

FEB 20 2019

Jorge Navarrete Clerk

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

Deputy

JAMES GUND, et al.

Petitioners,

vs.

COUNTY OF TRINITY, et al,

Respondents.

) Supreme Court Case No. S249792
)
) Court of Appeal, Third District
) Case No. C076828
)
) Trinity County Superior Court
) Case No. 11CV080
)
)
)
)
)
)

MOTION FOR JUDICIAL NOTICE

(Evid. Code, § 459; Cal. Rules of Court, rules 8.520(g) and 8.252)

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Pursuant to Evidence Code section 459 and California Rules of Court, rules 8.520(g) and 8.252(a), the above-captioned *amicus curiae* hereby requests that the Supreme Court take judicial notice of the following documents. None of these materials were presented to the trial court by this *amicus*,¹ and the materials do not relate to proceedings occurring after the order or judgment that is the subject of the appeal. (Cal. Rules of Court, rule 8.252(a)(2)(B), (D).)

- 1. California Law Revision Commission records pertaining to the enactment of Labor Code section 3366 by Statutes 1963, chapter 1684 (Senate Bill 47), attached hereto as Exhibits "A" through "F" (Evid. Code, § 452, subd. (c); see *Estate of Joseph* (1998) 17 Cal.4th 203, 210, fn. 1; *DiCampli-Mintz v. County of Santa Clara* (2012) 55 Cal. 4th 983, 991-994; Cal. Rules of Court, rule 8.252(a)(2)(C)), more particularly set forth as follows:**

Exhibit "A" - Cal. Law Revision Com., Second Supp. to Mem. 23 (May 18, 1962) study 52(L)

Exhibit "B" - A Study Relating to Sovereign Immunity (Jan. 1963) 5 Cal. Law Revision Com. Rep. (1963) pp. 404, 452-453

Exhibit "C" - Recommendation relating to Sovereign Immunity, Number 6— Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers (Jan. 1963) 4 California Law Revision Commission Report (1963) pp. 1502-1507.

Exhibit "D" - Cal. Law Revision Com. (May 24 and 25, 1962), Minutes

Exhibit "E" - Cal. Law Revision Com. (Aug. 16, 17, and 18, 1962), Minutes

Exhibit "F" - Cal. Law Revision Com. (Sep. 21 and 22, 1962), Minutes

The foregoing materials demonstrate the history and legislative intent underlying the enactment of Labor Code section 3366. These documents support the argument advanced in the accompanying *amicus curiae* brief that "active law enforcement" includes the services performed by plaintiffs in this case. (Cal. Rules of Court, rule 8.252(a)(2)(A).)

¹ Plaintiffs previously requested and obtained judicial notice of Exhibit "C" in the Court of Appeal. (Slip Op. at pp. 16-17.)

2. **Legislative history materials pertaining to Statutes 1963, chapter 1684 (Senate Bill 47), attached hereto as Exhibits "G" through "J" (Evid. Code, § 452; *McLean v. State of California* (2016) 1 Cal. 5th 615, 624-625; *People v. Rodriguez* (2016) 1 Cal.5th 676, 690, fn. 4; Cal. Rules of Court, rule 8.252(a)(2)(C)), more particularly set forth as follows:**

Exhibit "G" - Legis. Analyst, analysis of Sen. Bill No. 47 (1963 Reg. Sess.) as amended May 3, 1963

Exhibit "H" - Sen. Cobey, sponsor of Sen. Bill No. 47 (1963 Reg. Sess.), letter to Governor Brown, Jun. 21, 1963

Exhibit "I" - Dept. of Finance, Enrolled Bill Rep. on Assem. Bill No. 1353 (1971 Reg. Sess.) Oct. 8, 1971

Exhibit "J" - Dept. of Industrial Relations, Enrolled Bill Rep. on Sen. Bill No. 47 (1963 Reg. Sess.) Jul. 11, 1963

The foregoing materials demonstrate the legislative history and intent underlying the enactment of Labor Code section 3366. These documents support the argument advanced in the accompanying amicus curiae brief that "active law enforcement" includes the services performed by plaintiffs in this case. (Cal. Rules of Court, rule 8.252(a)(2)(A).)

3. **Statistical information and records from governmental sources regarding the risk of injury or death associated with specified law enforcement encounters, attached hereto as Exhibits "K" through "P" (Evid. Code, § 452, subds. (c), (h); *In re Arturo D.* (2002) 27 Cal.4th 60, 85, fn. 23; *People v. Alexander* (1985) 163 Cal.App.3d 1189, 1201, fn. 3; *Ordlock v. Franchise Tax Bd.* (2006) 38 Cal.4th 897, 911, fn. 8; Cal. Rules of Court, rule 8.252(a)(2)(C)), more particularly set forth as follows:**

Exhibit "K" - FBI, Uniform Crime Reports (2017) Law Enforcement Officers Killed and Assaulted, 2017, LEOKA Definitions

Exhibit "L" - FBI, Uniform Crime Reports (2017) Law Enforcement Officers Killed and Assaulted, 2017, tbl. 118

Exhibit "M" - FBI, Uniform Crime Reports (2017) Law Enforcement Officers Killed and Assaulted, 2017, tbl. 84

Exhibit "N" - FBI, Uniform Crime Reports (2017) Law Enforcement Officers Killed and Assaulted, 2017, tbl. 23

Exhibit "O" - FBI, Uniform Crime Reports (2017) Law Enforcement Officers Killed and Assaulted, 2017, tbl. 111

Exhibit "P" - Breul & Keith, Deadly Calls and Fatal Encounters: Analysis of U.S. Law Enforcement Line of Duty Deaths When Officers Responded to Dispatched Calls for Service and Conducted Enforcement, 2010-2014 (2016)

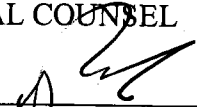
The foregoing materials demonstrate the inherent risks and dangers involved in responding to 911 calls that give no initial indication of criminal activity. These documents support the argument advanced in the accompanying amicus curiae brief that responding to any 911 call, even a call that gives gives no initial indication of criminal activity, constitutes "active law enforcement. (Cal. Rules of Court, rule 8.252(a)(2)(A).)

Dated:

2/12/14

Respectfully submitted,

ARTHUR J. WYLENE
GENERAL COUNSEL



Attorneys for Amicus Curiae
RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

5/18/62

Second Supplement to Memorandum No. 23(1962)

Subject: Study No. 52(L) - Sovereign Immunity (Workmen's Compensation for Persons Assisting Peace Officers)

Attached (blue sheets) are two copies of a tentative recommendation extending workmen's compensation benefits to persons assisting law enforcement officers in active law enforcement activities. Please mark your suggested changes in the text of the recommendation on one copy and turn it in to the staff at the May meeting.

The Commission's action at the April meeting was to recommend coverage under the Workmen's Compensation Act for persons impressed into active law enforcement service under Penal Code Section 150. The recommendation and statute go a little further and also extend coverage to persons who perform such services at the express or implied request of a peace officer. The matter of the compensation rate (covered in Section 2 of the proposed act) was not specifically considered at the April meeting.

The extension of the act to cover persons other than those mentioned in Penal Code Section 150 was made because few persons know of the precise terms of that statute and, hence, cannot tell when asked to assist a peace officer whether they are required to or not. Many people would assume that they are required to assist police officers whenever requested to do so, and others would feel it their civic duty whether required to by law or not. These people, it would seem, should also be covered by the Workmen's Compensation Act.

Monterey County v. I.A.C., 199 Cal. 221 (1926), cited in the tentative recommendation, is a square holding that a person may be impressed into law enforcement service by the oral request of a sheriff and that

such a person is covered by workmen's compensation. However, Dept. of Nat'l Resources v. I.A.C., 208 Cal. 14 (1929), distinguishes the earlier case and holds that unpaid officers are not covered. The Monterey County case devoted several pages to explaining how the compensation factor was irrelevant; hence, it is difficult to understand the purported distinction stated in the Natural Resources case. In City of Long Beach v. I.A.C., 4 Cal.2d 624 (1935), a private detective saw some suspicious looking individuals (furtive actions; bent, illegible license plate) and after some preliminary examination with a passing uniformed policeman discovered they were carrying arms in the trunk of the car. The policeman asked him to observe the individuals while the policeman called the station for additional men. After the police arrived, the uniformed policeman was dismissed so that his uniform would not unduly alarm the suspects. The detective remained to assist the police. The detective started to question one of the suspected individuals upon their emergence from a building (where they had just committed a robbery) whereupon the private detective was shot. The Supreme Court held that he was not entitled to compensation benefits as a Long Beach employee as he had not been impressed into service.

It is the purpose of the first section of the proposed statute to avoid any of the technical distinctions that might be based upon the above line of cases.

Section 2, not discussed in policy at the April meeting, is self-explanatory. It carries out a policy previously adopted by the Legislature in regard to volunteer police department members.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

TENTATIVE RECOMMENDATION

of the
CALIFORNIA LAW REVISION COMMISSION
relating to
Workmen's Compensation Benefits for Persons Required or Requested to
Assist Law Enforcement Officers

The California Supreme Court has held that a person impressed into law enforcement service under Penal Code Section 150 is entitled to workmen's compensation benefits as an employee of the law enforcement agency that requested his assistance.¹ Later cases have questioned this holding and have suggested that workmen's compensation benefits may not be paid if the person assisting in the enforcement of the law receives no compensation for his services² or if he has volunteered his services.³

When a person not trained in law enforcement is required by law to assume the risk of death or serious injury to provide police protection to the public, or when he undertakes to do so at the express or implied request of a peace officer, he and his dependents should be provided with protection against the financial consequences of his death or injury. The Commission, therefore, recommends that the benefits of the Workmen's Compensation Act be extended to cover cases where a person

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1. County of Monterey v. I.A.C., 199 Cal. 221 (1926).
 2. Dept. of Nat'l Resources v. I.A.C., 208 Cal. 14, 16-17 (1929).
 3. City of Long Beach v. I.A.C., 4 Cal.2d 624 (1935).

is killed or injured while engaged in the performance of active law enforcement service, whether he does so because he is required by law to do so or because he does so at the request of a peace officer.⁴

The Legislature has previously enacted several statutes that carry out the policy underlying the Commission's recommendation. For instance, Labor Code Section 3362, enacted in 1959, extends the benefits of the Workmen's Compensation Act to members of volunteer police departments. Labor Code Section 3363, enacted in 1961, covers active members of the reserve fish and game warden program of the Department of Fish and Game; and Labor Code Section 3364, also enacted in 1961, brings volunteer, unsalaried members of a sheriff's reserve under the Workmen's Compensation Act while they are engaged in active law enforcement service.

When members of volunteer police departments were covered by workmen's compensation in 1959, the Legislature determined that their benefits should be computed at the maximum rates. The Commission recommends that this policy of providing maximum compensation benefits to citizens providing unsalaried law enforcement service be extended to all persons who are requested or required to assist law enforcement agencies in the enforcement of the law.

The Commission's recommendation would be effectuated by the enactment of the following measure:

-
4. In some states, local entities are civilly liable, without regard to negligence, for all damages resulting from the death or injury of a person impressed into law enforcement service. The Commission believes that it is better policy to extend such persons the same benefits and protections that are provided to peace officers generally.

An act to add Section 3365 to, and to amend Section 4458.2 of, the Labor Code, relating to workmen's compensation.

The people of the State of California do enact as follows:

SECTION 1. Section 3365 is added to the Labor Code, to read:

3365. Each person engaged in the performance of active law enforcement service as part of the posse comitatus, and each person engaged in assisting any peace officer in active law enforcement service at the express or implied request of such peace officer, is an employee of the public entity he is serving or assisting in the enforcement of the law.

SEC. 2. Section 4458.2 of the Labor Code is amended to read:

4458.2. If a male member registered as an active police member of any regularly organized volunteer police department as described in Section 3362 suffers injury or death while in the performance of his duty as a policeman, or if a person engaged in the performance of active law enforcement service as described in Section 3365 suffers injury or death while in the performance of such active law enforcement service, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

A STUDY

relating to

Sovereign Immunity

January 1963

CALIFORNIA LAW REVISION COMMISSION

School of Law
Stanford University
Stanford, California

STATE OF CALIFORNIA

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January 1963

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January 2, 1963

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits a research study on this subject prepared by the Commission's research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles. The Commission's recommendations covering various aspects of this subject are contained in other published reports prepared for the 1963 legislative session. Only the recommendations submitted to the Legislature (as distinguished from the research study) are expressive of Commission intent.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*

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A STUDY RELATING TO SOVEREIGN IMMUNITY *

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* This study was made at the request of the California Law Revision Commission by Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles. The opinions, conclusions and recommendations are entirely those of the author and do not necessarily represent or reflect the opinions, conclusions and recommendations of the Law Revision Commission.

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services are relatively great, would seem to support the soundness of public tort liability in this area. In the present state of medical knowledge, it should be recognized that some mistakes are bound to occur, often through human failings to employ what a trier of fact later concludes would have been ordinary care. The only apparently practical way to distribute the resulting losses as part of the cost of the valuable public service being rendered is through the medium of tort liability; and such liability may well serve as a useful deterrent against less than the optimum possible standard of care.

Recommendation

It is suggested that legislation be enacted which makes applicable to public entities engaged in providing medical, hospital and health services the same general principles of tort liability which are presently applicable in California to private persons similarly engaged; and that existing standards for personnel, facilities and operations of hospitals, as promulgated by authorized public officials, be incorporated by reference as standards of duty for violation of which tort liability may ensue. Collateral aspects of this general rule should also be considered, with a possible view to providing: (a) that there shall be no liability upon any public entity for a refusal or failure to admit any person to a public medical facility for purpose of care or treatment, unless such failure or refusal constituted a breach of an affirmative duty imposed by statute; (b) that there shall be liability upon public entities for injuries to person or property sustained at the hands of any mentally ill person who has escaped from a public institution charged with the duty to keep said person in its custody and control for purposes of care and treatment for said mental illness; (c) that public entities shall not be liable for wrongful arrest, detention or restraint of persons alleged to be mentally ill or afflicted with an isolable disease where such arrest, detention or restraint is undertaken by public personnel in reliance upon a warrant, commitment or other legal process which appears to be valid upon its face; (d) that public entities shall not be liable for decisions made by public health authorities in exercising their discretionary responsibilities to decide whether to take or not to take measures designed to prevent the spread of disease or otherwise to protect and promote the public health. Legislation along these lines would, in effect, incorporate the substance of the policy suggestions advanced in connection with the preceding analysis.

Police Protection and Law Enforcement

In the application of the traditional dichotomy between "governmental" and "proprietary" functions, it is settled with almost complete unanimity in California¹ as elsewhere² that the activities of peace officers in the enforcement of the criminal law, and in the custodial care of persons convicted of crimes, are "governmental" and hence within the doctrine of sovereign immunity. The full logical

¹ See, e.g., *Chappelle v. City of Concord*, 144 Cal. App.2d 822, 301 P.2d 968 (1956); *Bryant v. County of Monterey*, 125 Cal. App.2d 470, 270 P.2d 897 (1954); *Oppenheimer v. City of Los Angeles*, 104 Cal. App.2d 545, 232 P.2d 26 (1951). Compare CAL. GOV. CODE § 1408, discussed in the text at 191 *supra*.

² 2 HARPER & JAMES § 20.6; 18 McQUILLIN, MUNICIPAL CORPORATIONS §§ 53.79, 53.80 (3rd ed. 1950).

impact of that doctrine, however, has been modified by statute with respect to various aspects of police and law enforcement activities in California. Here, for example, police officers driving emergency vehicles in response to emergency calls are personally immune from liability for ensuing automobile accidents, but the employing public entity is answerable in tort.³ Police stations, jails, honor farms and other physical properties employed in law enforcement and detention activities would seem clearly to be included in the statutory description of "public property" for which cities and counties, in the event of injuries caused by dangerous or defective conditions thereof, may be sued.⁴ Persons erroneously convicted and imprisoned for crime may, on stated statutory conditions, recover a limited indemnity from the State.⁵ Inmates of state prisons and other correctional institutions may, in effect, recover from the State for injuries sustained as the result of medical or dental malpractice by state employees, in view of a statute requiring the State to satisfy any malpractice judgment against its officers and employees in such cases.⁶ Finally, cities and counties are made liable, without fault, for property damage caused by mob or riot—a form of liability which undoubtedly stems from a policy of insisting that such local agencies prevent mob violence at all costs.⁷

The statutory modifications just reviewed manifestly have touched only upon peripheral aspects of the larger problem of tort liability for injuries sustained as the result of law enforcement activities of government. The potential contrariety of policy considerations which are here relevant, it should be observed, is greatly intensified by the nature of the policing function. Nightsticks, handcuffs, jail cells, pistols, riot guns, tear gas bombs, and the gas chamber all are reminders of the awesome powers to take both liberty and life which are vested in law enforcement officers as necessary weapons in the relentless war against crime. The possibilities of injury to the person and to that most precious of intangible interests, personal freedom, are at their maximum in this area of governmental operations. To be sure, the risk is one which society has accepted as indispensable to the preservation of peace and good order. On the whole, however, society has been willing to accept the benefits of the system of police protection but has not (at least in California) been willing to assume all of the burdens flowing therefrom. Injuries to life, limb or liberty, occasioned by negligent or deliberately wrongful police action, are still required to be borne primarily by the injured individual except in the presumably somewhat rare case in which a financially responsible police officer can be held liable.

The temptation is attractive to jump to the humanitarian conclusion that all injuries sustained from torts of police officers in the line of their duty should be a basis for action against the employing public entity. A moment's reflection, however, suggests that the problem cannot be resolved in such simplistic terms, for agreement must first be

³ CAL. VEH. CODE § 17001, discussed in the text at 36-40 *supra*, and CAL. VEH. CODE § 17004, discussed in the text at 166 *supra*.

⁴ CAL. GOVT. CODE § 53051, discussed in the text at 42-59 *supra*.

⁵ CAL. PEN. CODE §§ 4900-4906, discussed in the text at 74-75 *supra*.

⁶ CAL. GOVT. CODE § 2002.5, discussed in the text at 68-69 *supra*.

⁷ CAL. GOVT. CODE § 50140, discussed in the text at 72-73 *supra*.

reached as to what constitutes a "tort"—that is, an actionable breach of a duty to a plaintiff within the ambit of foreseeable risk. Police and law enforcement activities do not always lend themselves to easy analysis in these terms, for police functions frequently have no readily discernible private counterparts upon which might be erected a body of tort law by analogy. The function of investigation and apprehension of persons suspected of criminal activity, and their detention in penal servitude after conviction, are functions solely vested in government and not in private persons. A discriminating analysis of the policy considerations inherent in any proposal to extend tort liability to the law enforcement and police activities of government, therefore, should commence with an attempt to identify the principal types of injury-producing situations characteristic of such activities. Cases arising both in California and in the other states of the Union are here surveyed for this purpose.

False Arrest and Imprisonment

The usual (but not necessarily the only) circumstances in which a peace officer may in California make a lawful arrest are defined in Section 836 of the California Penal Code as follows:

A peace officer may make an arrest in obedience to a warrant, or may without a warrant, arrest a person:

1. Whenever he has reasonable cause to believe that the person to be arrested has committed a public offense in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. Whenever he has reasonable cause to believe that the person to be arrested has committed a felony whether or not a felony has in fact been committed.

Nearly 80 years ago, the Supreme Court ruled unanimously that an arrest which did not conform to these statutory standards, although unlawful, could not be the basis for tort liability of the public entity employing the culpable arresting officer.⁸ This ruling is still the law of California today,⁹ except insofar as it may have been altered by *Muskopf*. The cited cases all classify the power to arrest for crime as a "governmental" function for which public entities are not liable in tort.

The arresting police officer, however, is personally liable as a rule for the false arrest or imprisonment, if the statutory standards are not satisfied. There is no liability if the officer, making the arrest on a felony charge without a warrant, had "reasonable cause" to believe the person arrested had committed a felony,¹⁰ or if the arrest on a misdemeanor charge, absent a warrant, was accompanied by "reasonable cause" to believe such misdemeanor was being committed in the

⁸ *Stedman v. City & County of San Francisco*, 63 Cal. 193 (1883).

⁹ *Chappelle v. City of Concord*, 144 Cal. App.2d 822, 301 P.2d 968 (1956); *Oppenheimer v. City of Los Angeles*, 104 Cal. App.2d 545, 232 P.2d 26 (1951).

¹⁰ *Cole v. Johnson*, 197 Cal. App.2d 788, 17 Cal. Rptr. 664 (1961) (arrest for robbery); *Murphy v. Murray*, 74 Cal. App. 726, 241 Pac. 938 (1925) (suspected burglar). See also *Whaley v. Jansen*, 208 Cal. App.2d —, 25 Cal. Rptr. 184 (1962) (probable cause to arrest for psychiatric examination).

to defining more accurately and realistically the crucial terms, "mob" and "riot."²⁴

Injuries Sustained by Citizens Aiding Police in Enforcing the Law

The duty of the private citizen to assist in the enforcement of law has an ancient history,²⁵ and today is embodied in the statutes of most of the states of the Union. Section 150 of the California Penal Code, for example, makes it a misdemeanor punishable by a fine of not less than \$50 nor more than \$1,000 for any male person over the age of 18 years to refuse to aid in making an arrest, recapturing an escapee, preventing a breach of the peace or preventing the commission of any other criminal offense, "being thereto lawfully required by any . . . officer concerned in the administration of justice." The citizen, in short, must respond to the call of the peace officer as in medieval times. "The ancient ordinance abides as an interpreter of present duty. Still, as in the days of Edward I, the citizenry may be called upon to enforce the justice of the state, not faintly and with lagging steps, but honestly and bravely and with whatever implements and facilities are convenient and at hand."²⁶ But what if, in fulfilling this duty, the individual sustains serious personal injury, possibly even fatal wounds, or property damage? Should the public entity be financially liable for such losses?

A recent Wyoming decision²⁷ poses this issue in its sharpest form. The complaint alleged that a law-abiding citizen was there instructed by a policeman to assist in the pursuit and apprehension of a dangerous felon, and that the officer had negligently failed to warn of the dangers involved or to advise of the need to take suitable safety precautions. The citizen was killed by the suspected felon while thus assisting the policeman. The Wyoming Supreme Court denied relief, feeling itself constrained to adhere to the doctrine of sovereign immunity where "governmental" functions were concerned, but suggesting that compensation for the loss might be secured by private legislative bill.

The Legislature of New York authorized a substantially more equitable solution to the instant problem when, in 1932, it enacted an amendment to its statutory command for citizens to aid the police upon request (i.e., New York's counterpart to California Penal Code Section 150). This amendment, now found in Section 1848 of the New York Penal Law, provides:

Where such command [to aid a police officer] is obeyed and the person obeying it is killed or injured or his property or that of his

²⁴ See text at 72-73 *supra*. Taken literally, the California statute would seem to impose liability whenever "two or more persons acting together" use force and violence to disturb the public peace. See CAL. PEN. CODE § 404; *People v. Bundte*, 87 Cal. App.2d 735, 197 P.2d 823 (1948). Application of the statutory definition so as to preclude liability under an insurance policy designating riot as an excluded risk, however, was denied in a case arising from an assault and battery committed by two persons on a third in a remote and unfrequented place. *Connell v. Clark*, 88 Cal. App.2d 941, 200 P.2d 26 (1948). The need for a reasonable definition, in order to prevent entity liability from arising under such a statute upon the basis of ordinary criminal conduct involving more than one miscreant, has been judicially recognized. See *Maus v. City of Salina*, 154 Kan. 38, 114 P.2d 808 (1941).

²⁵ See *Babington v. Yellow Taxi Corp.*, 250 N.Y. 14, 164 N.E. 726, 61 A.L.R. 1354 (1928); *Riker v. City of New York*, 204 Misc. 378, 126 N.Y.S.2d 229 (1953), *aff'd*, 286 App. Div. 808, 143 N.Y.S.2d 620 (1955).

²⁶ *Cardozo, C.J.*, in *Babington v. Yellow Taxi Corp.*, 250 N.Y. 14, 17, 164 N.E. 726, 727 (1928).

²⁷ *Maffel v. Town of Kemmerer*, 80 Wyo. 83, 238 P.2d 808 (1959). See also the related case of *In re Maffel's Claim*, 80 Wyo. 117, 338 P.2d 818 (1959).

employer is damaged and such death, injury or damage arises out of and in the course of aiding an officer in arresting or endeavoring to arrest a person or retaking or endeavoring to retake a person who has escaped from legal custody or executing or endeavoring to execute any legal process, the person or employer so injured or whose property is so damaged or the personal representatives of the person so killed shall have a cause of action to recover the amount of such damage or injury against the municipal corporation by which such officer is employed at the time such command is obeyed.

This provision, it will be observed, does not predicate liability upon any fault on the part of the entity or its officers, but "makes liability absolute" by authorizing a cause of action, where it applies, "even if the police and other public authorities have taken the utmost care."²⁸ Such liability is founded upon a governmental policy of "care and solicitude for the private citizen who cooperates with the public authorities in the arrest and prosecution of criminals."²⁹ It has thus been held in New York that the statutory liability does not preclude the pursuit of any common law remedies founded on negligence in cases to which the statute is inapplicable;³⁰ and that reasonably construed, its reference to municipal corporations includes not only cities³¹ but counties³² as well. Its generally liberal interpretation is illustrated by a recent case allowing recovery for permanent disability sustained by a private detective who was struck by a brick when, at the request of a police officer, he assisted in quelling a disturbance caused by a disorderly group of youths who were throwing bottles, bricks and other objects at the officer.³³

In view of the mandatory nature of the citizen's duty to aid the police upon demand, and its importance to maintenance of law and order, it is believed that the imposition of absolute liability, as in New York, is an equitable and justifiable means for compensating losses sustained in performance of that duty. The paucity of cases involving the New York statute suggests that the extent of actual financial outlay thereunder is probably extremely modest; and the elimination of possible misgivings as to financial consequences in the event injury is sustained might conceivably tend to promote more willing and whole-hearted cooperation by citizens when called upon to give aid in law enforcement. Adoption of a provision similar to the New York statute above quoted should thus be considered for California. An alternative approach to the problem would be through legislation making work-

²⁸ *Schuster v. City of New York*, 5 N.Y.2d 75, 86, 180 N.Y.S.2d 265, 274, 154 N.E.2d 534, 541 (1958).

²⁹ *Ibid.* Illinois also has a similar statutory policy. ILL. ANN. STAT., ch. 24, §§ 1-4-5, 1-4-6 (Smith-Hurd 1962).

³⁰ *Schuster v. City of New York*, *supra* note 28; see also *Adamo v. Village of Mamaroneck*, 4 App. Div.2d 758, 164 N.Y.S.2d 874 (1957).

³¹ See *Riker v. City of New York*, 204 Misc. 878, 126 N.Y.S.2d 229 (1953), *aff'd*, 286 App. Div. 808, 143 N.Y.S.2d 620 (1955).

³² *Sawyer v. Town of Southport*, 6 App. Div.2d 553, 179 N.Y.S.2d 897 (1958). *But see* *Commissio v. Meeker*, 8 N.Y.2d 109, 202 N.Y.S.2d 287, 168 N.E.2d 365 (1960), impliedly disapproving the *Sawyer* case.

³³ *Riker v. City of New York*, *supra* note 31.

men's compensation benefits available to citizens injured in the course of assisting in law enforcement.³⁴

Violations of Federal Civil Rights Act

In February 1961, the United States Supreme Court rendered its decision in the important case of *Monroe v. Pape*.³⁵ The complaint in this action, which was instituted in a federal district court, alleged facts indicating that certain police officers of the City of Chicago, acting under color of Illinois law, had wrongfully broken into the plaintiffs' home and had thereafter engaged in conduct amounting to assault and battery, trespass, and false imprisonment of plaintiffs while ostensibly seeking evidence relating to an unsolved murder. Damages were sought from the officers and from the City of Chicago. The action was predicated upon a section of the Federal Civil Rights Act which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law suit in equity, or other proper proceeding for redress.³⁶

Similar attempts previously to utilize this statutory provision in fashioning an effective federal civil remedy for misconduct of state officials had proved abortive in the light of restrictive interpretations imposed by the lower federal courts.³⁷ The Supreme Court, however, in a rare display of near unanimity (with only Mr. Justice Frankfurter dissenting, and then only in part) concluded that the complaint stated a good cause of action against the defendant police officers, although not against the defendant City of Chicago. The unlawful conduct of the officers constituted a violation of due process clause of the fourteenth amendment, and was thus a basis for personal liability under the Civil Rights Act; but the legislative history of the statute convinced the court that public entities were not intended to be included in the category of "persons" made liable. It may be noted, also, that a previous decision of the Supreme Court, which apparently is still good law, had ruled that

³⁴ An early case indicating that persons summoned into law enforcement service under Section 150 of the Penal Code are entitled to workmen's compensation benefits, see *County of Monterey v. Industrial Acc. Comm'n*, 199 Cal. 221, 248 Pac. 912 (1926), has been qualified in later cases which intimate that such benefits are not available to persons who are not compensated for their services (as was the claimant in the *County of Monterey* case, *supra*). See *Department of Nat. Resources v. Industrial Acc. Comm'n*, 208 Cal. 14, 279 Pac. 987 (1929). Cf. *City of Long Beach v. Industrial Acc. Comm'n*, 4 Cal.2d 624, 51 P.2d 1089 (1935). It should be noted that individuals pressed into fire suppression service under Section 4010 of the Public Resources Code are covered by workmen's compensation by virtue of Section 4458.5 of the Labor Code. The last cited provision would thus provide a useful pattern for extending similar benefits to citizens pressed into law enforcement activities.

³⁵ 365 U.S. 167 (1961), discussed in Sperber, *Monroe v. Pape: Redress Under the Civil Rights Acts Redefined*, 21 LAW IN TRANSITION 197 (1961).

³⁶ REV. STAT. § 1979 (1875), 42 U.S.C. § 1983 (1953).

³⁷ See, e.g., *Egan v. City of Aurora*, 275 F.2d 377 (7th Cir. 1960), *rev'd*, 365 U.S. 514 (1961), on authority of *Monroe v. Pape*, *supra* note 35; *Stift v. Lynch*, 267 F.2d 237 (7th Cir. 1959); *Simmons v. Whitaker*, 252 F.2d 224 (5th Cir. 1958); *Agnew v. City of Compton*, 239 F.2d 226 (9th Cir. 1956), *cert. denied*, 353 U.S. 959 (1957); *Tate v. Arnold*, 223 F.2d 782 (8th Cir. 1955); *Francis v. Lyman*, 216 F.2d 583 (1st Cir. 1954).

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

**Number 6—Workmen's Compensation Benefits for
Persons Assisting Law Enforcement or
Fire Control Officers**

January 1963

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

NOTE

This pamphlet begins on page 1501. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes.

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CALIFORNIA LAW REVISION COMMISSION

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Stanford, California

January 2, 1963

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission herewith submits its recommendation on one portion of this subject—workmen's compensation benefits for persons assisting law enforcement or fire control officers. This is one of a series of reports prepared for the 1963 legislative session containing the recommendations of the Commission relating to various aspects of the subject of sovereign immunity. The Commission also has published a research study relating to sovereign immunity prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*

RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 6—Workmen's Compensation Benefits for
Persons Assisting Law Enforcement or
Fire Control Officers

The California Supreme Court has held that a person impressed into law enforcement service under Penal Code Section 150 is entitled to workmen's compensation benefits as an employee of the law enforcement agency that requested his assistance.¹ Later cases have limited this holding by suggesting that workmen's compensation benefits may not be paid if the person assisting in the enforcement of the law receives no compensation for his services² or if he has volunteered his services.³

Sections 4010 and 4160 of the Public Resources Code authorize certain public officers and employees to order a person to assist in combating a forest, brush or grass fire. Failure to comply with such an order is a misdemeanor. Labor Code Section 4458.5 provides that persons impressed into fire control service under Section 4010 are entitled to workmen's compensation benefits, but no comparable provision exists to provide similar benefits to persons impressed into fire control service under Section 4160.

When a person not trained in law enforcement or fire suppression is required by law to assume the risk of death or serious injury to provide such protection to the public, or when he undertakes to do so at the request of a peace officer or fire control officer, he and his dependents should be provided with protection against the financial consequences of his death or injury. The Commission, therefore, recommends that the benefits of the Workmen's Compensation Act be extended to cover cases where a person is killed or injured while engaged in the performance of active law enforcement or fire suppression service, whether he does so because he is required by law to do so or because he is requested to do so by a peace officer or fire control officer.⁴

¹ County of Monterey v. Industrial Acc. Comm'n, 199 Cal. 221, 248 Pac. 912 (1926).

² Department of Nat. Resources v. Industrial Acc. Comm'n, 208 Cal. 14, 17-18, 279 Pac. 987, 988-89 (1929).

³ City of Long Beach v. Industrial Acc. Comm'n, 4 Cal.2d 624, 51 P.2d 1089 (1935).

⁴ In some states, local entities are civilly liable, without regard to negligence, for all damages resulting from the death or injury of a person impressed into law enforcement service. The Commission believes that it is better policy to extend to such persons the same benefits and protections that are provided to peace officers generally.

The Legislature has previously enacted a number of statutes that carry out the policy underlying the Commission's recommendation and provide workmen's compensation benefits for persons providing unsalaried law enforcement service⁵ or fire suppression service.⁶

Workmen's compensation benefits for members of volunteer police departments and volunteer fire departments are computed at the maximum rates. Labor Code Section 4458.5 provides that certain persons impressed into fire control service also are to receive benefits computed at the maximum rates. The Commission recommends that this policy of providing maximum compensation benefits to citizens providing unsalaried law enforcement or fire suppression service be extended to all persons who are requested or required to assist in law enforcement or fire suppression.

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to add Sections 3365 and 3366 to, and to amend Sections 4458 and 4458.2 of, and to repeal Section 4458.5 of, the Labor Code, relating to workmen's compensation.

The people of the State of California do enact as follows:

SECTION 1. Section 3365 is added to the Labor Code, to read:

3365. For the purposes of this division, each person engaged in suppressing a fire pursuant to Section 4010 or 4160 of the Public Resources Code, and each person engaged in suppressing a fire at the request of a public officer or employee charged with the duty of preventing or suppressing fires, is deemed to be an employee of the public entity that he is serving or assisting in the suppression of the fire, and is entitled to receive compensation from such public entity in accordance with the provisions of this division.

SEC. 2. Section 3366 is added to the Labor Code, to read:

3366. For the purposes of this division, each person engaged in the performance of active law enforcement service as part of the posse comitatus or power of the county, and each person engaged in assisting any peace officer in active law enforcement service at the request of such peace officer, is deemed to be an employee of the public entity that he is serving or assisting in the enforcement of the law, and is entitled to receive compensation from such public entity in accordance with the provisions of this division.

⁵ Labor Code Sections 3362 (enacted in 1959) and 4458.2 (enacted in 1961) extend maximum benefits of the Workmen's Compensation Act to persons registered as active members of organized volunteer police departments; Labor Code Section 3363 (enacted in 1961) covers active members of the reserve fish and game warden program of the Department of Fish and Game; and Labor Code Section 3364 (enacted in 1961) brings volunteer, unsalaried members of a sheriff's reserve under the Workmen's Compensation Act while they are engaged in active law enforcement service.

⁶ Labor Code Sections 3361 and 4458 extend maximum benefits of the Workmen's Compensation Act to members of volunteer fire departments, and Labor Code Section 4458.5 extends maximum benefits of the Workmen's Compensation Act to certain persons impressed into fire control service.

SEC. 3. Section 4458 of the Labor Code is amended to read:

4458. If a male member registered as an active firefighting member of any regularly organized volunteer fire department as described in Section 3361 suffers injury or death while in the performance of his duty as fireman, *or if a person engaged in fire suppression as described in Section 3365 suffers injury or death while so engaged*, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

SEC. 4. Section 4458.2 of the Labor Code is amended to read:

4458.2. If a male member registered as an active police member of any regularly organized volunteer police department as described in Section 3362 suffers injury or death while in the performance of his duty as policeman, *or if a person engaged in the performance of active law enforcement service as described in Section 3366 suffers injury or death while in the performance of such active law enforcement service*, then, irrespective of his remuneration from this or other employment or from both, his average weekly earnings for the purposes of determining temporary disability indemnity and permanent disability indemnity shall be taken at the maximum fixed for each, respectively, in Section 4453. Four times his average annual earnings in disability cases and in death cases shall be taken at the maximum limits provided in Sections 4452 and 4702 respectively.

SEC. 5. Section 4458.5 of the Labor Code is repealed.

4458.5. Any minor or adult impressed or ordered into fire control service as provided by Section 4010 of the Public Resources Code who suffers injury or the dependents of such person who suffers death while in the performance of the impressed or ordered duties shall receive benefits as provided for a male member registered as an active fire fighting member of a regularly organized volunteer fire department by the provisions of Section 4458 of this code.

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MINUTES OF MEETING

of

May 24 and 25, 1962

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles at the U.C.L.A. Law School on May 24 and 25, 1962.

Present: John R. McDonough, Jr., Vice Chairman (May 24)
Honorable James A. Cobey
Honorable Clark L. Bradley
Joseph A. Ball (May 24)
James R. Edwards
Richard H. Keatinge
Angus C. Morrison, ex officio

Absent: Herman F. Selvin, Chairman
Sho Sato
Thomas E. Stanton, Jr.

Messrs. John H. DeMouilly, Joseph B. Harvey and Jon D. Smock of the Commission's staff were also present.

Professor Arvo Van Alstyne, the Commission's research consultant on Study No. 52(L) - Sovereign Immunity, and Mr. Benton A. Sifford, special research consultant to the Senate Fact Finding Committee on Judiciary, and the following persons were also present:

Robert F. Carlson, Department of Public Works
Louis J. Heinzer, Department of Finance
Robert Lynch, Office of the County Counsel (Los Angeles)
Richard C. Maxwell, Dean, U.C.L.A. Law School (May 24)
John J. Savage, Bureau of Casualty Underwriters (May 25)

Minutes of April Meeting. The Minutes of the April 1962 meeting were approved as submitted.

ADMINISTRATIVE MATTERS

Letter from Assembly Interim Committee on Criminal Procedure. The Commission considered a letter from the Chairman of the Assembly Interim Committee on Criminal Procedure requesting the comments of the Commission on a proposed amendment to California law. The Commission suggested that the Chairman of the Commission advise the Chairman of the Interim Committee that the Commission is not authorized to study any matter unless prior legislative approval has been secured and that the Commission has not been authorized to study the subject matter of the proposed amendment.

Meeting Dates and Places. Future meetings are tentatively scheduled as follows:

June 15-16	Los Angeles (State Bar Building)
July 20-21	Stanford Law School
August 10-11	San Francisco
September 21-22	Beverly Hills (State Bar Convention)

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

Defense of Actions Brought Against Public Officers and Employees.

The Commission considered Memorandum No. 21(1962).

Section 991.1 of the draft statute was amended to limit "actions or proceedings" to judicial actions and proceedings. The Commission discussed whether the statute should be extended to include the right to a defense at public expense in administrative proceedings. Representatives of public agencies pointed out the difficulties that would arise if a defense were provided in these cases. It was noted that the theory of the statute is that a defense should be provided where a public officer or employee is sued for something he did to carry out the interests of the public entity. The extension to include administrative proceedings would change the theory to provide for free defense whenever a public officer is sued and was not guilty of bad faith or malice--a completely different theory to justify the statute.

A motion to delete all of paragraph (a) of Section 991.1 did not receive a second.

Paragraph (a) of Section 991.1 was revised to read:

(a) "Action or proceeding" means a judicial action or proceeding, but does not include (1) an action or proceeding brought by a public entity to remove, suspend or otherwise penalize its own employee, or (2) an action or proceeding brought by a public entity against its own employee as an individual and not in his official capacity.

Under Section 991.1(a)(1) above, a public officer, agent or employee would not be entitled to counsel at public expense when his employer brings a judicial proceeding to remove him, nor would he be entitled

to counsel at public expense when he seeks judicial review of administrative disciplinary proceedings.

The staff was directed to add a provision to Section 991.2 to make clear that for the purposes of the proposed statute, a cross action, counterclaim or cross complaint against an officer, agent or employee would be considered to be a civil action or proceeding brought against him. It was suggested that the text of the recommendation also make clear that the public entity in defending an action or proceeding brought against a public officer, agent or employee could take any appropriate action necessary to defend the action or proceeding, including the prosecution of a cross action, counterclaim or cross complaint by the defendant against the plaintiff who brought the action or proceeding against the public officer, agent or employee.

The staff was directed to substitute "actual fraud" for "bad faith" throughout the statute.

Proceedings to remove an officer under Sections 3060 to 3073, inclusive, of the Government Code, are to be treated the same as criminal actions under Section 991.4.

Other minor revisions were made in the form of the statute.

Tentative Recommendation. A number of suggestions were made for revision of the text of the tentative recommendation.

The Commission determined that reasons should be stated in the tentative recommendation to indicate why the proposed statute does not permit reimbursement for cost of defense in a criminal case where the defendant is exonerated of the criminal charge and proves in a subsequent

action against the public entity to recover the costs of his defense that he was not guilty of actual fraud, corruption or actual malice. It was noted that the public employee who makes a similar showing after defending a civil action or proceeding is entitled to reimbursement. The following reasons were thought to justify the distinction between civil actions and criminal actions:

Although as a general rule a public officer, agent or employee should be given a right to a defense at public expense against a civil action or proceeding, he should have no recourse against the public entity if it declines to furnish him with a defense against a criminal charge. Giving public personnel a right to a defense against criminal actions and proceedings would, in effect, give them a right to free legal service as an incident to their employment that other citizens are not entitled to receive. Such a requirement might tend to undermine the deterrent effect of our criminal laws. In criminal actions, too, there is a preliminary screening process by responsible public officials--the magistrate, public prosecutor or grand jury--which is not present in civil actions; hence, criminal actions are less likely to be prosecuted without probable cause than are civil actions. Moreover, criminal actions frequently involve serious misconduct and it would sometimes be harmful to the good public relations of the public entity to require it to expend public funds for the defense of such actions. In many instances the public entity would be compelled to appear through counsel on both sides of the same case. Since it is necessary to weigh a great many factors to determine whether the public interest would be served by providing

public officers, agents and employees with a defense against criminal charges, and since these factors will vary in importance from case to case, the Commission has concluded that the decision whether it is in the public interest to provide such a defense in any particular case is best left to the sound discretion of the public entity. In reaching this conclusion, the Commission is also influenced by the existence of such civil remedies as actions for false arrest, false imprisonment and malicious prosecution that may be available when unfounded criminal charges are made against public personnel.

Mob and Riot Damage

The Commission considered the First Supplement to Memorandum No. 23(1962) containing a draft statute and proposed tentative recommendation relating to liability for mob and riot damage. The Commission made the following decisions.

1. The theory of liability for mob and riot damage was changed from absolute liability to a negligence standard of liability based upon failure of the responsible public authority to exercise reasonable care or diligence to prevent or suppress the mob or riot. It was noted that the present law imposes absolute liability for mob and riot damage whereas no liability is imposed for damage resulting from other crimes even where the grossest lack of diligence could be shown. The present law is unrealistic in terms of the duty imposed upon public authorities to prevent or suppress mobs and riots. The Commission believes that this relic of past history should not be perpetuated, particularly where

liability is extended to embrace personal injury resulting from a mob or riot. This extension of liability further justifies a change in the theory of substantive liability in recognition of the impossible burden which would otherwise be placed upon public authorities. Other means of limiting this burden, such as limiting the amount recoverable or substantially raising the number of participants in the mob or riot, were thought to be highly arbitrary and less realistic than imposing a standard of reasonable care or diligence.

2. The definitions in Section 905.1 were changed in several respects.

(a) The definition of the responsible public authority liable for mob and riot damage was changed to include any local public entity that has the duty or has undertaken to maintain peace or order in the area where the mob or riot occurs. The language of this definition is to be carried over into the substantive liability provision--Section 905.2--but the latter section is to include language limiting the liability of counties since they now have responsibility for law enforcement throughout the county.

(b) The definition of "mob" was revised to reduce the number of participants from five to two or more. This action is consistent with the changed theory of liability and the relatively narrow scope of activity embraced within the substantive definition of "mob".

(c) The definition of "riot" was changed to increase the number of participants from five to ten or more. This action was taken because of the broad sweep of the substantive definition of "riot" and the fact

that a lesser number would be able to congregate in a single vehicle, thereby making it a practical impossibility for public authorities to exercise an acceptable measure of diligence in preventing or suppressing the group from damaging activity.

3. The substantive liability provision was changed to read substantially as follows:

905.2. A local agency is liable for death or for injury to persons or property proximately caused by a mob or riot within an area where the local agency has the duty or has undertaken to maintain peace and order if the local agency fails to exercise reasonable care or diligence to prevent or suppress the mob or riot. A county is not liable under this section where a mob or riot occurs within an area in the county where another local agency has the duty or has undertaken to maintain peace and order unless the county fails to exercise reasonable care or diligence to prevent or suppress the mob or riot after the county has notice, express or implied, of the danger.

The revision of the first sentence is in accord with the changed theory of liability. The second sentence makes clear that a county that has relinquished to another public authority the primary responsibility for law enforcement, and now acts solely as a backstop in a secondary capacity, should be liable only if it fails to act with reasonable care or diligence after notice of the danger. A county that knows or should have known that the other local agency cannot cope with a mob or riot within the area in the county policed by that entity has the duty to exercise reasonable care or diligence to prevent or suppress the mob or riot. This is a relaxation of present law concerning the liability of counties for mob and riot damage because the county, having responsibility for law enforcement within its boundaries whether within or without

incorporated areas, would appear to be liable under the present statute whether or not another local agency also would be liable. Under the proposed statute, in areas within the county where no other local agency has the duty or has undertaken to maintain peace and order, the county is under the same obligation as every other local agency because of its principal responsibility for law enforcement in the county, thus being covered by the first sentence in Section 905.2.

Workmen's Compensation Benefits for Persons Required or Requested to Assist Law Enforcement Officers

The Commission considered the Second Supplement to Memorandum No. 23 (1962) and took the following actions:

- (1) The proposed statute was approved as drafted by the staff.
- (2) The proposed text of the tentative recommendation was approved as submitted.
- (3) The distribution of the tentative recommendation to interested persons for comments and suggestions was unanimously approved.

During the discussion of this matter, the Commission considered whether the right to compensation should be dependent upon the claimant having a legal duty to assist in law enforcement or upon the showing of an expressed or implied request of an officer for assistance. A majority of the Commission took the view that volunteers should not be entitled to compensation under the proposed statute. Before a duty to pay compensation is imposed, it should be established that the public entity at least impliedly requested the claimant to perform the service that resulted in the injury for which compensation is sought.

The Commission also considered whether the claimant should be entitled to workmen's compensation or should be given a right of action against the public entity for his injuries. Mr. Sifford recommended that the workmen's compensation solution to the problem be the one adopted by the Commission. He stated that this solution permits the risk to be spread so that a claim for which compensation is allowed would have only a relatively slight impact on any individual account. In addition, it was noted that this solution guarantees that the claimant will receive compensation even though he assumed the risk or was contributorily negligent.

Revision of Claims Statutes

The Commission considered Memorandum No. 19(1962).

A motion by Commissioner McDonough that all public entity claims statutes be repealed did not receive a second. The Commission took the following action with respect to the provisions of the proposed draft statute relating to local public entities (blue sheets attached to Memorandum No. 19);

Section 710. The research consultant suggested that the proposed addition to this section is in accord with the case law prior to the enactment of the local public entity claims statute and that the proposed addition also may represent what a court would hold under the language of the new local public entities claims statute.

A motion to adopt the proposed addition to Section 710 failed to pass and the proposed addition was rejected.

Section 715. The policy reflected in the amendment to this section was previously approved by the Commission. No action was taken

to change the previous decision of the Commission.

Section 716. It was suggested that the text of the recommendation include a statement that whether the entity received notice may be considered by the court in determining whether the entity was unduly prejudiced under Section 716(a).

Section 716(a) was approved with the addition of the word "surprise" after the word "inadvertence."

Section 716(b) was approved as drafted.

Section 716(c) was rejected.

Section 717 and Section 720. The amendments to these sections were approved as drafted.

Section 12 (introductory clause). The figure "729" was deleted and the provision was approved as so revised.

Section 729. This section was deleted.

Section 731. References to "resolution" were deleted from this section with appropriate changes to be made to conform to such deletion. As so revised the section was approved.

Section 732. This section was approved after it was revised to read:

732. A local public entity may authorize an officer or employee of the local public entity to allow, compromise or settle claims against the local public entity for which the local public entity may be liable in lieu of and with the same effect as an allowance, compromise or settlement by the governing body of the local public entity if the amount to be paid pursuant to such allowance, compromise or settlement does not exceed \$1,000 or such lesser amount as may be authorized by the local public entity. Upon the written order of such officer or employee, the auditor or other fiscal officer of the local public entity shall cause a warrant to be issued upon the treasury of the local public entity in the amount for which a claim has been allowed, compromised or settled.

Section 53055. The repeal of this section was approved.

Section 14. The repeal of Chapter 3 (commencing with Section 800) of Division 3.5 of Title 1 of the Government Code was approved.

Section 800. This section was approved as drafted. [Note that the word "agent" should be added to this provision so that it reads "officer, agent or employee."]

Section 801. The Commission discussed whether a claim against the public entity should have to list the names of the officers, agents and employees whom the plaintiff will seek to hold personally liable. The Commission determined not to include such a requirement because this information is more likely to be available to the public entity than to the plaintiff. Section 801 was approved after it was revised to read:

801. (a) Except as provided in subdivision (b), a cause of action against a public officer, agent or employee for death, injury or damages resulting from any negligent or wrongful act or omission in the scope of his office, agency or employment is barred if an action against the public entity would be barred for failure to file a claim with the public entity.

(b) A cause of action against a public officer, agent or employee is not barred by this section if the plaintiff pleads and proves that he did not know or have reason to know within the period prescribed by Section 665 or 715 as a condition to maintaining an action therefor against the employing public entity that the death, injury or damage was caused by a negligent or wrongful act or omission of a public officer, agent or employee.

It was noted that the indemnity statute (which will be considered later by the Commission) might contain a provision that a public entity would not be required to pick up a judgment against its public officer, agent or employee in a case where a judgment is obtained against the

officer, agent or employee under subdivision (b) of Section 801 and the public entity is prejudiced because he failed promptly to notify his employer of his negligent or wrongful act or omission.

Section 803. This section was approved as drafted. [Note that the word "agent" should be added to the phrase "officer, agent or employee."]

Section 701. The repeal of this section was approved.

[Note: A subcommittee of the Commission took further action on Memorandum No. 19(1962) at its meeting on May 25.]

REPORT OF SUBCOMMITTEE MEETING ON MAY 25, 1962

On May 25, 1962, a subcommittee of the Commission under the Chairmanship of Commissioner Edwards met. The subcommittee makes the following recommendations to the Commission:

Revisions of Claims Statutes

The subcommittee considered Memorandum No. 19(1962).

General statutory scheme. The Department of Finance objected to the approach reflected in the proposed draft statute. The department representative stated that the department would prefer to have the statute retain the two-year filing period unchanged rather than having 100 days for filing and the possibility of extending the period of time for filing as under the local entities claims statute. Both the Department of Public Works and the Department of Finance objected to having to go to court in every case to resist a petition for leave to present a late claim.

It was suggested that the statute might include a provision providing that a claim would be deemed to be timely filed if the board does not object to the late filing within a certain time.

The subcommittee considered the following scheme for the State claims statute: There would be established a 100-day filing requirement for most actions and a 1-year filing requirement for vehicle accident cases and certain other kinds of cases. Notwithstanding those limitations a person can file his claim late if he files it within 1 year from the time the cause of action accrues; if the entity fails to object within a specified period.

of time to the late filing and fails to notify the claimant that it is rejecting the claim because it is filed late, then it is deemed that the late filing is waived so long as filed within the one year. If the entity objects to the late filing on the grounds that it has made a sufficient investigation of the claim so that it has determined that it will be prejudiced by the late filing, then the person filing the late claim should be required to petition the court for leave to file the late claim.

Senator Cobey moved, seconded by Commissioner Keatinge, that the public entity be allowed a period to consider and reject the claim under the local public entities claim statute. The effect of this motion would be to renew in substance the 1959 recommendation regarding local public entities. After rejection of the claim or after the claim is deemed to be rejected, the claimant should be allowed a specified period within which to bring an action. The motion was adopted unanimously.

It was noted that in 1959 the Commission recommended that an 80-day period be allowed local public entities to consider claims. At the end of the 80 days the claim would be deemed to be rejected. The subcommittee determined that this period be made applicable both to the State and to local public entities claims statutes.

The subcommittee determined that one general statute covering claims against all public entities should be drafted. The statute should be along the lines of the 1959 recommendation of the Commission.

Section 621. The subcommittee determined that both the State and local public entities claims statutes should have a verification requirement or its equivalent or that the claim be made under penalty of perjury (Code Civ. Proc. § 2015.5).

In this connection, however, it was noted that many statutes in other states and the local public entities claims statute do not require verification, possibly because the filing of a false claim is itself actionable.

It was suggested that a provision be added to the claims statutes indicating that the claims statutes do not impose liability where liability does not otherwise exist.

Section 661. It was agreed to delete the provision that permits a claim to be filed that is not signed by the claimant or by some person on his behalf.

It was suggested that the statute authorize the claimant either to list the information specified in the statute or to comply with a claim form prescribed by the public entity. Either procedure would satisfy the statute.

The statute of limitations that would govern actions would be six months after the claim is rejected.

Section 664. The words "in the State Capitol, Sacramento," were deleted.

Section 667. This section was deleted.

It was suggested that the text of the recommendation contain a calendar of significant times under the claims statute.

The Commission discussed whether State agencies should be authorized to compromise claims. The Department of Finance representative stated that the department has no objection to the compromise of claims where the claim has been disallowed by the Board of Control and an action has

been brought by the claimant. It was suggested that the Board of Control be given authority to authorize State agencies to compromise claims without approval of the board as to the particular claims. It was also suggested that claims could be paid by a State agency only if the agency had budgeted funds for that purpose. This would in effect give the Department of Finance and the Legislature a veto power over the compromise of claims by a particular State agency. The Department of Finance and the Department of Public Works were requested to submit to the Commission staff suggested provisions for insertion in the claims statute.

Fiscal Administration

The subcommittee considered Memorandum No. 20(1962) and a portion (pp.1-10) of Memorandum No. 10(1962) relating to several matters pertaining to fiscal administration and the payment of tort claims and tort judgments. The following matters were agreed upon.

Definitions (Section 740). The subcommittee approved the definition of "fiscal year" as it appears in Memorandum No. 20(1962).

The subcommittee agreed that a definition of "tort judgment" should be included in this section to avoid unnecessarily restrictive judicial interpretation. The following definition was approved:

(b) "Tort judgment" means a final judgment against a local public entity for money damages founded upon death or injury to persons or property arising out of a negligent or wrongful act or omission.

Consent to sue (Section 742). This section was approved as drafted.

Authority to pay judgments. The subcommittee approved a motion by Senator Cobey to include a provision in this article placing a mandatory duty upon the local public entity against which a tort judgment has been rendered to arrange for the payment of such judgment in accord with this article. It was noted that the present sections impose such duty but that a provision should be included to make this clear. The subcommittee then considered the several sections outlining the means of making such payment.

Section 742. This section was approved as drafted in Memorandum No. 20(1962) except that a semicolon and the word "or" were substituted for the period at the end of subdivision (a).

Section 743. This section was approved as drafted in Memorandum No. 20(1962).

Section 744. The subcommittee disapproved the alternative draft of this section presented in Memorandum No. 20(1962) relating to the instalment payment of tort judgments. At least two reasons for this action were specifically noted. First, the court should not be in a position to second guess fiscal policy decisions made by responsible officials of the local public entity. Second, the plaintiff creditor is not really damaged by reason of delayed payment through instalments because of the lucrative interest rate on such unpaid judgment and the ready market for such judgments if the public entity is financially responsible. A suggestion that an additional penalty be imposed upon the entity for deferment of payment was rejected.

The subcommittee approved the former draft of this section as presented in Memorandum No. 10(1962).

Mandatory levies to pay tort judgments (Section 745). No final action was taken with respect to this section as presented in Memorandum No. 10(1962). It was suggested that paragraph two of this section might be changed so that the local public entity against whom a tort judgment is rendered would charge only a pro rata share of the cost of such judgment against another local public entity, the share being based upon the same pro rata income for the preceding year. This is because it would be unfair to charge the other local public entity with the entire cost where it furnishes only one, five or ten percent of the revenue of the entity against whom the judgment is obtained. The subcommittee agreed that this section should be considered again by the Commission.

Judgments as investments (Section 746). The subcommittee agreed that all reference to public bodies should be deleted from this section and that another section permitting such investment by public bodies should be considered by the Commission. This action was taken because there is a possibility that investment by public bodies, particularly the State, may undermine the stability of bonded indebtednesses of the investing entities. With this deletion, the section was approved as drafted.

Attorney's fees limitation. (Section 747). The first matter considered was whether a provision limiting attorney's fees can be

justified. One justification advanced was that if public moneys are to be expended because someone has been injured, the public should be assured that most of the money paid from public funds will go to the injured party. It was noted that the Federal Tort Claims Act contains a similar limit on attorney's fees. (Apparently the attorney's fees provision was added to the Federal Tort Claims Act as an afterthought. There is no discussion of the provision in the legislative history of the Act.) It was suggested that the section also will conserve public funds by reducing the number of unmeritorious suits brought merely because the public entity has a deep pocket. It was also suggested that the attorney's fees limitation is a means of discouraging the filing of law suits unless there is good reason to believe there are grounds for recovery. It was noted that the Industrial Accident Commission fixes maximum fees.

Senator Cobey suggested that the attorney's fees might be subject to approval of the court as to reasonableness as in the case of a minor. Having the fee subject to approval of a court would allow the court to control the situation so that the injured party doesn't have to pay the attorney a large percentage of the amount paid by the entity, particularly where the attorney has rendered little service. This suggestion was not adopted.

A majority of members present (3 to 1) were in favor of Section 747 as drafted.

Claims and Judgments Against Dissolved Local Public Entities

Sections 750-763. The subcommittee considered the sections dealing

with the payment of unsatisfied claims and judgments against dissolved local public entities. The following matters were agreed upon.

The general scheme of providing by statute a uniform method of handling the affairs of dissolved local public entities where no other statutory authority governs was approved in substantially the same form as drafted in the memorandum. The provisions of the proposed Article pertain only to dissolved entities and apply only where no other law governs the winding up of the affairs of the particular entity involved.

Proposed Sections 753 and 754 were drafted to reflect Commission policy approved at the December 1961 meeting. The theory underlying these sections whereby the succeeding entity would pay the outstanding debts of the dissolved entity was changed materially. With respect to these two sections, the following matters deserve particular attention.

1. A local public entity should be required to pay its debts, including claims and judgments arising out of tort liability, or cease to exist. The succeeding entity, whether it be another local public entity or the county in which the whole or greater part of the dissolved entity is situated, should not be generally liable for the payment of debts incurred by the dissolved entity.

2. The territory embraced within the boundaries of the dissolved entity should be solely responsible for the satisfaction of those claims and judgments which remain unsatisfied at the time of dissolution (including those arising after dissolution). Thus, the succeeding entity assumes the position of an administrative-tax levying-tax collecting agency for the dissolved entity.

3. The authority to assess and collect taxes, assessments, etc., for the payment of tort claims and judgments is to be limited by an amount equal to \$.25 per \$100 assessed value per year for a maximum period of 20 years from the date of dissolution. In effect, this limits the total amount collectible against any dissolved entity, such total to be divided proportionately among the tort judgment creditors. This tax ceiling is to be a mandatory rate applicable to all succeeding entities where the purpose of the collection is to satisfy tort claims and judgments. This rate, of course, does not affect other provisions relating to the power to levy taxes and assessments to raise funds for the payment of general debts, such as bonds and the like.

4. The governing principle to be reflected in the statute is that the liability for satisfaction of debts attaches only to the property within the boundaries of the dissolved entity at the time the liability accrues. It was noted that this scheme would not interfere with normal annexations and the like because the property affected would be the same as though the dissolution never occurred.

Conforming changes are to be made in the remainder of the proposed article to carry out the policy reflected in these sections.

Indemnity or Save Harmless Agreements

It was pointed out that indemnity agreements, while useful in some cases, would not be desirable in every case, for the expense of a public contractor in providing insurance to cover the indemnity agreement might exceed the benefit to the public agency.

It was also pointed out that indemnity agreements are in wide use now. The proposed statute would merely make clear that public entities have this authority.

It was suggested that the provision be amended to insert "Except as otherwise provided by law" at the beginning of the provision and to add the words "in its discretion" in the portion of the provision that grants the authority to require indemnity or save harmless agreements. It was also suggested that the section be revised so that an indemnity agreement might be drafted to cover only part but not all of the potential liability. It should be clear that the provision covers a contract or agreement between two public entities or between the United States and a public entity in California.

Insurance Under Joint Powers Agreements. A staff recommendation that Section 6502 of the Government Code not be amended to provide for specific authority to enter into a joint powers agreement to jointly secure insurance was adopted. It was pointed out that this amendment was not needed and might be construed to restrict the broad grant of authority under Section 6502.

Liability Under Joint Powers Agreements. The following suggestions were made with reference to proposed Section 6503.5: The general language used in the substantive liability statutes--"arising out of any negligent or wrongful act or omission"--should be used in this section. Other provisions in the Government Code--cited in the Fire Protection portion of the Study and also in the Park and Recreation portion of the Study--

should be amended. Also, some provisions in the Public Resources Code should be amended.

It was noted that under proposed Section 6503.5 the public entity was required to make payment before it was entitled to contribution. It was suggested that the provision be revised to make it an indemnification provision so that a defendant public entity would be permitted to bring other indemnifying public entities into the action. The pro rata share of each entity should be based on assessed valuation of property located within the boundaries of the public entity on the last equalized assessment roll for the county.

Funding Tort Judgments With Bonds

The subcommittee considered pages 27-42 of Memorandum No. 10(1962) relating to the authority of entities to issue bonds to fund tort judgments. The following matters were agreed upon.

1. It was suggested that a workable solution to the problem of providing authority to issue bonds without unnecessarily disturbing present statutes, particularly those relating to bond limits, might be to provide (1) general authority to bond to fund tort judgments and (2) a uniform procedure to be followed in such bonding. The authority created and the procedure provided would be in addition to any existing statutes.

2. The procedure to be provided for the issuance, payment, etc., of bonds issued for the purpose of paying tort judgments should omit any reference to a bond limit, thus leaving to the courts the question

whether the authority therein provided is subject to bonding limits which may be contained in the statutes specifically governing the local entity involved.

3. The uniform procedure to be provided should require a prior two-thirds vote of persons within the local public entity that seeks to issue such bonds. No authority to issue bonds for such purpose should be provided without the prior consent of two-thirds of such persons.

Liability for Dangerous Conditions of Public Property

The subcommittee considered Memorandum No. 15(1962) dealing with special statutes that provide for immunity from liability for certain types of public property and certain activities thereon. The following matters were agreed upon.

Civil Code Section 1714 and 1714.5. The subcommittee approved the staff's suggestion to make no change in these sections.

Streets and Highways Code Sections 941 and 1806. These sections generally provide immunity for failure to maintain streets and roads until accepted by the governing board of the city or county involved. It was noted that there are numerous highways which have not been accepted by such boards. However, because of the importance of fixing an event after which liability attaches, the sections were approved as drafted.

Government Code Sections 54000-54005. It was agreed to defer action on these sections until the Commission considers that portion of the research consultant's study dealing with parks and recreational activities.

Streets and Highways Code Sections 943 and 954. The suggested revisions to these sections dealing with stock trails were approved as drafted, except that "contents of vehicles" were added to the items listed in revised Section 954 for which damages could not be recovered.

MINUTES OF MEETING

of

AUGUST 16, 17 and 18, 1962

San Francisco

A regular meeting of the Law Revision Commission was held in San Francisco on August 16, 17 and 18, 1962.

Present: Herman F. Selvin, Chairman
John R. McDonough, Jr., Vice Chairman
Honorable Clark L. Bradley
Richard H. Keatinge
Sho Sato
Thomas E. Stanton, Jr..

Absent: James A. Cobey
Joseph A. Ball
James R. Edwards

Messrs. John H. DeMouilly, Joseph B. Harvey and Jon D. Smock of the Commission's staff were also present.

Mr. Benton A. Sifford, special research consultant to the Senate Fact Finding Committee on Judiciary, was present on August 17 and 18, 1962.

The following persons were also present:

Carlos Bea, Dunne, Dunne and Phelps (August 16, 1962)
Jack F. Brady, Department of Finance (August 16 and 17, 1962)
Robert F. Carlson, Department of Public Works
George Hadley, Department of Public Works (August 16 and 17, 1962)
Robert Lynch, Office of the County Counsel, Los Angeles
Mark C. Nosler, Department of Finance
Robert Reed, Department of Public Works
John J. Savage, Bureau of Casualty Underwriters
Willard Shank, Office of the Attorney General

Minutes of July Meeting. The minutes of the July 1962 meeting were approved as submitted.

ADMINISTRATIVE MATTERS

Move of Commission Office. The Executive Secretary reported that it will be necessary to move the office of the Commission to the basement of the law dormitory. The move is a temporary one (approximately 10 months) and is made necessary because of the remodeling of a portion of the law school. The lease covering the space now occupied by the Commission in the law school has been terminated by Stanford.

The Commission authorized the Chairman to determine what recommendation the Commission should make to the Department of Finance concerning the terms of the lease covering the new space.

Hearsay (printing pamphlet). The Commission authorized the Executive Secretary to make arrangements for the sale of the Hearsay Pamphlet with the Documents Section of the State Printing Department.

Sovereign Immunity Study (printing pamphlet). The Commission determined that the Sovereign Immunity Study be printed separately and the Executive Secretary was authorized to make arrangements for the sale of the printed study with the Documents Section of the State Printing Department.

The Commission determined that the various recommendations relating to sovereign immunity be printed in separate pamphlets. What is to be printed in a separate pamphlet will be determined at the time when a particular recommendation is ready to be printed. The Executive Secretary was directed to make recommendations concerning this matter at appropriate times.

Meeting Dates and Places. Future meetings of the Commission

are tentatively scheduled as follows:

September 21-22	Beverly Hills (State Bar Convention)
October 18-19-20	San Francisco
November 15-16-17	Los Angeles
December 14-15	San Francisco

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

General Liability Recommendation

The Commission considered Memorandum No. 54 (1962), containing the text of a recommendation and draft statute relating to liability of public entities and public officers and employees.

The Commission first considered the draft statute and took the following actions:

ARTICLE 1 - DEFINITIONS

901.05. This section was approved without change.

901.10. This section was approved without change.

901.15. This section was approved without change.

901.20. This section was approved after it was revised to read:

901.20. "Injury" means death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, character, feelings or estate of such nature that would be actionable if negligently or wrongfully inflicted by a private person.

901.25. This section was approved after it was revised to define "enactment" instead of "law."

It was noted that the word "law" used in each section of the proposed statute would have to be carefully examined to determine whether "law" should be used instead of "enactment." With the change in the definition, the word "law" will now include the common law as well as statutory law.

The word "statute" will be used in the proposed legislation to mean a state statute.

901.30. This section was approved as drafted.

901.35. This section was approved as drafted.

ARTICLE 2 - GENERAL PROVISIONS RELATING TO LIABILITY

It was determined that this article should be split into three articles. The first article would deal with liability of public entities; the second with liability of public employees; the third article with indemnification of public employees. The staff is directed to revise the article accordingly.

The Commission adopted the general policy that in drafting the statute that sections indicating the liability or immunity of public employees should contain no reference to liability or immunity of public entities. This general policy is not to apply, however, to the discretionary immunity--a provision providing a discretionary immunity for the public entity and another provision providing a discretionary immunity for the public employees are to be contained in the proposed statute. This decision was made so that the question as to whether a discretionary immunity for public entities (rather than one for public employees--which would provide public entities with the same immunity since the public entity is not liable unless its employee is liable) can be voted upon by the entire Commission at a later time.

It was suggested that the statute should be consistent in form: either it should state "no public entity is liable" or "a public entity

is not liable." It was noted that the proposed statute was not consistent because some sections include a statement as to the liability of the employee as well as the public entity. Statements as to the immunity of public employees should be consistent in form.

902.05. The word "enactment" was substituted for "statute" in this section and the section was approved as so revised. As revised, the section permits liability to be imposed by constitutional provision, statute, charter provision, ordinance or regulation. This provision does not give the power to impose liability--it merely indicates that where the power to impose liability (as by a regulation) otherwise exists, that power will continue to exist.

902.10. This section was approved as drafted.

902.15. This section was approved after it was revised to read:

902.15. Where a public entity is under a mandatory duty imposed by an enactment that is designed to protect against the risk of a particular kind of injury, the public entity is liable for an injury of that kind proximately caused by its failure to discharge the duty unless the public entity establishes that it exercised reasonable diligence to discharge the duty.

The examples that were listed in Section 902.15 as proposed by the staff are to be included in the text of the recommendation.

902.20. This section was approved after it was revised to read:

902.20. A public entity is liable for injury proximately caused by a nuisance created or maintained by it.

This section states the existing law.

902.25. This section was approved in principle. The staff was directed to use the same language as is used in the Civil Code. As

proposed to be revised, the section was approved.

902.30. It was recognized that this section does not spell out the discretionary exception in any detail. The Commission has studied a number of areas and provided specific rules indicating whether a particular phase of an activity is discretionary or not. The general discretionary exception contained in Section 902.30 is intended to cover those areas not yet studied. We have already covered the major areas of liability--dangerous conditions of public property, vehicle torts--and provided specific rules. Thus, the area of potential liability that remains is not too great.

Section 902.30 in effect overrules the Lipman case--the public entity gets the same discretionary immunity that the public employee gets.

Section 902.30 is to be divided into two provisions to read as follows:

A public entity is not liable for an injury resulting from an act or omission of an employee where the act or omission was the result of the exercise of the discretion vested in such employee, whether or not such discretion be abused.

A public employee is not liable for an injury resulting from his act or omission where the act or omission was the result of the exercise of the discretion vested in him, whether or not such discretion be abused.

The provision relating to the discretionary immunity of the public entity is to be moved so that it follows Section 902.10.

902.35. This section was approved after it was revised to read:

902.35. A public employee is not liable for his act or omission, exercising due care, in the execution of any enactment.

902.40. It was pointed out that this section makes a public

employee not liable for trespass ab initio, even though he causes injury after he enters property. Under the section, he would be liable only for the injury caused by his negligent or wrongful act or omission.

The section was approved as drafted.

902.45. This section was approved after it was revised to read:

902.45. If a public employee, exercising due care, acts in good faith and without malice under the apparent authority of an enactment which is held to be unconstitutional, invalid or inapplicable for any reason, he is not liable for injury caused thereby except to the extent that he would have been liable had the law not been held unconstitutional, invalid or inapplicable.

The Commission considered whether the public entity should be liable where an employee acts under an unconstitutional, invalid or inapplicable enactment, notwithstanding the fact that the employee would be immune from liability. The Commission determined that this was a type of discretionary action for which there should be immunity, but that the immunity of the public employee should exist only if the employee exercised due care.

902.50. Subdivision (a) providing an immunity for injury caused by "the adoption of or failure to adopt any enactment" was deleted as unnecessary because such adoption or failure to adopt is clearly discretionary.

The Commission considered whether an immunity should be granted for the exercise of judicial functions. Such an addition was considered unnecessary because the exercise of judicial functions has been held to be clearly discretionary.

Subdivision (b) was revised to read "His failure to enforce any enactment unless such liability is specifically imposed by enactment."

The exception to the immunity was included to cover the mob and riot damage cases. This subdivision covers such cases as one where a police officer fails to arrest a drunk who subsequently causes injury to another person.

Subdivision (c) covers such cases as one where a building permit is negligently issued. New York in such cases has held no liability because the duty does not run to each individual injured but is instead a duty that runs to the public at large. Another case--a boxer is authorized to box on the basis of a negligently administered physical examination. The reason why these cases might not be considered discretionary is because the permit, license, etc., is required to be issued if and only if certain conditions are satisfied.

Section 902.50 was approved after it was revised to read:

902.50. A public employee is not liable for injury caused by:

(a) His failure to enforce any enactment unless such liability is specifically imposed by enactment.

(b) His issuance, denial, suspension or revocation, whether negligent or wrongful, of any permit, license, certificate or similar authorization where he is authorized by enactment to determine whether or not such authorization should be issued, denied, suspended or revoked.

A suggestion to include a good faith requirement was not adopted because the inclusion would permit the case to go to the jury if the plaintiff alleged a lack of good faith. Moreover, there are ordinarily administrative and judicial remedies available in the case of a denial, suspension or revocation of a permit, license or certificate.

902.55. After considerable discussion, this section was deleted.

A proposal that the statute contain a provision imposing liability upon a public entity for lack of due care in acting where the public

entity has undertaken to carry out an activity was not adopted.

902.60. This section was approved after it was revised to read:

902.60. Except as otherwise provided in [the statute relating to dangerous conditions of public property], a public employee is not liable for injury caused by his failure to inspect or by his inspection, whether negligent or wrongful, of any property while acting within the scope of his employment for the purpose of determining whether such property complies with or violates any enactment or contains or constitutes a hazard to health or safety.

A similar section is to be inserted in the article relating to the liability of public entities.

902.65. This section should be divided: the portion relating to liability of public entities should be in the article on public entities; the portion relating to nonliability of public employees should be in the article on public employees.

The provisions of proposed Section 902.65 were revised as follows and approved as so revised:

No public employee is liable for instituting or prosecuting a judicial or administrative proceeding within the scope of his employment, even if done maliciously and without probable cause.

A public entity is liable for injury proximately caused by an employee of the entity, acting within the scope of his employment, if the employee instituted or prosecuted a judicial or administrative proceeding without probable cause and out of personal animosity or ill will or corruption.

The Commission considered a letter from Richard Dinkelspiel relating to Section 902.65. He suggested that a provision contained in a previous staff draft (to require plaintiffs in malicious prosecution actions to post a bond and to pay attorneys' fees if

the action failed) be included in the proposed statute. A motion to include such a provision was tabled.

902.70. This section was divided into three sections and revised in substance as follows and approved as so revised:

Except as otherwise provided by enactment, a public employee is not liable for an injury caused by the negligent or wrongful act or omission of another employee unless he directs or participates in the negligent or wrongful act or omission.

A public entity is liable for an injury caused by an employee if the injury was proximately caused by the failure of the appointing power of the public entity to:

- (a) Exercise due care in selecting or appointing the employee; or
- (b) Exercise due care to eliminate the risk of such injury after the appointing power had knowledge or notice that the conduct, or continued retention, of the employee in the position to which he was assigned created an unreasonable risk of such injury.

A public entity is liable for an injury caused by an employee if the injury was proximately caused by the failure of the public entity to exercise due care in supervising the employee.

The three sections set out above will replace a large number of existing sections (that will be repealed) that govern the liability of a superior employee for torts of his subordinates. These existing statutes are overlapping, inconsistent and ambiguous.

902.75. This section, which retains the substance of Section 1953.5 of the Government Code, was revised as follows and approved as revised:

Except as otherwise provided by statute, a public employee is not liable for moneys stolen by another from his custody unless the loss was sustained because he failed to exercise due care.

This section will make clear that the common law rule of absolute liability for money stolen from the custody of a public employee does not apply unless some other statute imposes such absolute liability.

902.80. This section and the following sections relating to indemnification of public employees should be included in a separate article.

The word "alleged" was inserted before "negligent or wrongful act or omission" in two places in this section.

The section was also revised to read "..., the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed. Nothing in this section authorizes a public entity to pay such part of a claim or judgment as is for punitive or exemplary damages."

As so revised, the section was approved.

902.85. This section was approved as drafted.

902.90. This section was approved as drafted.

902.95. This section was approved as drafted.

SCHEME TO BE USED IN ARTICLES COVERING SPECIFIC AREAS OF LIABILITY

The Commission considered the extent to which provisions included in articles covering specific areas of liability should duplicate general provisions relating to liability. It was agreed

that in considering specific articles consideration should be given to whether the general provisions adequately covered a matter that is also covered in the article relating to a specific area of liability.

A suggestion that the provisions covering specific areas of activity be phrased in terms of whether or not a particular act is or is not a discretionary act was not adopted. A suggestion that the various specific discretionary acts be enumerated under Section 902.30 was not adopted.

ARTICLE 4. POLICE AND CORRECTIONAL ACTIVITIES

A motion to add to Article 4 a provision comparable to Section 906.05 was made but not adopted. Commissioner Bradley requested that he be recorded as voting in favor of the motion.

904.05. This section was deleted because Section 902.15, as revised by the Commission, sets an appropriate standard to apply to jails, detention and correction facilities.

A motion was adopted that a provision be added to Article 4 to the effect that "Subject to the provisions of Section 902.15, neither a public entity nor a public employee is liable for injury proximately caused by its failure to establish or maintain jail facilities, police protection service, correctional facilities etc.,--in effect a broad description of all the activities that fall in the police and correctional field."

904.10. A motion to delete this section was not adopted.

A motion to approve this section in substance was not adopted.

The section was revised as follows and approved as revised:

A public entity and an employee of a public entity is liable for injury proximately caused by the intentional and unjustifiable interference by such employee acting in the scope of his employment with any right of an inmate of a jail or other detention facility to obtain judicial determination or review of the legality of his confinement.

904.15. The word "injury" was substituted for "damages" in this section. As thus revised, the section was approved.

904.20. This section was revised to substitute "an escaping or escaped prisoner" for "escaping prisoners" and as thus revised the section was approved.

The Commission discussed whether provisions relating to supervision of prisoners, etc., should be added to Article 5. It was concluded that the law governing negligence of public employees would adequately cover the situations not covered specifically by the proposed statute.

The Commission discussed the relationship of 904.15 and 904.20 to 902.15. The Commission declined to add "notwithstanding Section 902.15" unless a statute exists which would apparently require more than Section 904.15.

ARTICLE 6. FIRE PROTECTION

906.05. The phrase "Notwithstanding Section 902.15" was

inserted at the beginning of this section. As thus revised, the section was approved.

906.10. The phrase "Notwithstanding Section 902.15" was inserted at the beginning of this section and the word "sufficient" was substituted for "adequate." As thus revised, the section was approved.

906.15. The phrase "Notwithstanding Section 902.15" was inserted at the beginning of this section and the word "negligent" and the phrase "by negligence" were deleted. As thus revised, the section was approved.

906.20. This section was deleted. The imposition of liability for "gross negligence" was not acceptable to the Commission. The imposition of liability for "wilful misconduct" was thought to cover so few cases that it was not desirable to retain the section if it were limited to wilful misconduct. The Commission concluded that a complete immunity (except for vehicle torts) should be provided.

906.25. It was noted that, in view of the previous action of the Commission, the liability covered by this section is only vehicle torts. Moreover, under the Commission's recommendation relating to liability under agreements between public entities, the law would require equal contributions by public entities (determined by dividing the number of public entities involved by the total liability). However, the cases covered by 906.25 might include cases where there was no "agreement."

A motion to impose liability upon the public entity that was negligent and to make the other entity immune from liability was adopted. The entities should be authorized to determine by agreement which entity would be ultimately liable.

906.30. This section became unnecessary in view of the action taken on Section 906.25.

906.35. This section is based on an existing statute-- Section 1957 of the Government Code. The clause "unless such damages are proximately caused by the wilful misconduct of such member or employee" is not in the existing law but is based on the research consultant's recommendation.

A motion to authorize any employee of a public entity acting in the scope of his employment to transport or arrange for transportation as provided in this section was adopted. The immunity provision was also approved.

AMENDMENTS AND REPEALS

The Commission made no changes in the amendments and repeals contained in the draft statute attached to Memorandum No. 54(1962).

TEXT OF RECOMMENDATION

The Commission discussed the basic approach that should be taken in drafting the recommendation relating to tort liability of public entities and public officers and employees.

Commissioner McDonough suggested that the recommendation be drafted

so that it clearly states that the proposed legislation is a stopgap measure in large part, designed primarily to provide additional time to permit study during 1963-64 so that appropriate legislation may be proposed in 1965. He stated that he believes the recommendation should indicate that the general liability statute is only a temporary solution to deal with problems we have not studied specifically. None of the other members of the Commission agreed with Commissioner McDonough that the legislation proposed by the Commission will be merely a temporary expedient. They expressed the view that the legislation to be recommended in 1963 will contain a sound framework of basic principles to govern governmental tort liability, although problems of detail may remain.

It was suggested that the nature of the general statutory scheme proposed by the Commission be indicated early in the text of the recommendation.

It was suggested that the recommendation contain a discussion (early in the text of the recommendation) of the elements of the problem involved in sovereign immunity--the balancing of the right of an injured plaintiff to recover against the right of government to govern.

Vehicle Ownership and Operation Recommendation

The Commission considered Memorandum No. 45(1962) and the draft of the tentative recommendation attached thereto.

It was suggested that consideration be given to including the proposed legislation relating to vehicle torts in the proposed general

liability statute. It was pointed out that the provisions are now in the vehicle code and that a number of existing sections in the vehicle code are related to the proposed vehicle liability statute. It was agreed that when the final general liability statute is drafted the question as to whether the vehicle torts statute should be included in the general liability statute will again be considered.

The Commission considered the proposed statute. Proposed Section 17002 was amended to insert at the beginning: "Notwithstanding any other statute, charter provision, ordinance or regulation,". As thus amended, the proposed statute was approved.

The Commission considered whether the words "or maintenance" should be added to Section 17001 after "operation". It was noted that the only reason for the existence of Section 17001 is to make the public entity liable in cases where the employee would not be liable because a public employee operating an emergency vehicle is immune (by statute) from liability for negligence, although under existing Section 17001 the public entity is liable. If it were not for this statutory employee immunity, the general liability statute would be adequate to make the public entity liable. The Commission determined not to change the language of the proposed statute to include "maintenance."

The Commission considered whether the ownership liability provision should apply to any case where a private person is subject to ownership liability. The staff is to investigate whether ownership liability exists for private persons operating vessels and aircraft or other means of

transportation. A motion was adopted that public entities should be liable to the same extent as private persons for ownership liability where vessels and aircraft are operated with the consent of the owner.

The tentative recommendation (including the draft statute) was approved, as revised, for distribution to interested persons for comments and suggestions.

Counsel Fees in Actions Against Public Entities and Public Officers
and Employees

The Commission considered Memorandum No. 53(1962) and the attached tentative recommendation relating to counsel fees in actions against public entities and public officers and employees.

A motion that the Commission make no recommendation relating to counsel fees to the 1963 session was not adopted.

After considerable discussion, it was determined that the votes of four or more members of the Commission could not be obtained to approve the tentative recommendation for distribution. Accordingly, it was determined to defer consideration of this tentative recommendation until a subsequent meeting.

Payment of Tort Judgments Against Dissolved Local Public Entities

The Commission considered Memorandum No. 37(1962) and the attached tentative recommendation relating to payment of tort liabilities of dissolved entities.

The Commission first considered the draft statute and took the

following actions:

741.1. In subdivision (d) of this section, the words "be liable" were deleted and "have been liable" were inserted. It was suggested that the staff consider whether the last three lines of the subdivision can be made more concise.

741.2. The word "statute" was substituted for the word "law" in this section.

741.3. The word "statute" was substituted for the word "law" in this section. A provision should be added to the statute to provide that any asset that remains unsold after the payment of all liabilities reverts to the county in which the asset is located.

741.4. The last sentence of this section was revised to read: "A successor public entity may be compelled by a writ of mandate to perform any act required by this article."

741.5. Consideration should be given to splitting this section into two or more sections.

741.6. The first portion of the second paragraph of this section was revised to read: "For the purpose of levying and collecting taxes pursuant to this authority, territory which was formerly included within a local public entity but was excluded therefrom prior to the dissolution of such entity . . .".

The tentative recommendation (including the draft statute as revised) was approved for distribution to interested persons for comments and suggestions.

Defense of Actions Brought Against Public Officers and Employees.

✓ The Commission considered Memorandum No. 47(1962) and the First Supplement to Memorandum No. 47(1962), relating to the defense of actions brought against public officers and employees.

The Commission first considered the draft statute contained in the tentative recommendation previously distributed and took the following actions:

991.1. The Commission considered the extent to which a defense should be provided for administrative proceedings brought against a public officer or employee. The Commission determined that a public entity should have discretionary authority (as under 991.4) to defend at the expense of the public entity an administrative proceeding brought against its officer or employee where the public entity itself did not initiate or bring the proceeding.

The definition of action or proceeding is to be redrafted to make clear that where the situation is one where the public entity has taken an appeal from a proceeding where the public entity is attempting to remove, suspend or otherwise penalize its own employee, the public entity need not provide the employee with a defense.

991.2. The Commission considered the comments on this section but made no change in the section as contained in the tentative recommendation.

A motion to add to the statute the language of the tentative recommendation relating to prosecution by the public entity of a counter

claim, cross complaint or cross action by the employee against the plaintiff in the action being defended by the public entity failed to be adopted because the vote was evenly divided on the question.

A motion to delete the second paragraph of Section 991.2 was made but was not adopted.

991.3. The Commission considered the comments on this section and added the following subdivision to the section:

(c) The defense of the action or proceeding by the public entity would create a conflict of interest between the public entity and the employee or former employee.

This provision is intended to cover cases of legal ethics that might arise under the proposed statute. A conflict of interest might arise where an employee and his superior are charged with negligence and both blame the other. The public entity might find a conflict of interest exists where each employee tells a different story.

The addition of subdivision (c) (set out above) would not, however, prevent the employee from recovering a reasonable counsel fee from the public entity because Section 991.6 gives the employee that right and the only cases where the employee is not entitled to recover a reasonable counsel fee are where the employee was not within the scope of his employment or where the employee was guilty of actual fraud, corruption or actual malice.

After considerable discussion, the Commission concluded that the public entity should not be given a right to determine in every case whether or not it wished to defend an action or proceeding against its employee.

The Commission considered who makes the determination under Section 991.3. It was concluded that the governing body of the public entity would make the decision unless that authority is delegated to some other body or person. No change was made in the tentative recommendation in response to the comments that suggested that consideration be given to this matter.

The Commission considered a suggestion of the State Bar Committee that a determination to defend or not to defend should not be admissible in any action or proceeding against the employee or former employee. After consideration, the Commission determined that the following provision should be added to the statute:

Except as otherwise provided in Section 991.6, the mention of the existence of this chapter, or the mention of the fact that the employee or former employee has or has not requested a defense pursuant to this chapter or that the public entity has or has not provided or refused to provide a defense pursuant to this chapter, during the voir dire examination of jurors or at any other time in the presence of the jury, constitutes grounds for a mistrial.

991.4. The Commission considered the comments concerning this section. No changes were made in this section.

991.5. After the word "purpose" in the third line of this section, the following was added: "or may purchase insurance which requires that the insurer defend the action or proceeding". The remaining sentences of this section are to be adjusted in view of the addition made to the section.

991.6. The Commission considered a suggestion of the State Bar Committee that recovery of reasonable attorney's fees could be ordered

by the court in the action in which the employee is sued under certain circumstances. The Commission declined to add the suggested provision to the statute. The action for attorney's fees will ordinarily involve a different issue than the main action--the main action involves the issue of whether the employee was negligent; the action for attorney's fees involves the issue of whether the employee was in the scope of his employment or was guilty of bad faith, corruption or malice. To join these issues would confuse the plaintiff's case. If the issue is to be separately tried, should not the provisions relating to jury trial, pretrial conferences and discovery be available to the public entity and the employee under appropriate circumstances--the order to show cause procedure is not a good one to deal with the action for attorney's fees.

In response to a suggestion from the State Bar Committee, the Commission substituted the words "the action or proceeding" for the word "it" in the sixth line of this section.

Insurance Coverage for Public Entities and Public Officers and Employees

The Commission considered Memorandum No. 48(1962) and the First Supplement thereto, and a letter from the Department of Finance, all relating to insurance coverage for public entities and public officers and employees.

The Commission adopted a suggestion of the Department of Finance that a provision be included in the proposed statute to place the substance of the recommended statute on insurance as Section 11007.4 to

apply to the State and the recommended statute as drafted would be limited in its application to local public entities. This action was taken so that other provisions in the Government Code applying to purchase of insurance by the State would be applicable to the purchase of insurance covering potential tort liabilities.

The Commission then considered the specific provisions of the draft statute contained in the tentative recommendation previously distributed for comments and took the following actions:

990.1. No change was made in this section.

990.2. The Commission adopted in principle the following provision to be added to this section:

(c) Purchase protection against the expense of defending against claims against the public entity or its employees, whether or not liability exists on such claims.

Some question was raised as to the phrase "purchase protection against" in the provision set out above. The staff is to consider revising the language to make it more consistent with subdivisions (a) and (b), so that the additional subdivision might read: "Insure against the expense . . .".

It was suggested that the language be referred to the Department of Finance and the Department of Public Works for comments after it has been drafted.

In subdivision (b) the words "to persons or property" were inserted after "damages".

990.3. The Commission determined that this section should be retained so that it is clear which public entity has authority to insure judicial officers--it is not clear whether the county is the public entity which is the employer of the judicial officers listed in this section.

After "damages" the words "to persons or property" were inserted.

990.4. No change was made in this section. The Commission determined not to require that self-insurance be funded; since insurance is not required there should not be a requirement that self-insurance be funded.

990.5. No change was made in this section.

990.6. The Commission substituted the following section for the section contained in the draft statute:

990.6. Where a statute, charter provision, ordinance or regulation, other than this chapter, authorizes or requires a public entity to insure against the liability or the liability of its employees:

(a) The authority provided by this chapter to insure does not affect such statute, charter provision, ordinance or regulation.

(b) Such statute, charter provision, ordinance or regulation does not limit or restrict the authority to insure under this chapter.

Joint self-insurance. The Commission considered a suggestion from Mr. Lewis Keller, Associate Counsel, League of California Cities, and added the following provision to the draft statute:

Two or more public entities, by a joint powers agreement made pursuant to Article 1 (commencing with Section 6500) of

Chapter 5 of Division 7 of Title 1 of the Government Code, may provide insurance authorized by this chapter by any one or more of the methods specified in Section 990.4.

The staff was directed to check with Mr. Keller to determine whether the authority under this section should be restricted to an agreement between two or more public entities entered into in accordance with the Joint Powers Act.

Workmen's Compensation Benefits

The Commission considered Memorandum No. 49(1962) and the first supplement thereto, relating to workmen's compensation benefits for persons required or requested to assist law enforcement officers.

Scope of statute. The Commission considered whether workmen's compensation protection should be provided to persons who are requested or required to assist fire control officers. After discussion, it was determined that such persons should be provided the same protection as persons who are requested or required to assist law enforcement officers. The language used to effectuate this decision should be the same in substance as the language used in the statutes relating to persons assisting law enforcement officers.

Section 3365. After "posse comitatus" the words "or power of the county" were added.

Before "he is serving or assisting" the word "that" was added.

It was noted that one case upheld the action of the Industrial Accident Commission in awarding workmen's compensation to a person

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who at the request of a deputy sheriff (who wanted to investigate an accident) flew the deputy in a private plane which crashed.

The words "express or implied" were deleted. The purpose is not necessarily to prevent compensation in case of an implied request, but rather to avoid giving emphasis to implied requests.

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MINUTES OF MEETING

of

SEPTEMBER 21 and 22, 1962

Los Angeles

A regular meeting of the Law Revision Commission was held in Los Angeles on September 21 and 22, 1962.

Present: John R. McDonough, Jr., Vice Chairman
Honorable James A. Cobey
Honorable Clark L. Bradley
James R. Edwards
Richard H. Keatinge
Sho Sato
Thomas E. Stanton, Jr.
Angus C. Morrison

Absent: Herman F. Selvin, Chairman
Joseph A. Ball

Messrs. John H. DeMouilly, Joseph B. Harvey and Jon D. Smock of the Commission's staff, and Mr. Benton A. Sifford, special research consultant to the Senate Fact Finding Committee on Judiciary, were also present.

The following persons were also present:

Robert Baida, Beverly Hills City Attorney
Robert F. Carlson, Department of Public Works
Joan Gross, Office of the Attorney General
Robert Lynch, Los Angeles County Counsel
Mark C. Nosler, Department of Finance
Robert Reed, Department of Public Works

Minutes of the August Meeting. The last two lines at the bottom of page 27 were corrected to read:

"It was noted that in one case the Industrial Accident Commission upheld the action of a referee in awarding workmen's compensation to a person. . . ."

The minutes were approved as corrected.

ADMINISTRATIVE MATTERS

Financial matters. The Commission discussed the financial condition of the Law Revision Commission. The Executive Secretary was directed to advise the budget division that it would be impossible for the Commission to comply with the legislative request that a comprehensive and continuing study be made in this field unless sufficient funds are provided to make such a study. The Commission agreed that it is essential that additional research studies be made in this field and that these studies should be undertaken immediately in order that they will be available to the Commission as soon as possible.

The Commission directed the Executive Secretary to send materials considered by the Commission to all persons who can assist the Commission in its work. The Executive Secretary had indicated that lack of funds would necessitate a drastic reduction in the number of persons who receive these materials.

The Commission also directed the Executive Secretary to prepare a contract with its research consultant, Mr. Benton A. Sifford, to provide for per diem compensation for his attendance at the October, November and December meetings of the Commission.

The Executive Secretary was directed to take necessary action to obtain sufficient funds so that the Commission is not hampered by lack of funds in making its study of sovereign immunity. This may necessitate obtaining additional funds for the 1962-63 fiscal year as well as for the 1963-64 fiscal year.

STUDY NO. 52(L) - SOVEREIGN IMMUNITY

The Commission considered Memoranda Nos X38(1962) (costs and interest), X46(1962) (dangerous conditions), X50(1962) (indemnity contracts), X52(1962) (venue), X53(1962) (attorney's fees), X55(1962) (mobs and riots), X56(1962) (medical and hospital) and X57(1962) (organization), and supplements thereto.

Report on Hearing by Senate Fact Finding Committee on Judiciary.

The Executive Secretary reported on the hearings held by the Senate Fact Finding Committee on Judiciary on September 17, 18 and 19, 1962 in Los Angeles. He reported that "at least one Senator expressed hostility to the idea of changing the law relating to sovereign immunity from its pre-Muskopf state. However, most of the committee seemed receptive to the Commission's tentative recommendations. Several of the representatives of the public entities that appeared approved the basic principles underlying the Commission's tentative recommendation, although there was some objection to various particulars.

Several local entity representatives expressed concern over the amount of unfounded litigation that is conducted against public entities. One county counsel urged the requirement of a bond to guarantee attorney's fees in case the litigation is unsuccessful, such a bond to be posted only on demand of the defendant, and the defendant being required to pay plaintiff's attorney's fee in case the plaintiff recovers judgment.

The League of California Cities representative presented the views of a League committee upon the Commission's proposals. The League itself has not acted. The League committee expressed particular objection to the Commission's recommendation relating to dangerous conditions. It urged that there be no

liability for such conditions in the absence of actual notice of the condition on the part of the public entity. It urged several other modifications of existing law that would also substantially curtail the existing liability to which cities are now subject. The League stated that it intends to present a liability statute to the Legislature in January.

The Department of Finance also objected to parts of the recommendation relating to dangerous conditions of public property. It indicated that the Court of Claims of New York pays out about \$17,000,000 in one year; however, it was brought to the Committee's attention that this figure includes condemnation awards as well as tort claims; hence, the figure gives no idea of what the annual cost of tort liability is to the State of New York.

Several county counsels pointed out the problem small entities will have in paying tort liabilities, and one suggested that some means be provided for the State to assume the excessive liabilities.

Most of the representatives of public entities urged the Committee to recommend a statute expressing a "closed-end" approach to tort liability, i.e., a statute that would provide that immunity exists except to the extent that liability is imposed by the statute itself. This approach would leave in legislative control the ultimate limits of liability instead of leaving these limits to the judiciary to decide. One Senator indicated some interest in an "open-end" approach to liability--an approach that would leave the limits of liability to the courts to work out on a case by case basis.

Mr. Reginald Watt, the attorney for the plaintiff in the Muskopf case, questioned the constitutionality of limiting liability by statute.

Following the description of the Senate Committee hearing, the suggestion was made that the sovereign immunity bills be introduced into both houses of the Legislature and that the month of January might be used for hearings before both the Senate and Assembly. The program might be jeopardized if hearings in the second house had to be held after the bills were passed by the other.

Organization of Governmental Tort Liability Legislation

The Commission first considered Memorandum No. 57(1962), relating to the organization of the legislation to be proposed by the Commission relating to governmental tort liability.

The memorandum presented a proposed Division 3.6 to be added to Title 1 of the Government Code. Parts 3 and 4 of the proposed division would supersede the existing Division 3.5. The bill enacting Parts 3 and 4 would repeal Division 3.5. If that bill, which relates to claims, fails of passage, there would be both a Division 3.5 and a Division 3.6. The total organization of the Division 3.6 is not dependent, though, on the passage of the claims bill.

The legislation relating to vehicular torts will remain in the Vehicle Code so that other existing provisions such as those relating to the authority of emergency vehicles will remain applicable.

The staff was directed to revise the general liability recommendation to place explanatory comments under each proposed section.

The Commission approved the outline submitted, recognizing that there may be variations from the approved outline as the legislation is actually prepared.

Dangerous Conditions of Public Property

The Commission considered Memorandum No. 46(1962) and the supplements thereto. The portion of the general liability statute considered was pages 71-74.

The Executive Secretary reported that no public entity spokesman supported the existing law on dangerous conditions at the Senate Committee hearing. Some spokesmen indicated that they would like to see the existing law retained, but modified to require actual notice, to eliminate liability for conditions that are dangerous for foreseeable uses but not for intended uses of the public property, and to require the plaintiff to show freedom from contributory negligence.

The commission then turned to the portion of Professor Van Alstyne's study dealing with dangerous conditions of public recreational property.

The Commission considered whether there should be a general immunity from liability for conditions of hiking, riding, fishing, hunting or other interior access roads or trails. A motion to provide such immunity failed to carry.

A motion to require precautionary measures for known, hidden dangerous conditions of such property but to require no inspection also failed to carry.

A motion to provide special rules of inspection or liability with regard to natural conditions of public property in undeveloped areas also failed to carry.

A motion to adopt an objective rather than a subjective standard for assumption of risk for persons using public recreational property for recreational purposes failed to carry.

The Commission did not think it necessary or desirable to write special rules relating to recreational property. The problems raised by Professor Van Alstyne will be considered again as the Commission considers the dangerous conditions statute.

The Commission then turned to the dangerous conditions statute.

Section 830. The beginning phrase, "Except as otherwise provided by statute", was deleted. The staff was directed to refer specifically to other sections which will not be superseded or controlled by the dangerous conditions statute.

The word "dangerous" was deleted from the third line of Section 830.

The State Bar Committee was concerned over the availability of equitable relief under the proposed dangerous conditions statute. This problem, though, is one of importance to the entire liability statute. The staff was directed to determine whether any revision is necessary to indicate that the statute does not preclude such forms of relief other than damages that may be appropriate. The staff was also directed to determine whether any other adjustments in the statute are necessary to indicate that the standards set forth are those that may be used in actions for specific relief instead of damages.

Section 830.2. The Commission rejected a proposal to insert the trivial defect rule--now stated in Section 830.4--in Section 830.2. The Commission felt that the statement of the rule in Section 830.4 would encourage judges to direct verdicts in appropriate cases, while the inclusion of the rule in the definition of "dangerous condition" would not do so.

A proposal to add "or defective" after "dangerous" was rejected because the proposed words would add no meaning to the statute and would create a possible ambiguity.

A proposal to add "which breaches a legal duty of care" after "public property" in the first line of subdivision (a) was rejected. It is the purpose of the statute to define the "legal duty of care" and this purpose would be frustrated if "dangerous condition" were defined in terms of an undefined duty. The proposed addition was suggested because the Department of Public Works did not feel that it should be compelled to build highways to accommodate persons who drive on the highways negligently. That is, if a bridge is built for 10 tons and is properly posted, the bridge should not be considered dangerous merely because it is foreseeable that some persons may drive on the bridge with heavier loads. To meet this problem, the Commission added "with due care" after the word "used" in the third line of subdivision (a). The staff was directed to make appropriate adjustments in other portions of the statute. The addition of these words would reach the ordinary situation where the property is being used in violation of the law, for violation of the

law is usually considered negligence per se. Thus, property is dangerous under the definition if it creates a substantial hazard to those who foreseeably would use the property while observing the law or otherwise exercising due care. Where those foreseeably using the property would not be guilty of negligence in using the property improperly--as in the case of children using property commonly characterized as "attractive nuisance"--the property would still be considered dangerous under the definition.

A proposal to substitute "unreasonable risk" for "substantial risk" in the definition of "dangerous condition" was rejected. The Commission did not think it desirable to frame the definition of "dangerous condition" in terms of whether the defendant acted unreasonably in regard to the risk. The definition should be kept free of concepts other than those that go to the actual dangerousness of the condition, and questions of the reasonableness or unreasonableness of the risk should be left for resolution in the parts of the statute that impose liability for certain dangerous conditions. To include "unreasonable" in the definition would tend to place the required standard of conduct of the defendant in the definition and would confuse the meaning of "dangerous condition."

The Commission requested the Department of Public Works and other representatives of public entities to submit lists of situations where there should be immunity from liability under any of the standards of the dangerous conditions statute, such as, for example the placement of stop signs, the

design of highways and bridges, etc. These will be considered by the Commission for inclusion within the statute.

The suggestion of the State Bar Committee, that a definition of "public property" be added to Section 830.2, was approved. Under the definition that was approved, "public property" includes real and personal property but does not include foodstuffs, beverages, drugs or medicines. This excludes from the dangerous conditions statute any liability arising from dangerous conditions of these materials. Liability, if any, for dangerous conditions of foodstuffs, etc. must be grounded upon another statute.

The definition of "public property" is also to exclude private encroachments, utility easements and other private property located on public property that is not within the jurisdiction or control of the public entity. This is to make clear that public entities do not have to inspect utility easements lying in public rights of way. Responsibility for such inspection will remain with the owner of the easement. If a condition of such property, though, makes the public property dangerous, the public entity will have an obligation to act reasonably in regard to the dangerous condition of its own property in order to avoid liability.

Section 830.4. The suggestion of the Southern Section of the State Bar Committee that "viewing the evidence most favorably to the plaintiff" be deleted and that "to a person exercising reasonable care" be added after "condition" in the fourth line was not approved. The Commission added "with due care" after "used" in the third line from the bottom of the section

in order to conform it to the change made in Section 830.2(a).

A suggestion to delete "or appellate court" was not approved. This section constitutes a direction to both trial and appellate courts. It merely states the existing law.

A proposal to make a reference to Section 830.4 or the rule it states in front of the jury a ground for mistrial was rejected. The Commission felt it unwise to specify but one item that it is improper to mention in front of the jury. It is better to leave this matter to the general rules on grounds for mistrial.

Section 830.6. A suggestion that this section be deleted and that its provisions be consolidated with Section 830.8 was rejected. Sections 830.6 and 830.8 articulate two bases of liability that now exist under the Public Liability Act of 1923. Liability will exist under Section 830.6 because of the improper performance of some function, while liability will exist under Section 830.8 because of the failure to remedy some condition that was not created by the public entity.

The question arose as to the liability of an entity under Section 830.6 when the condition was created by the careless work of a contractor. This question relates to the entire liability statute, not merely to the dangerous conditions chapter. The staff was asked to report on the extent to which a person may be held liable for acts of an independent contractor and, if necessary, to suggest appropriate amendments to the general liability statute.

A suggestion that "facts showing that" be added after "pleads and proves" was rejected. Instead, the Commission substituted "establishes that" for "pleads and proves all of the following". This substitution avoids any implication that the plaintiff's complaint is sufficient if it restates the terms of the statute and also avoids any implication that the rules of pleading in these cases are any different from the rules of pleading in any other case. Conforming changes are to be made in other portions of the statute.

In subdivision (a), "at the time of the injury" was added at the end of the sentence, thus expressing more fully the intended meaning of the subdivision.

The State Bar Committee's suggestion that Section 830.6 be made subject to the defenses of Section 831.2 was discussed at length. A proposal to include the balancing test stated in Section 831.2 in a definition of negligence to be included in Section 830.6 was rejected. A motion was then made to strike "negligent or wrongful act of an employee of" out of Section 830.6(4) so that the plaintiff would have to show only that the public property was in a dangerous condition as a result of the action of the entity and that, as a result, he was hurt. Section 831.2 should be modified so that the burden would then shift to the entity to show that under all the circumstances, considering the risks created and the cost of doing things in another manner, it did not act unreasonably when it created the condition. This proposal was made so that the burden of proof on the respective

parties in an 830.6 (created condition) case would be comparable to the burden that is on the respective parties in an 830.8 (notice and failure to repair) case. The motion carried, Commissioners Bradley, Edwards and Stanton voting "No." [Note that this action was reconsidered later and the motion was defeated] Commissioner Sato pointed out that usually negligence is determined by weighing the risk of conduct against the utility thereof and the cost of doing something else without considering the financial exigencies of the particular defendant. The discussion of the Commission had been equating the community or society standard of reasonable conduct, which usually must be shown by the plaintiff to make out a prima facie case, with the practicability and cost to the particular public entity defendant. Although it is not improper to permit the public entity defendant to show considerations pertinent only to itself in defense, the plaintiff should be expected to show at least that the defendant had violated some community or society standard of conduct in establishing a prima facie case. Commissioner Sato suggested that both Sections 830.6 and 830.8 should be modified to require a showing that the entity defendant failed to meet some objective standard of conduct before it is put to the burden of justifying its conduct on the ground its own peculiar problems prevented it from meeting the standard of conduct that would ordinarily be expected.

The Commission then reconsidered its action deleting "negligent or wrongful act of an employee of" from Section 830.6 (c). The motion to delete these words from 830.6 (c) and to modify 831.2 was defeated.

In the second line of subdivision (c) of Section 830.6, "or omission" was added after "act" and "within" was substituted for "acting in". A motion to delete "of an employee" from the same subdivision was defeated. Subdivision (c) was then recast to read:

(c) A negligent or wrongful act or omission of an employee of the public entity within the scope of his employment created the dangerous condition.

The words "and the public entity did not take adequate measures to protect against that risk" were deleted from subdivision (d). The remainder of (d) was revised to read:

(d) The dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred.

A proposal to require the plaintiff to establish that the property was being used carefully at the time of the injury was rejected.

In the preliminary language of Section 830.6, a cross reference to 831.2 is to be added so that the entity may show justification for its conduct under the standards described in Section 831.2.

The Commission then considered the suggestion of the State Bar Committee that a discretionary immunity be added to Section 830.6. It also considered certain specific immunities suggested by the Department of Public Works as follows: No liability for failure to provide regulatory traffic devices such as traffic signals, stop or yield signs, traffic strips and speed

restriction signs. No liability for highway design standards such as capacity, width, horizontal or vertical curvature, grade and similar conditions apparent to a highway user under normal conditions. No liability for weather conditions such as fog, wind, flood, rain, ice or snow conditions.

The Department explained that they should not be required to put up signs, warnings, etc. about conditions that are obvious. A driver should be as able to see the fog as he is a sign saying "Fog."

During the discussion, it developed that the Commission has never decided whether or not the general discretionary immunity should apply to dangerous conditions of public property; although the statute was drafted upon the assumption that the general immunity was not applicable.

The Commission deferred a decision on whether there should be a general discretionary immunity or a series of specific immunities such as those suggested by the Department of Public Works. The staff was directed to request interested public entities to submit suggestions as to specific immunities. The Attorney General's representative, Mrs. Joan Gross, indicated that the Attorney General would submit such a list at the earliest possible date. The staff was also directed to research the nature and extent of the discretionary immunity so far as it pertains to the condition of property under the Federal Tort Claims Act as well as under existing California law.

Consideration of the remainder of the statute was deferred because it was drafted on the theory that the discretionary immunity was not applicable.

Mob and Riot Damage

The Commission considered Memorandum No. 55(1962) relating to tort liability for damages from mobs and riots. It was noted that the State Bar Committee recommended against the enactment of any special statute relating to liability for mob and riot damage. The Committee expressed concern over the probability of substantial litigation, particularly if liability were extended to include personal injury.

It was noted also that the imposition of liability for mob and riot damage would create a substantial exception to the general rule approved by the Commission regarding law enforcement activities -- i.e.; that there should be no liability for failure to enforce the law. Mr. Sifford reported that standard insurance policies carried by retail merchants, as well as homeowner's policies, provide coverage for glass breakage as well as other property damage caused by mobs and riots, thus permitting property owners to spread the loss due to property damage from mobs and riots.

Upon motion by Commissioner Sato, seconded by Commissioner Edwards, the Commission approved the deletion of proposed Chapter 4 of the comprehensive liability statute and approved the repeal of the existing law relating to liability for mob and riot damage. Commissioners Keatinge and Stanton voted against this motion. The effect of this action is to provide no liability for mob and riot damage, consistent with the recommended general rule of immunity for failure to enforce the law.

Medical, Hospital and Public Health Activities

The Commission considered Memorandum No. 56(1962) relating to medical, hospital and public health activities.

The Commission approved the suggestion that proposed Section 855(a) should be revised to conform with proposed Section 815.6 so that liability for failure to comply with established minimum standards for equipment, facilities and personnel would be based upon a reasonable diligence standard.

In accord with the suggestion made by the Department of Public Health, the Commission approved the addition of "or the State Department of Mental Hygiene" immediately following every reference in the statute to the Department of Public Health so that the appropriate regulatory agency governing the conduct of mental institutions would be included in the statute.

Proposed Section 855.2 was revised to conform with the language used in proposed Section 840.4, which deals with the identical problem of interference with legal rights. Accordingly, this section was revised to substitute "intentional and unjustifiable interference with any right of" in place of "negligent or wrongful interference with any attempt by" an inmate seeking judicial review of the legality of confinement.

The Commission approved the insertion of the word "any" preceding the references to regulations in proposed Section 855 to clarify the distinction between state statutes and regulations promulgated by state agencies.

The Commission approved the suggestion made by the Department of Mental

Hygiene to broaden the scope of immunity granted in Section 855.6(a) to include (in addition to "mentally ill" persons) habit forming drug addicts, narcotic drug addicts, inebriates, sexual psychopaths and mentally deficient persons. Providing immunity for diagnosis and treatment of these persons picks up the full range of activities of state mental institutions.

To make it entirely clear that neither the public entity nor the public employee is to be liable for carefully executing prescribed treatment, it was agreed to add at the end of proposed Section 855.6(b) substantially the following language: "but neither the public entity nor the public employee is liable for executing with due care the prescribed treatment."

Proposed Section 855.8(a) was revised to make reference to the public entity as well as the public employee since discretionary authority may be vested in either. The form of the section was revised to conform with the language used in proposed Section 815.4. As revised, the proposed section reads substantially as follows:

(a) Neither a public entity nor a public employee is liable for an injury resulting from the performance or failure to perform any act relating to the prevention or control of disease if the decision whether the act was or was not to be performed was the result of the exercise of discretion vested in the public entity or the public employee, whether or not such discretion be abused.

Because the problem regarding the liability of a principal for the tortious acts of independent contractors is a general one that pervades the entire statutory scheme, the Commission deferred consideration of the agency problem as it relates to medical and hospital activities pending a report by the staff.

It was noted that the statute was to be revised to make explicit in the statute that nothing contained therein grants nor is it intended to grant authority to regulatory agencies to promulgate regulations which they would not have the authority to promulgate under their enabling statutes.

Indemnity and Save Harmless Agreements

The Commission considered Memorandum No. 50(1962) relating to indemnity and save harmless agreements. It was noted that several public agencies objected to the proposed statute because it may be unduly restrictive of existing authority, which was believed to be entirely adequate. On the other hand, public contractors expressed the view that the proposed statute was too broad in that it would permit a public entity to shift liability for its own negligence to another person, thus resulting in increased costs of public projects--particularly because of the improbability of obtaining insurance protection against this type of liability. With respect to the objections made by public contractors, it was noted that the existing law permits the same shifting of liability to which objection was made.

The Commission agreed not to include this subject in its statutory recommendations relating to tort liability. It was agreed, however, that the subject should be mentioned in the Commission's recommendations by noting that the use of indemnity agreements is one means of reducing liability by shifting the loss to another party.

Counsel Fees

The Commission considered Memorandum No. 53(1962) relating to the limitation of counsel fees in tort actions against public entities. Upon

motion by Commissioner Sato, seconded by Commissioner Edwards, the Commission agreed to make no recommendation on this subject to the 1963 Legislature, but to defer consideration of this problem until the Commission considers its 1965 legislative program, at which time a decision on this subject should be made on the merits. Commissioners McDonough, Bradley, Edwards, Sato and Stanton voted for the motion. Commissioner Keatinge voted against the motion. Commissioners Selvin, Cobey and Ball were absent.

Venue in Actions Against the State.

The Commission considered Memorandum No. 52(1962) relating to venue in tort actions against the State. The Commission approved the principle of dealing with the venue problem in its recommendations to the 1963 Legislature. It was generally agreed that tort actions against the State should be commenced and tried in the county where the injury occurred.

Payment of Costs and Interest

The Commission considered Memorandum No. 38(1962) and the First Supplement thereto. It was agreed that public entities should be liable for costs to the same extent as private litigants. Similarly, it was agreed that public entities should be liable for interest at the legal rate on the same basis as private litigants. Generally, this will be from the date judgment was rendered. The staff was requested to report to the Commission as to the present status of law regarding those cases in which a private litigant is entitled to interest from an earlier date.

It was noted that in approving the policy of requiring a minimum \$100 undertaking at the request of the public entity, with a minimum recovery of \$50

for costs in cases where the plaintiff loses, the Commission intended that such amounts be posted and collected from each plaintiff in any tort action. It was noted that the expense of posting a bond is an allowable cost. [Code of Civil Procedure Section 1035.]

The staff was requested to research the question whether a public entity may be sued in a small claims court and to present a recommendation for consideration by the Commission as to whether public entities should be subject to suit in small claims courts. Also, the staff was directed to revise the statutory language to clear up the procedural problem of a nonparty (the public entity) having the ability to request an undertaking in cases where the public entity furnishes the defense for an employee sued alone. Where the statute refers to suits against the employee alone, the phrase "if a public entity furnishes the defense" is to be substituted for the present language to make clear that the undertaking may be required where the entity employs counsel to defend the employee.

Legislative Analyst
June 12, 1963

ANALYSIS OF SENATE BILL NO. 47 (Cobey)
As Amended in Senate, May 3, 1963
1963 General Session

SB 47 (amended 5/3)

Fiscal effect: Additional indeterminate costs. The average cost per industrial injury currently is \$375. To the extent that public entities are encouraged by this bill to impress more persons into service, costs will be increased. The average workmen's compensation rate is 1.70 percent of payroll. The rate for airplane owner-operator pilots is 19 percent of payroll.

Analysis:

This bill is one of the series introduced at the request of the California Law Revision Commission relative to the increase in tort liability of the State and other public entities arising out of the decision in the case of Muskopf versus Corning by the State Supreme Court in 1961. The effects of this decision are being held in abeyance under Chapter 1404, Statutes of 1961 until the 91st day following adjournment of the 1963 General Session of the Legislature.

According to its statement, the commission has recommended that workmen's compensation benefits be extended to cover those cases not now covered where a person is killed or injured while engaged in performance of active law enforcement or fire suppression service whether he is required to do so by law or has been requested to do so by a peace officer or fire control officer. There is a lack of uniformity of law and practice in state government and among the various affected jurisdictions with reference to this problem and apparently the area contains large potential liability.

This bill, as amended, provides generally that any person engaged in fire suppression at the request of an official of a public agency is deemed an employee of the agency and is entitled to workmen's compensation benefits except for (1) independent contractors and their employees, (2) members of the armed services, and (3) certain persons who supply aircraft for fire suppression purposes.

LIS - 3b

FROM: DISTRICT OFFICE
800 WEST 20TH STREET
P. O. BOX 1226
MERCED, CALIFORNIA
RANDOLPH 2-6286

FROM: SACRAMENTO OFFICE
ROOM 5070, STATE CAPITOL
ZONE 14
HICKORY 5-4711, EXT. 5976

SENATORIAL MEMBER
CALIFORNIA LAW REVISION
COMMISSION

JAMES A. COBEY
TWENTY-FOURTH SENATORIAL DISTRICT
MERCED AND MADERA COUNTIES

CALIFORNIA LEGISLATURE

Senate

June 21, 1963

COMMITTEES—FACT FINDING
WATER RESOURCES
CHAIRMAN
AGRICULTURE
FINANCE
JUDICIARY
SOCIAL WELFARE

COMMITTEES—LABOR AND WELFARE
CHAIRMAN
AGRICULTURE
WATER RESOURCES

COMMITTEES—STATUTORY
JOINT LEGISLATIVE BUDGET
COMMITTEE

The Honorable Edmund G. Brown
Governor of California
State Capitol
Sacramento 14, California

Re: Senate Bill 47

Dear Governor:

Senate Bill 47 provides workmen's compensation benefits for certain persons who are required or requested to assist law enforcement or fire control officers in active law enforcement or fire suppression.

When a person not trained in law enforcement or fire suppression is required by law to assume the risk of death or serious injury to provide such protection to the public, or when he undertakes to do so at the request of a peace officer or fire control officer, he and his dependents should be provided with some protection against the financial consequences of his death or injury. To some extent, such protection is already provided by existing statutes, but Senate Bill 47 will provide carefully drafted rules to replace the haphazard and incomplete coverage provided by existing statutes.

It should be recognized, however, that Senate Bill 47 will make workmen's compensation benefits the sole relief available to such persons. Thus, it will prevent such persons from bringing civil actions for damages and will eliminate the possibility of public entities having to pay catastrophic judgments.

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GOVERNOR'S OFFICE

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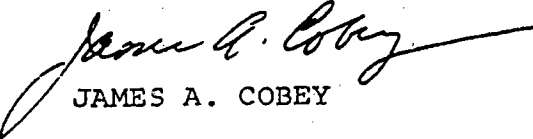


PE-3

The Honorable Edmund G. Brown
June 21, 1963
Page Two

Senate Bill 47 has the approval of the Department of Finance and the Department of Conservation. The bill is one in a series relating to sovereign immunity recommended by the California Law Revision Commission. I enclose a copy of the report of the Commission relating to this bill.

Respectfully yours,


JAMES A. COBEY

JAC:mw

Enclosure

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-4

Honorable Edmund G. Brown
Governor of California

June 28, 1963

Attention: Mr. Paul D. Ward
Legislative Secretary

Senate Bill 47

HISTORY, SPONSOR AND PURPOSE:

Senate Bill 47 (Cobey) is one of the bills prepared and recommended by the California Law Revision Commission on the subject of sovereign immunity. The commission recommended that (1) The Workmans' Compensation Act be extended to cover cases where a person is killed or injured while engaged in the performance of active law enforcement or fire suppression service, whether he does so because he is required by law to do so or because he is requested to do so by a peace officer or fire control officer, and (2) maximum workmans' compensation benefits be extended to all persons who are requested or required to assist in law enforcement or fire suppression.

Under present law, the Workmans' Compensation Law does not apply to prisoners, a person impressed into law enforcement service who receives no compensation, or a person impressed into fire control service under Section 4160 of the Public Resources Code. However, the statutory law provides that persons impressed into fire control service under Section 4010 of the Public Resources Code and members of certain specific volunteer police and fire fighting organizations are covered by the Workmans' Compensation Law. Also, workmans' compensation disability benefits are computed at the maximum rate for members of volunteer police and fire departments and certain persons impressed into fire control service.

The Department of Finance proposed, and Senator Cobey accepted, author's amendments to the bill changing and clarifying certain provisions to protect the State from unreasonable or unintended liability, particularly with respect to the Division of Forestry fire fighting operations. The State does not impress people into law enforcement or fire suppression service, but it does "request" temporary employees, military personnel and prisoners to engage in fire suppression. The Department of Finance amendments have the effect of:

- (1) exempting the State from liability under the Workmans' Compensation Law for military personnel and independent contractors engaged in fire suppression service,

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PE-7

- (2) limiting the State's liability to prisoners under the Workmans' Compensation Law to injuries received during actual fire fighting, training exercises, and while being transported to and from a fire,
- (3) limiting the State's liability to prisoners to disability benefits under the Workmans' Compensation Law based on minimum earnings,
- (4) exempting the State from liability to prisoners under the Workmans' Compensation Act during the period of confinement, and
- (5) limiting the liability of the State for disability benefits to employees based on maximum earnings to injuries received during actual fire fighting, training exercises, and while being transported to and from a fire.

The Attorney General, the Department of Finance, the Department of Conservation, the Division of Highways, the County Supervisor's Association and the League of California Cities, favor the bill as a reasonable compromise.

FINANCIAL EFFECT AND COMMENT:

The Department of Conservation estimated the bill as originally introduced would cost the Department \$75,000-\$100,000 annually for fire fighting injuries in addition to the \$453,000 paid in 1962 for workmans' compensation benefits to all employees. It was also estimated that only 5% of the injuries to fire fighting personnel occurred while engaged in actual fire fighting. The Department last year employed 1500 seasonal workmen (May-October) at \$300 per month and used 3,000 prisoners for fire suppression work. The resultant cost to the State of the bill as amended will be substantially less. It is essential that the tort liability bills (SB 42 through 47, inclusive) be signed to avoid the unlimited governmental vicarious tort liability imposed by the Muskopf decision.

RECOMMENDATION:

The bill be approved.

Hale Champion
 Hale Champion
 Director of Finance

HC:wek
 78449
 cc: DML
 LJH
 MCN
 BCU

PE-8

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LEGISLATIVE INTENT SERVICE



Memorandum

SB 47

To : Paul D. Ward
Legislative Secretary
Governor's Office

Date : July 11, 1963

File No.: 53:MPMc:vw

From : Department of Employment
Albert B. Tieburg, Administrator

Subject: Report - Enrolled Bill
Dept. of Industrial Relations
SB 47

1654

This bill adds Sections 3365 and 3366 to, amends Sections 4458, and 4458.2 of, and repeals Section 4458.5 of, the Labor Code. This bill is part of the package of bills on sovereign immunity.

The added provisions provide that parties who are injured after being impressed into fire suppression service or into assisting peace officers in active law enforcement are limited in their right of recovery to recovery under the Workmen's Compensation Act. The language in the repealed Section is reinstated in the added provisions as well. This limitation of the right of recovery is made applicable to inmates of penal or correctional institutions. Their earnings are taken to be at the minimum rather than the maximum amount and the period of confinement in the penal or correctional institution is set-off against the period of compensable injury or illness.

I am in receipt of a copy of a letter directed to the Governor, dated July 9, 1963, from Mr. J. William Beard, Chairman of the Industrial Accident Commission and note that he makes no recommendation on this bill.

Director Ernest B. Webb and I join in recommending that the Governor approve SB 47 as part of the governmental immunity legislation.

Albert B. Tieburg
Albert B. Tieburg

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PE-11



LEOKA Definitions

Type of Incident

Feloniously Killed—Incident type in which an officer, while engaged in or on account of the performance of their official duties, was fatally injured as a direct result of a willful and intentional act by an offender.

Accidentally Killed—Incident type in which an officer was fatally injured as a result of an accident or negligence that occurred while the officer was acting in an official capacity. Due to the hazardous nature of the law enforcement profession, deaths of law enforcement officers are considered accidental if the act causing the death is found not to be willful and intentional.

Assaulted—An unlawful attack by one person upon another for the purpose of inflicting severe or aggravated bodily injury. This type of assault is accompanied by the use of a weapon or by a means likely to produce death or great bodily injury.

Detailed Assault Data—The detailed data collection is limited to officers who are assaulted and injured with firearms or knives/other cutting instruments. — Incident type in which an officer, while engaged in or on account of the performance of their official duties, received nonfatal injuries as a direct result of a willful and intentional act by an offender.

Race

White—A person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

Black/African American—A person having origins in any of the black racial groups of Africa. Terms such as “Haitian” or “Negro” can be used in addition to “Black or African American.”

American Indian/Alaska Native—A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.

Asian—A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.

Native Hawaiian/Other Pacific Islander—A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands, e.g., individuals who are Carolinian, Fijian, Kosraean, Melanesian, Micronesian, Northern Mariana Islander, Palauan, Papua New Guinean, Ponapean (Pohnpelan), Polynesian, Solomon Islander, Tahitian, Tarawa Islander, Tokelauan, Tongan, Trukese (Chuukese), and Yapese. (NOTE: The term “Native Hawaiian” does not include individuals who are native to the state of Hawaii simply by virtue of being born there.)

Ethnicity

Hispanic or Latino—A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term “Spanish origin” can be used in addition to “Hispanic or Latino.”

Type of Assignment

Two-officer patrol—An assignment where the officer is on patrol and is accompanied by another law enforcement officer(s) in the agency’s marked patrol vehicle.

One-officer patrol—An assignment where the officer is on patrol and is not accompanied by another officer in the agency’s marked patrol vehicle.

Investigative/detective—An officer’s whose occupation is mainly to investigate and solve crimes.

Tactical assignment (uniformed)—A uniformed assignment where an officer is strategically deployed in order to achieve a specific goal or objective. These are typically high-risk assignments.

Plainclothes assignment—A non-uniformed assignment where the officer’s role and identity as a sworn law enforcement officer is not intended to be confidential or clandestine.

Undercover—A non-uniformed assignment where the officer requires anonymity or blending into a group or environment to gather evidence or intelligence. The disclosure of the officer's identity would pose a significant safety risk.

Court/prisoner security—An officer whose occupation is responsible for providing a safe environment for the judge, court personnel, attorneys, and general public.

Off duty, but acting in an official capacity—An officer who is off duty at the time of incident, but is acting in such a way that is sanctioned by, recognized by, or derived from authority.

Call for Service or Reason for Involvement / Circumstance Encountered by Victim Officer Upon Arrival at Scene of Incident / Specific Activity Being Performed by Victim Officer at Time of Attack

Administrative assignment—An assignment in which an officer is working management, performance, or executive duties of the local, state, or federal jurisdiction. Examples include, but are not limited to:

- handling, transporting, or maintaining custody of persons who are in the custodial care of a law enforcement agency subsequent to an arrest and/or while dealing with persons who are being detained in accordance with the law.
- attending community meetings, crime preventive programs, or other organized functions as an official representative of a law enforcement agency.
- performing duties and recreational activities associated with agency sanctioned programs such as D.A.R.E., Boys and Girls Clubs, or other youth programs.
- serving of writs, notices, summonses, subpoenas, hearing notices, notifications, and other civil processes.
- transporting papers, equipment, or persons associated with official agency sanctioned activities, functions, and programs.

Ambush (entrapment/premeditation)—Situation where an unsuspecting officer was targeted or lured into danger as the result of conscious consideration and planning by the offender.

Arrest situation—Situation where an officer is arresting or attempting to arrest an offender either through verbal advisement or through physical contact, such as attempting to restrain, control, or handcuff the offender.

Assist another law enforcement officer—Situation where an officer assists other law enforcement personnel/agencies in an emergency or nonemergency circumstance. Examples include officer down circumstances; officers requiring emergency assistance; vehicular and foot pursuits; providing/deploying equipment such as traffic cones, flares, etc.; and other emergency and nonemergency circumstances.

Foot pursuit—Situation where an officer assists other law enforcement personnel/agencies in a foot pursuit of an individual for a known, suspected, or unknown offense.

Vehicular pursuit—Situation where an officer assists other law enforcement personnel/agencies in a vehicle pursuit of an individual for a known, suspected, or unknown offense.

Other emergency circumstance—Situation where an officer assists other law enforcement personnel/agencies in an emergency circumstance not covered by other more specific categories in this list of options. (*Emergency circumstance* is a circumstance where it is reasonable to believe an officer or others could suffer serious bodily injury or death.)

Other nonemergency circumstance—Situation where an officer assists other law enforcement personnel/agencies in a nonemergency circumstance in order to provide additional law enforcement presence at a scene for precautionary measure. Include any nonemergency circumstance not covered by other more specific categories in this list of options. (*Nonemergency circumstance* is a circumstance where there is no reason to believe an officer or others are in immediate danger of serious bodily injury or death.)

Citizen complaint—An action taken by a citizen to bring to the attention of law enforcement any action considered to be contrary to law, proper procedure, good order, or in some other manner prejudicial to the citizen, the law enforcement agency, or the community as a whole. Examples include animal bites, animal disturbances, verbal complaints of noncriminal violations, requests for checking on the welfare of a citizen, drug complaints, requests for business checks, and traffic complaints.

Animal disturbance (barking dog, unleashed dog, etc.)—Examples include, but are not limited to, complaints regarding excessive barking or other animal noise, mistreatment of animals, and reports of stray, feral, or wild animals in the area.

Check on welfare of citizen—Visit conducted by a law enforcement officer to the residence of an individual for the purpose of assessing whether the individual poses a danger to the individual or others due to a mental, behavioral, or physical condition.

Drug complaint—Incident where a citizen reports the use or presence of illegal drugs or drug paraphernalia. Examples include, but are not limited to, the possession, buying, or selling of illegal drugs or drug paraphernalia. (EXCLUSIONS: Do not include drug complaints in reference to persons under the influence of, and not necessarily in possession of, illegal drugs. This type of incident should be classified as a disturbance call under “disorder/disturbance.” Also, do not include activities such as undercover operations, buy/bust operations, surveillance activities, etc. These types of activities should be classified appropriately under “investigative/enforcement.”)

Verbal complaints of noncriminal violations—Examples of noncriminal types of incidents, reports, or complaints include, but are not limited to:

- assisting citizens accidentally locked out of their residence/vehicle.
- dead animals or other noncriminal animal complaints.
- found property, lost property, and attempts to locate property.
- missing persons, runaways, and attempts to locate persons.
- natural deaths, including assignments to investigate odors thought to be associated with natural deaths.
- taking reports (but not the transportation) of sick persons admitted to healthcare, detoxification, or mental health facilities.

Disorder/disturbance—Any behavior that tends to disturb the public peace or decorum, scandalize the community, or shock the public sense of morality. This includes affray, breach of the peace, blasphemy, profanity, obscene language, disturbing the peace, and public nuisance. Examples include civil disorders, disturbance calls, domestic disturbances, and domestic violence situations. (*Breach of the peace* is the criminal offense of creating a public disturbance or engaging in disorderly conduct, particularly by making an unnecessary or distracting noise.)

Civil disorder (mass disobedience, riot, etc.)—An activity where an officer is to control, disperse, or terminate a riot or mass disobedience.

Disturbance call (disorderly subject, fight, etc.)—A breach of the peace type of circumstance resulting from a call for law enforcement to respond. Examples include, but are not limited to, curfew violations, disorderly persons, drinking in public, fights, fireworks violations, gambling in public space, persons under the influence, landlord/tenant disputes, loitering, loud noise of any type (excluding animal disturbance complaints by a citizen), littering, nuisance complaints, prostitution offenses, trespassing or unwanted guests, vagrancy violations, and verbal altercations.

Domestic disturbance (family quarrel, no assault)—A breach of the peace or crime against a person occurring within a family, families, or other relatives or members of the household. Examples include, but are not limited to, family disputes, family intimidations, family arguments, and assisting citizens with the removal of legally owned possessions at locations where prior domestic disturbances or other related offenses have occurred. (*Family* includes a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is or has been in a social relationship of a romantic or intimate nature with the victim; a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or a person who is or has been similarly situated to a spouse, parent, or guardian of the victim.)

Domestic violence—The use, attempted use, or threatened use of physical force, or a weapon; or the use of coercion or intimidation; or committing a crime against property by a current or former spouse, parent, or guardian of the victim; a person with whom the victim shares a child in common; a person who is or has been in a social relationship of a romantic or intimate nature with the victim; a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian; or by a person who is or has been similarly situated to a spouse, parent, or guardian of the victim.

Encounter or assist an emotionally disturbed person—Situation where an officer has encountered or is assisting an individual who is in a temporary disturbed state of mind due to a circumstance such as a high stress situation, life-altering event, emotional occurrence, anger, sadness, grief, etc.

Investigative/enforcement—Situation where an officer is involved in an investigative and/or enforcement activity. Examples include performing investigative activities; investigating suspicious persons or circumstances; investigating possible DUI/DWI suspects; performing traffic stops; investigating motor vehicle crashes; investigating or enforcing incidents involving wanted persons, persons with a mental illness, or drug-related matters; performing in tactical or undercover capacities; and surveillance activities.

Handling person with mental illness—Situation where an officer is handling a person who is known or suspected to be suffering from a mental illness that impairs judgment, behavior, perceptions of reality, or their ability to cope with the ordinary demands of life. Examples include, but are not limited to, mental patients, suicidal persons, service of commitment orders, and calls to investigate persons or activities where it is suspected that a person is suffering from a mental illness.

Investigate suspicious person/circumstance—An activity where an officer's intent is to investigate an unusual occurrence, an out-of-the-ordinary condition, or a suspicious person or circumstance.

Investigative activity—An activity where an officer is making official inquiries relating to prior criminal offenses and/or perpetrators. Examples include, but are not limited to, obtaining follow-up information or additional information relating to any crime (excluding drug offense complaints) or interviewing a citizen relating to any criminal matter (excluding drug offenses). (EXCLUSIONS: Assignments to investigate complaints related to the manufacturing, buying, selling, or possession of illegal drugs; the service of search warrants which should be reported as tactical situations; and calls to investigate suspicious persons or circumstances.)

Tactical situation—Situation where an officer is strategically deployed in order to achieve a specific goal or objective. Examples include, but are not limited to, serving search warrants, hostage situations, barricaded offenders, search warrants for drug violations, and any other situations that could be deemed “high-risk,” such as serving an arrest warrant on a known armed felon.

Traffic stop (felony traffic stop)—A vehicle stop made by an officer that is considered to be high-risk in nature.

Traffic stop (traffic violation stop)—A vehicle stop made by an officer due to a motorist’s violation of traffic rules and regulations.

Undercover situation—Situation where an officer is acting in an undercover capacity by not disclosing his or her role as a law enforcement officer.

Wanted person—An individual who is known or suspected to be wanted for a criminal offense.

Pursuit—Situation where an officer initiates a foot or vehicle pursuit of an individual.

Respond to alarm—Situation where an officer responds to an electronic, audible, or silent alarm of any type. Examples include, but are not limited to, any hold up or burglar alarm, including banks, government buildings, private or commercial structures, or motor vehicles.

Respond to crime in progress—Situation where an officer responds to a crime that is occurring and there is reason to believe the perpetrator is still at or near the scene of the crime. Examples include assaults, robberies, burglaries, larceny-theft situations, motor vehicle thefts, persons with firearms (no shots fired), reports of shootings/shots being fired, tampering with vehicle reports, and other crimes against persons or properties.

Assault—The unlawful attack by one person upon another.

Burglary—The unlawful entry of a structure with the intent to commit a felony or a theft.

Larceny-theft—The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

Motor vehicle theft—The theft or attempted theft of a motor vehicle whether locked or unlocked.

Robbery—The taking, or attempting to take, of anything of value under confrontational circumstances from the care, custody, or control of a person by force, threat of force, or violence and/or by putting the victim in fear of immediate harm.

Other crime against person—Situation where an officer responds to a crime in progress against a person and the crime is not covered by other more specific categories in this list of options. (*Crime against person* is a criminal offense in which the offender uses or threatens to use force. *Crimes against persons* are those crimes whose victims are always individuals, e.g., murder, rape, assault, etc.)

Other crime against property—Situation where an officer responds to a crime in progress against property, and the crime is not covered by other more specific categories in this list of options. (*Crime against property* is a criminal offense in which the offender seeks to derive an unlawful benefit from, or do damage to, another's property. The object of *crimes against property* is to obtain money, property, or some other benefit, e.g., robbery, bribery, burglary, etc.)

Respond to report of crime—Situation where an officer responds to a crime that has taken place at an earlier date and/or time, or the date and/or time of the crime is unknown. In these situations, there are no indications the perpetrator is at or near the scene of the crime. Examples include homicides, assaults, robberies, burglaries, larceny-theft situations, motor vehicle thefts, persons with firearms (no shots fired), reports of shootings/shots fired, tampering with vehicle reports, and other crimes against persons or properties.

Assault—The unlawful attack by one person upon another.

Burglary—The unlawful entry of a structure with the intent to commit a felony or a theft.

Homicide—The willful (nonnegligent) killing of one human being by another.

Larceny-theft—The unlawful taking, carrying, leading, or riding away of property from the possession or constructive possession of another.

Motor vehicle theft—The theft or attempted theft of a motor vehicle, whether locked or unlocked.

Robbery—The taking, or attempting to take, of anything of value under confrontational circumstances from the care, custody, or control of a person by force, threat of force, or violence and/or by putting the victim in fear of immediate harm.

Other crime against person—Situation where an officer responds to a crime in progress against a person and the crime is not covered by other more specific categories in this list of options. (*Crime against person* is a criminal offense in which the offender uses or threatens to use force. *Crimes against persons* are those crimes whose victims are always individuals, e.g., murder, rape, assault, etc.)

Other crime against property—Situation where an officer responds to a crime in progress against property, and the crime is not covered by other more specific categories in this list of options. (*Crime against property* is a criminal offense in which the offender seeks to derive an unlawful benefit from, or do damage to, another's property. The object of *crimes against property* is to obtain money, property, or some other benefit, e.g., robbery, bribery, burglary, etc.)

Traffic control (crash scene, directing traffic, etc.)—Situation where an officer is directing vehicular and pedestrian traffic around a construction zone, accident, or other road disruption, thus ensuring the safety of emergency response teams, construction workers, and the general public.

Unprovoked attack—An attack on an officer not prompted by official contact at the time of the incident between the officer and the offender.

Other (specify)—Criminal or noncriminal incidents that do not meet any descriptions previously listed. The use of this category should be used sparingly, and the specific call or reason for the activity should be described. Please provide a description of the specific circumstance.

Other terminology

Ambush—Situation where an officer is unexpectedly assaulted as the result of premeditated design by the perpetrator.

Law enforcement officer—All local, county, state, tribal, and federal law enforcement officers (such as municipal, county police officers, constables, state police, highway patrol, sheriffs, their deputies, federal law enforcement officers, marshals, special agents, etc.) who are sworn by their respective authorities to uphold the law and to safeguard the rights, lives, and property of individuals. They must have statutory arrest powers and be members of a law enforcement agency organized and funded for the purposes of keeping order and for preventing and detecting crimes, and apprehending those responsible.

Line of duty—Any action which an officer whose primary functions are crime control or investigations, reduction, enforcement of the criminal law and keeping public order is obligated

and authorized by law to perform in the course of performing his/her functions. The officer is compensated by the public law enforcement agency which he or she serves.

Line-of-duty killing or assault –

- An officer who is killed or assaulted while on duty and while acting in an official capacity.
- An officer who is killed or assaulted while officially off duty and due to the past performance of his/her official duties or while reacting to a situation, such as a robbery in progress or a traffic accident, in an official capacity.

Serious bodily injury—Injury considered serious in nature to include broken bones, internal injuries, stitches required, etc. Examples of injuries not considered serious in nature include abrasions, minor lacerations, or contusions that require no more than usual first-aid treatment.

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Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments
State and Agency by Progression of Circumstances, 2017

State	Agency	Progression of Circumstances		
		Call for service or reason for involvement	Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
ALASKA	Anchorage	Respond to crime in progress	Assist another law enforcement officer	Arrest situation
ARIZONA	Department of Public Safety, Phoenix	Assist motorist	Unprovoked attack	Arrest situation (crash scene, directing traffic, etc.)
ARKANSAS	Batesville	Disorder/disturbance	Arrest situation	Arrest situation
	Pine Bluff	Domestic violence	Verbal advisement only	Verbal advisement only
CALIFORNIA	Bakersfield	Disorder/disturbance	Disorder/disturbance	Arrest situation
	Bakersfield	Disorder/disturbance call (disorderly subject, fight, etc.)	Disorder/disturbance call (disorderly subject, fight, etc.)	Attempting to control/handcuff/restrain offender(s)
	Bakersfield	Disorder/disturbance	Arrest situation	Arrest situation
	Bakersfield	Domestic disturbance (family quarrel, no assault)	Attempting to control/handcuff/restrain offender(s)	Attempting to control/handcuff/restrain offender(s)
	Bakersfield	Disorder/disturbance	Arrest situation	Arrest situation
	Chico	Domestic disturbance (family quarrel, no assault)	Attempting to control/handcuff/restrain offender(s)	Attempting to control/handcuff/restrain offender(s)
	Chico	Respond to crime in progress	Investigative/enforcement	Arrest situation
	Chico	Shooting/shots fired	Tactical situation	Arrest situation
	Chico	Respond to crime in progress	Investigative/enforcement	Attempting to control/handcuff/restrain offender(s)
	Chico	Shooting/shots fired	Tactical situation	Arrest situation
Chula Vista	Disorder/disturbance	Investigative/enforcement	Investigative/enforcement	
Del Norte County	Disorder/disturbance call (disorderly subject, fight, etc.)	Investigative activity	Investigative activity	
Del Norte County	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
Del Norte County	Tactical situation	Tactical situation	Tactical situation	
Highway Patrol, Clear Lake Area, Kelseyville	Respond to report of crime	Respond to report of crime	Respond to report of crime	
Highway Patrol, Valley Division, Sacramento	Shooting/shots fired	Shooting/shots fired	Shooting/shots fired	
Highway Patrol, Valley Division, Sacramento	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
Highway Patrol, Valley Division, Sacramento	Investigative activity	Tactical situation	Tactical situation	
Highway Patrol, Valley Division, Sacramento	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
Highway Patrol, Valley Division, Sacramento	Investigative activity	Tactical situation	Tactical situation	
Highway Patrol, Valley Division, Sacramento	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
Highway Patrol, Valley Division, Sacramento	Investigative activity	Tactical situation	Tactical situation	
Highway Patrol, Valley Division, Sacramento	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
Highway Patrol, Valley Division, Sacramento	Investigative activity	Tactical situation	Tactical situation	

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**Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments
State and Agency by Progression of Circumstances, 2017**

State	Agency	Progression of Circumstances		
		Call for service or reason for involvement	Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
State	Los Angeles	Investigative/enforcement	Ambush (entrapment/premeditation)	Investigative/enforcement
	Los Angeles	Investigate suspicious person/circumstance	Pursuit	Investigate suspicious person/circumstance
	Los Angeles	Investigative/enforcement	Investigative/enforcement	Pursuit
	Los Angeles County	Investigative activity	Vehicular	Foot
	Los Angeles County	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	Los Angeles County	Traffic stop (traffic violation stop)	Traffic stop (traffic violation stop)	Traffic stop (traffic violation stop)
	Los Angeles County	Investigative/enforcement	Arrest situation	Arrest situation
	Los Angeles County	Wanted person	Attempting to control/handcuff/restrain offender(s)	Attempting to control/handcuff/restrain offender(s)
	San Bernardino County	Check on welfare of citizen	Investigative/enforcement	Investigative/enforcement
	San Bernardino County	Check on welfare of citizen	Handling person with mental illness	Handling person with mental illness
	San Bernardino County	Citizen complaint	Investigative/enforcement	Investigative/enforcement
	San Bernardino County	Check on welfare of citizen	Handling person with mental illness	Handling person with mental illness
	San Bernardino County	Citizen complaint	Investigative/enforcement	Investigative/enforcement
	San Bernardino County	Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
San Bernardino County	Respond to crime in progress	Traffic stop (felony traffic stop)	Verbal advisement only	
San Bernardino County	Robbery	Encounter or assist an emotionally disturbed person	Arrest situation	
San Bernardino County	Check on welfare of citizen	Respond to crime in progress	Attempting to control/handcuff/restrain offender(s)	
San Bernardino County	Respond to crime in progress	Respond to crime in progress	Arrest situation	
San Bernardino County	Motor vehicle theft	Motor vehicle theft	Attempting to control/handcuff/restrain offender(s)	
San Bernardino County	Investigative/enforcement	Investigative/enforcement	Arrest situation	
San Bernardino County	Investigate motor vehicle crash	Investigate motor vehicle crash	Attempting to control/handcuff/restrain offender(s)	
San Bernardino County	Other	Pursuit	Arrest situation	
San Bernardino County	Other (Security check)	Pursuit	Attempting to control/handcuff/restrain offender(s)	

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State and Agency by Progression of Circumstances, 2017

State	Agency	Progression of Circumstances			
		Call for service or reason for involvement	Circumstance encountered by victim/officer upon arrival at scene of incident	Specific activity being performed by victim/officer at time of attack	
COLORADO	Castle Rock Denver Douglas County Douglas County Douglas County Westminster	Disorder/disturbance	Encounter or assist an emotionally disturbed person	Investigative/enforcement	
		Disturbance call (disorderly subject, fight, etc.)	Investigative/enforcement	Tactical situation	
		Citizen complaint	Handling person with mental illness	Investigative/enforcement	
		Check on welfare of citizen	Encounter or assist an emotionally disturbed person	Investigative/enforcement	
		Disorder/disturbance	Encounter or assist an emotionally disturbed person	Tactical situation	
DISTRICT OF COLUMBIA	Metropolitan Police	Disorder/disturbance	Encounter or assist an emotionally disturbed person	Investigative/enforcement	
		Disturbance call (disorderly subject, fight, etc.)	Encounter or assist an emotionally disturbed person	Tactical situation	
		Disorder/disturbance	Encounter or assist an emotionally disturbed person	Investigative/enforcement	
		Disturbance call (disorderly subject, fight, etc.)	Investigative/enforcement	Tactical situation	
		Investigative/enforcement	Investigative/enforcement	Tactical situation	
FLORIDA	Clearwater Clearwater Miami-Dade Miami-Dade Miami-Dade	Assist another law enforcement officer	Arrest situation	Arrest situation	
		Officer requires emergency assistance (not pursuit)	Attempting to control/handcuff/restrain offender(s)	Arrest situation	
		Disorder/disturbance	Arrest situation	Arrest situation	
		Disturbance call (disorderly subject, fight, etc.)	Attempting to control/handcuff/restrain offender(s)	Arrest situation	
		Investigative/enforcement	Unprovoked attack	Investigative/enforcement	
GEORGIA	Clay County Polk County Police	Drug-related matter (drug bust, buy, etc.)	Unprovoked attack	Investigative/enforcement	
		Respond to crime in progress	Investigative/enforcement	Investigative/enforcement	
		Other crime against person	Investigative activity	Investigative activity	
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
		Investigate suspicious person/circumstance	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance	
INDIANA	Indianapolis	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
		Tactical situation	Tactical situation	Tactical situation	
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	
		Tactical situation	Tactical situation	Tactical situation	
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement	

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State	Agency	Reason for Involvement or	Progression of Circumstances	
			Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
IOWA	Davenport	Respond to crime in progress	Investigative/enforcement	Arrest situation
	Pottawattamie County	Burglary	Investigative activity	Attempting to control/handcuff/restrain offender(s)
		Administrative assignment	Administrative assignment	Administrative assignment
KENTUCKY	Louisville	Prisoner transport	Prisoner transport	Prisoner transport
	Louisville	Assist another law enforcement officer	Investigative/enforcement	Pursuit
	Louisville	Foot pursuit	Investigate suspicious person/circumstance	Foot
		Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
MARYLAND	State Police, Harlan	Burglary	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
	Baltimore	Assist another law enforcement officer	Investigative/enforcement	Arrest situation
	Baltimore	Officer requires emergency assistance (not pursuit)	Wanted person	Attempting to control/handcuff/restrain offender(s)
MARYLAND	Baltimore	Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
	Baltimore County	Person with firearm (no shots fired)	Investigative activity	Investigative/enforcement
		Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
MASSACHUSETTS	Lowell	Robbery	Traffic stop (felony traffic stop)	Tactical situation
		Citizen complaint	Disorder/disturbance	Disorder/disturbance
MICHIGAN	Bishop International Airport Police	Check on welfare of citizen	Disorder/disturbance	Disturbance call (disorderly subject, fight, etc.)
		Other (Walking into a meeting)	Unprovoked attack	Other (Walking into a meeting)
	Detroit	Domestic disturbance	Investigative/enforcement	Investigative/enforcement
	Detroit	Domestic disturbance (family quarrel, no assault)	Investigative activity	Investigative/enforcement
	Detroit	Investigative/enforcement	Investigative/enforcement	Investigative activity
	Detroit	Investigate suspicious person/circumstance	Handling person with mental illness	Arrest situation
	Detroit	Investigative/enforcement	Handling person with mental illness	Attempting to control/handcuff/restrain offender(s)
	Detroit	Investigate suspicious person/circumstance	Investigative/enforcement	Arrest situation
	Detroit	Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
	Detroit	Burglary	Investigative activity	Investigative/enforcement
Detroit	Respond to crime in progress	Investigative/enforcement	Investigative/enforcement	
Detroit	Burglary	Investigative activity	Investigative activity	
Detroit	Other (Off duty)	Unprovoked attack	Other (Off duty)	

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State	Agency	Progression of Circumstances	
		Call for service or reason for involvement	Circumstance encountered by victim officer upon arrival at scene of incident
MISSOURI	Jasper County Springfield	Investigative/enforcement	Investigative/enforcement
		Drug-related matter (drug bust, buy, etc.)	Tactical situation
		Investigative/enforcement	Pursuit
		Wanted person	Foot
		Investigative/enforcement	Investigative/enforcement
		Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
		Investigative/enforcement	Investigative/enforcement
		Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
		Investigative/enforcement	Ambush (entrapment/premeditation)
		Investigative activity	Unprovoked attack
NEVADA	Las Vegas	Investigative/enforcement	Investigative/enforcement
		Respond to report of crime	Respond to report of crime
NEW JERSEY	Camden County Police	Investigative/enforcement	Investigative/enforcement
		Arrest situation	Pursuit
NEW MEXICO	Albuquerque	Attempting to control/handoff/restrain offender(s)	Foot
		Investigative/enforcement	Investigative/enforcement
NEW YORK	Orondaga County	Tactical situation	Tactical situation
		Investigative/enforcement	Ambush
		Drug-related matter (drug bust, buy, etc.)	(entrapment/premeditation)
		Other	Other
NORTH CAROLINA	Gulfport County	(Responding to call not related to incident)	(Responding to call not related to incident)
		Investigative/enforcement	Investigative/enforcement
		Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
		Other	Disorder/disturbance
		(Responding to 911 hang-up call)	Domestic disturbance (family quarrel, no assault)

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State	Agency	Reason for Involvement	Progression of Circumstances	
			Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
OHIO	Cincinnati	Disorder/disturbance	Pursuit Foot	Pursuit Foot
		Domestic violence	Unprovoked attack	Investigative/enforcement
		Investigative/enforcement	Investigative/enforcement	Investigative activity
OKLAHOMA	Chickasha	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Drug-related matter (drug bust, buy, etc.)	Tactical situation	Tactical situation
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
OKLAHOMA	Chickasha	Tactical situation	Tactical situation	Tactical situation
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Tactical situation	Investigative/enforcement	Investigative/enforcement
OKLAHOMA	Chickasha	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Tactical situation	Tactical situation	Tactical situation
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
OKLAHOMA	Clinton	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Tactical situation	Tactical situation	Tactical situation
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
OKLAHOMA	Valley Brook	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Tactical situation	Tactical situation	Tactical situation
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
PENNSYLVANIA	Whitetail Township	Traffic stop (traffic violation stop)	Traffic stop (traffic violation stop)	Traffic stop (traffic violation stop)
		Respond to crime in progress	Other	Other
		Burglary	(Open door building search)	(Open door building search)
SOUTH CAROLINA	Harderville	Disorder/disturbance	Investigative/enforcement	Investigative/enforcement
		Domestic disturbance (family quarrel, no assault)	Investigative activity	Investigative activity
		Disorder/disturbance	Investigative/enforcement	Investigative/enforcement
SOUTH CAROLINA	Jasper County	Domestic disturbance (family quarrel, no assault)	Investigative activity	Investigative activity
		Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
		Investigative/enforcement	Tactical situation	Tactical situation
TEXAS	Arlington	Drug-related matter (drug bust, buy, etc.)	Pursuit	Pursuit
		Respond to crime in progress	Vehicular	Vehicular
		Person with firearm (no shots fired)	Pursuit	Pursuit
TEXAS	Bowie County	Respond to crime in progress	Vehicular	Vehicular
		Person with firearm (no shots fired)	Investigative/enforcement	Investigative/enforcement
		Respond to crime in progress	Investigative activity	Investigative activity
TEXAS	Bowie County	Respond to crime in progress	Investigative/enforcement	Investigative/enforcement
		Person with firearm (no shots fired)	Vehicular	Vehicular
		Respond to crime in progress	Investigative activity	Investigative activity
TEXAS	Flower Mound	Larceny-theft	Investigative activity	Attempting to control/handcuff/restrain offender(s)

Table 118

**Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments
State and Agency by Progression of Circumstances, 2017**

State	Agency	Progression of Circumstances		
		Reason for Involvement or Call for services	Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
UTAH	Hays County	Citizen complaint	Ambush (entrapment/premeditation)	Citizen complaint
	Houston	Check on welfare of citizen Respond to alarm	Pursuit	Check on welfare of citizen Arrest situation
	Laredo	Burglary	Foot	Attempting to control/handcuff/restrain offender(s)
	Laredo	Assist another law enforcement officer	Respond to crime in progress	Assist another law enforcement officer
	Laredo	Officer down (requiring emergency assistance)	Shooting/shots fired	Officer down (requiring emergency assistance)
	Laredo	Assist another law enforcement officer	Respond to crime in progress	Assist another law enforcement officer
	Laredo	Officer down (requiring emergency assistance)	Shooting/shots fired	Officer down (requiring emergency assistance)
	Laredo	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	Laredo	Wanted person	Investigative activity	Investigative activity
	Laredo	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	Lufkin	Wanted person	Investigative activity	Investigative activity
	Lufkin	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	Lufkin	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
	Lufkin	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	San Antonio	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance
San Antonio	Assist another law enforcement officer	Arrest situation	Arrest situation	
San Antonio	Foot pursuit	Attempting to control/handcuff/restrain offender(s)	Attempting to control/handcuff/restrain offender(s)	
San Antonio	Disorder/disturbance	Respond to crime in progress	Arrest situation	
San Antonio	Disturbance call (disorderly subject, fight, etc.)	Robbery	Attempting to control/handcuff/restrain offender(s)	
San Antonio	Investigative/enforcement	Investigative/enforcement	Verbal advisement only	
San Antonio	Investigate suspicious person/circumstance	Investigate suspicious person/circumstance	Arrest situation	
UTAH	Unified Police Department of Greater Salt Lake	Disorder/disturbance	Arrest situation	Attempting to control/handcuff/restrain offender(s)
VIRGINIA	Arlington County Police	Domestic violence	Attempting to control/handcuff/restrain offender(s)	Attempting to control/handcuff/restrain offender(s)
	Virginia Beach	Investigative/enforcement	Investigative/enforcement	Arrest situation
	Virginia Beach	Handling person with mental illness	Handling person with mental illness	Attempting to control/handcuff/restrain offender(s)
	Virginia Beach	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
Virginia Beach	Tactical situation	Tactical situation	Tactical situation	
Virginia Beach	Respond to crime in progress	Respond to crime in progress	Arrest situation	
Virginia Beach	Robbery	Other crime against person	Attempting to control/handcuff/restrain offender(s)	

Table 118

**Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments
State and Agency by Progression of Circumstances, 2017**

State	Agency	Progression of Circumstances		
		Call for service or reason for involvement	Circumstance encountered by victim officer upon arrival at scene of incident	Specific activity being performed by victim officer at time of attack
WASHINGTON	Bremerton	Investigative/enforcement	Investigative/enforcement	Investigative/enforcement
	Bremerton	Investigative activity	Wanted person	Investigative activity
	Seattle	Investigative/enforcement Investigative activity Respond to crime in progress	Investigative/enforcement Wanted person Pursuit	Investigative/enforcement Investigative activity Investigative activity Arrest situation
WEST VIRGINIA	State Police, Hamlin	Disorder/disturbance Domestic violence	Disorder/disturbance Domestic violence	Verbal advisement only Arrest situation Verbal advisement only

NOTE: To obtain statistics in reference to the data presented in this table, refer to Tables 111, 112, 113, and 117.

NOTE: Assault with injury data in this table reflect only a subset of those incidents reported to the FBI's Uniform Crime Reporting Program. For more information about this data collection, see Detailed Assault Data.

Table 84

Law Enforcement Officers Assaulted

Circumstance at Scene of Incident by Type of Assignment and Percent Distribution, 2017

Circumstance	Total	2-Officer vehicle		1-Officer vehicle				Detective/special assignment				Other				
		Percent distribution	Total	Percent distribution	Alone	Assisted	Alone	Assisted	Alone	Assisted	Alone	Assisted				
Number of victim officers	60,211	100.0	10,820	18.0	14,856	24.7	22,097	36.7	746	1.2	1,565	2.6	3,101	5.2	6,966	11.6
Disturbance call	18,329	100.0	3,557	19.4	4,736	25.8	8,039	43.9	120	0.7	196	1.1	416	2.3	1,265	6.9
Burglary in progress/pursuing burglary suspect	894	100.0	184	20.6	224	25.1	381	42.6	10	1.1	25	2.8	15	1.7	55	6.2
Robbery in progress/pursuing robbery suspect	498	100.0	97	19.5	114	22.9	204	41.0	14	2.8	25	5.0	15	3.0	29	5.8
Attempting other arrest	9,505	100.0	1,567	16.5	2,270	23.9	3,766	39.6	130	1.4	442	4.7	273	2.9	1,057	11.1
Civil disorder (mass disobedience, riot, etc.)	783	100.0	154	19.7	131	16.7	211	26.9	8	1.0	43	5.5	32	4.1	204	26.1
Handling, transporting, custody of prisoner	7,493	100.0	1,171	15.6	1,403	18.7	2,123	28.3	73	1.0	142	1.9	595	7.9	1,986	26.5
Investigating suspicious person/circumstance	5,697	100.0	1,151	20.2	1,626	28.5	2,164	38.0	103	1.8	164	2.9	150	2.6	339	6.0
Ambush situation	292	100.0	76	26.0	61	20.9	60	20.5	3	1.0	21	7.2	38	13.0	33	11.3
Handling person with mental illness	2,215	100.0	317	14.3	523	23.6	1,037	46.8	18	0.8	32	1.4	76	3.4	212	9.6
Traffic pursuit/stop	5,108	100.0	1,018	19.9	1,741	34.1	1,842	36.1	75	1.5	139	2.7	56	1.1	237	4.6
All other	9,397	100.0	1,528	16.3	2,027	21.6	2,270	24.2	192	2.0	336	3.6	1,495	15.9	1,549	16.5

Because of rounding, the percentages may not add to 100.0.

Table 23

Law Enforcement Officers Feloniously Killed

Call for Service or Reason for Involvement, 2013-2017¹

Circumstance	Total	2013	2014	2015	2016	2017
Number of victim officers	Total	231	27	51	41	66
Administrative assignment	Total	5	0	0	4	1
	Prisoner transport	2	0	0	1	0
	Other administrative assignment	3	0	0	3	0
Ambush (entrapment/premeditation)	Total	0	0	0	0	0
	Total	0	0	0	0	0
Arrest situation	Total	0	0	0	0	0
	Attempting to control/handcuff/restrain offender(s)	0	0	0	0	0
	Verbal advisement only	0	0	0	0	0
Assist another law enforcement officer	Total	17	0	3	5	4
	Deploying/providing equipment (traffic cones, flares, etc.)	1	0	0	1	0
	Foot pursuit	2	0	0	2	0
	Officer down (requiring emergency assistance)	1	0	0	0	1
	Officer requiring emergency assistance (not pursuit)	3	0	0	1	0
	Vehicular pursuit	3	0	1	0	1
	Other emergency circumstance	2	0	1	0	1
	Other nonemergency circumstance	5	0	1	1	1
	Total	5	2	1	1	0
	Total	6	2	2	2	0
	Citizen complaint	Total	0	0	0	0
Animal bite	0	0	0	0	0	
Animal disturbance (barking dog, unleashed dog, etc.)	0	0	0	0	0	
Business check	0	0	0	0	0	
Check on welfare of citizen	4	1	1	2	0	
Drug complaint	0	0	0	0	0	
Traffic complaint	0	0	0	0	0	
Verbal complaint of noncriminal violation	2	1	1	0	0	
Disorder/disturbance	Total	29	4	6	3	12
	Civil disorder (mass disobedience, riot, etc.)	0	0	0	0	0

Table 23

Law Enforcement Officers Feloniously Killed

Call for Service or Reason for Involvement, 2013-2017¹

Circumstance	Total	2013	2014	2015	2016	2017
Disturbance call (disorderly subject, fight, etc.)	12	3	5	0	3	1
Domestic disturbance (family quarrel, no assault)	11	0	1	0	7	3
Domestic violence	6	1	0	3	2	0
Encounter or assist an emotionally disturbed person	0	0	0	0	0	0
Investigative/enforcement	98	8	27	15	24	24
Total	98	8	27	15	24	24
Drug-related matter (drug bust, buy, etc.)	3	0	1	0	2	0
Handling person with mental illness	1	0	1	0	0	0
Investigate motor vehicle crash	4	0	0	1	1	2
Investigate possible DUI/DWI suspect (operating a vehicle)	2	0	0	1	1	0
Investigate suspicious person/circumstance	21	0	6	6	4	5
Investigative activity	10	3	0	0	3	4
Tactical situation	11	2	2	1	3	3
Traffic stop (felony traffic stop)	0	0	0	0	0	0
Traffic stop (traffic violation stop)	24	2	7	4	3	8
Undercover situation	3	0	2	0	1	0
Wanted person	19	1	8	2	6	2
Pursuit	0	0	0	0	0	0
Total	0	0	0	0	0	0
Foot	0	0	0	0	0	0
Vehicular	0	0	0	0	0	0
Respond to alarm	1	1	0	0	0	0
Total	1	1	0	0	0	0
Burglary	0	0	0	0	0	0
Robbery	1	1	0	0	0	0
Respond to crime in progress	32	5	7	4	9	7
Total	32	5	7	4	9	7
Assault	1	0	1	0	0	0
Burglary	4	1	0	1	2	0
Larceny-theft	1	0	0	0	0	1
Motor vehicle theft	1	0	0	0	0	1

Table 23

Law Enforcement Officers Feloniously Killed

Call for Service or Reason for Involvement, 2013–2017¹

Circumstance	Total	2013	2014	2015	2016	2017
Person with firearm (no shots fired)	9	2	2	1	4	0
Robbery	5	1	0	1	2	1
Shooting/shots fired	10	0	4	1	1	4
Tampering with vehicle	0	0	0	0	0	0
Other crime against person	1	1	0	0	0	0
Other crime against property	0	0	0	0	0	0
Respond to report of crime	Total	11	1	1	2	6
Assault	0	0	0	0	0	0
Burglary	0	0	0	0	0	0
Homicide	1	0	0	1	0	0
Larceny-theft	0	0	0	0	0	0
Motor vehicle theft	0	0	0	0	0	0
Person with firearm (no shots fired)	2	0	1	0	1	0
Robbery	2	1	0	1	0	0
Shooting/shots fired	4	0	0	0	3	1
Tampering with vehicle	0	0	0	0	0	0
Other crime against person	2	0	0	0	2	0
Other crime against property	0	0	0	0	0	0
Traffic control (crash scene, directing traffic, etc.)	Total	4	0	0	0	4
Unprovoked attack	Total	0	0	0	0	0
Other	Total	23	4	4	5	7

¹Ten years of data for the topics presented in this table are not available at this time. A 10-year table is expected to be available for the publication of 2020 data.

Table 111

Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments

Call for Service or Reason for Involvement, 2013-2017¹

Circumstance	Total	2013	2014	2015	2016	2017
Number of victim officers	Total	555	126	106	102	119
Administrative assignment	Total	4	1	1	0	1
	Prisoner transport	4	1	1	0	1
	Other administrative assignment	0	0	0	0	0
Ambush (entrapment/premeditation)	Total	0	0	0	0	0
	Total	1	0	0	0	1
Arrest situation	Total	1	0	0	0	1
	Attempting to control/handcuff/restrain offender(s)	1	0	0	0	1
	Verbal advisement only	0	0	0	0	0
Assist another law enforcement officer	Total	58	15	12	15	10
	Deploying/providing equipment (traffic cones, flares, etc.)	0	0	0	0	0
	Foot pursuit	5	2	0	0	1
	Officer down (requiring emergency assistance)	9	3	1	1	2
	Officer requiring emergency assistance (not pursuit)	19	5	6	5	1
	Vehicular pursuit	6	2	2	1	1
	Other emergency circumstance	6	0	1	4	1
	Other nonemergency circumstance	13	3	2	4	4
	Total	1	0	0	0	0
	Total	34	17	3	6	2
	Citizen complaint	Total	0	0	0	0
Animal bite	0	0	0	0	0	
Animal disturbance (barking dog, unleashed dog, etc.)	0	0	0	0	0	
Business check	1	1	0	0	0	
Check on welfare of citizen	25	10	3	5	1	
Drug complaint	1	1	0	0	0	
Traffic complaint	1	1	0	0	0	
Verbal complaint of noncriminal violation	6	4	0	1	1	
Total	86	17	25	12	15	
Disorder/disturbance	Total	0	0	0	0	
Civil disorder (mass disobedience, riot, etc.)	0	0	0	0	0	

Table 111

Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments

Call for Service or Reason for Involvement, 2013-2017

Circumstance	Total	2013	2014	2015	2016	2017
Disturbance call (disorderly subject, fight, etc.)	43	11	14	3	7	8
Domestic disturbance (family quarrel, no assault)	23	2	6	7	3	5
Domestic violence	20	4	5	2	5	4
Encounter or assist an emotionally disturbed person	Total	2	1	0	1	0
Investigative/enforcement	Total	224	45	46	42	48
Drug-related matter (drug bust, buy, etc.)	19	0	5	6	2	6
Handling person with mental illness	15	2	3	4	5	1
Investigate motor vehicle crash	4	1	1	1	0	1
Investigate possible DUI/DWI suspect (operating a vehicle)	2	0	0	1	1	0
Investigate suspicious person/circumstance	54	9	16	7	11	11
Investigative activity	18	5	1	3	0	9
Tactical situation	39	10	5	6	11	7
Traffic stop (felony traffic stop)	2	1	1	0	0	0
Traffic stop (traffic violation stop)	30	7	10	5	6	2
Undercover situation	3	1	2	0	0	0
Wanted person	38	9	2	9	12	6
Pursuit	Total	4	0	1	1	1
Foot	1	0	0	0	0	1
Vehicular	3	0	1	1	1	0
Respond to alarm	Total	4	1	1	0	1
Burglary	1	0	0	0	0	1
Robbery	3	1	1	0	1	0
Respond to crime in progress	Total	85	16	11	18	22
Assault	5	3	0	1	0	1
Burglary	9	1	1	0	2	5
Larceny-theft	5	0	1	1	2	1
Motor vehicle theft	1	0	0	0	0	1

Table 111

Law Enforcement Officers Assaulted and Injured with Firearms, Knives, or Other Cutting Instruments

Call for Service or Reason for Involvement, 2013-2017¹

Circumstance	Total	Year					
		2013	2014	2015	2016	2017	
Respond to report of crime	Person with firearm (no shots fired)	16	5	0	2	6	3
	Robbery	11	1	1	2	3	4
	Shooting/shots fired	28	3	4	11	8	2
	Tampering with vehicle	0	0	0	0	0	0
	Other crime against person	5	2	2	0	0	1
	Other crime against property	5	1	2	1	1	0
	Total	30	10	5	5	8	2
	Assault	9	4	3	1	0	1
	Burglary	0	0	0	0	0	0
	Homicide	2	1	1	0	0	0
	Larceny-theft	3	0	1	0	2	0
	Motor vehicle theft	0	0	0	0	0	0
	Person with firearm (no shots fired)	2	0	0	2	0	0
Robbery	4	3	0	0	1	0	
Shooting/shots fired	7	0	0	1	5	1	
Tampering with vehicle	0	0	0	0	0	0	
Other crime against person	2	2	0	0	0	0	
Other crime against property	1	0	0	1	0	0	
Total	5	1	0	0	4	0	
Unprovoked attack	0	0	0	0	0	0	
Total	17	2	1	2	7	5	

¹Ten years of data for the topics presented in this table are not available at this time. A 10-year table is expected to be available for the publication of 2020 data.

NOTE: Assault with injury data in this table reflect only a subset of those incidents reported to the FBI's Uniform Crime Reporting Program. For more information about this data collection, see Detailed Assault Data.



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★ For Immediate Release
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Department of Justice Releases Report on Officers Killed in the Line of Duty

WASHINGTON, D.C. - The Department of Justice, Office of Community Oriented Policing Services (COPS Office) today announced its report *Deadly Calls and Fatal Encounters*, which was produced by the National Law Enforcement Officers Memorial Fund (NLEOMF) and funded by the COPS Office and provides analysis of 684 cases involving line-of-duty deaths over a five-year period (2010-2014).


The purpose of this report is to identify the situations that present officers the most risk and make recommendations to enhance officer safety. For example, this report found that calls related to domestic disputes and domestic-related incidents resulted in the highest number of officer fatalities. The study also concluded that there are high risks associated with traffic stops.

“As President Obama has repeatedly stated, ‘officers deserve to go home at the end of their shifts,’” said COPS Office Director Ronald Davis. “This invaluable report is designed to help us understand the risk that law enforcement officers face and to help us develop best practices to reduce officer fatalities.”

The report provides three steps that law enforcement agencies can immediately implement: encourage officers to slow down when responding to calls (specifically, Officer Needs Assistance calls), wear seatbelts, and wear issued body armor.

Deadly Calls and Fatal Encounters, is available here:
<http://www.nleomf.org/programs/cops/cops-report.html>.

The COPS Office, headed by Director Ronald Davis, is a federal agency responsible for advancing community policing nationwide. Since 1995, the COPS Office has invested more than \$14 billion to advance community policing, including grants awarded to more than 13,000 state, local, and tribal law enforcement agencies to fund the hiring and redeployment of more than



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Deadly Calls and Fatal Encounters

Analysis of U. S. law enforcement line of duty deaths when officers responded to dispatched calls for service and conducted enforcement (2010-2014)

By Nick Breul
and Mike Keith



COPS

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National Law Enforcement Officers
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Disclaimer

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Program Development

This project was developed in partnership with the National Law Enforcement Officers Memorial Fund (NLEOMF), and was designed to enhance the safety of law enforcement officers across the United States by providing them with the most up-to-date analysis of fatality trends in law enforcement as it relates to officers responding to calls for service or conducting self-initiated activities, such as traffic stops. The analysis conducted through this project will increase awareness of the dangers posed by certain types of incidents and provide insight into the commonalities among law enforcement fatalities. This information can then be shared with the wider law enforcement community to alter training and reduce the number of fatalities and injuries in the profession.

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Sheriff Lenny Millholland – Fredrick County (MD) Sheriff's Office

Brian McAllister – Federal Bureau of Investigations (LEOKA)

Craig Floyd – President & CEO, NLEOMF

Executive Summary

In 2015, the National Law Enforcement Officers Memorial Fund (NLEOMF) entered into a cooperative agreement with the U.S. Department of Justice COPS office to study officer line-of-duty deaths.

This report is a five-year study analyzing line-of-duty deaths in which a total of 684 cases were reviewed. Specifically, the analysis focused on cases that involved a dispatched call for service which required a police response and what information was made available to responding officers in the deadliest calls for service. Armed with this information, researchers were then tasked with determining if any commonalities existed that could be utilized as learning tools to prevent future deadly calls or fatal encounters.

Some key findings from this report reveal that calls related to domestic disputes and domestic-related incidents represented the highest number of fatal types of calls for service and were also the underlying cause of law enforcement fatalities for several other calls for service. In addition, researchers discovered that officers were slain with handguns in 71% of all cases studied and that in 45% of all the cases in which officers were responding to a dispatched call

for service that ended in a fatality, the officers had been advised the suspect(s) might be armed, or had made prior threats.

Based on the results of the analysis of these fatal incidents, it is clear that agencies must strive to improve the information sharing between dispatchers and all responding officers. Better information regarding the location and its call history, as well as any other details of the call, must be made readily available. Information sharing between officers via Mobile Digital Computers, tablets, smart phones or simply relaying pertinent information over the radio is a critical component of safety as it enhances the officer's awareness and may guide their approach to the call.

This report also recommends that agencies responding to each other's calls under an inter-jurisdictional MOU or other agreement, conduct shared dispatcher and supervisory training to better coordinate responses to high priority calls such as Officer Needs Assistance, Robbery in Progress, and Shots Fired. Agency personnel should also ensure that domestic violence/disturbance cases are monitored closely and that dispatchers inquire about an officer's welfare regularly when they are on the scene of a high priority call.

Additionally, first line supervisors must correct dangerous behaviors such as complacency, speeding, not wearing seatbelts, not wearing issued body armor and failing to wait for backup before taking action.

Methodology

Researchers from the National Law Enforcement Officers Memorial Fund, and specifically from its Officer Safety, Wellness and Research Department, examined five years of NLEOMF primary research fatality data and accompanying case files in an effort to determine what information was made available to responding officers when handling calls for service that involved an officer death. Research included determining how fatal self-initiated actions evolve and what, if any, commonalities were discovered that could be utilized as learning tools to prevent future deadly calls or fatal encounters.

This research project began with a preliminary examination of all the approved line-of-duty death cases from 2010 to 2014 in the National Law Enforcement Officer Memorial Fund's database. This review included 684 total cases.

The 684 cases were then reviewed and coded to identify those that involved an identifiable call for service. This review process involved reading the narratives of all the cases and looking for a reference to officers responding to a call for service or an indication that the officer was handling an assignment that came through the dispatcher. All of the narratives, along with the

manner in which cases were initially coded when entered into the NLEOMF database, provided researchers the immediate information necessary to determine if the officer fatality involved a call for service and the resulting fatality type. In instances of question, the case was flagged and additional research was conducted by further reviewing the case file materials.

Those cases that involved an identified call for service where the fatality involved the officer's handling of the call were then placed into a group that was further segmented into specific types of calls for service. Each case was then categorized by type of call such as *Burglary*, *Robbery*, *Domestic Abuse*, *Disturbance*, etc. The cases were then analyzed, drawing out key data points with regard to the response to the call. Data—such as dispatch information provided to the responding officer(s), number of officers responding and subsequent actions taken by officers on the call—was then further inspected.

The cases with a call for service where the death of the officer was not tied specifically to the call were excluded from the study. An example of such a call would be where an officer was responding to a domestic dispute but became involved in a fatal vehicle crash while en-route; never reaching the scene.

It is important to note that the 684 cases examined also included officers from Corrections departments, Federal agencies, and other regulatory commissions that do not routinely respond to calls for service or engage in independent enforcement or investigative activity.

In a second phase of study, the research team also examined actions that were initiated by officers as they enforced the law, or reacted to suspicious behavior they observed. Instances of self-initiated action that resulted in a law enforcement death were separately analyzed using a similar method, as with the examination of calls for service. Researchers looked at these cases with a similar eye towards examining how the fatal assaults unfolded; reviewing the information officers had at the time of the stop, and if there were any shared elements throughout these cases. These cases were drawn from the initial 684 cases that were culled through when examining calls for service.

The research team also reviewed fatal vehicle crashes in response to a dispatched call for service; to identify any patterns in the types of crashes and the types of calls for service. The researchers again segmented those cases where an officer crashed en route to a call for service and coded the crashes by call type in order to see if there was a significant trend in certain types of calls resulting in vehicle crashes.

In a few instances, researchers discovered insufficient or incomplete information had been provided in the initial data collection, so researchers spent a considerable amount of time making personal contact with representatives from various agencies in an effort to collect additional information or gain clarity regarding individual cases. While some agencies provided

the requested information, others did not. However the data that was available was useful in the analysis conducted.

The study also identified some key issues that emerged among the reviewed cases that were not captured in the two larger analytical segments, but were important factors to highlight as they related to officers' safety. These issues, such as failing to adequately search a prisoner or not wearing body armor, are factors that were contributing attributes in some of the studied cases. Those factors and additional data points are summarized along with all of the major findings at the end of the report.

The report also contains a preliminary analysis of the 2015 line-of-duty death cases by providing a statistical breakdown of the approved NLEOMF cases, coupled with a basic analysis of the primary reason or type of fatality and circumstances involved.

Throughout the analysis, as researchers identified various calls for service, they selected a series of case studies that were particularly illustrative or representative of key elements within that specific category of call type or type of self-initiated activity. These case studies are sanitized versions of actual cases included in the study and provided opportunities for learning without directly identifying an agency or officer. These examples, which are not intended to second guess nor judge an officer's actions, provide a vivid illustration of how some of these fatal incidents occur and provide the reader with a stronger context from which to understand the analysis and case circumstances being referenced.

In the conclusion segment of each call type analysis and self-initiated action type analysis, the researchers identified areas of concern, and provided concrete action steps, which are labeled as "Red Flags and Recommendations." This section highlights the salient points drawn from the research and delivers recommendations for alleviating the identified concerns and improving safety.

Once development of the draft report was complete the National Law Enforcement Officers Memorial Fund convened a Primary Research Advisory Panel which consisted of Subject Matter Experts from the public safety community representing municipal, county, state and federal law enforcement agencies. The advisory panel reviewed the draft report, attended a private briefing in Washington, DC facilitated by NLEOMF staff, and provided valuable input on the practical implications and pragmatic implementations of this report.

Background

The National Law Enforcement Officers Memorial Fund (NLEOMF) is responsible for maintaining the nation's monument in Washington, DC, etched with the names of more than 20,000 law

enforcement officers who have died in the line-of-duty. A committee of the organization's Board of Directors reviews each law enforcement officer fatality to determine if it meets the established criteria for inclusion on the Memorial walls as an in the line of duty death. This review requires that agencies submit specific documents and forms to provide the Names Committee with the necessary information to evaluate each case. Thus, the NLEOMF has a wealth of data on the circumstances surrounding law enforcement deaths, dating back to 1791.

As a repository for detailed information on the circumstances surrounding each fatality, the NLEOMF is an untapped resource of information regarding law enforcement deaths in the United States. There is a great deal that can be learned by leveraging that data and analyzing the details of specific cases in an attempt to identify risk factors and behaviors that may have contributed to that fatality.

This report content is different from other studies as it focuses on responses to calls for service and self-initiated activity over a five-year period. The report is not an in-depth analysis of one specific case, but a broad look at incidents that occurred during the study period. While the report highlights anonymous cases to illustrate an identified trend, it is sweeping in nature and provides analysis of trends on a macro level.

Statement of Purpose

It is part of the mission of the National Law Enforcement Officers Memorial Fund to "make it safer for those who serve." This organization is engaged in several projects that highlight safety and work towards reducing injuries and deaths. It is our goal to drive down the number of officer fatalities by using organizational resources to identify areas where changes can be made to improve officer safety.

This project is the result of a cooperative effort between the National Law Enforcement Officers Memorial Fund and the Department of Justice's COPS Office to support law enforcement by providing an in-depth analysis of cases involving line-of-duty deaths and, through those research efforts, make policing safer. The key findings from this detailed analysis will hopefully augment current policies, improve training curricula, and increase awareness of the current trends contributing to law enforcement deaths and injuries.

The intent of this report is to examine law enforcement line-of-duty death cases over a five-year period and determine what commonalities exist amongst the responses to dispatched calls for service that resulted in a line-of-duty death, as well as identify problem areas to provide recommendations to law enforcement to avoid similar reoccurrences when handling similar assignments.

The research examines not only those fatalities resulting from responding to a call for service such as a robbery or disturbance, but also looks into fatal cases where officers took self-initiated enforcement action. It also seeks to identify any commonalities in those fatal self-initiated contacts, to provide greater insight into such instances and instill a greater understanding of the nature of those fatal encounters.

This project's ultimate goal is to provide meaningful and actionable analysis of situations that lead to such deaths and apply those lessons learned to training environments, policy and response recommendations, and to be a catalyst for change in law enforcement. Hundreds of agencies provided information for this report to help prevent reoccurrences of these fatal events and to mitigate risk. This report is intended to ensure that law enforcement may learn from these tragic events and enact change.

"Those that do not know their history, are doomed to repeat it."

-Winston Churchill

Project Scope

The research team, consisting of staff from the NLEOMF's Officer Safety, Wellness and Research Department, conducted an analysis of the relevant line-of-duty death cases in a five-year period from 2010-2014 and includes preliminary analysis of the 2015 cases. This date range was chosen to gain a broad understanding of the issues and considers the most recent cases for making relevant conclusions.

While every line-of-duty death during the study period was screened, the cases selected for further study were those that involved an identifiable call for service, or an instance of self-initiated activity that drew the suspect and the officer together.

The research project began by focusing on deaths related to calls for service, but once that data was gathered, the team began to look at cases that involved officers who were killed while engaged in a self-initiated enforcement activity.

Calls for service were considered to be incidents where a complaint was received by a 911 dispatch center or police barracks and subsequently dispatched to officers in the field to investigate. The cases involving a call for service were examined to find those in which the officer's death was directly related to the call for service and was not the result of an indirect action or unforeseen physical ailment, such as a heart attack.

Considered in the analysis was the type of call dispatched, the information made available to the responding officers, and the subsequent response. The research team also conducted an

analysis of calls for service that resulted in vehicle crashes while the officers were responding to the scene of the call. While these crashes were separated from the cases where officers were killed on the scene by a suspect, there was important crash-related analysis completed as it relates to responses to calls for service.

The research team also studied cases of self-initiated activity over the five-year period. This is an independent enforcement or investigative action taken by the officer and not the result of a dispatched assignment. This type of self-initiated activity includes traffic stops, stopping suspicious persons, and investigating disabled or crashed vehicles.

The analysis of these independent actions includes an examination of the type of activity involved, the information known to the officers at the time they made contact, and an analysis of the number of officers on the scene compared to the number of suspects during each encounter.

Finally, the research team, through its review of hundreds of fatal cases, also found other data points and important elements from fatal cases that were notable. These important data points are summarized in the final portion of this report.

Analysis

In the initial review of all 684 cases, the research team identified 91 cases that met the criteria for an officer responding to dispatched call for service. Each of these cases had an identifiable call for service in which the circumstances of the officer's death were attributable to the nature of the call, the information that was available at the time of the call, and the subsequent handling of the call.

After the initial review of the 684 cases it was determined that self-initiated activity should also be included in this research study as interaction, or lack thereof, between the officer and dispatcher which may yield vital officer safety information. The research team then identified 41 separate cases of self-initiated activity within the initial 684 cases considered, in which an officer was killed as they conducted enforcement or made an investigatory stop. Thus the research team analyzed a total of 132 cases that involved a response to a call for service or a case of self-initiated activity.

Additionally, because of the large number of traffic-related fatalities which were identified during the initial survey of 684 cases and the interaction between officers and dispatchers during these events, the NLEOMF research team decided to examine cases involving crashes of officers responding to calls for service. This supplemental analysis provided 78 cases where officers were involved in collisions or single-vehicle crashes while driving to the scene.

The breakdown of all the cases reviewed is illustrated in Figure 1 below, with the two main focus categories of this study in darker blues:

Summary of Line of Duty Deaths Analyzed in Report

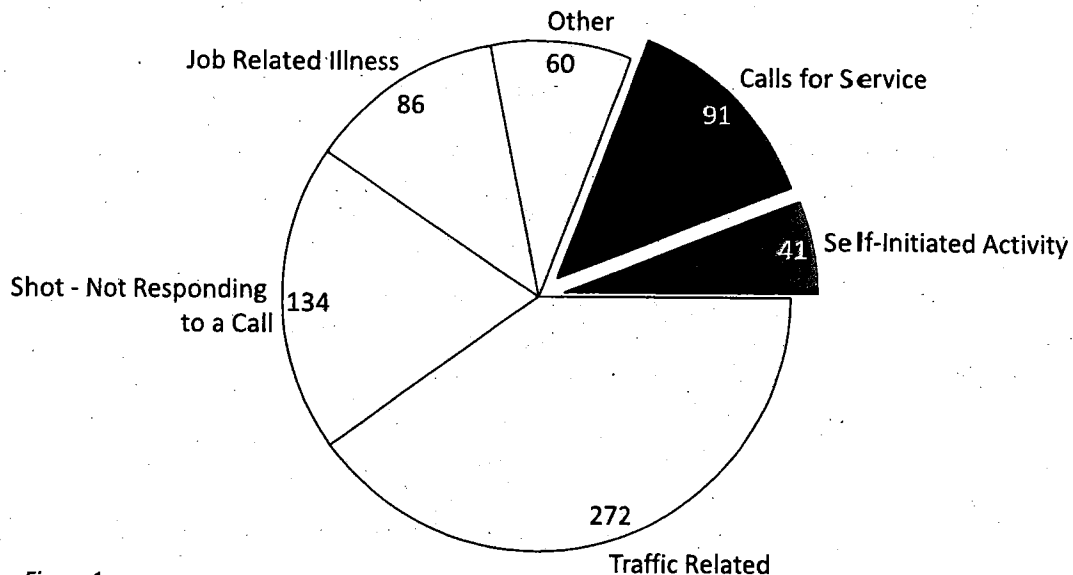


Figure 1

The largest category of excluded cases was *Traffic-related*, with 272. These include officers killed in automobile crashes, motorcycle crashes, and struck-by incidents. Although an analysis of officers crashing en route to a call for service was conducted, a large number of the crashes investigated were not related to either a call for service or a case of self-initiated activity.

Officers shot while not responding to a call was the second largest category of excluded cases, totaling 134. These cases consisted of instances where officers were ambushed in unprovoked attacks, performing tactical operations, serving warrants, and conducting follow-up investigative work.

Officers who suffered fatal *Job-Related Illnesses* were also excluded. An example is an officer suffering a heart attack in a police station after having struggled with a prisoner or when an officer collapses while directing traffic. These were cases where the death of the officer was the result of something internal rather than external and not the result of a suspect's direct action. Although the stress of a particular call or activity may have been a contributing factor, there are too many variables to draw any conclusions regarding job-related illnesses and specific calls for service.

The cases in the *Other* category, include officers who died during weather-related events, industrial accidents, aircraft accidents, training mishaps, and in various unpredictable circumstances.

As each of the 132 remaining cases that were culled from the larger pool was reviewed, the research team inspected the documents associated with each case file. This analysis required the research team to examine news articles, the NLEOMF data form submitted by each agency for their officer's inclusion on the national memorial, the incident or investigation report, the computer-aided dispatch (CAD) information or call sheet, the death certificate, as well as the autopsy report, if available. In addition to reviewing the submitted documentation, the research team conducted follow-up open source research for any recent additional details on a case that were not part of the NLEOMF file. The significant facts and data points of the reviewed material were then extracted and recorded on a case management document.

Fatal Calls for Service as Dispatched: The Big Picture

Once the analysis of the cases with identifiable calls for service was complete, the cases were categorized by type of call for service to determine the type of call with the most fatalities.

There were 91 cases identified that involved a call for service. Researchers divided those cases into categories according to the classification or nature of the call. For example, the *Burglary* and *Robbery* calls were divided into separate categories, as were the *Domestic Dispute* calls, *Disturbance* calls, and so on.

Figure 2 illustrates a breakdown of the 91 cases as a percentage of the differing call types that comprise the fatal calls for service.

Breakdown of 91 Line of Duty Deaths by Dispatched Call Types

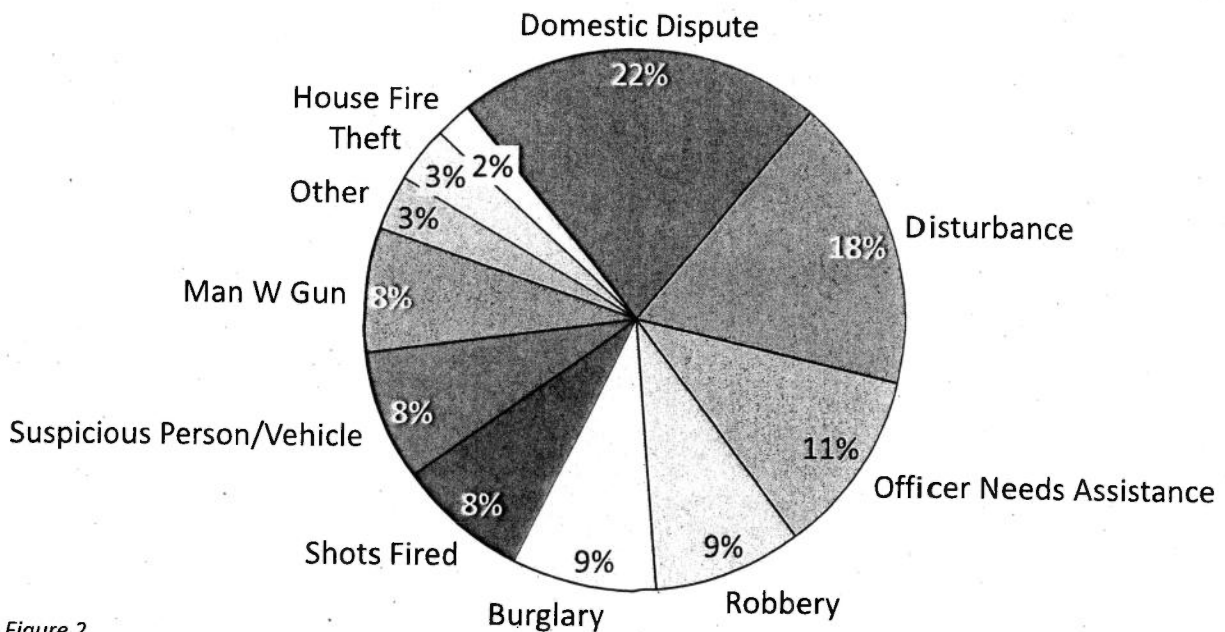


Figure 2

Calls that fell under the *Disturbance* category involved many different types of activity. Eighteen percent of calls classified as *Disturbance* were deemed non-violent, nuisance crimes, or complaints such as drinking in public, indecent exposure, disorderly conduct, or trespassing. These calls were placed in the *Disturbance* category by the submitting agency when it originally submitted case documentation to the NLEOMF.

The category of *Other* contains calls for service that were not *Disturbances*, but a more specific type of offense or request for assistance. These call types were varied in nature, as they dealt with a range of circumstances such as “assisting a probation officer,” “investigating an open line,” and a “wanted person sighting.”

Calls for officers to respond to a complaint of a *Domestic Dispute* or domestic-related incident represented the largest single group. The details from the study of these 20 cases highlight the potential areas of concern where responding officers had been placed or placed themselves in dangerous situations. These points will be described fully as each type of call for service, and their findings are explored in detail.

Disturbance calls were the next largest category, representing 18 percent of the calls identified in the study. *Officer Needs Assistance* calls were the third largest category and accounted for 11 percent of the calls identified in the study. *Officer Needs Assistance* calls were comprised entirely of priority (emergency) responses to assist fellow officers with rapidly-evolving threats or incidents that required additional manpower to handle the situation. Some of these were responses to radio broadcasts from officers requesting assistance rather than from a 911 dispatcher.

Calls for service involving *Robbery*, *Burglary* and *Suspicious Persons or Vehicles* represented 9 percent, 9 percent and 8 percent, respectively. Calls for *Shots Fired*, *Theft*, *House Fire* and *Other*, rounded out the list of calls for service types examined and each represented a smaller percentage as shown in Figure 2. What follows is an in-depth look at the findings in the analysis of the individual types of calls for service, presented with a case study to further illustrate the findings and recommendations. Each case study was selected from that call group to better illustrate how these incidents evolve and to highlight the key issues identified with that call type.

Some of the case studies presented are examples of how fast situations can turn deadly, and despite receiving the best information and deploying the correct approach, tragedy can still occur.

As the final analysis sections of the calls for service and self-initiated activity are presented, detailed information on additional data points will be provided. Important facts and analysis on body armor usage, firearms, the number of officers on scene, and information known to officers at the time of their response will be summarized.

Because *Domestic Disputes* and *Disturbance* calls account for 40 percent of the cases reviewed, the research team provided a more detailed analysis of those case types, as there was more data to relate. The subsequent call for service categories, presented in order of their percentage, will have a similar but less robust analysis as there was a limited amount of data to consider due to the decreasing number of cases.

Domestic Dispute Calls: A Closer Look

As most law enforcement officers have been informed during their training or know intuitively from working the streets, and as this data supports, *Domestic Dispute* calls, or intra-family offenses, were the most dangerous type of call for the responding officers.

The analysis of calls for service that were classified as *Domestic Dispute* accounted for 20 of the 91 calls for service, or 22 percent, that resulted in an officer fatality. In all but one of the cases studied, the responding officers were killed with a firearm.

Analysis of these cases were conducted for any common themes to better understand the officer response and to identify cues to increase awareness among officers about the dangers posed in handling *Domestic Dispute* calls. In seven, or 35 percent, of the *Domestic Dispute* cases examined, there was only one officer on the scene of the call at the time of the shooting, which is illustrated in Figure 3 below.

Number of Officers on Scene at Time of Line of Duty Death

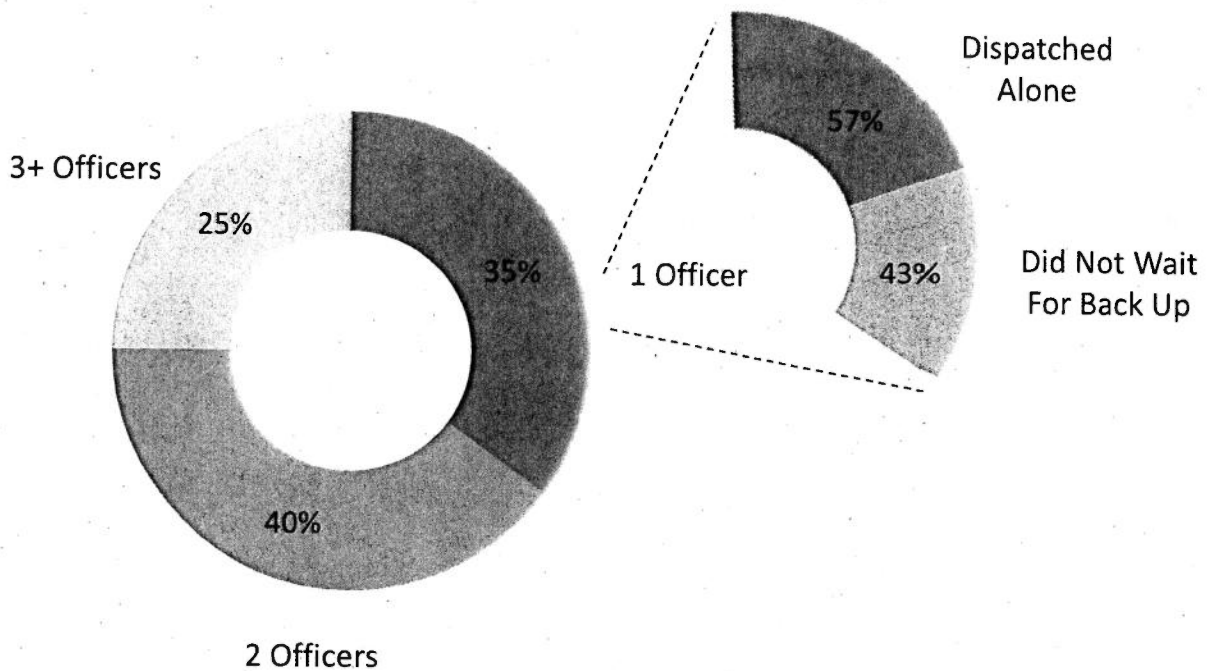


Figure 3

Of the seven *Domestic Dispute* cases where officers were on-scene alone, four of the cases involved a single officer being dispatched. In three of the cases, multiple officers were

dispatched to the call, but the first officer on scene did not wait for a backup unit to arrive before contacting subjects.

In two instances, officers requested additional assistance, but entered the suspect's home without waiting and with no apparent exigency. In one specific instance, the officer knew the suspect to be violent and potentially armed when he entered the suspect's apartment ahead of his assisting officer. The initial officer was shot and killed and his backup officer was shot and wounded but able to return fire and kill the suspect.

The research team clearly understands the necessity in some circumstances for officers to act independently in order to immediately address a threat or to aid a person in imminent danger. These cases of exigency are understood but were not represented in any of the cases that were part of the study.

It should be noted that the research team is aware of the limited resources and manpower available to many law enforcement agencies, and often agencies depend on mutual aid from neighboring jurisdictions. In four of the fatal domestic-related cases the team reviewed, officers from different agencies were involved in the initial response to the call.

However, in all but one of the cases reviewed where an officer was dispatched to a domestic-related call alone, or initiated the investigation alone, the subsequent review revealed that backup or swift mutual aid was available.

The topic of officers handling calls for service alone is a major theme throughout our analysis of all the calls for service. As illustrated in Figure 3, 35 percent of the officers killed while responding to *Domestic Dispute* calls were alone. The necessity of having three or more officers at a domestic situation to adequately separate parties, monitor family members and, if necessary, physically restrain and arrest a suspect, is apparent. As this study found, even in the situations where two officers were present, domestic violence calls had the potential of turning deadly.

In situations where officers were alone, they were without the immediate support that could be provided by a second officer, including possible life-saving measures. In two of the studied cases, the deceased officers were discovered by citizens or other responding officers who did not know the primary officer had been shot.

A further finding from the domestic-related calls was the number of cases in which officers knew the suspect had made threats to kill others, was known to be armed, or the responding officers had knowledge of past violent acts committed by the suspect.

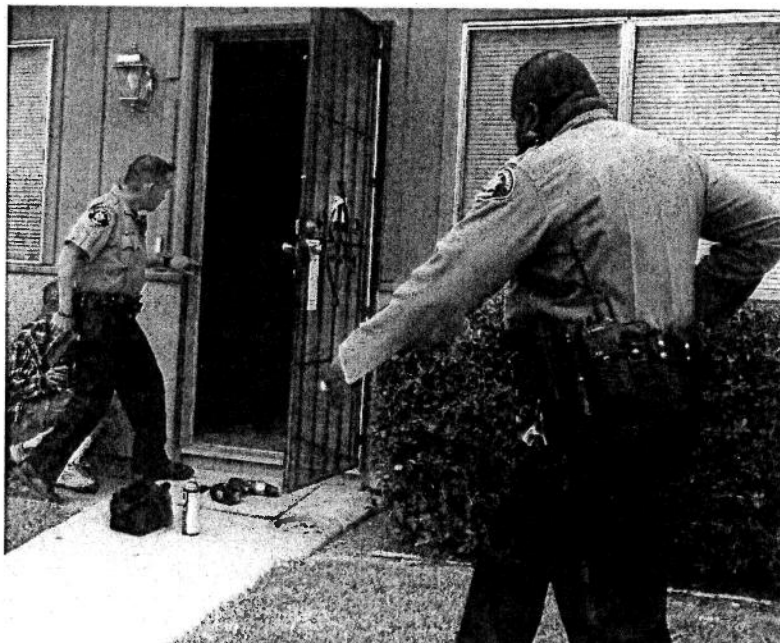
In eight of the studied cases, two or more officers responded to a *Domestic Dispute* call and were provided information from the dispatcher or complainants claiming the suspect was armed, had a history of violence, or had threatened to kill persons. In five of these cases, officers were shot and killed by these suspects as they approached the residence or were shot by the suspect when investigating the complaint.

The need and use of coordinated information before handling a domestic-related call is critical. Sharing information and discussing a plan of approach is important so that officers act together with the same set of facts.

The importance of call history, accurate information, and suspect descriptions cannot be overstated, as in two of the cases examined researchers found that misinformation led to an officer being unaware they were stopping an armed suspect. The crucial nature of obtaining, relaying, and taking action on call information as safely as possible is a key finding from the data analyzed.

This notion ties directly to the current trend towards providing patrol officers enhanced information, direct access to call details, and providing criminal databases at their fingertips. The move towards intelligence-led policing and the use of technology and social media are components of a safer and more methodical approach to handling volatile domestic-related cases.

The research team found that even in agencies that did not have access to an enhanced Computer Aided Dispatch (CAD) systems, cruiser mounted computers or similar devices, officers were still able to provide additional information to responding officers via the dispatcher, or messages relayed via police radio from other officers regarding their knowledge of the call history of the location and family parties involved.



Case Study: A multi-jurisdictional domestic violence response

In a medium-sized city police department of 60 officers during a late winter evening shift, a patrol officer was dispatched to assist an officer from a different agency to investigate a domestic violence complaint that had occurred in the requesting officer's town. The officer who requested the assistance had previously interviewed the complainant, who informed him that the suspect, who resided in the city limits, had made violent threats, left threatening messages, and was in possession of a firearm.

The officer from the town agency requested through the dispatcher that a city police officer respond to assist at a location within the jurisdiction of the city, where he was going to speak to the suspect. It is unclear if he intended to arrest the suspect for threats or just ask the suspect's version of events.

The officer from the town agency arrived at the suspect's address ahead of the assisting city officer and entered the suspect's home before the arrival of the city officer. The town officer began to interview the suspect about the reported complaint made by his estranged wife, and the suspect was becoming increasingly agitated. As the city officer arrived to assist, he entered the residence as the suspect was becoming combative and was resisting being placed in handcuffs.

The suspect, who was previously seated on a sofa, began wrestling with the two officers and was able to retrieve a concealed handgun as he fought to get free. The suspect shot and killed the officer from the city agency and wounded the town officer before being shot and killed.

The record of the case, which is quite thorough, does not indicate that there was any additional information passed to the assisting city officer about the nature of the call, other than it was a "follow-up."

Other city police units monitoring the dispatched run heard the call dispatched as an "assist with a follow-up." It is unclear whether the violent threats made by the suspect, as well as the possibility that the suspect was in possession of a weapon and intoxicated, was ever relayed to the city officer responding as backup.

This case illustrates the problems posed when there is a multi-jurisdictional response and where officers do not act in concert or share information before handling a call together. The initial officer may have placed himself in danger when he decided to make contact without waiting for his requested backup and seemingly underestimated the threat posed by the suspect.



Red Flags and Recommendations

- Officers responding alone to a domestic-related call:
 - Dispatchers and supervisors must be cognizant of the inherent dangers posed by domestic-related calls for service and ensure that officers are not sent alone, even for a report or a call where the “suspect is no longer on the scene.” In one of the cases examined, an officer dispatched alone was shot and killed when the suspect returned.
 - This recommendation applies to the seemingly routine calls for service such as “Assist with Clothing,” “Assist in Serving a Protection Order,” or “Child Custody Disputes.”
 - There must be regular checks by the dispatcher on the welfare of the officers on scene.

- Officers not waiting for their backup and entering before assessing the situation:
 - Fellow officers, supervisors and dispatchers who become aware of officers handling calls without waiting for their assistance must address these actions. Supervisors must counsel their subordinates, take proactive steps, and reinforce training and adherence to policy. They must also monitor and, if necessary, document such instances and take corrective action.

- Not providing responding officers with accurate information or full information:
 - Officers should be made aware of all the call information and, when possible, get a call history and any suspect information prior to making contact. Further, officers should discuss any pertinent information such as threats, prior weapons charges or mention of weapons before handling the call.
 - Special emphasis should be placed on dispatchers and call takers to obtain accurate information. Officers who are provided the wrong lookout or a poor suspect description are at a disadvantage when handling such calls.
 - Not properly sharing relevant information regarding the call to assisting officers is problematic, especially when officers are responding from different

jurisdictions and they may not be working from the same call information or history of the location and occupants.

Disturbance Calls: A Closer Look

The second largest category of fatal calls for service was *Disturbance* calls. These calls ranged from disorderly conduct to noise complaints. There were 16 calls for service grouped under the *Disturbance* category. These were largely breach of the peace violations, nuisance complaints, and other calls that are usually a lower priority.

The “disorderly” call type within the *Disturbance* category represented the largest portion of call type for this category, with 5 (31 percent) of the calls being classified as a “disorderly person(s).” This classification was contained in the case, the dispatch report or the narrative of the investigative report. Very often there was no further information about the specific nature of the behavior that was deemed disorderly. Two cases whose initial call for service was classified as a “disorderly” incident mentioned arguing or fighting in the dispatch notes, but nothing that elevated the level of the response.

Figure 4 shows the breakdown of the 16 *Disturbance* cases by sub-type, as they were dispatched.

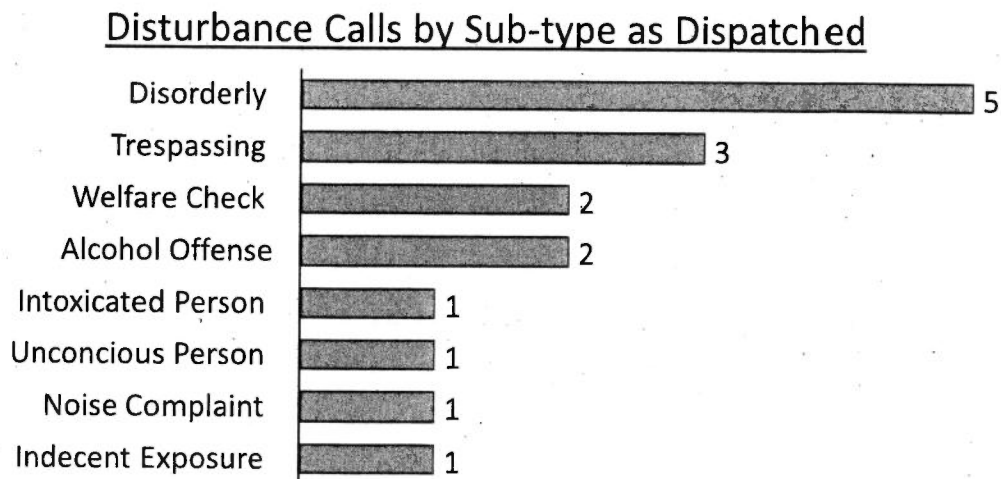


Figure 4

In other portions of the *Disturbance* category, the research team found that officers were dispatched for disturbance-type complaints that were more specific in their classification. In three cases the calls were for “trespassing” or “unlawful entry,” two cases were for an “alcohol offense,” and two other cases were “check on the welfare” calls. The four remaining cases were for a “noise complaint,” an “intoxicated person,” an “unconscious person,” and an “indecent exposure.” These cases were similar in their initial stature and overall level of importance and subsequently grouped under the *Disturbance* category.

Similar to *Domestic Dispute* calls, the team found there was only one officer dispatched to investigate the complaint in five of the *Disturbance* cases. While given the initial stature of the call for service, having one officer respond is more easily understood.

Figure 5 illustrates the large percentage of officers who were on scene of a *Disturbance* call alone when killed. Nine of the 16 *Disturbance* cases involved officers who were on scene alone and were killed, representing 56 percent of all *Disturbance* cases. Of the nine who were on scene alone, five (56 percent) were dispatched alone.

Number of Officers on Scene at Time of Line of Duty Death

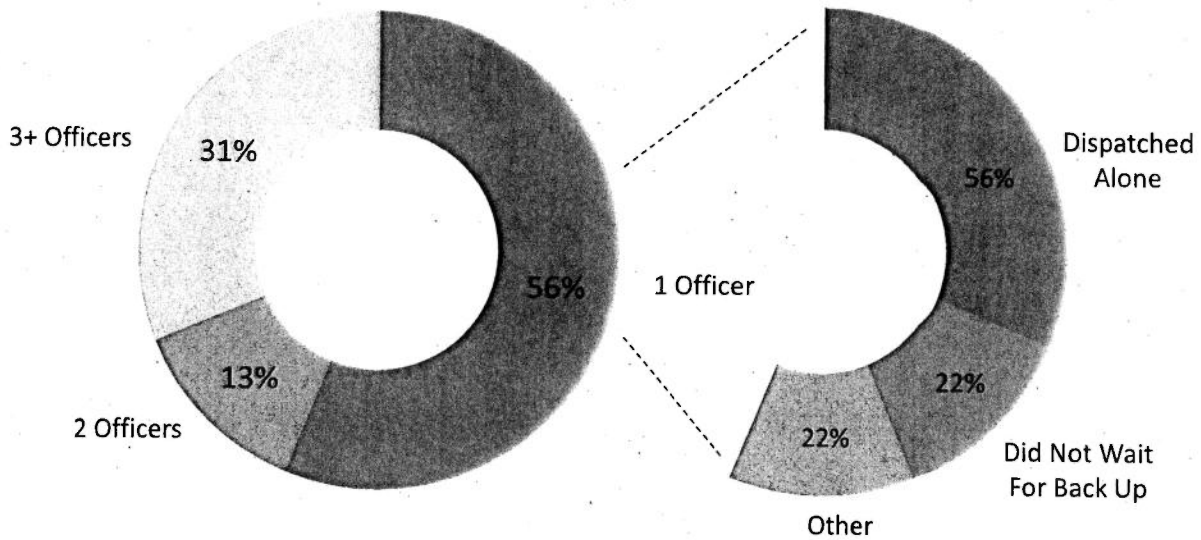
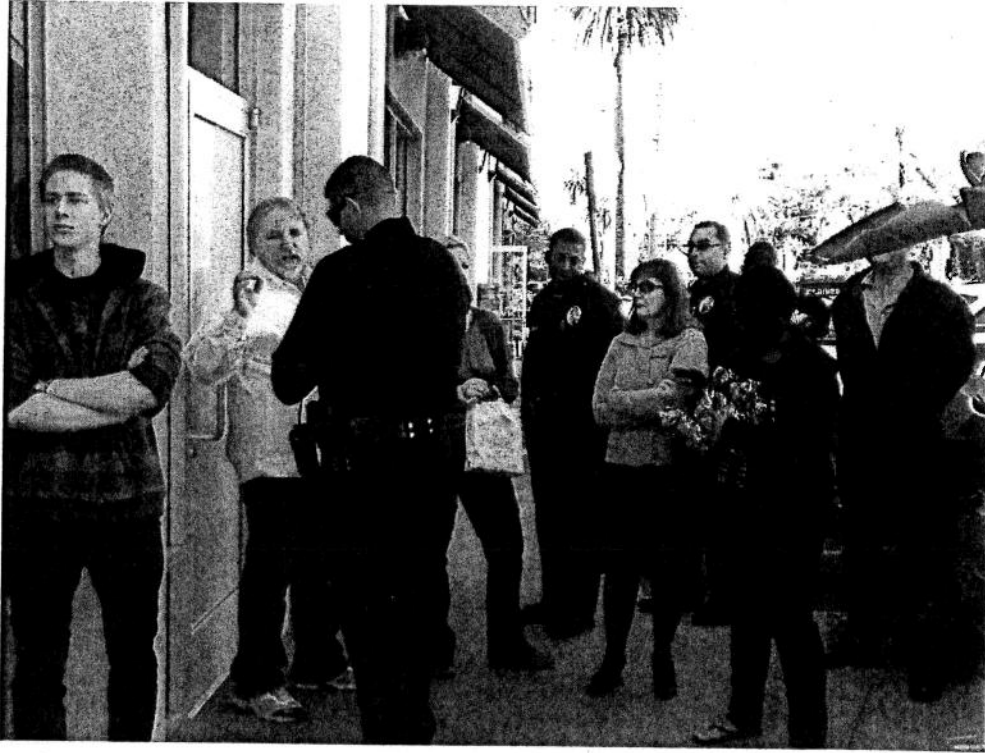


Figure 5

Three of the cases studied were ambushes of the responding officers that were unrelated to the initial call for service. The calls were not ruses to lure an unsuspecting officer; suspects made tactical decisions to shoot the unsuspecting officers while they were summoned to handle an unrelated matter. One of these cases was a call for “check on the welfare” and when the dispatched officer arrived on the scene, they were shot from a concealed position by an unrelated suspect.

There are several remarkable cases within this category in which tragedy erupted from what is normally a common call for service; such as calls where officers are breaking up noisy groups, checking on a family member or assisting emergency medical personnel. The following case study is an example of how seemingly minor disputes can become dangerous situations in which accurate information and threat assessment by the responding officer are critical components to handling the call in a safer manner.



CASE STUDY: A single officer handles a reported "neighbor dispute"

Two officers from a medium-sized city police department of 100 sworn officers were dispatched to a "Neighbor Disturbance" in which a complaint of indecent exposure was made. The initial officer took the call and informed the backup officer that he would handle the call.

The officer arrived at the location and interviewed the complainant, who indicated that their next door neighbor (separated single-family homes) had come to their house complaining about their daughter damaging his property and that the neighbor had exposed himself to their child when he came over to complain.

The complainants advised the investigating officer that they wanted the police to speak with the disgruntled neighbor, but they did not want him arrested. The investigating officer updated the dispatcher with the information regarding the complaint and was asked if he was "OK?" by a fellow officer via the police radio. The officer handling the complaint

replied he was OK, and he further advised that he was going to speak with the suspect.

One officer who was at the police station advised that due to the mention of the suspect being nude or having exposed himself, he was heading to the location of the call to serve as backup. The officer who was handling the complaint, walked the short distance to the suspect's residence, knocked on the door and was invited in by the suspect. Upon entering the home, witnesses reported hearing gunshots.

The officer who made contact with the suspect then shouted over his police radio, "I've been shot!" All city police units, as well as county sheriff units, were dispatched to the scene. Numerous police units converged on the street from where the call originated but no one knew precisely where the wounded officer was located.

As officers arrived they cautiously entered the block, for fear of an ambush as they did not know the location of the gunman. Two officers who were making their way towards the location of the original complaint encountered the suspect in a yard. He was partially clad and covered in blood. The two officers ultimately shot and killed the suspect as he aggressively approached them with his hands concealed and ignored commands to stop and lie down. The officer was found in the suspect's house; shot and bludgeoned to death following a struggle.

The subsequent investigation into this line-of-duty death revealed that vital facts about the interaction between the suspect and the complainants were omitted by the complainants when they spoke to the lone responding officer. The complainants, who wanted only to have the officer talk to the suspect, intentionally concealed the fact that the suspect was irrational, made death threats, had assaulted the male complainant, and damaged their property.

The call seemed minor in nature, as the call taker undoubtedly received scant facts and nothing reporting the death threats, assault, and damaged property. In fact, it was revealed that as the confrontation that prompted the call to police went on in the street, several witnesses could have immediately called the police but did not.

In addition to a substantial delay in the complainants calling to report the incident, when they did call they were not forthcoming regarding the circumstances surrounding the disturbance. The officer who responded did so at a great disadvantage as he went to speak to the suspect

about what he thought to be a relatively minor matter and instead confronted a violent and agitated suspect who shot and beat him to death.

The responding officer did attempt to get historical information on the house and the named suspect but, unfortunately, did not have the correct first name. If he had the correct name, he should have been informed by the dispatcher that the suspect had recently been arrested for domestic battery and had a firearm when last arrested.

This case study points out the danger officers face when responding to reports of problems that appear to be minor incidences. Officers must constantly evaluate the information they are being given and work to get as much information on the call location and suspect before making contact. It is unclear why the initial officer felt comfortable handling the call alone beyond the lower level classification of the call. What is clear is that he was hindered from properly assessing the situation due to the lack of clear and accurate information.

The complainants, for whatever reason, provided the officer with misleading information. Nor is it known why he had the wrong name for the suspect. An address check for the suspect's residence should have revealed the recent arrest and committal of a resident there.

As in the previous category of *Domestic Dispute* calls, the issue of being dispatched alone, or making contact with a suspect before a secondary officer arrives to assist, is an important safety element to consider.

Having two officers conducting separate field interviews of the complainants, rather than one listening to both at the same time, may have yielded conflicting information that could have raised concerns. Also, the presence of a second officer when making contact with the suspect may have changed the final outcome.

Even if the suspect opened fire, there would have been two officers for the suspect to simultaneously confront and the fatal bludgeoning that occurred in this case may have been prevented. Further, resources could have been more rapidly directed to the scene, and the rescue of injured or incapacitated officers affected more swiftly. As in the previous case study, no one can say what the results of this call would have been had two officers responded. However, there is sufficient information to conclude that the presence of a backup officer as a second set of eyes, ears and hands could have made it safer.

This notion that two officers are better than one, was echoed in a recent article by David Griffith, titled "The Buddy System" in *Police: The Law Enforcement Magazine* (1), that espoused some of the virtues of two-man patrol cars. The report found benefits to the presence of at least two officers when handling calls for service and making stops of persons and vehicles. Even in those instances where a suspect engaged two or more officers, the presence of two

officers, in most cases, allowed for the threat posed by the suspect to be thwarted. Further, immediate medical assistance was able to be summoned, to say nothing of the life-saving measures a second officer can take while awaiting emergency medical assistance.

In a second case study, the research team found another startling example of the initial call for service being relatively mild in its classification and nature, but ended with the responding officer being shot and killed.

CASE STUDY: Officer responds to call for impaired shoplifter

In a large urban police department of more than 2,300 sworn officers, a senior police officer was dispatched as a backup to a complaint of a disturbance at a large chain department/grocery store where an intoxicated male was reported to be wandering the store.

While the two officers were en route, the call was changed from a disturbance to a shoplifting, as the store employees had called back to inform the dispatcher that the suspect may be trying to steal merchandise. The senior officer arrived on scene first and entered the store to investigate the complaint. He quickly spotted the suspect, and as he approached, the suspect ran up an aisle away from the officer.

The officer gave chase and was able to tackle the suspect near the front of the store and a struggle ensued. During the struggle, the suspect pulled a handgun from his jacket and shot the officer twice. The suspect was quickly disarmed and subdued by store employees who were already rushing to assist the officer as he struggled with the suspect. The officer died at the scene and the suspect, who was impaired on Xanax and liquor, was arrested.

The chief of the police department later said, "This was a routine call. What makes our job deadly is that there is no routine call."

The case illustrates how a call for service is often not what it appears and that even minor infractions of the law or ordinances can involve armed criminals or persons with mental disorders.

In many cases the call classification and initial complaint are typically considered nuisance calls which may lull officers into a false sense of security. Often, disorderly calls are dispatched as

routine and something that, based on the initial information, would not necessarily result in an arrest.

The examples of officers who were dispatched to handle what, at first, were complaints about non-violent nuisance violations or minor offenses that resulted in an officer fatality, are evident in each of the 16 cases that were disturbance type calls.



Red Flags and Recommendations

- Officers must avoid being lulled into a false sense of security by a call classification:
 - Assume things are not going to be as they were originally reported.
 - Dispatchers and call takers are critical components in the chain of information provided to officers, and they must use every resource to get the best information possible.
 - Officers responding to calls, particularly at private residences, should make every effort to get a call history on the location and any suspects who reside there.

- Officers must act together and not assume that it is a routine matter:
 - Supervisors and fellow officers should always ensure that officers wait for their backup and challenge officers who regularly handle matters by themselves with little communication.
 - Dispatchers should constantly check on officers' welfare even when they are handling seemingly routine matters.

- Any call that mentions possible erratic behavior or mental disorders must be handled with the utmost caution:
 - Crisis Intervention Team officers specially trained to cope with persons suffering from a mental illness should be dispatched to these calls.
 - Academy and in-service training that recognizes the many signs of mental illness should be conducted, as at least four of these fatal cases involved persons with mental illness.

Officer Needs Assistance Calls

Officer Needs Assistance calls represented 11 percent or 10 cases of the 91 total fatal calls for service during the period. The calls represented in this category were all high priority requiring emergency response. They were dispatched to officers in the field to respond to assist a fellow officer who was in danger or in pursuit of an armed suspect.

These types of calls can create an increased sense of urgency within officers as they respond to assist and protect their colleague. They are designated in many different ways across the country. Some refer to them by a numeric code classification such as "10-33," "999," "10-24," "10-99," or "Signal-13." No matter what the code, officers responding to these calls do so with an intense desire to get there and help their fellow officer.

As previously mentioned, the research team separately analyzed crashes that occurred as officers responded to calls for service. It was discovered that *Officer Needs Assistance* calls accounted for 51 percent of the call type in which officers crashed while responding. This percentage is a significant metric and one that clearly identifies a problem to address through training and awareness.

The 10 calls for assistance that comprise this category were split evenly between officers being summoned to back up an officer at a scene and officers being called to assist a fellow officer in apprehending a suspect.

In all of the cases, officers were shot as they manned perimeters when a suspect barricaded themselves, as they assisted in the search for an armed fleeing suspect, or as they attempted to rescue a wounded officer. Suspects were wielding rifles in seven cases, and of those, four were ambush-style attacks. Three of the cases involved multiple officers being shot and killed.

The *Officer Needs Assistance* calls reviewed in this report were all the result of an initial call for service in which the responding officers requested additional assistance to handle a situation or where officers were injured by a suspect while handling the initial call and required immediate medical assistance as well as support in apprehending the suspect. The following case study

exemplifies the dangers that officers confront and demonstrates why an *Officer Needs Assistance* call is an indicator of a highly charged and potentially deadly situation developing.

CASE STUDY: Deputies respond to report of a theft

In a rural sheriff's office consisting of just over 30 sworn deputies, a call was received by the county 911 center reporting a theft in progress at a scrap yard. Two deputies responded to the scene as well as two state police officers who had also monitored the call over their police radio. The assisting state police officers soon left the scene as it appeared that the suspect had already fled on foot, and they were dispatched to another call.

As the two deputies were investigating the scene of the attempted theft, they observed a man in the woods lying down. One of the deputies began to approach the suspect, but as he did so the suspect rose up with a rifle in his hands and began firing at the deputies. The suspect shot and wounded both of the deputies, who then managed to take cover.

The wounded deputies summoned assistance, reporting that shots had been fired and that they were pinned down and in need of medical assistance. Additional units responded and established a perimeter as they attempted to rescue the two wounded deputies. Two of the deputies who responded as backup to the call for assistance were shot and killed by the gunman.

One deputy was shot while helping rescue the two wounded deputies and the other deputy was shot while behind cover and shooting at the suspect with a patrol rifle. The gunman was later confronted away from the shooting scene and shot by officers as he drew a pistol.

This case again reinforces the notion that no call is routine and violence can erupt at any time. The initial call was someone stealing scrap metal, but it ended up being an ambush of officers by a skilled and motivated shooter. As in the *Disturbance* call section, the starting point for this case that resulted in the *Officer Needs Assistance* call was not the type of call in which officers would anticipate an armed assault.

There is little to be done when an assailant opens fire on unsuspecting officers, and there is no indication that anything else could have been done in this case given the manner in which it


developed. The manner in which multiple officers quickly responded, established a perimeter and were armed with rifles was appropriate. The responding deputies, who likely had a strong motivation to rescue their comrades, faced the most dangerous situation as they sought to extricate the two wounded deputies and stop the gunman.

This call category is different than the preceding call types, as the responding officers knew they are facing a dangerous situation. They must arrive quickly to bring the situation under control and, when possible, coordinate their response. Dispatchers work to coordinate the response and provide the best-possible information while trying to manage all police communications including both radio and computer-based messaging.

The radio traffic in response to a scene like the one described above is chaotic, and supervisors and dispatchers must work to maintain radio discipline to properly coordinate how and where responding police units are going.

As previously mentioned, in seven of these ten cases, officers were shot by suspects with rifles. And many times officers were shot from a distance with a high-powered rifle. Standard soft body armor such as Level III-A, worn by most patrol officers, will not stop a rifle round. The increasing use of assault-style rifles against police has given rise to the issuance of AR-style patrol rifles, body armor with hard armor plates, and ballistic helmets, to be deployed during high threat responses.





Red Flags and Recommendations

- Calls for service dispatched for *Officer Needs Assistance* are often highly charged and dangerous for the responding officers:
 - Training and emphasis must be placed on making it to the scene safely and avoiding collisions with other responding police units.
 - The arrival and assignment of responding units must be coordinated to avoid crossfire and ensure responding officers know where the danger area is. Supervisory control beginning with the senior officer on scene must be maintained to avoid confusion.
 - The use of cover, even if on an outer perimeter or when on the scene of a barricade, must be emphasized. Concealment is good, but a solid piece of cover between officers and suspects armed with high-powered weapons is essential.
 - The use of a designated incident safety officer to manage the safety of personnel on complex, ongoing scenes is encouraged. More agencies are taking this approach to barricades, major crash scenes and large-scale events.

Robbery Calls

Calls involving robberies accounted for 9 percent of the 91 fatal calls for service that were examined. These calls for service were dispatched as priority calls for officers to respond to a “Robbery in Progress” or “Robbery Just Occurred.” In this study, of the eight cases examined, all but one of the dispatched calls for service was for the robbery of an establishment, such as a convenience store, department store, or bank. In five of those cases, responding officers were shot and killed as they arrived on the scene and encountered the armed suspects.

In the remaining four cases, the officers were shot and killed as they pursued fleeing suspects from the scene or stopped suspects near the scene. In placing these calls for service in this category, the research team relied on the classification as submitted by the agency and through the review of the overall circumstances of the case. There are other police fatalities that occurred during the study period that involved robbery suspects, but they were not the result of a direct call for service sending officers to the scene of the crime.

In the cases studied, officers were aware that an armed robbery was occurring or had just occurred as they responded. In one case, officers were provided updated information by the dispatcher as they were en route to the scene, providing them a possible number of suspects and their description.

There were instances where officers were dispatched alone or were alone when killed in this call category. In the below case study, the officer was by himself when he confronted an armed suspect, but this was as other officers were on the scene and confronting two other suspects.

CASE STUDY: Officers respond to the robbery of a retail establishment

In a town police department of 100 sworn officers, during an intense snow storm, units were dispatched to a robbery in progress at a department store. The call information indicated that two armed men wearing ski masks entered the store, and began stealing jewelry at gunpoint. They entered just as the store was preparing to close. There was a getaway driver/lookout posted in the parking lot near the front of the store.

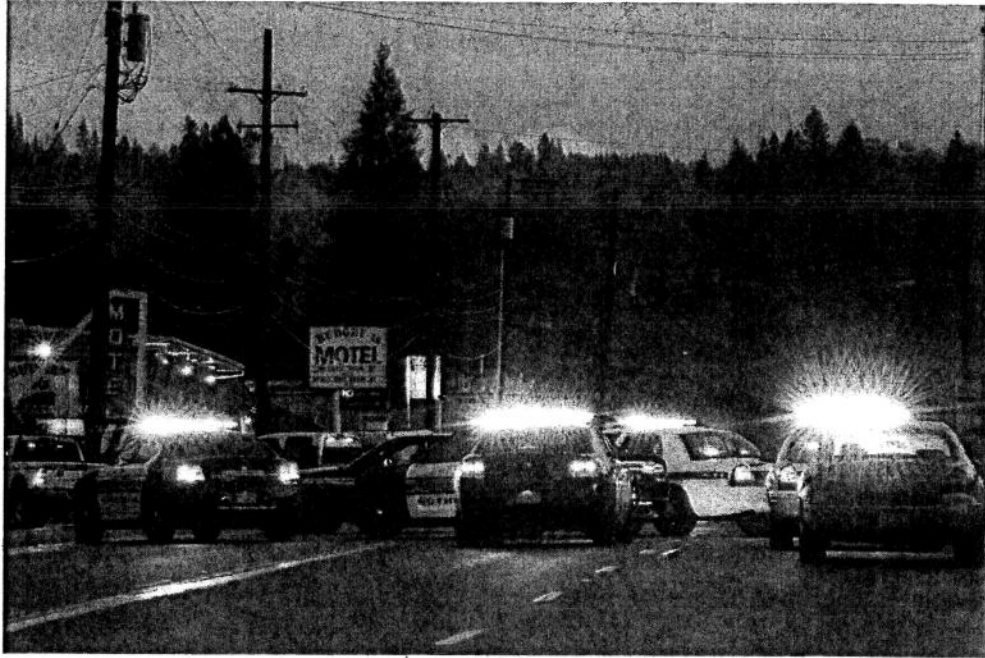
Three patrol units were close by and responded to the call. As units arrived on the scene, one of the officers, a 34-year veteran, was the second car to arrive and observed one of the suspects fleeing the scene on foot. The officer drove his police car to get ahead of the fleeing suspect and then stopped and got out to confront the armed suspect.

The suspect and the officer exchanged gunfire at close range and despite being struck multiple times, the officer was able to shoot the suspect. The suspect died at the scene, and the officer died later at the hospital. The other suspect and the getaway driver were all arrested on the scene.

The suspect confronted by the veteran officer was a parolee who had sworn he would not go back to prison.

This case was the first line-of-duty death experienced by this agency in its 160-year history. The swift dispatch and quick response prevented the suspects from escaping but then had individual officers chasing or containing the multiple fleeing suspects.

The response to reports of armed hold-ups at establishments must be coordinated and strategies should be discussed in training and among squads in a proactive manner.



Red Flags and Recommendations

- Armed robbery calls are dangerous and unpredictable:
 - Responding officers must be tactical in their approach to the scene and be prepared to confront armed suspects.
 - A coordinated response to block escape routes, and limit the possibilities of a wide-scale active shooter, or hostage situation, should be paramount in the minds of officers. Supervisors and senior officers who are first on the scene must take control of the response and assignment of other officers.
 - Reviewing the basics with patrol officers, such as never pulling-up directly in front of the establishment, turning their siren off several blocks away so as not to announce their arrival, and finding adequate cover, should regularly be performed. Training and policies should be reviewed to ensure that officers are prepared and thinking tactically when responding to such calls.

Robberies of banks and establishments often become violent encounters, as clerks are assaulted, employees are shot, and civilians are taken hostage. One need only be reminded of two spectacular incidents involving heavily armed bank robbers wearing ballistic vests who were cornered by responding officers. The 1997 North Hollywood and 2013 Stockton, California, shootouts created a multitude of safety concerns when officers arrived in time to thwart well-armed and desperate criminals' escape. In these two highly-publicized incidents,

many officers and civilians were wounded in protracted gun battles and, in one case, hostages were taken.

In a November 2015 article in *Police: The Law Enforcement Magazine*, Lieutenant Amaury Murgádo of the Osceola County (FL) Sheriff's Office (2) said it best, before you respond to a likely robbery of an establishment "Think it Through." Meaning there has to be some preparation and coordination as you engage the suspects.

The data for these robbery cases indicated that none of the suspects were reported to be mentally ill; they were simply intent on escape by any means necessary. The 2015 Department of Justice's COPS Office report on "Ambushes of Police," (3) which recounts the findings in a study of New York City Police Department line-of-duty deaths, indicated that "...most assailants were rational robbers, fleeing the scene of a crime, who routinely used potentially lethal weapons as 'tools of the trade.'" In the *Robbery* calls for service cases analyzed, researchers found that the perpetrators were all armed with handguns.

Burglary Calls

A similar call type to the *Robbery* call is the *Burglary* call, also representing 9 percent of the fatal calls for service that were analyzed. The research team examined eight cases that involved a response to a reported burglary. These cases were for the most part forced entry cases or witness reporting a suspect entering a building. One of the cases involved a response to an alarm, where forced entry was discovered.

As demonstrated in previous call categories, the research team found that in these eight cases, five of the responding officers were alone when they were assaulted and killed. All of the eight cases identified for this category of call involved an officer being shot with a firearm.

Seven of the officers were shot with handguns, one of which was a stolen police handgun, and one of the officers was shot and killed by a suspect armed with an AR-15.

In all of the cases, officers had responded to a report of a break-in and were in the process of investigating the crime when they made contact with a suspect and were subsequently shot. Only one of the cases involved a suspect diagnosed with a mental illness.

In three of the cases, the suspects were concealed within the location entered or very nearby as they attempted to elude the responding officers. In seven of the cases, backup officers were en route or nearby when the suspects were confronted by a single officer and shot. In one of the cases where an officer was alone when killed, the officer was processing the scene of the burglary for evidence as the complainant, a retired police officer, was standing nearby. The complainant was also shot and killed by the suspect, who had returned to retrieve the stolen items he had left behind.

In another case, three officers who were canvassing the scene of a burglary for stolen items that may have been set aside, dropped or hidden to be picked-up later, and encountered a well-armed burglar who engaged them in a shootout.



CASE STUDY: Scene canvass leads to shootout with suspect

In a large-sized sheriff's office of over 900 sworn deputies, an early morning burglar alarm from a medical facility was dispatched for sheriff deputies to investigate. Within minutes of the alarm, deputies were on scene and discovered that entry had been forced into the building. Four deputies began a methodical search of the building for any suspects and, finding none, cleared the building as one deputy spoke with the business manager who had arrived on the scene.

Two of the deputies began a sweep of the immediate vicinity for any signs of a suspect or any stolen items that may have been set aside or discarded. As one deputy made his way through an adjacent parking lot, he came upon a parked van with out-of-state license plates. The deputy ran a license check on the van which came back as not stolen and the dispatcher provided the deputy with the registered owner's name and address.

The deputy then peered into the van and observed a man lying down on a mattress in the back of the van. The deputy summoned a second deputy to his location and the second deputy drove his cruiser to the parking lot where the vehicle was located. The backup deputy turned on his overhead

emergency lights and used his spotlight to better illuminate the inside of the van.

The deputy who had discovered the van began to try and speak to the man inside, who sat upright when the deputy knocked on the sliding door of the van. The deputies gave the suspect several commands to show his hands and exit the van. The suspect then forcefully flung open the side door and immediately began firing an AR-15 rifle at the deputy near the sliding door. His first rounds struck that deputy twice, incapacitating and ultimately killing him.

The second deputy, positioned near the rear of the van, drew his firearm and began to exchange gunfire with the suspect, who was still inside the van. Despite being struck numerous times by the deputy's gunfire, the suspect continued to fire his rifle, falling out of the van still holding his weapon. Additional deputies who were at the scene of the burglary ran to the shooting scene and also fired at the suspect until he dropped the rifle.

The suspect was pronounced dead at the scene and was subsequently linked to a double murder committed two days earlier with the same rifle. The shooting lasted less than a minute, but 70 rounds were fired between the suspect and the three deputies.

This case is an extreme example of what officers may encounter when they are on the scene of a burglary that has just occurred or in progress and locate a suspect. Unlike other case examples, there is no evidence in this case to indicate that the officers were complacent or used poor judgement in how they tactically handled this incident. It is an example of how responding officers can do everything correctly and still have it end badly.

These deputies waited for backup, showed good intuition, acted in concert, and sought further information as they worked to determine whether or not this suspicious person in the van was related to the burglary. There was no way for the deputies to know who he was, as there was no additional information available on the van, and they also could not see his hidden rifle.

No other deputies were struck by the suspect's gunfire as they maintained positions of cover, and the deputy, positioned at the rear of the van, was immediately able to shoot the suspect once he began his assault. Although he did not instantly incapacitate the armed suspect, he was in a position to continue to deliver what the investigative report described as "...devastating and accurate fire."



Red Flags and Recommendations

- Officers responding to burglary and burglar alarm calls should not be dispatched alone and must wait for their backup:
 - In five of the cases studied, officers were on the scene and made contact ahead of their backup or separated from their partner and encountered the suspect alone. In one case, responding backup officers had to search the house to find the wounded officer who was surprised by the burglar after entering to investigate the room where the complainant reported hearing glass break.
- Officers must avoid the false alarm monotony that leads to complacency when assigned burglar alarms and burglary reports:
 - Officers can become complacent when faced with the high number of false alarms that regularly emanate from residences and businesses. As mentioned, one of these cases involved a suspect returning to retrieve items left behind, who shot and killed the officer processing the scene.
- None of the cases reported deploying a K-9 or K-9 teams to search for suspects:
 - While not applicable to each case, K-9 teams are the best way to search for a secreted suspect and to clear a location or track a suspect. Not all agencies have K-9s, but most have the ability to access them through mutual aid, Memorandums of Understanding, and shared jurisdiction authority with adjoining agencies.

Shots Fired Calls

The research team examined seven *Shots Fired* calls, which represented 8 percent of the call type that resulted in a law enforcement fatality over the course of the study. These calls are ones in which the responding officers are on a heightened alert as they arrive in the vicinity of the call and anticipate encountering armed people. *Shots Fired* calls often direct officers to a general area where gunshots were heard while other times they are reported as emanating from a specific location. Responding officers are at a great disadvantage when responding to these calls, as they may not know the source location or the underlying cause of the gunfire.

The dispatched information on many of these calls was too vague to provide the responding officers a suspect description or precise location of the gunfire.

Three of the calls dispatched for *Shots Fired* were cases of domestic violence in which a suspect had shot or fired shots at a domestic partner during a dispute. This fact further highlights the danger posed by domestic-related violence. The underlying cause of the violence was domestic-

related, but the call for service dispatched was for someone firing a weapon from a complainant who called the police to report the "Sounds of Gunshots."

Two of the calls resulted in ambushes of the responding officers who were shot while investigating the original call, but not actively confronting a suspect. One officer was shot from a trailer while photographing evidence related to the original shots fired call but with no idea who or where the shooter was.

In each of the studied cases, there was a minimum of two officers dispatched to the scene, and very often three or more had responded. In four of the eight cases, the suspects were armed with rifles that fired high-velocity rounds, capable of penetrating the responding officer's soft body armor.

Case Study: Officers ambushed as they investigate shots fired call

On a summer evening in a large city police department of over 1,500 sworn officers, two patrol units were dispatched to investigate the "sounds of gunshots" coming from an intersection. There were no further details or descriptions available from the 911 call reporting the gunfire. The two dispatched officers responded, and the first officer on the scene was flagged down by a male who was near an alleyway.

The male was acting suspiciously, and when asked to show his hands he refused and kept them hidden from the officer's view. The second officer arrived, and the two officers faced the non-compliant suspect as they sought cover.

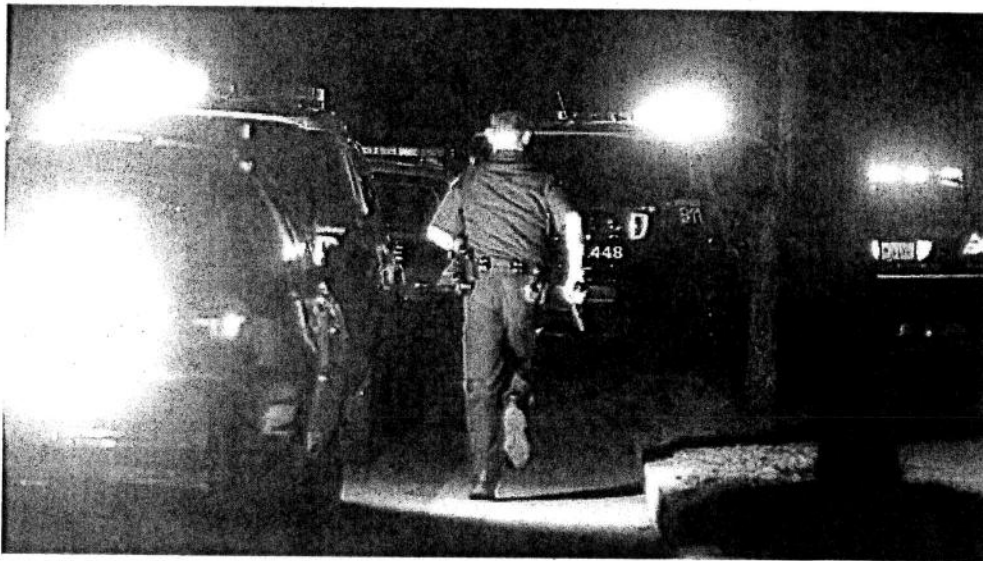
As the second officer moved from cover to get a better position, the suspect produced an AK-47 assault rifle and began firing at the two officers. His shots struck the second officer, and both officers returned fire striking the suspect.

The second officer died as a result of his wounds, and the wounded suspect was taken into custody. One of the rounds fired by the suspect penetrated the officer's vest. The suspect is undergoing trial for murder. He had a lengthy criminal background and an apparent grudge against the law enforcement.

The suspect had fired off his weapon to generate the initial call for service. The responding officers were only given an intersection to respond to, and when the first officer arrived, the suspect flagged him down as though he were a witness or complainant.

Often the lack of information that dispatchers can provide to responding officers creates a hindrance for officers attempting to handle the call and protect themselves. They may drive to the location where the shooting is still occurring or unknowingly place themselves in close proximity of the armed suspect.

Shots Fired calls can also become routine in many jurisdictions where they are a nightly occurrence, and many times the sounds are quickly dismissed as fireworks. Such dismissals can lead to a complacent approach, similar to burglar alarms, and should be guarded against. As several of the previous case studies have shown, violence can erupt at any moment and on any type of call.



Red Flags and Recommendations

- Calls reporting shots fired create challenges in response, as the information about the location and suspect descriptions are often vague:
 - Officers must approach the area with extreme caution and receive constant updates from the dispatcher when information becomes available.
 - Responding officers must avoid becoming complacent if such calls are common within their jurisdiction, or arrive with the understanding that they will be responding only to locate a victim with the shooter gone.

- Agencies that experience a large number of shootings and calls for shots fired should consider acoustic systems that can pinpoint where the gun fire originated from to more accurately guide the response and make locating suspects and evidence easier.

Suspicious Person and Vehicle Calls

There are seven cases that involved officers responding to a *Suspicious Person or Vehicle* call which led to an in the line-of-duty death, as the responding officer(s) attempted to question the subject or occupant(s) of the vehicle. These seven cases represent 8 percent of the total calls for service analyzed. Four of the cases involved the report of a suspicious vehicle and two of these cases involved two officers being killed in the same incident as they investigated a suspicious vehicle.

The three remaining cases all involved officers responding to investigate a report of a suspicious person. In each case, the responding officers had very little information other than a suspect or vehicle description. In the cases involving a suspicious vehicle, there was no information indicating that call takers or dispatchers had anything other than a location and vehicle description to relay to the responding officers.

Similar to the *Shots Fired* call category, officers responding to *Suspicious Persons and Vehicle Calls* are handicapped by a lack of clear information provided by witnesses and reporting persons as they make contact with the person described or approach the vehicle in question. In six of the cases examined in this call type, the persons being contacted by the responding officers were committing or had recently committed other crimes.

All of the officers in this call category were killed by gunfire. In an unfortunate case of mistaken identity, an officer responding to assist on a suspicious person call, where officers had just shot a knife-wielding suspect, was shot by another officer who did not recognize him as law enforcement.

One of the officers killed was investigating a suspicious automobile in a park and was alone when shot as she approached the car in question.

In only one of the cases was the suspect who was encountered by the responding officers reported to be mentally disturbed.

CASE STUDY: Two officers slain as they investigate the occupants of a reported suspicious vehicle

At 6:00 pm on a winter evening, in a city police agency of just under 1,000 sworn officers, a call was dispatched to patrol units to investigate a suspicious vehicle in the parking lot of a grocery store. A description of the vehicle was provided, and the information indicated that the occupants of the suspicious car may be involved in drug activity.

Two officers arrived, followed shortly by a third, and the officers asked all three occupants to get out of the vehicle to be interviewed. As the three suspects began to get out of the four-door car, the rear driver's side passenger emerged and immediately fired a handgun at the officer closest to him, striking him in the head.

The suspect then turned and fired at the second officer who was positioned close by, striking him in the head and exchanged shots with the third officer before fleeing in the vehicle. Both officers died as a result of the shooting.

There was no apparent warning of the swift and accurate assault perpetrated by the male suspect, who had a lengthy criminal history. The suspect vehicle, fled the scene, and was discovered abandoned. A subsequent investigation led to a standoff with the armed suspect at a nearby residence. The suspect was eventually shot and killed by tactical team members as he emerged from the residence and fired at officers.

This case further illustrates the dangers of *Suspicious Person* or *Suspicious Vehicle* calls. The officers responded to investigate an unknown situation and in the very early moments of investigating the suspicious activity, were quickly and unexpectedly shot by the suspect. It should be noted that in this case, despite the assertion that more officers make it safer to respond to deadly threats, control suspects, and provide security, the three officers on the scene did not deter the suspect from carrying out his assault and escaping.



Red Flags and Recommendations

- Calls for suspicious persons and vehicles should be screened for as much information as possible. These calls present unknowns that place responding officers in jeopardy as they must approach and make contact with the persons described with little or no additional information.
 - Agencies must use all their resources to provide responding officers the best information possible on the suspect, and any relevant information on the suspect vehicle.
 - Responding officers should run the tag of the vehicle and ensure they have a backup officer before approaching. The tactical approach of contact and cover, with officers stationed on opposite sides of the vehicle, is recommended.
- Officers responding to any call for service who are in plain clothes, especially when there is more than one jurisdiction involved, must use extreme caution. A plain clothes officer, approaching a scene carrying a rifle or other displayed firearm, may be taken as a threat and shot, which occurred in one of the cases studied under this call type.
 - Scenes must be de-conflicted, and plain clothes officers must be identifiable.

Man with Gun Calls

Man with Gun calls also accounted for 8 percent of the calls for service cases. Unlike *Shots Fired* calls, these calls often provide the responding officers' with a description of the suspect, the type of firearm the suspect is carrying and the suspect's last known location.

This information is important to the responding officers so they are not blindly entering into an area, but are looking for a specific person and can plan their approach in the safest manner possible. In three of the cases, responding officers received information about the suspect and were aware that he may have been impaired or mentally ill before making contact.

Five out of the seven *Man with Gun* cases resulted in officers shot with a rifle or a shotgun. All but one of the cases had two or more officers dispatched and on scene. Three of the cases involved a suspect suffering from mental illness.

In one of the calls that involved a report of a man carrying a firearm, a senior level officer within the small department, responded alone. He did not request a backup until he had already encountered the suspect. The suspect shot the officer with a shotgun as he tried to speak with the armed man.

In another case, two officers responded to reports of a man who had brandished a firearm in a village, and the investigating officers attempted to take the suspect into custody. As the two officers were wrestling with the suspect, a family member then exited the house with a rifle and shot and killed both officers.

Case Study: Officers respond to home for a report of a mentally unstable man armed with a handgun

In a medium-sized sheriff's office with roughly 100 deputies, a call was received reporting an armed suicidal man at a residence. Two deputies were dispatched to the home and when they arrived, they were met by a family member who advised the deputies that the man was inside the home, and that the suspect suffered from mental illness and he had made threats to commit suicide.

The two deputies then walked to the front door of the home, which was open, and were able to see inside the residence and observed the suspect who was seated in a chair, facing away from them.

As the deputies prepared to speak with him, the suspect stood up and began firing a handgun at the deputies. Both deputies were shot, but were able to return fire, striking the suspect.

One deputy was fatally shot in the head, and the surviving officer was struck three times, twice in the extremities and once in his lower chest area, which was protected by his body armor. The wounded suspect surrendered and was taken into custody.



Red Flags and Recommendations

- Calls reporting armed individuals are dangerous, as the information about the suspect is often limited to just a physical description.
 - Officers must approach the area with extreme caution and receive constant updates from the dispatcher when information becomes available, especially if the individual has a history of violence or is making threats.
 - Consider the use of trained Crisis Intervention Training (CIT) when dealing with a suspected mentally ill person or person in crisis.
 - The use and maintaining positions of cover when challenging armed persons must be reinforced and trained.
 - Officers in rural areas, or areas where it is legal to carry a firearm openly, must avoid becoming complacent if such calls are common.

Other Calls

The *Other* category of calls for service accounts for three cases that were all different in type of calls, and the specific nature of these calls for service precluded them from being placed in one of the aforementioned categories.

These three cases will be outlined in order for the reader to understand the differing nature of the calls and their outcomes.

Other Calls Case Study: Officers respond to report of a wanted suspect

The first case was a dispatched call regarding the location of a wanted person who was reported to be at a local fast food restaurant. The dispatcher informed the responding officers that the wanted suspect was in a specific vehicle parked in front of the restaurant. The responding officers were aware that the suspect had outstanding felony warrants for attempted murder and had recently threatened law enforcement.

While more than one unit was dispatched to the call, the first responding officer on scene positioned his police car directly behind the vehicle in which the suspect was reported to be in, blocking his escape. As the officer

approached the vehicle, the suspect shot the officer, killing him. One report indicated that the suspect shot at the officer through the glass windows of the vehicle where he was seated.

The suspect then got out the vehicle and exchanged shots with other arriving officers who chased him behind the restaurant where he became trapped. Responding officers shot the suspect, but he may have ultimately taken his own life with a self-inflicted gunshot wound.

Other Calls Case Study: Officer dispatched to assist a probation officer

The second case examined involved an officer who was dispatched to assist a probation officer, who was meeting a subject on probation at his apartment. The probation officer was contacting the subject regarding him possibly being in possession of a firearm. The dispatched officer arrived, and while speaking to the suspect in front of the apartment complex with the probation officer, the suspect suddenly drew a handgun and shot the officer. The suspect then stole the wounded officer's weapon and fled the scene in his police vehicle.

The wounded officer was able to radio for assistance but later died as a result of his wounds. The suspect was pursued by other officers and critically wounded in a shootout with other officers.

Other Calls Case Study: Open line from 911 call leads to shooting of responding officers

The third case involved the investigation of an open line 911 call. There was no additional information other than the location of the residence where the phone was listed. Two officers were dispatched to the mobile home park to investigate the call.

As officers approached the mobile home, a woman spoke with the officers and informed them that the suspect had been drinking. The suspect then appeared holding what appeared to be a handgun. The officers ordered

him to drop it, which he did, but he then went back into the trailer and retrieved a shotgun. The suspect emerged from the trailer and began shooting at the officers. The suspect's gunfire fatally struck one of the officers and the second officer returned fire, killing the suspect. The open line 911 call was the result of a domestic dispute.

The three cases examined under this category, presented here in the above synopsis all reinforce the importance of coordination, information sharing, and the benefit of having two officers. While the presence of a second officer does not always prevent a fatal assault, they are usually instrumental in bringing the assault under control and apprehending the suspect. Officers taking action before adequate manpower is on the scene place themselves in jeopardy and may be taking an unnecessary risk, especially if there is information that indicates the suspect is armed and dangerous.

Information about the nature of the call or the specifics of the requested assistance must be evaluated to determine if additional officers are needed. As different agencies interact, they must share case or suspect information before approaching a suspect.

Summary of Important Data Points from Calls for Service Analysis

Calls involving a domestic disturbance or domestic-related assault were not only the most dangerous type of call for service, but they were also the underlying cause in other fatal calls for service analyzed in this report. Calls for *Shots Fired*, *Man with a Gun*, and *Suspicious Person* were the result of a previous or ongoing domestic disturbance, where family members had been assaulted or threatened by the suspect.

The raw emotions that are part of domestic relationships present a constant danger to officers who are summoned to investigate a dispute or assault. The case analysis has shown that these emotions are also often fueled by substance abuse, and the police quickly became the focal point of a suspect's anger, particularly when they attempt to take family members into custody.

Manner of Death

Of the 91 calls for service cases reviewed, 88 officers died as a result of gunfire. One officer was pushed and fell to his death, another officer was stabbed, and one officer was intentionally struck by a vehicle.

Years of Service

Officers killed after having responded to a call had an average of 12 years of service. Although this fact does not correlate to other data contained in this report, it is important to note the average experience officers had at the time of their death and dispel any notions that only younger and more inexperienced officers are killed in the line of duty.

Number of Officers on Scene

The number of officers on the scene of a call at the time of an officer fatality was analyzed. The research team then segmented the cases into groups where one officer was on scene, two officers were on scene, or three or more officers were on scene when the line of duty death occurred. Mentioned in the analysis of several of the calls for service types is the fact that 34 percent of the officers killed when handling a call for service were alone.

The reason officers encountered a subject alone fell into several categories with the most frequent reason being that the officer was dispatched to a call alone. As identified in the analysis of calls for service, there were instances of officers being dispatched to *Domestic Violence* calls alone and to the seemingly more innocuous *Disturbance* calls. The second most frequent reason was the officer was dispatched with backup, but did not wait for that backup to arrive before contacting the subject or entering a dwelling.

Officers who are killed by the subject during foot pursuits and officers who encounter subjects alone while canvassing are the next two most frequent reasons an officer is killed while they are alone. Other reasons include circumstances such as an officer shot while processing a crime scene alone when the subject returns.

Circumstances Where an Officer was Alone at Time of Death

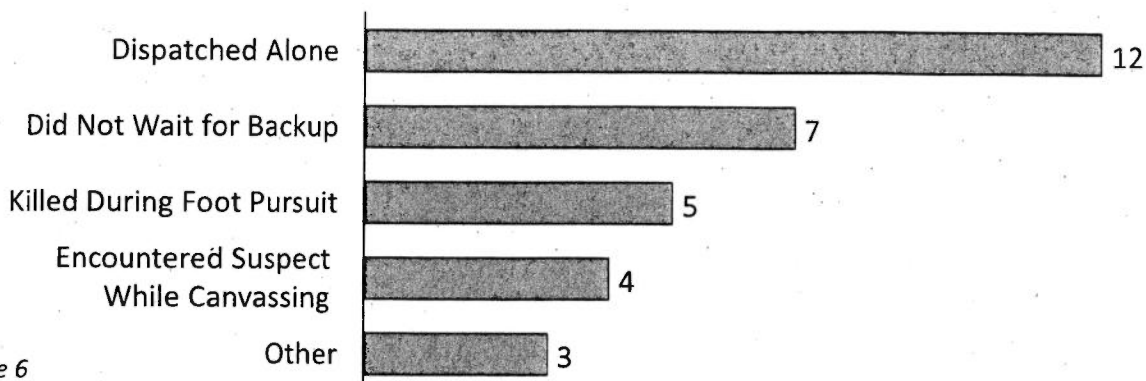


Figure 6

Officers Dispatched Alone

Officers dispatched alone to a call accounts for 13 percent, or 12 of the 91 cases that were analyzed. Four of those cases involved officers being dispatched alone to a *Domestic Dispute*. One officer was dispatched alone to a *Man with a Gun* call.

It should be noted that the research team is aware of the limited resources and manpower available to many law enforcement agencies across the country. Very often, rural areas have to depend on mutual aid from neighboring jurisdictions, which may have to travel a significant distance in order to respond to the call. Agencies should recognize the need to dispatch at least two officers to specifically-identified calls for service and officers should understand that it is imperative that the initial responding officer wait for back-up if at all possible.

This report is not meant to infer that two officers will solve the issue. In fact, there is evidence to suggest that in some circumstances officers in pairs are attacked at a higher rate than those who are alone and that the feeling of safety in numbers makes an officer more at ease than an officer would be if they responded alone. This notion is examined by Chief of Police Joel F. Shults, Ed D., who recently listed “5 reasons Back-up Calls Don’t Guarantee Safety.” (4)

Chief Shults points out that backup is not a cure-all, and that an officer who summons backup but fails to coordinate with the assisting officer “...plows into the call before help arrives,” placing themselves and the backup officer in danger.

Officers Not Waiting for Backup

In 8 percent, or seven of the cases reviewed, officers dispatched to calls did not wait for backup to arrive before contacting the suspect or entering a dwelling. Three of those officers were killed while responding to *Domestic Dispute* calls. Two of those officers had entered the suspect’s house before their backup arrived. In one *Burglary* call case, an officer was shot and killed as he entered a residence in which the complainant had reported forced entry.

Subjects Known to be Armed or Prior Threats to Law Enforcement

The vital role of information being gathered and forwarded to the responding officer cannot be overstated, as the more information an officer has the better decisions they can make. As one of the subject matter experts stated during the review of this report, dispatchers and officers must use the "When in doubt, give it out!" approach to providing responding officers all the available information.

Nearly half, or 45 percent, of the cases reviewed involved subjects reported to be armed or who had made threats. This information was provided to the responding officers via the dispatcher or came through information shared by other officers who had previous knowledge regarding the suspect. These include *Man with Gun* calls, *Shots Fired* calls, and many of the *Officer Needs Assistance* and *Robbery* calls. While some calls had elements of prior threats or a subject known to be armed, several cases had elements of both. The first case study in the previous section discussing the *Other* calls category involving the wanted felon who had made threats to law enforcement is an example of such prior knowledge.

When responding to a call involving someone who has made threats and/or is known to be armed, having adequate resources available to respond is critical. Officers responding to these calls must coordinate their response with one another and use sound tactics. In almost all of these types of cases, multiple officers were dispatched. There were two cases where an officer had been made aware of the suspect's threats and did not wait for backup. In almost 20 percent of these cases, the subjects had either a rifle or shotgun. Officers need to be mindful of their approach to calls with armed subjects, especially ones involving long guns. Several cases involved officers driving right up to the scene and immediately being fired upon.

Subjects Suffering from Mental Illness

At least 19 percent of the cases involved officers responding to a call that involved a subject with a reported mental illness. Close to half of those reportedly mentally ill suspects were either known to be armed or had previously made threats. While the NLEOMF does not collect data on a suspect's mental health, extensive open source research was performed on each of the 91 cases to determine whether or not the subject had a mental illness, and whether or not the responding officers were aware of it.

This area requires further study as the research team was careful not to simply take the mention of a mental illness as a confirmation that the suspect was suffering from a diagnosed disorder. Other sources and evidence were examined to make the determination that 17 cases involved a person who was mentally ill.

Self-Initiated Activity

Once the analysis of calls for service was complete, the researchers then examined the identified cases that involved so called, self-initiated activity. This analysis is the second major portion of the research team study and focused on cases where officers were killed while taking action on their own volition—actions such as conducting traffic stops for speeding, engaging in enforcement of ordinances, or investigating suspicious activity. These are patrol related duties where officers are proactively enforcing the law, as they observed a violation and stopped a vehicle or saw something suspicious and approached the person to investigate further. These actions were not the result of a dispatched call for service but were originated by the officer as they patrolled their assigned areas.

For the period studied, the team identified 41 cases of self-initiated activity that resulted in a line-of-duty death. The most common type of self-initiated activity found in the study was when officers conducted a traffic stop on a vehicle for a routine violation such as speeding or an equipment violation. This form of contact represented 63 percent of the overall self-initiated activity examined in the study.

Nature of Self-Initiated Activity in the 41 Cases Examined

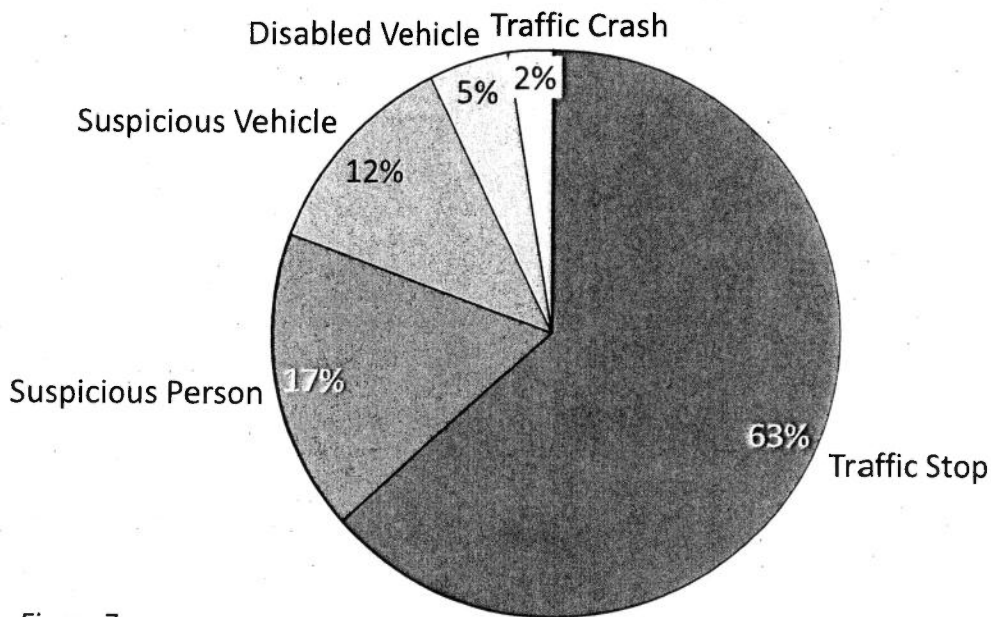
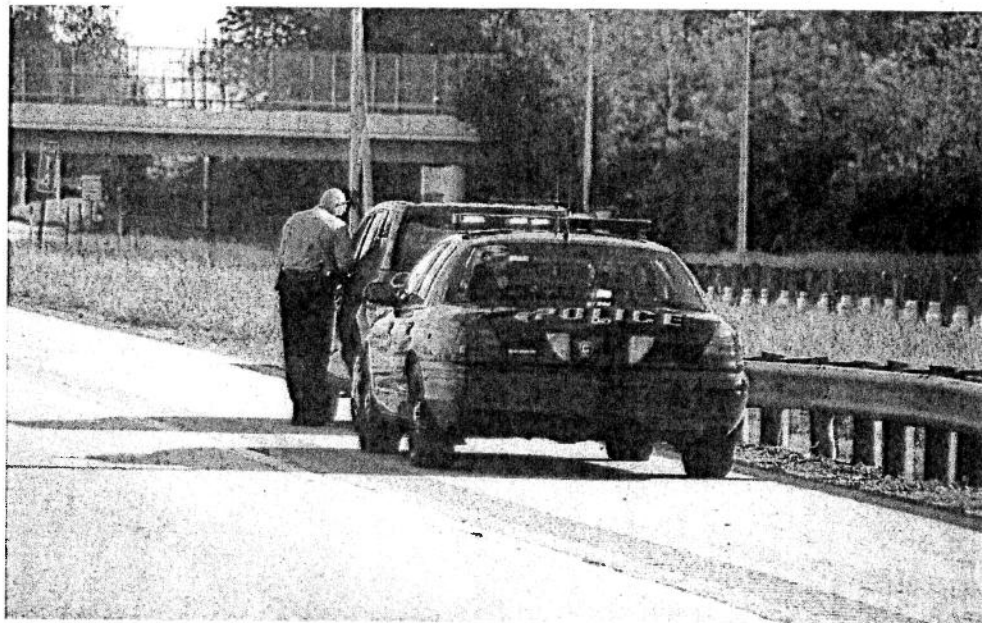


Figure 7

As seen in Figure 7, officers investigating suspicious persons and suspicious vehicles represent the next two largest types of instigated contacts. Although a vital aspect of policing, traffic stops and investigatory stops of persons and vehicles can be some of the most dangerous work a police officer performs.

The remaining cases of officers killed while engaged in self-initiated activity involved officers stopping to assist a disabled vehicle or to investigate an apparent traffic crash. In these instances, officers were reacting to an incident they came across while on patrol. These were not the result of a dispatched call for service or a request from another police unit for assistance.



Traffic Stops: A Closer Look

Traffic Stops accounted for 26 (63 percent) of the 41 self-initiated cases that lead to line of duty fatalities. Enforcing traffic regulations represent the most common form of contact the public has with law enforcement.

These cases provide valuable training points and lessons learned for law enforcement through dashboard camera footage that also includes an audio recording of the incident. Though painful and disturbing to watch, the research team reviewed those available videos to gain a full understanding of what happened during the fatal encounter.

The research team analyzed the cases involving vehicle stops to try and discover how each fatal encounter unfolded. The research team looked at the circumstances of each case and tried to glean what vehicle information the officer obtained prior to making contact with the driver, whether they notified the dispatcher of their location, and at what point during the stop was the officer killed.

Figure 8 below illustrates whether the officer died before making contact with the driver, while the officer was conducting an interview with the driver, while the officer is affecting their arrest, or after the suspect has been taken into custody.

Points of Time During Traffic Stops When Officers Were Killed

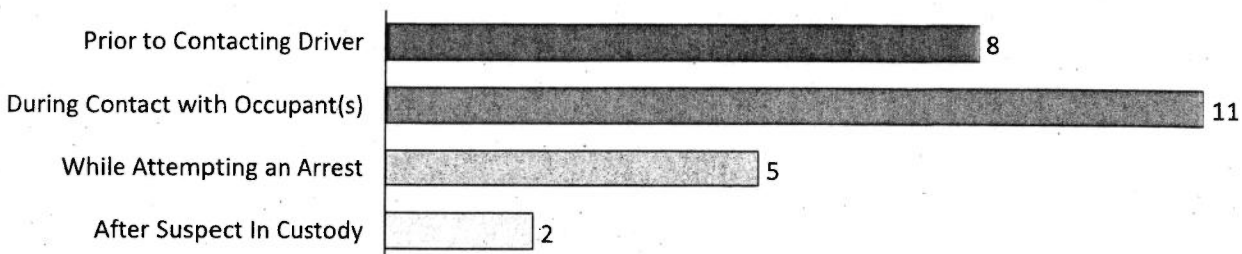


Figure 8

Officers that were killed before initial contact account for 8 (31 percent) of the 26 *Traffic Stop* cases. These cases involved officers who were shot while still in their patrol vehicles, having just exited their vehicles, or while approaching the window of the suspect’s vehicle.

The most frequent time an officer was killed was during their contact and interview of the occupant(s)—accounted for 11 cases (42 percent). The circumstances with these cases vary, ranging from situations where it was one officer and one subject outside of the vehicle, to multiple officers performing a pat down on a driver while the unattended passenger exited the vehicle and shot at officers. There is also no pattern of officers being outnumbered.

In examining the 26 *Traffic Stop* cases, it was found that 69 percent of the officers were shot after contacting the driver or passengers. Officers were in the process of running records checks or verifying information when they were assaulted. In one case, an officer who was alone requested backup believing the passenger in the vehicle he had stopped was giving him a false name. The officer then informed the dispatcher that he was going to get the suspect passenger out of the car. He was shot by the passenger, who was wanted, as he asked him to get out of the car. The officer still had the driver’s license on his person when the backup officer found him.

In 22 of the 26 cases, officers had notified the dispatcher of their location, the nature of the stop, and provided some vehicle information. In one instance, it was reported by the suspect who was later arrested that he could hear the officer running his name for warrants on the police radio and overheard the reply information verifying that he was wanted. This information was an important factor in the suspect’s decision to assault the officer.

In three cases, officers were found by passing citizens who called 911 to report the wounded officer. Three of the deceased officers were still in possession of suspect and vehicle identification and documentation when they were shot.

Officers killed while placing a suspect under arrest, or after the subject was in custody, following a traffic stop, represent the smallest number of cases, with five and two, respectively.

The cases where officers were killed while making an arrest involved shootings that occurred as the officer went to place the subject in handcuffs. In one of those cases, two officers were shot and killed when they asked an individual with an outstanding arrest warrant, to exit the vehicle.

One case that accounted for two deaths was the result of a suspect who was in custody following a traffic stop and arrest for impaired driving. The two officers, who were seated in the front of the patrol car, were shot by the suspect who had been put into the rear seat of the vehicle with his hands cuffed in front of him. The suspect retrieved a pistol that was hidden on his person and shot both officers. This tragic case is one of those whose circumstances, though rare, was notable and re-emphasizes the necessity of thorough searches and handcuffing prisoners behind their back.

Number of Occupants

The research team also looked at the number of vehicle occupants involved in fatal cases. This was examined to provide a perspective on what the breakdown was for officers being assaulted when stopping a vehicle occupied by just a driver or when stopping a vehicle with multiple occupants. Figure 9 details this information.

Number of Occupants in Traffic Stops that Ended in a Line of Duty Death

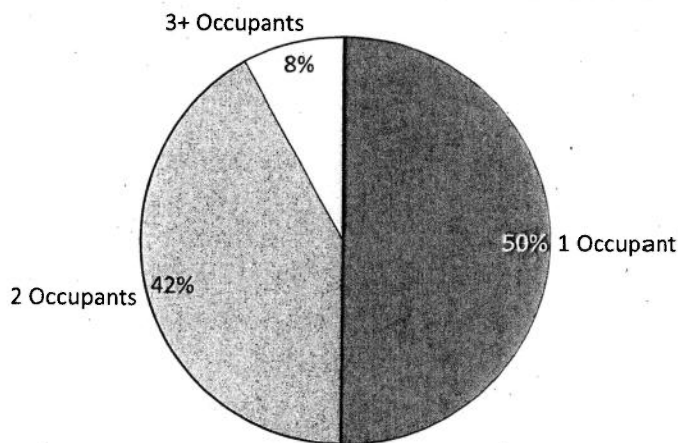


Figure 9

It is a general practice in law enforcement that officers stopping a vehicle will notify the dispatcher how many people are in the car. This information alerts the dispatcher and other officers monitoring the radio that the officer conducting the stop is outnumbered. This usually prompts swift backup assistance and will guide how the stop is conducted as there are now multiple people to monitor. This is tied to the assumption that the presence of multiple officers can present a greater threat than a lone driver. However, of the 26 *Traffic Stops* cases, 13, or

50 percent, involved a traffic stop on a vehicle that was occupied by only one person. Two occupants were present during 42 percent of the traffic stop cases, and 8 percent of the cases involved three or more occupants. Statistically the stop conducted upon a vehicle containing more than just the driver is no more dangerous than the stop of the single occupant vehicle.

Shooter

The research team also looked at who was doing the shooting during these stops. Clearly the shooter in the single-vehicle stops was the driver, but in looking at stops where there was more than one occupant, it was determined that there was a slight preponderance for the passenger to be the shooter. Figure 10 details this information.

Shooter in Traffic Stops that Ended in a Line of Duty Death

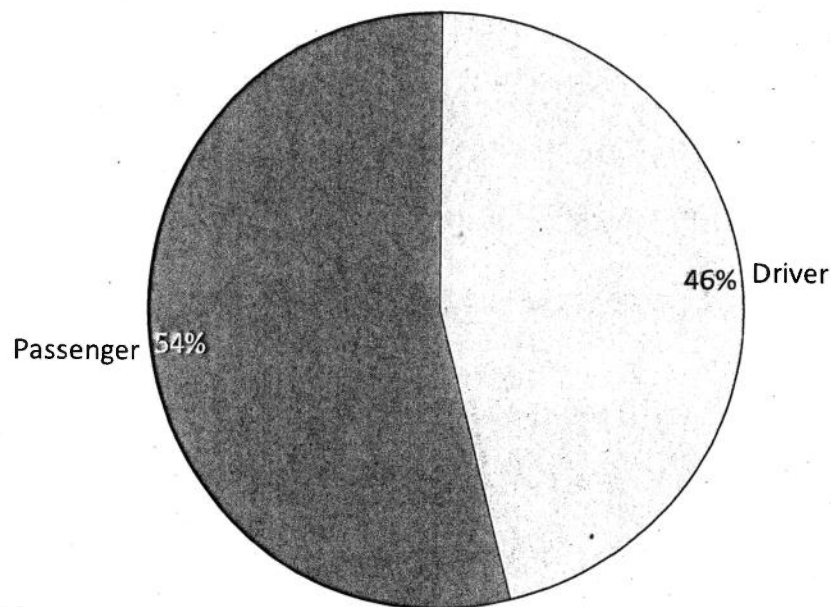


Figure 10

Half of the 13 *Traffic Stops* involved vehicles with multiple occupants. In those cases, it was nearly equal as to whether the driver or passenger was the suspected shooter in the officer's death. Passengers were responsible for shooting the officer in seven (54 percent) of the 13 cases.

Case Study: Traffic stop on a rural road

On a winter night along a rural stretch of road, a State Trooper conducted a traffic stop on a pickup truck for an unknown violation. The trooper radioed in his position and the license number of the pickup before

approaching the vehicle. The trooper made a passenger-side approach and made contact with a male driver and female passenger.

The trooper asked the driver for his license, registration and proof of insurance, and as the driver pretended to reach for his glovebox with his left hand, he drew a handgun in front of the female passenger's face and fired at the trooper. His shot struck the trooper in the head, killing him.

The suspect then fled the scene in the pickup. Assistance was sent to the location of the trooper's stop because the dispatcher could not raise him on the radio. A local sheriff was the first to respond and found the trooper in a ditch by the side of the road. The subsequent investigation, which was initiated off of the vehicle license information the trooper had provided the dispatcher, resulted in the shooter killing himself before being taken into custody.

The trooper, in this case, had no way of knowing that he had stopped an agitated and paranoid drug user who simply decided to kill him. By the trooper reporting the location of the stop and providing a description of the pickup and license number, he left an investigative trail to follow.

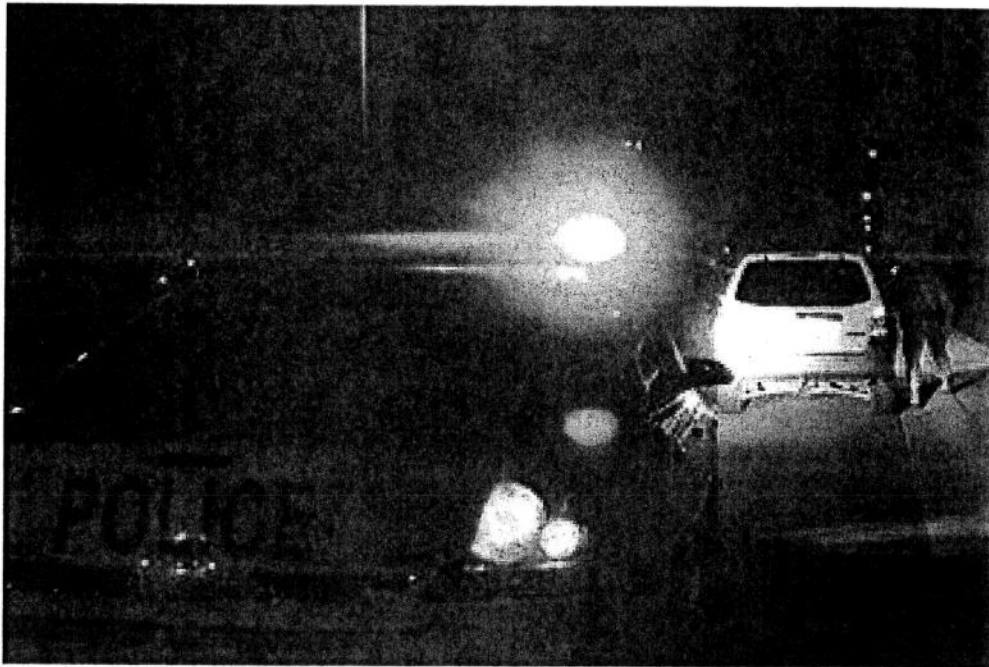
The passenger-side approach can be safer than the driver-side approach and can catch suspects off guard. It can protect officers who may be struck by passing traffic and depending on the type of vehicle, offers more protection to the approaching officer.



Red Flags and Recommendations

- Officers making traffic stops are at risk from an unexpected assault as they do not always know who they have stopped and how someone may react.
 - Officers must notify the dispatcher of their location and vehicle description, including license plate number and the number of occupants.
 - Officers with Mobile Digital Computers should run the vehicle's license plate before making contact with the driver and, if not, await the dispatcher's response information on the vehicle.
- Dispatchers must continually check on the welfare of officers who have marked out on a traffic stop and send backup to the officer's location upon verifying a wanted status on a vehicle or suspect.

- Officers must constantly monitor the behavior and language of drivers and suspects on traffic stops. Remember that any unusual delay in providing requested documentation or excessive repetition of requests or explanations can be a precursor to an assault.
- Officers should wear radio ear pieces so that driver's and wanted suspects cannot hear the information that may tip them to the fact that they are about to be arrested and give them time to prepare.
- Right side approach is the safest to protect against struck-by crashes and may tactically put the driver at a disadvantage as the approaching officer has some limited protection from the vehicle's door frames (pillars).
- Officers must thoroughly search their suspects before securing them in the rear of a patrol car, and must ensure they handcuff suspects with their hands behind their backs and the handcuffs must be double locked.



Suspicious Persons and Vehicles

The second largest category of self-initiated activity or contact was when an officer(s) observed a suspicious person or suspicious vehicle and conducted a stop of that person or approached that vehicle to investigate it and the occupants. These types of activities represent 12 of the 41 cases examined, accounting for 29 percent of all the self-initiated actions.

All of the cases under the suspicious person/vehicle category involved a single officer approaching a parked vehicle or stopping a suspect who was on foot to determine if they were engaged in criminal activity.

Seven of the 12 cases involved the stop of a suspicious person; where the officer engaged a suspicious person who was walking or in one instance on a bicycle, and effected or attempted to conduct a stop of that person.

In each of those seven cases, the suspects were armed and shot the officer at close range as they were talking to the officer or being pursued. In all the cases, the officer conducting the stop had notified the dispatcher of their location and indicated that they were stopping a suspect, or in one case, multiple suspects.

In one of those cases, the officer was shot as he sat in his police vehicle after pulling up alongside a suspect who was walking on the sidewalk. The officer had him under observation and knew the suspect's name. The suspect then began to walk away from the officer as the officer was awaiting confirmation of an outstanding warrant via the dispatcher. The suspect shot the officer as he drove up next to the suspect to initiate contact and conduct a stop.

In another case, an officer, who had requested backup, confronted three suspects who were in a park afterhours. The officer was shot by one of the suspects as he was preparing to conduct a pat-down search for weapons.

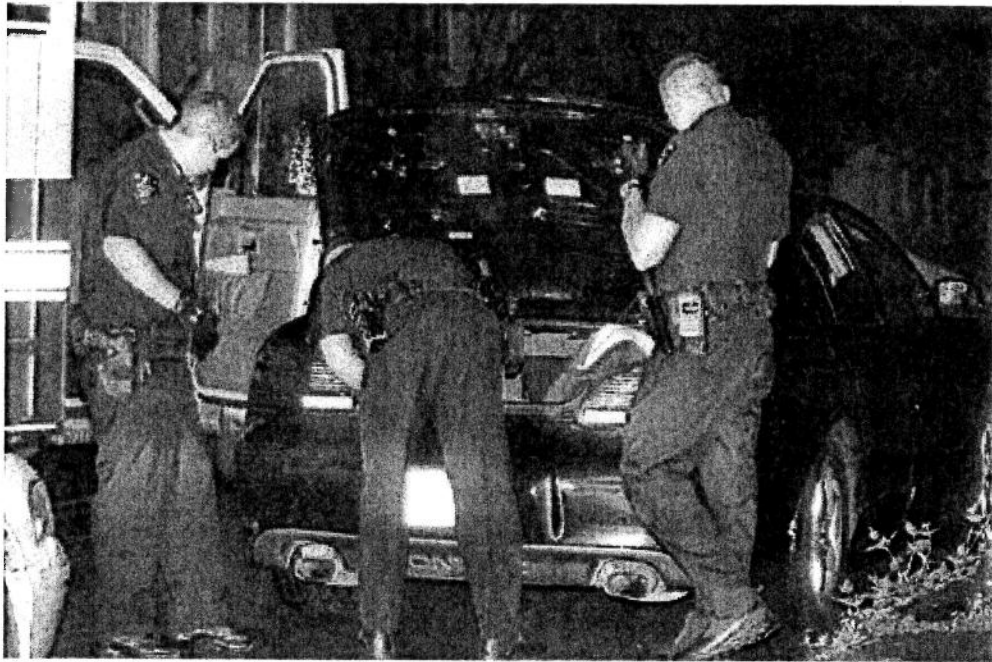
All of the officers killed while making self-initiated stops for suspicious activity or investigating a suspicious vehicle were shot and killed.

In most of these cases officers were shot by the suspect as they attempted to stop them or during the initial contact. However, three of the officers killed under the suspicious person/vehicle category were shot from a concealed position or from the suspect vehicle before making contact with its occupants. These officers were essentially ambushed as they approached to make contact.

In one situation, an officer encountered what appeared to be a crash on the side of the road and was killed as he approached what in reality was a domestic-related incident.

Part of the dangers officers face when approaching a suspicious person or vehicle are the unknowns: Is this person armed? Are they wanted? Is what the officer observed a misunderstanding or misinterpretation of the situation? Officers are at a disadvantage in these cases, as they do not know what is in the mind of the suspect, or what criminal activity they may have interrupted. In some of the cases, it appears that the officer's mere presence prompted the suspect to react violently, feeling they were in jeopardy.

Here again the postulation that two officers are better than one, particularly as it relates to making stops, is further supported by retired Scottsdale (AZ) Police Detective Jim Hill, who was quoted in the David Griffith article (1) saying, "Until you get up on the driver and start asking questions, you don't have any idea what you are getting into and things can escalate very quickly. And when you leave the car to go back to your car to do a reference check, you don't know what is happening in that car. That's why you need another officer to watch the driver and the passengers."



Case Study: Officers attempt to stop a suspicious man

On a late summer evening, in a city police department of just under 850 employees, two uniformed tactical officers patrolling in a marked police car observed a suspicious male who they had just earlier observed in a vehicle. The suspect was now walking along the sidewalk, and as the

officers stopped and got out to approach him, the suspect fled with one officer chasing behind him on foot. The second officer got into the police car and informed the dispatcher that they were involved in a foot pursuit, as he maneuvered the police car in the direction of the chase.

As the officer who was pursuing the suspect on foot got close to the suspect, the suspect turned and fired a round into the officer's face, causing him to fall forward, tripping the fleeing suspect. As the suspect was getting to his feet, the second officer in the police car pulled up, and the suspect began to flee again.

The second officer then pursued the suspect on foot, and as the suspect pointed the firearm at him, the officer fired his service pistol, striking the suspect who then fell to the ground. The officer maintained cover on the wounded suspect as additional police units arrived on the scene.

The officer who was shot in the face was transported to a hospital where he later died. The suspect, wanted on an outstanding warrant, was treated for his wounds and later charged with the murder of the officer.

The suspect in this case was armed, and his fear of that discovery, and the fact that he was wanted drove him to flee and use deadly force against his pursuers. As in previously recounted instances, when two officers were present, the second officer was able to shoot the armed suspect, maintain custody over him until additional assistance arrived, and summon medical assistance for his wounded partner.

This report also looked at cases where officers were conducting stops or approaching parked suspicious vehicles. The research team looked at five cases where officers were shot and killed as they investigated suspicious vehicles that they observed or happened upon while on patrol.

In those five cases, three officers were shot as they approached the vehicle before any contact or conversation was initiated with the driver or passengers of the vehicle. In examining those three cases, it appears that in two of them, officers did not call in their location or a description of the vehicle they were about to approach. It may have appeared to the investigating officer that the motorist(s) may have been having trouble or may have been in need of assistance.

These encounters turn deadly in a matter of seconds, with officers never having a chance to respond. Many of these situations can set in motion large-scale manhunts and subsequent crime sprees by the fleeing suspects who are determined to escape.

Case Study: Investigation of a suspicious couple in a car sets off a chain of events that leads to the death of two deputies and a prolonged chase

On an October morning on the outskirts of a busy city, two sheriff's deputies from a large agency of over 900 sworn personnel approached a suspicious vehicle parked in the rear of a motel. The deputies got out of their cruiser, approached the vehicle, and observed a female standing at the rear of the vehicle by an open trunk. Upon seeing the approaching deputies, the female closed the trunk and got back inside the front passenger seat of the vehicle.

As one deputy approached the passenger side to speak with the female, the second deputy approached the driver's side. As the deputy approached the driver's side, the driver began firing at the deputy, striking him in the head and killing him. The driver then fired rounds at the second deputy who was on the passenger side of the car, missing him.

The second deputy drew his service weapon and began firing at the car as it sped off. The second deputy immediately radioed that there was an "officer down" and requested medical assistance. The deputy also provided responding units with a description of the fleeing suspects, the vehicle, and their last known direction.

The suspects traveled a short distance and attempted to carjack another vehicle and ended up shooting that driver before successfully carjacking a second vehicle.

The pair then fled using that vehicle to carjack yet another vehicle, a pickup truck, and were observed transferring a long rifle into the pickup from the first carjacked vehicle.

As police units from across the county began to converge on the area, the pair was spotted by deputies in an adjacent county, where there was another exchange of gunfire as the two suspects abandoned the pickup truck. The male suspect then shot and killed another deputy and wounded a second as the two suspects were able to steal a marked patrol car and

continued to flee. Officers pursued the suspects until they crashed the patrol car into a ravine and began to again exchange gunfire with deputies.

It was later revealed the suspects were a married couple and were eventually taken into custody after they had barricaded themselves in a house and surrendered after officers gassed the home. It was still unclear as to their motive and what prompted them to open fire.

Officers who are investigating suspicious vehicles are at an even greater disadvantage when making an approach to the vehicle. Dark tinted windows, door pillars, and glare can all help to conceal occupants within the vehicle. The officer is exposed when approaching and can only react if gunfire should erupt. As illustrated in the above case study, extreme caution must be used when approaching unknown situations.

In another case examined, a deputy on his way home, stopped to investigate a car on the side of the road. Before he could approach the vehicle, he was gunned down by a distraught military veteran involved in a domestic dispute. The military veteran then took his own life.



Red Flags and Recommendations

- Officers are vulnerable as they approach and make contact with suspicious persons:
 - Officers must ensure that the dispatcher and other officers are aware of their location and the investigative actions they are about to take.
 - Whenever feasible, the initiating officers should request an additional unit and wait for back up to arrive before making contact. These actions may not always be possible as suspects must be kept under surveillance until the secondary officer can arrive.
 - Officers must tactically approach the suspect and remain on guard, even if they feel they know the suspect or have dealt with them before.
 - Officers must anticipate a foot pursuit and be prepared to coordinate the chase to prevent ambush situations by subjects lying in wait. Evaluate the efficacy of engaging in a foot chase. Many agencies are now adopting foot pursuit policies.
 - Agencies should consider providing training in recognizing the signs of an individual carrying a concealed firearm. This training provides officers with key observational skills in recognizing the characteristics of armed persons and helps promote safe, tactical approaches to handling such persons.

When looking specifically at suspicious vehicle stops or investigations within the overall self-initiated category, there were three cases where officers were killed as they approached the suspicious vehicle before having any contact with the occupants.

As previously mentioned and a consistent theme throughout this report is that all may not be as it appears. In one case an officer stopped to investigate what appeared to be a crash and was shot as he approached a suspect engaged in a domestic dispute. Once again, we see that domestic-related incidents and crimes are an underlying cause of many of the line of duty death cases studied.

Additional Data on Calls for Service and Self-Initiated Activity

Types of Weapons Used

In an analysis of both calls for service and self-initiated activity, which totals **132** cases, officers died as a result of gunfire in 129 cases. One officer was stabbed, one officer was pushed and fell from an elevated area, and one officer was intentionally run over by a vehicle.

Of the 129 officers who were shot and killed, 92 cases (71 percent) involved suspects armed with a handgun. In 27 cases (21 percent), suspects used a rifle against the officer(s). A shotgun was used in 10 cases (8 percent).

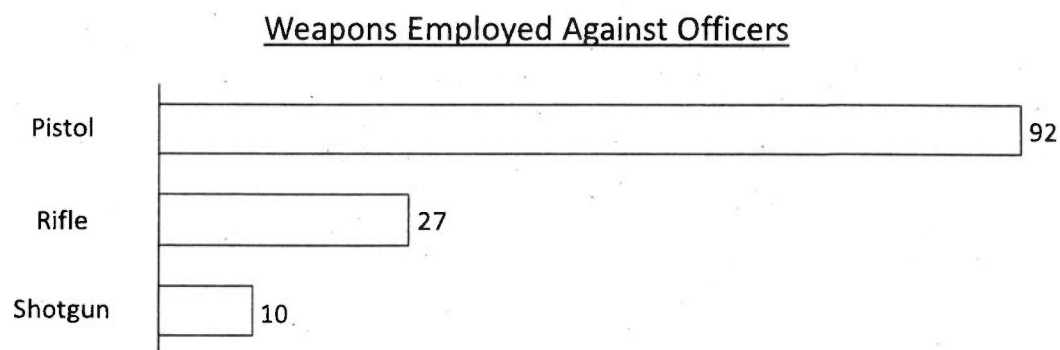


Figure 11

Although the use of handguns is the clear majority in cases where an officer was killed with a firearm, it should be noted that more than 20 percent of the officers were killed by suspects with rifles. The majority of those rifles were semiautomatic, magazine fed weapons, such as an AR-15 or AK-47 style weapon, not a hunting rifle or bolt action rifle. Most officers are not equipped with body armor that can defend against rifle rounds. Although many cases involved officers shot in the head, where having body armor would not have prevented their death, there are several cases where data provided to us specifically calls out that that a rifle round penetrated the officer's vest.

Body Armor Usage

Of the 132 cases, 14 percent of officers were not wearing any body armor at the time of their death.

Body Armor Usage Amongst Officers Killed in the Line of Duty

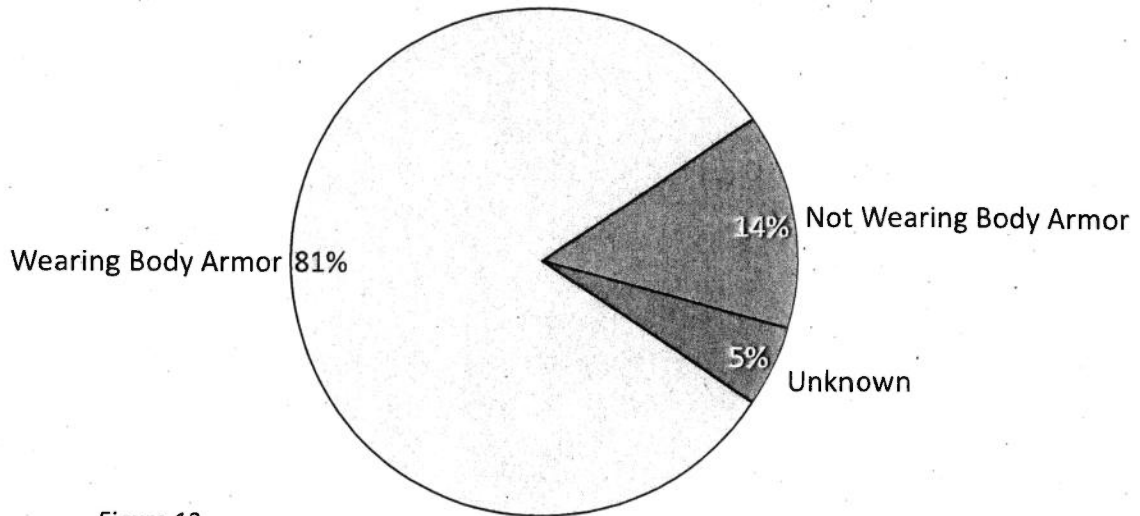


Figure 12

Fatal Traffic Crashes

Although traffic crash data is not the core focus of this report, the research team identified 78 cases during the period in which an officer was dispatched to an identifiable call for service and crashed while en route. More than half, or 53 percent, of the officers who died in fatal traffic crashes while responding to a call, were en route to assist a fellow officer that requested help. Two cases involved officers responding to assist EMS personnel that needed help. The second most frequent call type where officers crashed while responding was for traffic crashes. The full breakdown of types of calls for service is highlighted in Figure 13 below:

Type of Call for Service in the 78 Cases Where an Officers Crashed While Responding

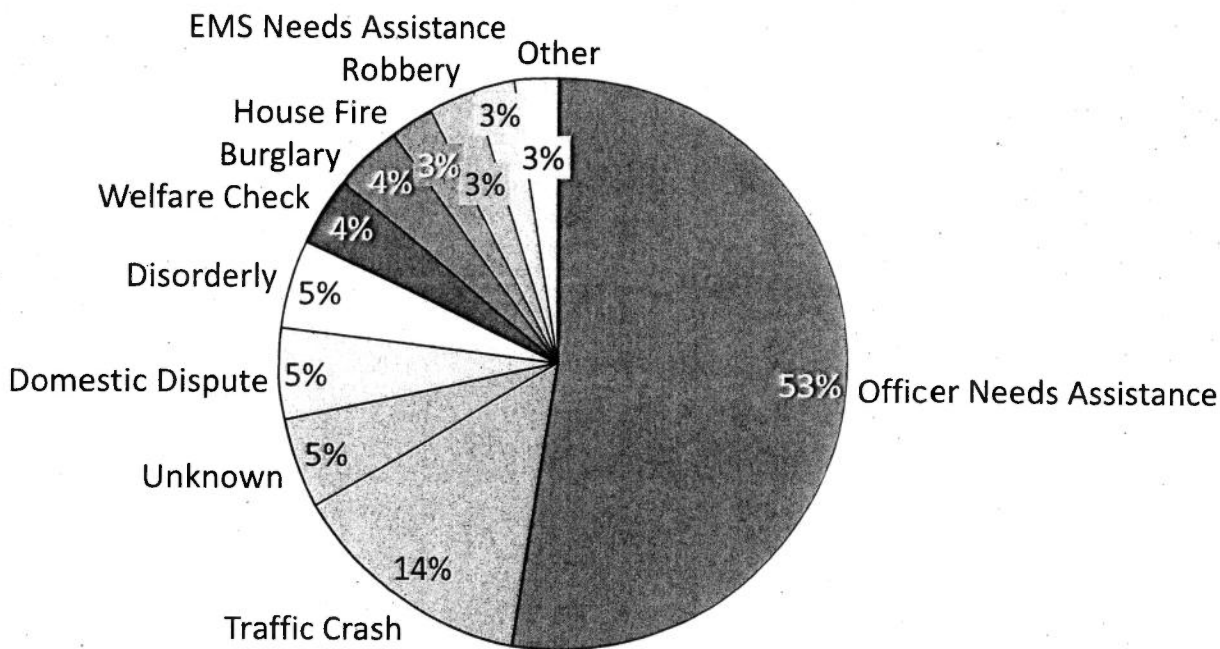


Figure 13

Single Vehicle Crashes

It is also important to note that 45 of the 78 fatal traffic crashes were single vehicle crashes, representing nearly 58 percent of the crashes. Four of the crashes involved officers colliding with each another while en route to a call.

Seat Belt Usage

Roughly 20 percent of the officers that died in fatal traffic crashes en route to a call were not wearing seat belts.

A Look at 2015 Year Fatality Data

The NLEOMF recorded 123 law enforcement officers who lost their lives in the line-of-duty in 2015. While the final number of cases has been determined, not all of the documents for these fatal incidents have been received, and the details of the specific type of call for service or type of activity the officers were engaged in when killed are currently incomplete.

Of those 123 cases, 48 died in traffic-related incidents, 41 officers were shot, and 28 died as a result of other circumstances such as heart attacks, falls, or job-related illnesses as a result of the 9/11 rescue and recovery operations. Six were killed in a bomb explosion while conducting counter-terrorism operations abroad.

Firearms-related Fatalities

In looking at the 41 officers shot, 39 were intentionally shot by suspects while two officers were inadvertently shot during training. The most common type of activity involved in those fatal encounters was the self-initiated traffic stop. Seven of the 39 officers feloniously shot were killed while conducting traffic stops.

Six officers were shot and killed in ambush-style attacks in a variety of calls for service and circumstances. Of those ambush-style attacks, four appear to have been perpetrated against unsuspecting officers as they were seated in their cars, or engaged in non-enforcement activity. An example of these ambush attacks occurred when an unsuspecting deputy sheriff was shot while filling his patrol car with gas.

In eight of the incidents in which officers were shot and killed, domestic violence or domestic-related disputes were the overt or underlying cause of the encounter between law enforcement and the suspect.

Five of these fatal cases stemmed from officers responding to a domestic disturbance call, while one case involved an officer serving a "domestic injunction," another officer was killed as he responded to a domestic-related *Shots Fired* call and a detective was shot while guarding an injured prisoner charged with a domestic-related offense at a hospital.

Five officers were shot and killed while investigating suspicious persons. Four officers were killed while attempting to arrest suspects for a variety of crimes, such as robbery or serving an arrest warrant.

In a tragic situation at the end of the year, three officers were shot and killed by a fellow police officer following the announcement of an internal investigation.

One officer was shot and killed while transporting an already processed prisoner who was apparently armed with two handguns. This case is still under investigation.

In three of the 39 felonious shootings of officers, the officer was shot with his own weapon after being disarmed by a suspect.

Traffic-related Fatalities

There were 48 traffic-related fatalities in 2015. Officers died in 34 automobile crashes across the country, of which 16 were single-vehicle crashes. Ten officers were struck and killed by vehicles and four officers died in motorcycle crashes.

Further analysis of body armor usage, seatbelt usage, and the specific type of call for service they were responding to, and the actual circumstances of their death will be conducted once the 2015 cases have been finalized, and all case material has been submitted.

The 123 law enforcement deaths in 2015, which includes Federal agents, correctional officers, and territorial and tribal agencies, represented a 1 percent increase over 2014 and a 9 percent increase over 2013.

Conclusion

As this report was being finalized, the nation is reeling from the ambush shooting deaths of five Dallas, TX police officers, followed days later by a similar attack on uniformed officers in Baton Rouge, LA in which three officers were killed. These ambushes of uniformed police officers have led police departments from New York to Los Angeles to deploy patrol officers in pairs for greater safety.

This report has concluded that having two or more officers on the scene of a call for service is safer and provides the additional support needed if a fatal encounter occurs. The researchers are not emphasizing two-man patrols but believe there is inherent safety of having multiple officers on the scene of those calls for service that are potentially dangerous and violent.

Publications such as the “*One Man, Two-Man Debate*” *Criminal Justice Publications* in 1978 (6), reported that it was safer and more fiscally sound for single officer patrols when compared to two-man patrols and this debate seems to be a constant discussion in law enforcement with varying opinions. This study, despite there being no statistical demonstration that two officers on a scene are less likely to sustain fatal assaults compared to just one, demonstrates that when there are multiple officers on the scene, particularly on domestic-related calls, the number of fatal assaults drops. The researchers also concluded that two officers handling a call, regardless of call type, are better than one because in almost all the fatal calls and deadly encounters examined, the secondary officer was able to stop the deadly assault by the perpetrator, request assistance, provide immediate first aid, and control the scene.

There have also been studies that, contrary to this report’s findings, indicated that officers are more likely to be killed or injured while responding to robberies and burglaries compared to domestic violence calls. In a study of 771 law enforcement deaths from 1996-2009, “When Officers Die: Understanding Deadly Domestic Violence Call for Service,” *The Police Chief* magazine, by Shannon Meyer, PhD, and Randall H. Carroll (7), the researchers concluded that there was a myth regarding the greater danger posed by domestic violence calls and their research actually supports a different set of call types being more dangerous.

Analysis of the NELOMF fatality data shows that domestic-related calls for service resulted in 22 percent of officer fatalities within the five year study period; more than any other type of call. The research further found that domestic-related disputes were the underlying cause in other calls for service not initially dispatched as domestic-related. In one of those fatal encounters, an officer was investigating a seemingly unrelated traffic complaint.

In a 2005 article by Gerald W. Garner, titled “Fatal Errors: Surviving Domestic Violence Calls, Police,” *The Law Enforcement Magazine*, (8) the author echoes the findings of this report by emphasizing the importance of waiting for backup officers, avoiding complacency, using team

work, and mentions the importance officer weapon retention. These fundamental steps apply to all calls for service; not just domestic violence calls.

Leadership, solid training, and clear policy are the foundation on which many of the outlined recommendations can be achieved and future repetition of these cases be prevented.

The path has to be set from the top and filter its way down to the officers answering the radio and out enforcing the law. All the facets of law enforcement must be involved in making the job safer; from the call taker to the dispatcher to the field supervisor to the officer answering the call. They are all part of a chain of information and communication that should make responding to these deadly calls for service safer.

Accurate information, good communications, and the proper exchange of information between call takers, dispatchers, responding officers, and supervisors is critical to the safety of officers and citizens alike. And dispatchers must continually check on the welfare of officers handling calls, especially on priority high risk assignments.

Accurate information on the type of call, the parties involved and any background knowledge regarding the person, place, or vehicle involved can have a dramatic impact on the eventual outcome of the incident. In many of these deadly incidents, officers were dispatched alone or failed to wait and coordinate with their assisting officers. Information sharing is vital and once a call for service comes into a 911 center, barracks, or station, the dispatcher should be working diligently to provide those responding to the call as much information as possible to enhance safety and allow for a more educated approach.

Equally important is the exchange of information between officers and between the officer and dispatcher once they have arrived at the call location. The many scenarios and case studies that were described in the report reinforce the patience and diligence required by officers when investigating complaints or making investigatory stops, to provide their precise location and a description of the vehicle or persons being stopped. This fact is highlighted by the cases studied in which a single officer was on a call, or on a stop, or investigating a suspicious vehicle, and was found deceased by another officer or civilian. The report also identified instances when officers did not wait for the assisting dispatched unit before making contact. Similarly, researchers identified cases of officers requesting assistance, but instead entered homes, or moved to arrest a suspect, before the assistance arrived.

Another key takeaway in the variety of cases studied was that first line supervisors must address and correct bad habits of their officers, such as not calling in their stops or not waiting for backup before entering a location. Supervisors must also take charge of coordinating responses to potentially deadly scenes such as *Officer Needs Assistance*, *Shots Fired*, *Burglary in Progress*, and *Robbery in Progress* calls.

This report emphasizes the idea that no call is routine and that dispatchers and officers must not become complacent and fall into a false sense of security when answering seemingly minor calls such as noise complaints, or alarms. Dispatchers and supervisors must also ensure that there is coordination and communication between jurisdictions when there is a multi-agency response. All officers responding to a call for service must be fully aware of the circumstances, background, and any other relevant information before arriving at the scene. They must know who their backup is, their distance from the scene and what the officer is wearing if they are not in uniform or in a marked patrol vehicle.

This report also revealed the need for continuing training in traffic stops and tactical approaches to vehicles. The right-side approach can be the safest approach from a tactical standpoint as well as a roadway safety standpoint.

As indicated by an analysis of weapons used against officers, and the fact that 21 percent of officers were shot by suspects using high powered rifles, there is a need to evaluate the issuance of hard body armor, helmets, and ballistic shields that can be quickly-deployed in high-risk incidents. Additionally, the use of ballistic panels for vehicle doors should be evaluated.

Finally, the report and its findings identify three steps that can be immediately addressed by supervisors and peers in every law enforcement agency: encourage officers to slow down when responding to calls (specifically, *Officer Needs Assistance* calls), wear seatbelts, and wear issued body armor.

Summary of Findings

This analysis of law enforcement deaths yielded the following summary of findings for law enforcement chief executives and practitioners:

Calls for Service

- Calls related to domestic disputes and domestic-related incidents represented the highest number of fatal types of calls for service and were also the underlying cause of several other calls for service that resulted in law enforcement fatalities.
- Calls that were classified as disturbances, such as disorderly persons, noise complaints, or nuisance violations were the next largest category of call type in which responding officers were killed, accounting for 18 percent of the total call type analyzed.
- Thirty-four percent of the officers killed in the study of calls for service were alone when they were assaulted. In 12 of those cases, officers had been dispatched alone.
- In 45 percent of all the cases in which officers were responding to a dispatched call for service that ended in a fatality, the officers had been advised the suspect(s) might be armed, or they had made prior threats. This number represents calls from all of the categories.
- A small but significant number (8 percent) of officers arriving first on the scene of a call took action by themselves, rather than coordinate with the backup officers they had requested or the additional units already en-route.
- At least nineteen percent of the suspects in the cases examined were reportedly suffering from a mental illness.

Self-Initiated Enforcement Activity

- Sixty-three percent of officers who were killed while engaged in self-initiated action were conducting a traffic stop for vehicle enforcement.
- The next largest categories of activity were officers stopping suspicious persons or suspicious vehicles representing 17 percent and 12 percent, respectively.
- Fifty percent of the fatal cases involving traffic stops involved only one occupant in the stopped vehicle.
- In 42 percent of the fatal traffic stop cases, the officers were assaulted while speaking to the occupants of the car.
- Officers had notified the dispatcher of their location and provided vehicle information in 22 of the 26 traffic stop cases examined.
- Officers are at a disadvantage as they make contact with suspicious persons and drivers because they cannot predict how the suspect(s) will react, or fully understand the situation to which they are responding.

- Officers were slain with handguns in 71 percent of all the cases studied and with a rifle in 21 percent of the cases. Shotguns were used in 8 percent of the cases.

Traffic-related Fatalities

- Crashes accounted for a high number of police fatalities over the five-year period totaling 211 deaths, of which 78 of those were responding to a dispatched call for service.
- Of those 78, 53 percent were responding to an *Officer Needs Assistance* call or a radio request for emergency assistance from a fellow officer.

Summary of Recommendations:

- Greater emphasis should be placed on the need for two officers to respond to calls for service and that officers should wait for the secondary unit or the backup assistance they requested before acting.
- Improve communications and information-sharing for officers on the street who are responding to calls for service. Call history, warrants and arrest history for the location and any previously identified mental health issues should be readily available.
- Conduct dispatcher and supervisory training to better coordinate responses to high priority calls such as *Officer Needs Assistance*, *Robbery in Progress*, and *Shots Fired*. Ensure that domestic violence cases are monitored closely and that dispatchers challenge officers for their welfare regularly when they are on the scene of a high priority call.
- Multi-jurisdictional and wide-scale interagency responses to calls and dynamic scenes must be de-conflicted to prevent friendly fire incidents and officers who are assigned together should be trained together.
- Officers must be empowered to lead at all levels in order to better handle rapidly evolving dynamic situations.
- Consider the use of ear pieces with radios to prevent suspects from hearing returns on name checks and license checks, which could prompt them to assault officers or flee.
- Seek out available free training such as the DOJ's VALOR's curriculum entitled *Recognizing the Characteristics of an Armed Suspect*, Below 100, FBI LEOKA, as well as Crisis Intervention Training (CIT) to better identify and assist those with mental illness.
- Consider training officers on passenger-side approaches during traffic stops to increase the officer's tactical advantage and reduce the likelihood of being struck by a passing vehicle.
- Policies must be examined and put in place to reinforce the training and further create a culture of safety among officers and agencies.
- Agencies should consider equipping all patrol officers with electronic control devices and incorporate them into their use of force training curriculum.

- **First-line supervisors must correct dangerous behaviors such as complacency, speeding, not wearing seatbelts, not wearing issued body armor and failing to wait for backup before taking action. ***

***The researchers recognize that waiting for backup is not always possible as situations can evolve rapidly and officers may have to act unilaterally to save a life.**

Project Director and Researchers' Information

John Matthews is the Director of Federal Partnerships for the National Law Enforcement Officers Memorial Fund (NLEOMF) and a former chief of police. Matthews has been in law enforcement for more than 30 years, and has Bachelor's and Master's degrees in Administrative Management and an Advanced Law Enforcement Certificate.

Mr. Matthews has developed over 100 law enforcement and public safety initiatives for federal agencies including the Department of Justice, Department of Homeland Security, Department of Transportation, Department of Defense and the Department of Education and is nationally recognized for his work in officer safety and wellness, community policing, and his expertise in mass shootings.

Mr. Matthews is an award-winning writer and the author of seven books including: *The Eyeball Killer*, a firsthand account of his capture of Dallas' only serial killer; *Police Perspective: Life on the Beat* an anthology of policing stories and *Mass Shootings: Six Steps to Survival* which examines four decades of these deadly crimes.

The research, analysis and preparation of this report were created by two staff members of the NLEOMF who served or currently serve in law enforcement.

Nicholas Breul is a retired lieutenant with the Metropolitan Police of the District of Columbia and served actively in law enforcement for more than 27 years. Mr. Breul's extensive career included serving as a detective, a patrol sergeant, a detective sergeant in homicide, and as an agent conducting investigations into fatal police use of force.

Mr. Breul was a member of a highly professional group of experienced investigators who formed the Fore Investigation Team (FIT) and earned a Weber Seavey award for their thorough and impartial investigations into police use of force.

He was later promoted to lieutenant and served as the Public Information Officer for the police department and went on to supervise the Traffic Safety Branch, which included the Major Crash investigative unit.

Mr. Breul retired in 2013 and became the Director of Security Operations for the Washington National Cathedral. There he oversaw a 13-person Special Police Officer corps and was responsible coordinating security for many high-profile events such as the inaugural prayer service and state funerals.

In 2014, Mr. Breul joined the NLEOMF bringing his passion for law enforcement and history with him as he became the Director of Officer Safety and Wellness.

Working with him is Michael Keith, the Senior Project Manager for Officer Safety and Wellness. Mr. Keith is currently a fully-sworn Reserve Officer with the Metropolitan Police of the District of Columbia and volunteers weekly handling patrol duties.

Previously, Mr. Keith spent three years with BAE Systems, Inc., an international defense and aerospace company, where he worked in the corporate strategy and planning group. He also worked on corporate initiatives such as mergers and acquisitions and strategic planning. This work included the divestitures of several law enforcement focused companies, and the acquisition of a full-motion video analytics software company that serves the intelligence and federal law community.

Prior to that, he spent three years as an analyst with The McLean Group, where he provided advisory services to government contractors who supported defense and intelligence agencies. This included the acquisition of a classified communications software and hardware provider.

ENDNOTES

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2. "Think It Through" by Lieutenant Amaury Murgado of the Osceola County (FL) Sheriff's Office, *Police: The Law Enforcement Magazine*, November 2015, Volume 39 Number 11, Page 14
3. "Ambushes of Police: Environment, Incident Dynamics, and the Aftermath of Surprise Attacks Against Law Enforcement, by George Fachner and Zoe Thorkildsen. 2015 Washington, DC: Office of Community Oriented Policing Services
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6. "When Officers Die: Understanding Deadly Domestic Violence Call for Service, By Shannon Meyer, PhD, and Randall H. Carroll *The Police Chief Magazine*, May, 2011, Issue 5

Gund, et al. v. County of Trinity, et al.
Supreme Court Case No. S249792
Court Of Appeal, Third District, Case No. C076828
Trinity County Superior Court Case No. 11CV0080

DECLARATION OF SERVICE

I am a citizen of the United States and a resident of Sacramento County, California. I am over the age of eighteen years and not a party to the within above-entitled action. My business address is 1215 K St., Suite 1650, Sacramento, California.

On the date indicated below, I served the following:

MOTION FOR JUDICIAL NOTICE

- BY MAIL. I am familiar with this company's practice whereby the mail, after being placed in a designated area, is given the appropriate postage and is deposited in a U.S. mailbox in the City of Sacramento, California, after the close of the day's business.
- BY ELECTRONIC SERVICE. Submitted via e-submission through the court's electronic filing system.
- BY OVERNIGHT DELIVERY. I caused such document to be delivered overnight to the office of the person(s).

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed at Sacramento, California on February 17, 2019.



Signature

Julie Lunn
Printed Name

SERVICE LIST

<p>Benjamin Henry Mainzer Bragg, Mainzer & Firpo, LLP 804 3rd Street Eureka, CA 95501</p> <p><i>Attorneys for Petitioners</i></p> <p>Via U.S. Mail</p>	<p>John R. Whitefleet Porter Scott 350 University Avenue, Suite 200 Sacramento, CA 95825</p> <p><i>Attorneys for Respondents</i></p> <p>Via U.S. Mail</p>
<p>Hon. Dennis Murray & Hon. Richard Schueler Trinity County Superior Court Post Office Box 1258 Weaverville, CA 96093</p> <p>Via U.S. Mail</p>	<p>California Court of Appeal Third Appellate District 914 Capitol Mall, 4th Floor Sacramento, CA 94102</p> <p>Via U.S. Mail</p>
<p>California Supreme Court 350 McAllister St. San Francisco, CA 94102</p> <p>Via Overnight Mail and E-Submission Original and Nine Copies (One to be conformed and returned)</p>	