play a critical role in training, supervising, monitoring, evaluating, disciplining, and leading LEOs in their department. Supervisors must not only be knowledgeable of their supervisory duties but must also be aware of their individual liability responsibilities and work in ways to mitigate personal as well as organizational liability. This requires ongoing training of supervisors on the specific dimensions of their jobs, including supervisory liability, monitoring, and assessing LEOs performance in the field, reviewing use of force incidents by evaluating force reports, body worn camera videos, and other videos. Zamoff (2019) found courts awarded summary judgment in favor of LEOs in 77 percent of the use of force case decisions when the full video from a body worn camera of the incident was available.

Supervisors should be trained on how to properly evaluate an LEO's job tasks and field performance, trained in the department's progressive disciplinary process and corrective action plans, documenting supervisory actions, trained on how to remediate marginal performance, working with human resources, and work toward holding LEOs accountable as warranted. A critical supervisory responsibility is maintaining organizational efficiency through ensuring high quality performance of LEOs within policy guidelines and the law.

Fifth, consistent with the Court's decisions in *Canton* and *Connick* (reference earlier), all LEOs and supervisors should be trained in the department's use of force policies and procedures, on a regular basis, and tested with documentation. LEOs, supervisors, and investigators should complete training on the Court's use of force decisions, their respective federal circuit on cases in which the court has developed clearly established law, and training on state laws and legislation impacting the use of force.

Additionally, LEOs and supervisors, and those tasked with investigating claims of excessive force, should complete ongoing competent-based training in all authorized force techniques, force options, and restraints. All positions should exhibit competency in the application of the force option within the law, department policy, within the circumstances confronted, and based on the perception of the LEO. An LEO's use of force should be documented in a written report,

in accordance with department policy. The training should include a combination of: lecture; analysis of legal cases; the range; de-escalation strategies; virtual simulators; scenario-based for honing motor skills; decision-making and threat analysis; force option transitioning; and understanding the human performance factors of using force under stress (Ross, 2023). Testing and documentation should be completed of all completed training. LEOs and supervisors should also be trained on all aspects of the use of force investigation, including the mechanics of the process.

Sixth, department investigators should be knowledgeable of the distinctions between criminal and administrative investigations, and their role and responsibilities. Force investigators should be competent in the following: the department's use of force policy; the investigation policy; state laws and the Court's decisions on the use of force; associated legal and liability issues; initiating, documenting, and record keeping of the investigation; department investigation protocols and collecting and retaining evidence; working with department supervisors, administrators, the district attorney, and other agency investigators; working with department use of force subject matter experts; working with outside consultants as warranted; interviewing witnesses and involved LEOs; video review and analysis; assessing LEO's reports; assessing relevant incident evidence; familiar with human performance factors associated with using force under stress; familiar with the associated science of force options and restraint techniques and the science of control and restraint procedures; assessing an LEO's training and performance file; the department's disciplinary process; following up, evaluating, and documenting citizen complaints and detainee grievances; developing an incident timeline; writing a competent report; and referring findings to the department administrator (Martin, 2024; Ross, Brave, and Kroll, 2018). The investigator should be knowledgeable and prepared to testify in civil proceedings, including trial. Finally, the investigator should attend relevant training and educational seminars consistent with their duties.

The use of force in law enforcement and correctional departments presents a critical liability area, requiring supervisory oversight and a commitment to working in tandem with department

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administrators and investigators. Implementing a multi-component system to managing the use of force is encouraged. Case examples presented showed that when the department supervisors and investigators followed appropriate policies, maintained documented practices, and consistently performed investigations within accepted practices and legal decisions, liability was averted.

Administrators can excel in their leadership abilities by bringing department supervisors, department instructors, and investigators together to provide the foundation for managing the use of force and associated investigations. Continuing to communicate the responsibilities of each position, providing them with the necessary resources, and holding them accountable as they work with LEOs can serve to correct marginal performance when observed. It can also serve to place the department in the best position to defend the next lawsuit for failing to supervise and failing to perform an adequate investigation into the force incident.

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