



Out of the Past, Into the Future: LEAF Guidance Promoting Fair and Equitable Law Enforcement

By Matthew Heins, Law Enforcement Action Forum Coordinator

On May 25, 2020, Minneapolis police officers arrested George Floyd, a 46 year-old African American man, after he was accused of passing a counterfeit \$20 bill. Three officers pinned Mr. Floyd to the ground for almost nine minutes while another stood between them and gathering onlookers. Mr. Floyd eventually lost consciousness and died. Cell phone video of the incident circulated quickly, sparking protests in cities across the country and world. Citizens are demanding changes to address racial inequities and injustice in society at large and policing in particular. Elected officials are sponsoring law enforcement reform bills. The qualified immunity standard is being questioned.



The underlying issues are complicated and proposed solutions can be contentious. A wide variety of perspectives exist, making productive dialogue sometimes difficult to achieve. Even so, we can all agree on the overall end goal of promoting fair and equitable treatment of citizens by law enforcement.

Over the years, Law Enforcement Action Forum newsletters have offered guidance to help agencies move toward achieving this goal – past guidance which still applies and can improve future policing. This issue will review excerpts from previous editions, taking the opportunity to refresh our memories on our ethical, social, and legal obligations to members of our communities as well as the men and women in our departments. The full newsletters are at: mml.org/insurance/risk_resources/leaf_newsletters.html.

One of the most important aspects of developing an equitable police force is selecting highly qualified candidates through a systematic, detailed hiring process. Jim Collins, author of *Good to Great*, captured the essence of hiring when he wrote, “First who, then what.” Commit the time and resources necessary to reduce the potential of hiring employees who are not a good fit for a career in law enforcement.

The October 2019 LEAF newsletter, *Spotting Bad Apples in the Hiring Process ... A Better Way to Know*, advises:

Conduct a thorough pre-hire investigation to make sure you are hiring the right person, not just someone who can pass a minimal background check to quickly fill a vacancy. ...

Obtain information about the reasons for the officer's separation of service from former employers. As of 2018, this is *legally mandated* by the Michigan Law Enforcement Officer Separation of Service Act. The intent of this act is to ensure agencies are doing their due diligence and that misconduct is not overlooked if an officer leaves one police department and applies for a job with another. ...

Tim Bourgeois, Executive Director of the Michigan Commission on Law Enforcement Standards (MCOLES), states, "If we want to be recognized as a profession, we must act in a professional way. Professionals self-regulate. Just one of the ways to do that is to conduct comprehensive background investigations. It is good for your agency, our profession, and required by law."

A second key aspect of maintaining an equitable police force is having strong policies and procedures in place and updating them regularly. In the October 2016 LEAF newsletter, *The Critical Importance of Implementing a Fair and Impartial Policing Culture*, Audrey Forbush, LEAF Legal Advisor and Partner at Plunkett Cooney PC, advises departments to adopt a Fair and Impartial Policing policy. She also discusses the ways personal biases can affect intuitive decision-making and the roles of training, supervision, and feedback in ensuring that officers treat people fairly:

Having a Fair and Impartial Policing policy and training to the policy helps officers make good decisions. The policy sets parameters for behavior when dealing with the public and training ensures that officers understand the department's expectations and what actions they must take to meet those expectations. Define clear goals and rules of engagement so as to avoid confusion and frustration. Without such structure, officers may rely upon intuitive decision-making to guide their actions, which may not be in line with policy.

Officers should be trained to understand that all people have biases based on previous life experiences, cultural assumptions, and historical frames of reference, and be taught how these biases can drive decision-making. Officers must learn to recognize their own biases and receive training on how to prevent them from interfering with good decision-making. Forbush noted that placing officers in situations of repeated positive exposure to people or situations that challenge identified bias will help establish a positive frame of reference and reduce the bias, if not eliminate it.

In addition, Forbush stressed that every law enforcement executive officer should be evaluating their department on an ongoing basis. The evaluation should be of the entire operation, including officers' performance and actions as well as the effectiveness of top command and supervision in leading the department and establishing its culture. Give praise where you should or take remedial actions as identified. It is management's responsibility to ensure the department is operating with fair and impartial treatment to all.

A third vital element for any department's equity in policing are clear policies and procedures regarding use of force, paired with strong, regularly scheduled training on use of force. Unfortunately, the use of force is unavoidable in law enforcement. When it becomes necessary, officers are obligated by law and ethics to use only the reasonable amount of force needed to overcome the resistance presented to them. Situations that call for force are dynamic and change rapidly. Officers must be attuned to changing situations and adjust their response as the person involved changes their actions. Once resistance stops, officers' use of force must stop or be reduced.

The U.S. Supreme Court has held that the use of force which is not objectively reasonable violates the Fourth Amendment. Citizens have the right to be free from excessive force. The factors officers must consider are:

- The severity of the crime at issue
- Whether the person poses an immediate threat to the safety of officers or others
- Whether the person is actively resisting arrest or attempting to evade arrest by flight.

In the June 2016 LEAF newsletter, *Increased Scrutiny In Officer Use of Force!*, Audrey Forbush offers the following suggestions regarding use of force and to prepare officers for incidents involving people who are not actively resisting an officer, or are mentally ill, intoxicated or agitated:

Department policy, practice and training needs to be audited to ensure it meets the current standard of law concerning the application of implements, weapons and control techniques in the use of force.

Officers need to understand they are accountable for their response to an incident and cannot unnecessarily escalate their response, causing a corresponding escalated resistance, creating a need to elevate the level of force to bring the person into control and custody.

Officers need scenario-based exercises to practice the use of de-escalation techniques as a common sense way to help calm an incident. The training should teach officers situational awareness and to plan their response to an incident. Typically, only one officer should give commands. Officers need to understand that several officers shouting orders at once can cause confusion and escalate tension, so this should not be their default or habitual pattern of communication.

Officers need regular training in the use of each authorized implement, weapon or control technique. The training should include top management's expectations for the level of resistance that officers must encounter before using a particular implement, weapon or control technique.

Officers need training to identify situations involving people who are suffering from a mental illness, are highly intoxicated or highly agitated.

Officers need training to recognize incidents of excited delirium, techniques for responding and the importance of EMS participation.

Officers must know the requirements of the Michigan Mental Health Code for using force and recognize that unless an individual is actively resisting, officers cannot escalate their force response in order to take them into custody.

Mental Health and Community Resources should be identified that can assist officers in resolving incidents involving people who are mentally ill or highly intoxicated or agitated by their circumstance.

Mid-level managers and supervisors must be trained and held accountable to review incident reports to ensure officers clearly articulate the behavior of a person encountered and the specific action the officers took in resolving the incident.

Top command must audit the activity of the department to ensure the behavior and action taken complies with department policy and rules, industry standards, statutes, court decisions and expectations of the elected officials.

Additionally, officers are responsible for an individual's health and welfare after a use of force incident, as discussed in the March 2016 LEAF newsletter, *I Can't Breathe! Is Failing to Do Something a Deliberate Indifference to a Serious Medical Need?* Officers must seek medical treatment if they suspect an arrestee's medical or mental status is in question:

There are times when officers must restrict a person's freedom of movement and choice for purposes of investigation, safety or arrest. Doing so imposes a duty on the officer to provide for that person's basic human needs and safety, including taking reasonable measures to protect them from harm or injury – such as being alert to unusual behavior which may indicate a potential medical or mental crisis and taking action should the need arise.

In a bellwether case, *Farmer v. Brennan* (1994), the U.S. Supreme Court ruled, “deliberate indifference to a substantial risk of serious harm to a prisoner is the equivalent of recklessly disregarding that risk.”

According to Forbush, training is at the heart of recognizing serious medical needs. The Supreme Court ruled in *Canton v Harris* (1989) that a municipality's failure to adequately train its police can amount to a civil rights violation under U.S. Code Section 1983. Top management must prioritize training officers on behaviors that may indicate a serious medical or mental condition and on the actions they should take once those behaviors are identified. Officers do not need to diagnose actual conditions or injuries. Training should reflect reoccurring job tasks officers are regularly expected to perform.

Having the right people on board, appropriate Fair and Impartial Policing and Use of Force policies in place, leadership that communicates firm and easily understood expectations, and conducting applicable training on a regular basis — all these can contribute significantly to a culture of fair and equitable policing within your organization. But active oversight is vital to ensure compliance and adoption by employees, because informal leaders and peer pressure will eat official policies for lunch. As a leader, you must be involved and informed about what is going on inside the organization.

The December 2017 LEAF newsletter, *Know What Your Officers Know!* discusses the need to regularly evaluate your officers' understanding of department and legal standards. Particular attention should be paid to areas where officers most often make mistakes or bad decisions that can result in improper actions, escalation of incidents, injuries, or even deaths. The newsletter provides 20 questions to assess officers' knowledge of key concepts. (The list of questions, with answers, can be found at mml.org/insurance/risk_resources/Know_What_Your_Officers_Know.html.)

Audrey Forbush noted that issues often arise because officers either do not know or properly understand the department's policies and procedures, or the laws and court decisions that establish limitations on, and correct ways to, perform job tasks such as stopping people on the street, taking people into custody, using force, the emergency operation of a motor vehicle, or entering private property.

Auditing your officers' knowledge on a regular basis can identify any need for training, supervision or modification of policy to ensure that your department's performance is fair and equitable, within legal parameters, and meets community expectations and the goals of your enabling governmental entity. It also establishes a record of training and testing toward officer compliance.

Once again, the law enforcement profession finds itself being closely scrutinized. This is not new. A review of history shows numerous commissions, at various levels of government, have been seated to perform in-depth examinations of the profession. Many respectable findings and recommendations have come out of these efforts that should have been instituted. For various reasons, some were and some were not. This is a very complex topic with multiple layers and law enforcement is one part of much larger systems. Even so, this is no excuse to neglect your responsibility to guarantee you have an ethical and professionally run organization.

Leaders set the tone for the organization. By your words and actions, you let it be known what is tolerated but more importantly what is not tolerated. You must set clear expectations and hold your employees accountable. If you have a leadership team, it's vital they are in sync with your beliefs and expectations. Be clear. Be concise. Be fair. Be professional. Be consistent. When presented with a complaint, no matter how minor, investigate to determine if there is wrong doing. Provide due process to your employees and take appropriate action if findings are sustained. Review your department's investigations to determine if there are policies that need updating or are no longer relevant. Determine if there are training issues that need attention. Identify employees who are not a good fit for your organization and decide the best course of action to address them.

Surround yourself with smart people, seek their counsel, but know at the end of the day you must make the final decisions. You are ultimately responsible for everything that occurs in the organization. You have a professional and ethical responsibility to ensure proper conduct of its employees and its responsiveness to its constituents. Simply put, you get paid to lead, so lead!

The issues facing law enforcement are deeply seated in history and extremely complicated. It is imperative to accept that we all bring some level of bias to the table and there are inequities woven into the very fabric of our society. We must address these with humility, open and honest conversations, continuous training, relationship building and solid leadership to hold employees accountable. Law enforcement derives its authority from the community it serves. Having open lines of communication, appreciating the diversity of our communities, understanding their expectations of their local police department and what they think its priorities should be, and ensuring all citizens are treated with respect, fairness, and within the law, will create a foundation of trust and cooperation upon which to build a better future for our organizations and the communities we serve.

“We hold these truths to be self-evident,
that all men are created equal,
that they are endowed by their creator with certain unalienable rights,
that among these are life, liberty, and the pursuit of happiness.”

– The Declaration of Independence

The following are actions that can be taken, if not already been enacted, to start the process of improving your organization.

1. The Chief/Director/Sheriff must make it clear what the expectations are for all employees. Practice what you preach, reward the positive behavior, hold people accountable for their mistakes, change behavior when possible, and terminate employees who don't conform to organizational standards and beliefs.
2. Screen potential employees with a thorough background investigation, testing process, drug screen and psychological exam. The investment in time and money will be well worth it in the long run. This is an important cost of doing business. Accept it and make certain it is done.
3. Have policies and procedures in place that reflect current best practices, legal standards and social norms. Review and update on an annual basis. "I don't have time" is not an acceptable answer.
4. Train often and on the pertinent topics. The training should ensure employees have a firm understanding of the policies, can apply the standards in the real world and understand it so well they could train new officers on the policies.
5. Maintain contact at the line level so you understand how the officers are performing on the street. How do they interact with the citizens, are they demonstrating the values you want them to, are they an ambassador for the department? Are they fair, unbiased and show empathy in their actions? Do they understand the big picture and know where you want to take the organization?
6. Ensure staffing reflects the demographics of your community. Diversity within the department will allow officers to learn from one another about different cultures and beliefs. This will be reflected in the officers' conduct on the street.
7. Obtain MACP accreditation for the organization.
8. Continually strive to make the organization better. Complete annual organization audits, identify areas that need improvement, encourage ongoing educational opportunities for employees, never stop your own professional development. The world is in a constant state of change — as a leader you need to be aware of the changes that will affect your community and be on the forefront to address them.
9. Maintain open lines of communication with the community you serve. Be responsive to their concerns, understand what they expect of you and the organization, be transparent and above all be honest.

This newsletter contains a fraction of the previous work completed by the LEAF committee with the goal of improving the professionalism of law enforcement in Michigan. The cited articles, along with many others, can be found in their entirety at mml.org/insurance/risk_resources/leaf_newsletters.html. It is a tremendous body of work that speaks to many of the policing issues being discussed today.

While compliance to the loss prevention techniques suggested herein may reduce the likelihood of a claim, it will not eliminate all exposure to such claims. Further, as always, our readers are encouraged to consult with their attorneys for specific legal advice.

LEAF continues to develop policies and resource documents designed to help Law Enforcement Executives manage their risk exposure.

Do not hesitate to contact the Michigan Municipal League's Loss Control Services at 800-482-2726 for your risk control needs and suggestions.

Are you an MML Insurance Program Member? Are you a Law Enforcement Executive?

If so, visit the MML's online [Law Enforcement Risk Control Manual](#) to access model policies and procedures developed by the LEAF Committee.

Go to: <http://www.mml-leaf.org/lerc.php>

Click on the green "Member Login" box in the left-hand panel.

At the Login screen, enter your username and password.

If you don't have a username and password, click "Request Access" and complete the online form.

The LAW ENFORCEMENT ACTION FORUM (LEAF) is a group of Michigan law enforcement executives convened for the purpose of assisting loss control with the development of law enforcement model policy and procedure language for the Law Enforcement Risk Control Manual. Members of the LEAF Committee include chiefs, sheriffs, and public safety directors from agencies of all sizes from around the state.

The LEAF Committee meets several times yearly to exchange information and ideas relating to law enforcement issues and, specifically, to address risk reduction efforts that affect losses from employee accidents and incidents resulting from officers' participation in high-risk police activities.

*Sponsored by the Michigan Municipal League
Liability & Property Pool and Workers' Compensation Fund
1675 Green Road, Ann Arbor, MI 48105 ph - 800-653-2483
Contact: Matthew Heins, matthew.heins@meadowbrook.com
ph - 800-482-2726 ext. 8040*