

Illinois Sheriff's Association
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Liability Risks for the Law Enforcement Supervisor – A Trial Lawyer's Perspective

Presented by:

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LAW ENFORCEMENT IS A FREQUENTLY SUED GROUP – WHY?

- Civil Rights Act of 1871
 - Codified at 42 U.S.C. § 1983
 - “Every person who, under color of any [law] . . . subjects, or causes to be subjected, any . . . person . . . to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured in an action at law”
 - Post Civil War Reconstruction statute passed to implement 13th, 14th and 15th Amendments.

LAW ENFORCEMENT IS A FREQUENTLY SUED GROUP – WHY?

- *Monroe v. Pape*, 365 U.S. 167 (1961)
 - The conduct of the local police constitute State action “under color of law” even when not authorized by statute or law
 - However, a local government is not a person under § 1983.

- *Monell v. Dep’t Soc. Services*, 436 U.S. 658 (1978)
 - A local government is a person under § 1983.
 - Local government liability pursuant to custom, practice or policy.

LAW ENFORCEMENT IS A FREQUENTLY SUED GROUP – WHY?

County or City = deep pocket =
indemnification

LAW ENFORCEMENT IS A FREQUENTLY SUED GROUP – WHY?

- 42 U.S.C. § 1988
 - Civil Rights Attorney's Fees Award Act of 1976
 - Private Attorney General Theory
 - *Riverside v. Rivera*, 477 U.S.561 (1986)
 - Plaintiff awarded attorney's fees if successful - the plaintiff's lawyer will get "paid."
- Prevailing Plaintiffs, not prevailing Defendants, recoup fees
- Cost of litigation = settlement

LAW ENFORCEMENT IS A FREQUENTLY SUED GROUP – WHY?

- Societal Attitudes and Perceptions
 - The Rodney King saga and jury perceptions
 - Continuing public mistrust of law enforcements in the 1990' s
 - September 11, 2001 – did the pendulum swing back?
- Illinois Areas of Concern
 - Wrongful convictions – death row emptied
 - Torture suits
 - High profile police misconduct

THE PUBLIC OFFICIAL PUNITIVE DAMAGES CRISIS

- Scope of punitive damages problem
 - Damages available in civil rights cases
 - Compensatory damages – make plaintiff whole
 - Punitive damages – punish and deter future misconduct

THE PUBLIC OFFICIAL PUNITIVE DAMAGES CRISIS

- Punitive damages sought in most every civil rights case- usually within jury's discretion
 - Intentional misconduct is not necessary for punitive damages award. *Smith v. Wade*, 461 U.S. 30 (1983)
- Large punitive damages awards occurring with greater frequency
- Illinois municipalities cannot pay punitive damages on behalf of officer.
 - 745 ILCS 10/2-302

THE PUBLIC OFFICIAL PUNITIVE DAMAGES CRISIS

- How to protect yourself – Action Plan
 - Consult an estate planning lawyer *before* being sued
 - Residence (in Illinois) can be held in tenancy by the entirety
 - Consider transfer of property to spouse or other family member (certain downsides – not for everyone)

Biography

- Charles Hervas is a 1983 graduate of DePaul University College of Law. Mr. Hervas concentrates his law practice in defending units of local government and law enforcement officials in the federal and state courts. He is licensed in the State of Illinois and is admitted to practice before the United States Supreme Court, the Seventh Circuit Court of Appeals, and numerous Federal District Courts. On a personal level, Mr. Hervas is active in local government as he currently serves as the Itasca Village Attorney. Previously, he served for 8 years on the Itasca District 10 School Board, and for 3½ years as an Alderman for the City of Des Plaines. Mr. Hervas is also the corporate counsel of Northeast Multi Regional Training. He regularly trains law enforcement and has been a featured speaker for the FBI sponsored Midwest Law Enforcement Executive Development Seminar (MLEEDS).