

BALTIMORE POLICE DEPARTMENT – EDUCATION AND TRAINING SECTION LESSON PLAN	
COURSE TITLE: General Supervisor Training	
LESSON TITLE: Module 10: Supervisor Liability Training	
New or Revised Course: [X] New [] Revised	
Prepared By: Timothy Dixon Date: April 25, 2022	
Academic Director Approval: Gary Cordner Date:	
PARAMETERS	Lesson hours: 1 hour Class size: 30 Space needs: Classroom [] Entry-level [X] Continuing Education [] Other
STUDENT/COURSE PREREQUISITES/QUALIFICATIONS (if any): Background or currently assigned to a law enforcement agency.	
LESSON HISTORY (previous versions, titles if applicable) None-New class	
PERFORMANCE OBJECTIVES 1. Given a lecture and facilitated discussion, members will identify and explain the civil justice system and litigation process as it typically relates to supervisors, to the satisfaction of the facilitator. 2. Through facilitated discussion and a whole-pupil response quiz, members will identify and explain common law torts and constitutional violations often alleged against supervisor, supervisors, and municipalities, to the satisfaction of the facilitator.	ASSESSMENT TECHNIQUE 1. Facilitated Discussion 2. Facilitated Discussion and Whole-Pupil Response Quiz

3. Through facilitated discussion, lecture and a scenario activity, members will accurately identify the concepts of indemnification, immunities, and defenses available to officers and supervisors acting within the law and the scope of their duties. 4. Given facilitated discussion and lecture, members will recognize and identify the causes and ways to prevent potential civil liability based on their role as a supervisor within BPD.	3. Facilitated Discussion, Lecture, and a Scenario 4. Facilitated Discussion
COURSE DESCRIPTION Supervisor Liability Training	
MPCTC OBJECTIVES (if applicable) (Include all terminal objectives. Include supporting objectives if they help elaborate what needs to be covered in the lesson. Ensure that all terminal objectives mentioned here are also added to the “Facilitator Notes” column where they are addressed in the lesson.) Not Applicable	
INSTRUCTOR MATERIALS <i>Module 10 – Supervisor Liability Lesson Plan</i> <i>Module 10 – Supervisor Liability PowerPoint</i> Computer Markers Chart paper	
TECHNOLOGY/EQUIPMENT/SUPPLIES NEEDED PC with Microsoft Office for PowerPoint, projector or large screen TV	
STUDENT HANDOUTS Appendix A – placed in student binders	
METHODS/TECHNIQUES Facilitated Discussion Lecture Case Study Scenario Whole-Pupil Response Quiz	

REFERENCES

- MD Common Law
- U.S. Constitutional Law.
- MD Rules of Civil Procedure
- Federal Rules of Civil Procedure
- Title 42 U.S.C. Sections, 1983
- Rodney King Case Study: <https://www.c-span.org/video/?33739-1/rodney-king-trial>
- Rodney King Case Study Information: <https://www.npr.org/2017/04/26/524744989/when-la-erupted-in-anger-a-look-back-at-the-rodney-king-riots>.
- Baltimore City Police Dep't v. Potts, 468 Md. 265, 309, 227 A.3d 186, 212 (2020).
- Sawyer v. Humphries, 322 Md. 247 (1991).
- Pearson v. Callahan, 555 U.S. 223, 129 S. Ct. 808, 172 L. Ed. 2d 565 (2009).
- " MPJI-Cv 17:1 ELEMENTS OF LIABILITY, MPJI-Cv 17:1

GENERAL COMMENTS

There is no E-Learning prior to this class, so the basic concepts are explored.

Lesson Plan Checklist (Part 1)

Format	Yes	No	N/A
1. All sections and boxes are completed.	X		
2. Performance objectives are properly worded and included in content.	X		
3. Assessment techniques are aligned with performance objectives.	X		
4. Copies of handouts and other instructional aids (if any) are included.	X		
5. References are appropriate and up-to-date.	X		
6. Instructions to facilitators are in the right-hand column.	X		
7. Content is in the left-hand column.	X		
8. Timing of instructional content and activities is specified.	X		
9. Instructional content and PowerPoint slides are consistent & properly aligned.	X		
10. Student engagement/adult learning techniques are included.	X		
a. Instructional content is not primarily lecture-based.	X		
b. Questions are posed regularly to engage students and ensure material is understood.	X		
c. Case studies, role-playing scenarios, and small group discussions are included where appropriate.	X		
11. Videos are incorporated.	X		
a. Video introductions set forth the basis for showing the video and key points are highlighted in advance for students.	X		
b. Videos underscore relevant training concepts.	X		
c. Videos do not contain crude or offensive language or actions that are gratuitous or unnecessary.	X		
d. Videos portray individuals of diverse demographics in a positive light.	X		
12. Meaningful review/closure is included.	X		
a. Important points are summarized at the end of lesson plan.	X		
b. Assessments are provided to test knowledge of concepts.	X		

Lesson Plan Checklist (Part 2)

Integration	Yes	No	N/A
13. Does the lesson incorporate BPD technology?	X		
14. Does the lesson plan integrate BPD policies?	X		
15. Does the lesson reinforce BPD mission, vision, and values?	X		
16. Does the lesson reinforce the Critical Decision-Making Model?			X
17. Does the lesson reinforce peer intervention (EPIC)?	X		
18. Does the lesson incorporate community policing principles?			X
19. Does the lesson incorporate problem solving practices?			X
20. Does the lesson incorporate procedural justice principles?			X
21. Does the lesson incorporate fair & impartial policing principles?			X
22. Does the lesson reinforce de-escalation?			X
23. Does the lesson reinforce using most effective, least intrusive options?			X
24. Does the lesson have external partners involved in the development of training?		X	
25. Does the lesson have external partners in the delivery of training?		X	
Subject Matter Expert: Timothy Dixon	Date: April 26, 2022 May 12, 2022		
Curriculum Specialist: Danalee Potter	Date: April 29, 2022 May 9, 2022		
Reviewing Supervisor: Director Gary Cordner	Date:		
Reviewing Commander: Major Derek Loeffler	Date:		

COURSE TITLE: General Supervisor Training

LESSON TITLE: Module 10 - Supervisor Liability Training

PRESENTATION GUIDE	FACILITATOR NOTES
I. ANTICIPATORY SET SAY: Hello everyone. My name is.....and I have been with BPD for... years. During my time with the Department, I have.... ASK: Who knows a police officer who has been sued? ASK: Who knows how the civil justice system works? ASK: Who feels comfortable discussing the basics of police liability and immunities? SAY: This course is to give you a basic understanding of how the civil justice system works. It will also help you understand what happens when members are subject to a lawsuit, to include how the civil process works. We will discuss some common causes of action, reasons for which people sue police officers. We will discuss some basic and common concepts of immunities and liability regarding police officers. We will also talk about some basics regarding municipal liability which will hopefully give you some insight into why some BPD policies exist.	Time: 5 minutes Slide 1  <i>Facilitators should introduce themselves and share a brief summary of their experience.</i> Desired Response: Members will raise their hands or even mention themselves Desired Response: Few will raise their hands. Desired Response: Few, if any will raise their hands.

SAY: The following case study you're about to watch is one that should be very familiar to many of you. It's the incident that occurred between Los Angeles Police and Rodney King. Sgt. Stacey Koon was the supervisor on the scene. He was considered an up-and-coming leader in the LAPD. He never laid a hand on Rodney King, but he did not intervene or adequately supervise the officers at the scene either.

As you view this case study, consider what supervisory actions Sgt. Koon's should have taken.

ASK: What are the actions Sgt. Koon should have taken

SAY: This incident was one of the first times that police brutality was captured for public view. Koon was acquitted at state court trial after venue was changed from Los Angeles to a predominately white suburb of Simi Valley, and the city of Los Angeles erupted for 5 days in which 10 people were shot and 50 died, 2000 people were injured, and 6000 people were arrested.

Koon and three officers were later convicted in federal court of civil rights violations and he and officer Laurence Powell both received 30 months in federal prison.

SAY: Let's take a moment to review today's learning objectives.

- Identify and explain the civil justice system and litigation process as it typically relates to supervisors.
- Identify and explain common law torts and constitutional violations often alleged against supervisor, supervisors, and municipalities.
- Identify the concepts of indemnification, immunities, and defenses available to officers

Slide 2



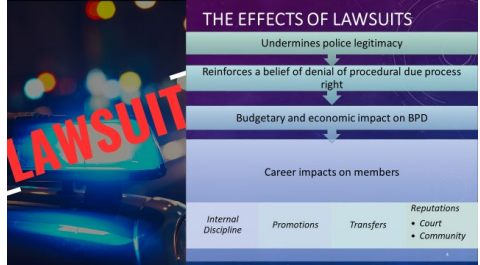
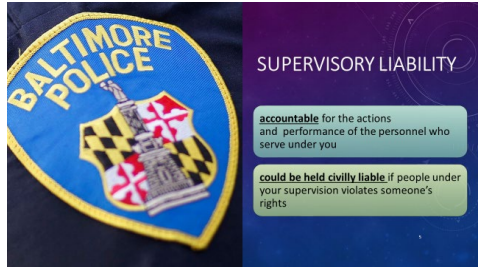
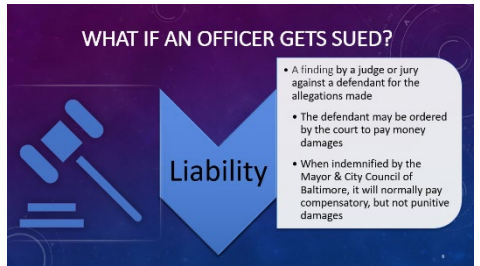
Hover over the screen and when the "play" icon appears, select it to start the case study.

Possible Responses:

- Intervene during use of force
- Encourage officers to take a different tactical approach
- Used authority to intervene
- Could have initiated the disciplinary process for subordinates who disobeyed

Slide 3



and supervisors acting within the law and the scope of their duties. Recognize and identify the causes and ways to prevent potential civil liability based on their role as a supervisor within BPD.	
II. INSTRUCTIONAL INPUT (CONTENT) SAY: Lawsuits have a variety of effects on police departments. Some of them are: - Undermines police legitimacy - Reinforces a belief of denial of procedural due process right - Budgetary and economic impact on BPD - Career impacts on members to include Internal Discipline and denial promotions, transfers, even separation from service. - Reputation loss of members in courts and community at-large ASK: Can you think of any other effects of civil suits on the community, BPD, and its members?	Time: 45 minutes Slide 4  <i>Call on volunteers to any other effects of civil suits</i>
SAY: Supervisors are accountable for the actions and performance of the personnel who serve under you. With accountability comes the understanding that as the supervisor, YOU could be held civilly liable if YOUR personnel violate someone's rights.	Slide 5 
SAY: If you or those working for you are sued, you have protections in place as a matter of law. As long as the employee, including you as a supervisor, was acting within the scope of employment, they will be indemnified. We will discuss that in detail later.	Slide 6 

SAY: If you are served with a lawsuit, neither HR nor Legal can accept the documents for you. You may not evade service of a process; instead, politely accept all of the documents given to you. If you avoid or evade service at a business address, you may be served at home, or the Court may allow alternative service.

ASK: What actions are you responsible for taking if you are served with a lawsuit?

ASK: Why can't BPD's Legal Unit accept documents for you?

SAY: That's right...Think about it...what if the lawsuit is personal or unrelated to employment? BPD would learn things about your personal life that you probably would not want your employer to know. People are often served with things that have nothing to do with employment. For example: divorce, bills, personal suits, child support, and other things someone might find embarrassing for others to know.

Write a 95 stating how and when you were served and send the 95 to the Office of Legal Affairs IMMEDIATELY with copies of all documents.

Once you notify legal, you will be assigned a lawyer either from BPD Legal, City Solicitor's Office, or the city will appoint them a private outside attorney. This lawyer will be able to answer many of the questions and help them navigate the civil process and help them investigate and prepare a defense.

SAY: You must cooperate with your lawyer. This includes, being at scheduled meetings, returning phone calls and emails promptly, and bringing documents and materials when asked.

Slide 7

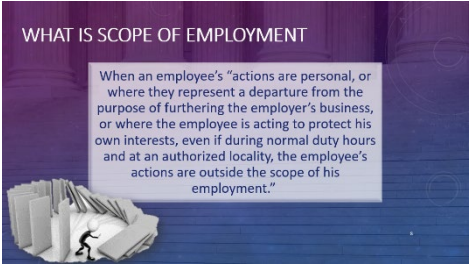


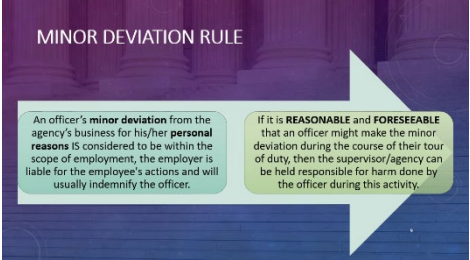
Desired Responses:

- Accept service of the documents. Write a 95 and send a copy of the 95 and documents to Legal Affairs as soon as you can.

Desired Responses:

- Because when someone is sued, personal service is required to put the person on notice of the claims made against them. Legal Affairs won't know until you tell them.

ASK: What do you think happens if you don't cooperate with your lawyer?	Desired Responses: ● The City may choose not to indemnify you ● You may have to pay for your own lawyer ● If you lose pay the judgment or award
SAY: You are indemnified if you are acting within the scope of your employment. When an employee's actions are personal, or where they represent a departure from the purpose of furthering the employer's business, or where the employee is acting to protect his own interests, even if during normal duty hours and at an authorized locality, the employee's actions are outside the scope of his employment. Certain actions are almost always within the Scope of Employment. ASK: What are some examples of actions that are within the Scope of Employment? SAY: You are correct. ASK: What are other actions that usually aren't within the Scope of Employment? ASK: What are some acts that are within the scope of your authority, but can cause disciplinary actions?	Slide 8  Desired Responses: ● Searches ● Stops ● Arresting people ● Interrogations and Field Interviews Desired Responses: ● Off-duty events ● Most forms of criminal activity ● Things clearly unrelated to your work as a police officer Desired Responses: ● Auto accidents ● Some unconstitutional searches, stop, and arrests if the officer knew or should have known it was a violation of the person civil rights. ● Some uses of force, if the officer knew or should have known it was a violation of the person civil rights.

SAY: As a legal rule, if an officer's actions are serving their own interests rather than BPDs, they are probably acting outside the Scope of Employment. Examples include, most forms of criminal activity, intimate personal relationships whether on or off-duty, things done in furtherance of a personal agenda against law and/or policy without authorization by the employer. We know it has become a recent point of discussion during training. The point is that if GTTF was indemnified, an officer who is mistaken will most likely be 11ndemnified. We all know that no one should engage in the misconduct or corruption and expect indemnification. Everyone should know that indemnification does not mean that your actions were appropriate, or that you will not be disciplined or even terminated. At some point as a professional you must be held accountable for your actions.	
SAY: If the discussion is whether you were acting within the Scope of Employment, you have a BIG PROBLEM. If you are at work, all of your actions should be within the scope of your employment. When we talk about Scope of Employment, we look at two legal concepts or rules. One is the Minor Deviation Rule, and the other is the Significant Deviation Rule. ASK: Does acting within the Scope of Employment mean that you were following BPD policy or that you will not be disciplined as a result of your actions? SAY: You are right. You can be acting within the Scope of Employment and be violating policy. For example, GTTF. Their job was to investigate crime, search, and seize drugs and guns. They committed crimes while doing the work of BPD. Here's an example of a Minor Deviation Rule. An officer stops at gas station/convenience store without permission to get a soda and negligently crashes his car into another vehicle parked at the location. The owner of the other vehicle brings a negligence claim. The employee was doing something foreseeable,	Slide 9  Desired Response: No, you may be acting within the scope of your employment and still violate the law and BPD policy.

getting a soda while at work. The employer pays, but may discipline the officer for poor driving or breaking policy and going somewhere they may not have been permitted to go to.													
SAY: A law enforcement agency is generally NOT liable and usually will not indemnify for an officer's significant deviation from the agency's business for personal reasons. But if you allow the employee to make the significant deviation, it could be seen as authorizing or tacit authorization and you may be liable and well as the person you are supervising. Because such action would BE OUTSIDE the scope of employment, the supervisor/law enforcement agency is NOT liable for the officer's actions. ASK: Can anyone explain why? SAY: You are right. Here's a prime example: An officer without permission decides to leave Baltimore during his shift and drives to see a friend in Pennsylvania. He gets into an auto accident while in Pennsylvania. ASK: What is another example of a Significant Deviation Rule?	Slide 10 Desired Response: If it isn't reasonable and foreseeable that the officer would do this during the course of their employment, then generally, the employer is responsible. The supervisor should have known and taken steps to stop the conduct. Desired Responses: Criminal Conduct of any type												
SAY: Let's take a look at some examples of actions that are in and not within an officer's scope of employment. Take a moment to look at the examples on the screen and discuss them with your table group partners. Identify whether or not each is an example of something within or not within an officer's scope of employment. Keep in mind, some of these MIGHT be considered a "MAYBE" within an officer's scope of employment.	Slide 11 NOTE: The answers to each row are hidden. Use the click to reveal button to show each answer after students provide an answer. <table border="1"> <tbody> <tr> <td>Sexually assaulting a suspect in custody</td> <td>• NO</td> </tr> <tr> <td>Making or attempting to make an arrest</td> <td>• MAYBE</td> </tr> <tr> <td>Stopping in another district while on your way back to your assigned district to get food, and you have an accident</td> <td>• YES</td> </tr> <tr> <td>Arresting an individual you believe a citizen told you had robbed them, and it turns out not to be the wrong person</td> <td>• YES</td> </tr> <tr> <td>Taking marked car without permission to run a personal errand at your home in Pennsylvania while on duty, and you have an accident</td> <td>• Maybe</td> </tr> <tr> <td>Punching someone without legal justification</td> <td>• No</td> </tr> </tbody> </table>	Sexually assaulting a suspect in custody	• NO	Making or attempting to make an arrest	• MAYBE	Stopping in another district while on your way back to your assigned district to get food, and you have an accident	• YES	Arresting an individual you believe a citizen told you had robbed them, and it turns out not to be the wrong person	• YES	Taking marked car without permission to run a personal errand at your home in Pennsylvania while on duty, and you have an accident	• Maybe	Punching someone without legal justification	• No
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Punching someone without legal justification	• No												

SAY: Ok, time's up. Let's start with the first one: ASK: Is it possible that committing a sexual assault is within the scope of employment? ASK: What about, making or attempting to make an arrest? SAY: Ok, let's discuss why this is a maybe. Arresting people where there is a warrant or probable cause is the job of a police officer. Even if the officer is mistaken, they would be acting within the scope of their duties, unless the officer was acting with an ill will or evil motive, like they knew there was no probable cause and just wanted to punish the person and used their police powers to do so. ASK: Is stopping in another district while on your way back to your assigned district to get food, and you have an accident, within an officer's scope of employment? SAY: Yes, it may be within the scope of employment, but may also subject the person to discipline if it is done without permission. But it is foreseeable that someone might stop for food while at work. ASK: What about arresting an individual who a citizen told you had robbed them, and it turns out not to be the person they were identifying? SAY: The law allows for mistakes, but not malicious acts. You would need to correct it as soon as possible. For instance, you would not send the person to CBIF. Not correcting it is malicious.	<i>Give students about 3 minutes to discuss the examples together before reviewing them.</i> Desired Response: No, because it has nothing to do with the job that police are hired to do. <i>Click to reveal the correct answer</i> Desired Response: Maybe, if the arrest is legal. <i>Click to reveal the correct answer</i> Desired Response: Yes <i>Click to reveal the correct answer</i> Desired Response: Yes <i>Click to reveal the correct answer</i>
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ASK: How about if an officer takes a marked car without permission to run a personal errand at their home in Pennsylvania while on duty, and they have an accident?

SAY: Because the person did it without permission and presumably without the knowledge of the supervisor, it might be outside the scope. But, if others or that officer had been allowed to do it without permission it might be within the scope.

ASK: And finally, what about punching someone without legal justification? We are not talking about a situation where the force was warranted at some point and was misused or became excessive in its application.

SAY: Ok, let's discuss why this is a maybe. Excessive force by definition means that the officer is at work. It also means the force was not justified, was more than necessary and reasonable and violated the person's rights. It is a constitutional violation. If the force weren't warranted at all, it may be criminal, because that is assaulting someone and probably other crimes as well. If it was warranted in some way and the officer used more than he should have, it may just be excessive. We already said that most criminal acts are not within the scope of employment.

SAY: Under the Local Government Tort Claims Act which dictates the how local governments must deal with lawsuits against employees, the law states that employees must be acting within the Scope of Employment and cannot be acting with malice.

Employees are liable for acting with actual malice..

In such circumstances the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under § 5-303(b) (1) of this subtitle.

Desired Response:

Maybe, if it were a mistake.

Click to reveal the correct answer

Desired Response:

No.

Click to reveal the correct answer

Slide 12



SAY: An employee shall be fully liable for all damages awarded in an action in which it is found that the employee acted with actual malice.

In such circumstances the judgment may be executed against the employee and the local government may seek indemnification for any sums it is required to pay under § 5-303(b) (1) of this subtitle.

SAY: If you are doing both, you have something like an insurance policy called indemnification.

SAY: If you are acting within the Scope of Employment and without Actual Malice the law says that you get indemnification.

ASK: What is Actual Malice?

SAY: Actual Malice means the officer acted with ill will or improper motivation.

ASK: What do you think can happen if you act with malice?

SAY: That's right. The Mayor and City Council may not settle or pay the judgment; If they do pay, they can collect the money back from you. And guess what?

The law will not allow payment of punitive damages if an officer is found guilty at a trial board and the act would constitute a felony.

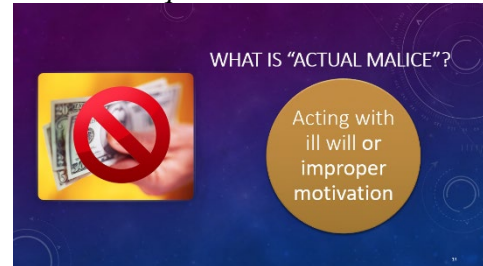
Slide 13



Md. Code Ann., Cts. & Jud. Proc. § 5-302

Slide 14

*Content on this slide is hidden.
Reveal the content once students
answer the question*



Possible Responses:

- Bad behavior
- You know it's wrong

Click to reveal the content

Desired Responses:

- City won't pay

SAY: Let's talk about immunity from suit. Immunity from suit means that as a matter of law, the suit should not be allowed, and the case will be dismissed.

Slide 15



ASK: What are immunities?

SAY: An immunity means that a suit cannot be brought against you. Police officers have several immunity protections as a matter of law to include:

- MD Common Law
- Public Official Immunity
- Statutory Emergency Vehicle Immunity
- Federal Qualified Immunity

SAY: Let's focus on Immunities-----
MD Common Law Public Official Immunity

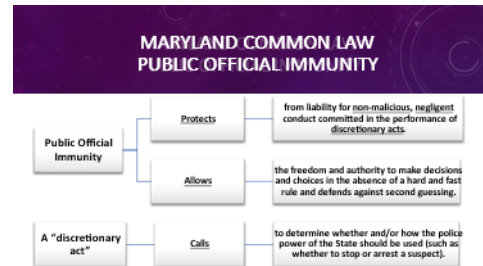
Generally, a law enforcement officer has immunity from civil liability for negligence when he [or she] is performing a discretionary duty (although not while performing a ministerial act), absent a special relationship.

ASK: Can anyone provide an example of discretionary duty? An act that you as an officer have to decide based on your knowledge and experience.

SAY: Remember; Police Officers are Public Officials and work for the public.

Intentional torts and constitutional violations do not involve legitimate public policy choices or actions, so they aren't generally covered by this immunity.

Slide 16



Desired Response:

- To arrest or not arrest
- To stop or not
- To search or not

SAY: Doctrine of qualified immunity protects government officials from liability for civil damages as long as their conduct does not violate clearly established statutory or constitutional rights of which reasonable person would have known."

This gives officers protection if they mistakenly violate a right that is not clearly established or constitutional that a reasonable person would have known of at the time. This does not protect you if you violated the constitutional rights or a statutory (a written law giving) rights.

SAY: Qualified Immunity covers "mere mistakes in judgment, whether the mistake is one of fact or one of law."

ASK: What are some constitutional rights that come to mind when thinking of policing and public safety?

SAY: If an officer violates these rights whether intentional or not, they are not immune from liability.

Remember: If you have immunity for what the suit accuses you of, the case ends, and it will be dismissed.

SAY: In civil proceedings, we call the allegations torts or violations.

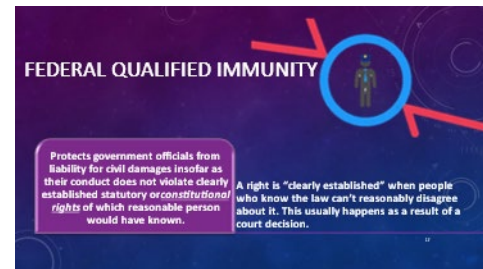
In a criminal case when police officers make arrests, they require probable cause. To make a stop, reasonable articulable suspicion is required. Most civil torts or violations are based on allegations that a police officer has made an arrest, used force, or taken another action without the reasonable articulable suspicion or probable cause that is required by law.

ASK: Can someone tell me how a police officer might commit the civil tort of assault? Battery? False Arrest? False Imprisonment?

ASK: Has anyone heard of Malicious Prosecution?

ASK: How about Invasion of Privacy-False Light?

Slide 17



Desired Response:

1st, 2nd, 4th, 5th, 6th, 8th 14th amendments

Slide 18



Desired Responses:

- Bad arrests
- Unjustified uses of force
- Manufacturing evidence
- Other types of misconduct

Look for acknowledgement

Look for acknowledgement

SAY: Invasion of Privacy-False Light claims can come from the public embarrassment of arresting someone without probable cause. For example, placing someone under arrest in view of the public when they have not committed a crime can give other citizens the impression or belief that the arrestee must be a criminal because you are arresting them.

SAY: The elements of the tort of malicious prosecution (criminal) are:

- A criminal proceeding instituted or continued by the defendant against the plaintiff;
- Termination of the proceeding in favor of the plaintiff;
- Absence of probable cause for the proceeding; and
- Malice or a primary purpose of instituting a proceeding other than that of bringing an offender to justice.

SAY: In addition to those common law torts, there are other claims that can be made under MD state law. MD has a Constitution and Declaration of Rights that is similar to the U.S. Constitution and federal Bill of Rights.

Everyone is familiar with the 4th Amendment of the U.S. Constitution which is one of the Bill of Rights which governs the laws of search, seizure, and arrest. Under the 4th Amendment is similar to Article 26 of the MD Declaration of Rights.

Some of you may be familiar with the 5th and 14th amendments which cover Due Process Rights including rights against self-incrimination. Under the MD Declaration of Rights, the 5th amendment would be similar to Article 22 and 24, respectively. The 14th Amendment would be similar to Article 24.

SAY: The 8th Amendment of the Bill of Rights prohibits cruel and unusual punishment. It is similar to Article 25 of the MD Declaration of Rights.

Also under Federal law, there is a statute that specifically prohibits the violation of constitutional rights of citizens under the color of law. This is Title 42 U.S.C. Section 1983. It is well known and became

Slide 19

SOME COMMON VIOLATION OF CONSTITUTIONAL RIGHTS FOR WHICH OFFICERS ARE SUED

- State Art. 24
(State version of 9/14th Amendments)
- State Art. 26
(State version of 4th Amendment)
- 1st, 4th, 5th, 6th, 8th, 14th Amendments
(Federal)
- Section 1983-Violation of Civil Rights Under the Color of Law
(Federal)

law right after the Civil War to prevent southern law enforcement officers from using their power and authority to violate the rights of newly freed blacks. It is still the law today. Section 1983 claims can be brought in state if there are other state claims or in federal court and are based on the violation of rights that are clearly establish constitutional rights. Some examples of clearly established rights are rights stated in the Bill of Rights like the 4th, 5th, 14th, and 8th amendments. So a violation of either of those rights could also give rise to a Section 1983 violation as well.

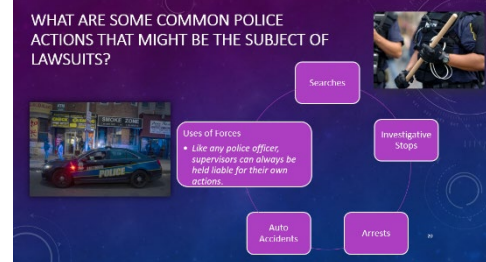
SAY: These are some, but not all of the civil claims or causes of action that can be brought against police officers. Remember, there can and are usually multiple claims and often are both state and federal claims as well.

ASK: Can anyone give me an example under what kind of circumstances we might see a violation of the 4th Amendment, which is almost the same as Article 26 of MD Declaration of Rights?

ASK: How about the 5th/14th Amendment which is like MD's Article 26?

SAY: Violating someone's due process rights. False charging and/or arrest. Manufacturing evidence or a Brady/Giglio violation. Invoking a false confession from a youth or adult.

Slide 20



Desired Response:

Arrests or searches without Probable Cause

Students will probably not know the answer to this question. If they don't, explain the answer to them as it scripted in the left column of the lesson plan.

ASK: What is an example of supervisory liability that comes to mind when reading the potential claims on the slide?

SAY: Under federal law, supervisors can be liable where:

- The supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to others.
- The supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices.
- There was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by another.

SAY: There are some common causes of action that we see brought against supervisors like, Failure to Supervise, Failure to Intervene, and actually participating in the violation.

ASK: How do you think a supervisor might be liable for failing to intervene? Can you give an example?

Slide 21

COMMON CLAIMS AGAINST SUPERVISORS

- Failure to Supervise
- Failure to Train
- Violation of a Statutory Duty
- Failure to Discipline
- Failure to Intervene

Desired Response:

Various ways, as to Violation of a Statutory Duty you can mention laws meant to specifically ensure a citizen is protected, for example a law prohibiting an arrest for a certain offense and the officer arrests the person. Failure to Discipline, not initiating the disciplinary process when applicable.

Slide 22

FEDERAL LAW ON SUPERVISOR LIABILITY

Supervisors can be liable where:

The supervisor had actual or constructive knowledge that his subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury to others.

The supervisor's response to that knowledge was so inadequate as to show deliberate indifference to or tacit authorization of the alleged offensive practices.

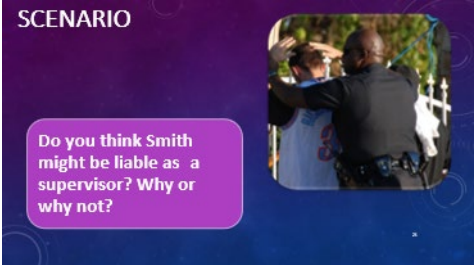
There was an affirmative causal link between the supervisor's inaction and the particular constitutional injury suffered by another.



Shaw v. Stroud, 13 F.3d 706, 709 (4th Cir. 1994)

Desired Response:

Like Rodney King, not stepping in while an officer is violating someone's rights.

SAY: Remember supervisors are not just accountable by BPD policy, they are also legally accountable for the actions of their subordinates.	
SAY: Let's do a scenario. In the binder on your tables in the Module 10 tab, is a scenario. Take a moment to read and discuss it with your table groups and consider this question when you're done: Do you think Smith might be liable as a supervisor? Why or why not? I'll give you a few minutes. You may begin. SAY: Ok, time's up. So in this scenario, you read: • Newly promoted Sgt. Smith is a supervisor for Officer Morris who makes a lot of good cases, but has had a few citizens' complaints alleging that he has made unlawful searches, seizures, and arrests. • Sgt. Smith doesn't review the previous complaints because she doesn't want to be prejudice based on what others say because he's a good officer. • Officer Morris receives more allegations alleging unlawful searches, seizures, and arrests some of which she deems necessary to enter into Blue Team. • Smith does not believe some of the allegations to be valid, so she does not enter those into Blue Team Morris. • Two years later, a lawsuit is filed alleging many civil rights violations against Morris occurring of over the course of years, including unlawful searches, seizures, and arrests. Some of the violations alleged occurred under Smith's supervision. ASK: Could Smith face civil liability?	Slide 23 SCENARIO  <i>Direct students to refer to Appendix A – Scenario in their binders. Give them time read the scenario and discuss it together. As they're doing so, utilize the MBWA strategy to listen to discussions, clarify any misconceptions or confusion, and monitor group progress.</i> <i>Call on a few groups to share their responses, but don't confirm if their answers are correct or incorrect</i> Possible Responses: Yes, No, Maybe

SAY: Ok, so I heard your thoughts, but let's take a few additional things into consideration.

ASK: Did Sgt. Smith show a supervisory indifference or tacitly authorize Morris' misconduct?

ASK: Were any of the Smith's action or inactions a causative factor in the constitutional injuries alleged?

ASK: Were the alleged constitutional violation done by a subordinate of Smith's?

SAY: So, the answer is, maybe. Let's break it down a bit more to better-understand why.

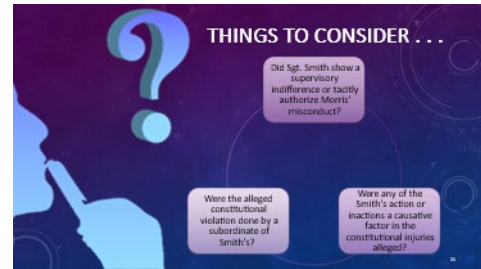
ASK: Did Sgt. Smith show a supervisory indifference or tacit authorization of Morris' misconduct by not entering the complaint into Blue Team?

ASK: Did she not care or allowed him to violate people's rights by taking no action on some complaints?

ASK: Did she help conceal his actions by not entering other misconduct into Blue Team?

ASK: Were Smith's actions or inaction by not entering complaints that she personally did not agree with into Blue Team a causative factor in the constitutional injuries alleged by the people suing?

Slide 24



Expected Response:

By not Blue Teaming him she may have tacitly authorized him to continue his misconduct

Possible Response:

Maybe, if he continued to violate people's rights because she did not take action

Possible Response:

Yes, if any of it happened while she was his supervisor

Slide 25



Desired Response:

Discussion as to yes or no

Desired Response:

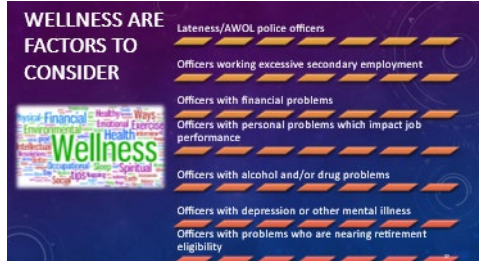
Discussion as to yes or no

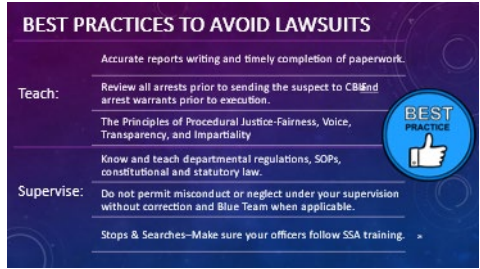
Desired Response:

Discussion as to yes or no

Desired Response:

Discussion as to yes or no

ASK: Would Morris have continued the "bad behavior" if the complaints were entered into Blue Team? ASK: Were the alleged constitutional violations occurring while Officer Morris worked for Sergeant Smith? If so, someone might believe that her actions allowed him to continue with the behavior or enabled it. SAY: Additionally, keep in mind that Officer Morris could face administrative liability within BPD, up to and including termination, and Sgt. Morris may face both administrative and criminal liability in addition to civil liability if it is found that he violated policy or law.	Desired Response: Discussion as to yes or no Desired Response: Sounds like some of them may have
SAY: Repeated violations of departmental rules and regulations (prior to and during your supervision) Numerous citizen complaints alleging violations of civil rights Previous internal disciplinary history or behavior exhibiting a willingness to violate people's rights Subordinate's refusal to accept responsibility of mistakes and refusal to accept counseling or corrective actions ASK: What else could be done to avoid supervisory liability?	Slide 26  Desired Response: Discuss following policy and the Complaint Intake process. Follow the policy regarding Blue Team, you are not looking out for them or BPD by excluding matters that should be investigated.
SAY: So the question is, how can officer wellness cause or prevent misconduct that can lead to lawsuits? Many times officer wellness factors can contribute to issues of that lead to liability. Let's discuss some.	Slide 27 

ASK: If your subordinate was known to work <i>excessive</i> secondary employment and was known to have significant financial problems, how is this information important in supervising the subordinate? ASK: How about alcohol or drug problems? How might that impact officer liability? Supervisory liability? SAY: Health and wellness issues are often the precursor to behavior that can contribute to misconduct. Take timely action on problems and don't procrastinate.	Desired Response: • All of these things can cause officers to commit acts that may incur civil liability. • An individual may incur criminal liability, in that if he/she is suffering significant financial problems the officer may actually engage in some type of criminal activity, such as taking bribes, stealing evidence, et Desired Response: All of these things can cause officers to commit acts that may incur civil liability.
III. REVIEW/EVALUATION/CLOSURE SAY: Now that's we've reviewed this information, here are some Best Practices you can do to avoid lawsuits. Teach: • Accurate reports writing and timely completion of paperwork. • Review all arrests prior to sending the suspect to CBIF and arrest warrants prior to execution. • The Principles of Procedural Justice-Fairness, Voice, Transparency, and Impartiality Supervise: • Know and teach departmental regulations, SOPs, constitutional and statutory law. • Do not permit misconduct or neglect under your supervision without correction and Blue Team when applicable. • Stops & Searches– Make sure your officers follow SSA training.	Time: 10 minutes Slide 28 

APPENDIX A

Scenario

Smith is a newly promoted Sergeant and Officer Morris a 7-year veteran is assigned under her supervision. She has heard that Morris makes a lot of good cases, but has had a few citizens' complaints alleging that he has made unlawful searches, seizures, and arrests.

Smith does not want to be prejudiced by "things" that others may have said about Morris, so she does not review the previous complaints. She wants to make her own observations. Smith believes that Morris is a valuable member of her squad. Over time Morris continues to make good cases.

He also receives more allegations alleging unlawful searches, seizures, and arrests some of which she deems necessary to enter into Blue Team. Smith does not believe some of the allegations to be valid, so she does not enter those into Blue Team Morris. Two years later, a lawsuit is filed alleging many civil rights violations against Morris occurring over the course of years, including unlawful searches, seizures, and arrests. Some of the violations alleged occurred under Smith's supervision.