

## **CALLING ALL SNIPER SUPERVIORS!!!**

*Are you prepared to survive civil litigation?*

By: Jeff Felts

Isn't it true, Sergeant or Lieutenant that *you are the Sniper Team Leader* on your SWAT Team, and one of *your Snipers* has maliciously and without cause, murdered my client's husband? Or worse yet, *your sniper* shot and killed my client, an innocent bystander or hostage.

Sorry to be so dramatic in the above paragraph, but surely you can see how the groundwork was being laid by the plaintiff's attorney to establish you as the direct supervisor of the sniper in question? Expect the next volley of questions to inquire into what your job entails as the Sniper Team Leader. How do you think your going to feel when the plaintiff's attorney starts examining every facet of your sniper unit? You didn't actually believe someone else was going to answer questions in an attempt to justify your sniper team's tactics, equipment, and training did you? Who did you think was going to be in the hot seat of this very expensive lawsuit filed against the sniper, possibly you, and certainly your department?

The answer to those questions is you. After all, you are the Sniper Team Leader. So I challenge you to examine what you are doing to justify your sniper team's tactics, equipment, and training in an effort to make them defensible during litigation? In other words, how are you ultimately preparing and protecting your snipers, yourself, and your agency for future litigation?

For the moment, put yourself in the shoes of a police officer who has been involved in a deadly force encounter, justified or questionable. Obviously that's difficult to do if you've never been there. However, if you ask, many will tell you that surviving the gunfight was the easy part (in most cases). The second fight which involves a legal battle, your reputation, and your physical and mental health, can be a much more intense battle. In an article from the Fall '99 edition of the ITOA news, Jeff Chudwin, the Chief of Police for the Olympia Fields PD, President of the ITOA, and former states attorney says, "In police work there are two levels of survival. Level #1 is to physically survive the fight, and level #2 is to survive the aftermath and continue a normal life. If you fail the first, the second is of no consequence. If you fail the second, your life can be ruined".

Russ Clagett, a former police sniper who justifiably shot and killed a suicidal woman, offers valuable insight in his book After The Echo which documents his shooting experience. Clagett says making a successful shot and saving someone's life is only half the job. He calls that problem number one. He goes on to say that problem number two, successfully surviving everything that happens afterwards, is the much tougher of the two problems. He points out that the Sniper team Leader will play a bigger part in surviving problems one and two than they may realize. Finally, as it relates to this article, Russ warns "your sniper should be able to survive problem number two with your assistance, not in spite of it". So again, I ask you Sniper Team leader, what are you doing to effectively protect your snipers, yourself and your agency in the aftermath of a sniper involved shooting?

It is often said by many respected “use of force” trainers that the application of force is not a team effort. It is in fact an individual action. As true as that may be, the scope of inquiry you can expect from the plaintiff will likely be broader than the particular use of force at that moment in time. You should expect everything under the sun to be subject to discovery. Obviously all documentation surrounding the incident to include reports, photographs, and audio recordings will be open to scrutiny. Then there are areas we so often overlook despite the warnings the courts have given us. These areas can and often do contribute, either directly or indirectly, to the ultimate decision by an officer to use force. This is where the use of force becomes a team effort. In other words, how did the organization prepare the involved officer and that work unit for the possibility of using force under the conditions and circumstances the involved officer(s) found them self confronted with? This may include an extensive examination of the actions your management and supervision took, corrected, or failed to take in its preparation of foreseeable events. This inquiry certainly will include the department’s training function with its focus on the type of training the individual and unit has received to include the frequency, relevancy, and the objectives or standards associated with the training. Other areas you can expect to be examined are the tactics employed and the equipment used or available to unit members.

A manager or supervisor who uses lessons learned through court decisions can only lesson liability and protect everyone involved by implementing contemporary management, supervision, and training methods. Those agencies that fail to follow the mandates of the courts do so at their own peril, and, unfortunately at the peril of employees and citizens. Regardless of how “clean” a particular use of force may be adjudicated in the criminal context, many families of subjects killed by police use of force believe that the truth is found in the civil process. This is where police organizations and municipalities are either exonerated because they maintain contemporary and effective operations or punished for what I term “deliberate incompetence.” Examples of deliberate incompetence can be found in cases that revolve around failing to effectively or properly supervise, train, or prepare for foreseeable events.

Increasing the odds of successfully defending the individual sniper’s actions and protecting your agencies “purse strings” rests largely in the following three areas of organizational management:

1. Supervision
2. Training frequency & relevancy
3. Documentation

Those are pretty generic answers, aren’t they? There is nothing earth shattering whatsoever, right? So what are you doing to demonstrate to a judge or jury that you are effectively supervising your unit and conducting relevant training on a frequent enough basis?

If your answer was anything other than documentation, it is my humble opinion that you are mistaken. It does not matter if every person in your unit shoots like Wyatt Earp. If some type of real or perceived error occurs involving one of your snipers that results in a lawsuit, if your training and its frequency and relevancy are not documented, then it did not occur in the eyes of the court.

You may be thinking that this is the exact reason why snipers keep data books, and that the documentation contained in the data book will cover the issues I am speaking about. However, take into consideration the operational purpose of the data book. It should be nothing more than an individual's compilation of information for quick reference in a field setting. Its purpose should not be as an all-inclusive training record. When was the last time you inspected your snipers data books? When was the last time you took an analytical look at your sniper's performance based on the data in that book? Finally, how have you demonstrated your supervision of the unit? The detailed training records of the unit are your responsibility as the Sniper Team Leader. It is not the individual sniper's responsibility. Your sniper's data book simply bolsters the units training records. That is, if they are kept up to date, are legible, and the sniper is able to articulate what they have recorded. Once you introduce the sniper's data book into the post-shooting investigation, it will be out of the sniper's hands until the conclusion of the matter. Moreover, EVERYTHING in that data book will be subject to review and explanation. Keep the data book out of evidence and with your sniper. After all, the data contained in that book is relevant only to its owner. Finally, the data book is not only a tool for the sniper to use to increase the odds of a first round hit, it is also a tool for the Sniper Team Leader to use to help the sniper analyze and improve performance over time.

That being said, lets take a more detailed look at how we can reduce liability, increase readiness, and better protect everyone involved by improving our understanding of the above mentioned organizational management principles.

**Supervision:** The command and control of any segment of a police organization is the responsibility of that agency and its designated leaders. The police Sniper Team Leader is then charged with and responsible for ensuring the readiness of the unit. This is a technical assignment and requires the sniper team leader to have an in-depth knowledge of sniper-related tactics, equipment, and training. Therefore, it is recommended that the sniper team leader should be a trained police sniper, as failure to competently supervise any segment of the police organization is an invitation for civil litigation. **McKinnon v. City of Berwyn**, 750 F.3d 1385 (7<sup>th</sup> Cir. 1984) (A police chief was liable for failure to properly supervise his officers.)

Some of the sniper team leader's responsibilities may include the following:

<ul style="list-style-type: none"><li>• Conduct equipment inspections.</li><li>• Conduct basic, advanced, and realistic sniper specific training evolutions.</li></ul>	<ul style="list-style-type: none"><li>• Enforce policy &amp; procedure.</li><li>• Enforce unit and team standards.</li><li>• Recommend additional training and equipment.</li></ul>
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<ul style="list-style-type: none"> <li>• Inspect team member's data books.</li> <li>• Record all training. <ul style="list-style-type: none"> <li>○ Daily record.</li> <li>○ Quarterly Report.</li> <li>○ Annual Report.</li> </ul> </li> <li>• Conduct at least semi-annual qualification. <ul style="list-style-type: none"> <li>○ NTOA recommends 4</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Test &amp; evaluate equipment</li> <li>• Evaluate subordinate's performance and judgment during all training and call outs.</li> <li>• Take corrective action to ensure individual &amp; unit readiness &amp; performance.</li> </ul>
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**Training frequency & relevancy:** Regardless of weapon type, a proper training program will have three distinct levels of training that are systematically re-addressed over time.

1. **Static Level:** The fundamentals of each weapon system are mastered.
2. **Dynamic Level:** Officers develop and prove their ability to make decisions and operate safely in public with their weapon systems and live ammunition. The purpose of dynamic level training is to enhance practical marksmanship in a realistic format. It allows for the integration of live fire tactical concerns. Examples include:
  - a) The use of cover and concealment.
  - b) Shooting at moving targets.
  - c) Night fire training evolutions.
  - d) Judgment in the use of deadly force.
    - Fixed position shoot / don't shoot targets.
    - Shoot / No shoot turning targets.
    - Running man or moving targets.
    - Live-fire video simulation.
    - **Zuchel v. City & County of Denver, Colorado**, 997 F.2d 730 (10<sup>th</sup> Cir. 1993). The City of Denver was assessed damages of \$330,000.00 for "deliberate indifference," inadequate training of their officers in the use of deadly force, specifically because the **training did not include "live fire, shoot-don't-shoot" training and practice.**
3. **Interactive Level:** Officers develop their ability to respond properly with all the force options and assets at their disposal, in a three dimensional environment (scenario based training). This training is only of benefit if officers have proven their live fire abilities at the static and dynamic levels. How do we address interactive training involving rifles?
  - a) Simunition FX: AR uppers available. Not available for sniper training ranges as of yet (as far as I know).
  - b) Empty gun role playing: Can be deadly - East Providence, RI
  - c) Live guns using blanks: Blanks can be deadly – Clackamas, OR
  - d) Live fire video simulation: Vary safe. No live guns pointing at live people.

**Documentation:** The only way to demonstrate command and control of your sniper unit to a judge or jury is by documenting your conduct. Documentation includes but is

not limited to **policies, training records, equipment maintenance, and counseling memos.** In **Whiteley v. Warden, 401 U.S. 560 (Supreme Court)** the court held **training that is not documented, did not occur.**

Listed below are three levels of recommended reporting that ensure detailed documentation of training, training frequency, and its relevancy. The quarterly and annual reports additionally illustrate individual and supervisory analysis of individual and unit performance that demonstrates command and control of the sniper unit.

1. **Daily or monthly training record:** This is a unit record that outlines the training day's objectives. It also records the basics of who, what, when, where, and how. **This report does not replace the individual sniper's responsibility to record every shot in his/her data book.**
2. **Quarterly Report:** This report requires compiled data from each snipers data book. It forces snipers to record information in their data book in a timely manner and ensures supervisory inspection every 90 days. From a marksmanship standpoint, it focuses on the cold bore evolutions of fire allowing individual and supervisory analysis of performance. It also documents other common issues that affect the sniper unit such as:
  - a) **Equipment:** Documents equipment assigned to or removed from the unit. Can be used to document equipment problems, equipment requests, and anything else related to the equipment the team uses or needs.
  - b) **Assignments:** Documents any personnel assigned to or removed from the unit.
  - c) **Training:** Documents training requests and anything else related to individual or unit training.
3. **Annual Report:** Compiles individual and unit cold bore marksmanship statistics using the four quarterly reports. Allows individual and unit analysis of print patterns, environmental conditions, ammunition consumption, etc. Allows individual and unit comparison on an annual basis.

For 10 + years (92-03), I was a police sniper assigned to a part-time, multi-jurisdictional SWAT Team in suburban Detroit, Michigan. During that assignment, I was involved in one fatal sniper shooting. I had the honor of serving as our Sniper Team Leader for the last four years of my SWAT career. Over the course of that time, I learned many valuable lessons. Here are the two most significant lessons I learned. First and foremost, if you can imagine it, it can happen. Second, if it can happen, you better prepare for it!

I am not a lawyer and I certainly do not profess to know everything about police sniping. What I do know is that the courts interpret the law of our land. Police organizations and police supervisors must remain aware of judicial decisions as they relate to the issues of supervision, training, and documentation if you want any realistic chance of successfully surviving civil litigation. As a leader, you owe this to yourself, your family, and the men and women under your command.

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