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UNCOMFORTABLY TRUE

POLICE

**MISCONDUCT
CASES**



Keys to appropriate
methods of
resolution

“You can’t fight city hall.” We all know that saying is totally wrong.

People fight city hall every day, often with civil rights lawsuits. These cases can drain energy and resources as well as depress employee morale. They also can make leaders overly cautious, especially if the local government manager or police chief knows a mistake was made by a public servant.

The plaintiff and local government lawyers usually are on automatic pilot, requiring the local government to fight for 18 months or more before anyone looks up to see what the plaintiff really wants and what action could be taken to solve the problem. By then, the fees of the plaintiff’s attorney are so high that a settlement seems barred by that alone. No one can argue that these cases can last way too long.

There is a better way. As a civil rights attorney and a village administrator, respectively, we followed an alternative course in two cases in the community where we were employed. This article reviews the cases and suggests how the model we used can be replicated in other communities.

This model is not appropriate for frivolous cases where the police acted correctly. Those charges need a vigorous defense. This article focuses on

cases where something really did go wrong, and it proposes a way to bring those disputes to a swift and honorable conclusion, using a minimum of government resources.

Case 1: Drug Dealing Response Causes Harrowing Experience for Family

The village of Lockland, Ohio, is a community of 3,700 lower-income and middle-income residents located in the center of a metropolitan area. Residents enjoy a small-town atmosphere and peaceful lifestyle. When drug dealers set up operations in town, that all changed.

The mayor, council, and residents demanded action. The recently appointed police chief conferred with members of the regional drug task force and independently came up with a plan of action. Here’s the story of how a SWAT raid nabbed the wrong people.

Members of the Williams family were sitting quietly in their car waiting for the minister to open their church, Victory Gospel Temple, in Lockland. It was December 4 and time to decorate for Christmas. A white van screeched to a stop in front of the Williams’s car. Men with automatic weapons and ski masks jumped from the van, screaming that Donna Williams, her young daughters, and her nephews should get out of their car and lie prone on the cold sidewalk.

Donna and the children were terrified and thought they were being robbed. Eventually the family was permitted—still at gunpoint—to sit on a ledge. After 20 minutes, they were released. They were in disbelief when the men identified themselves as police officers. During the ordeal, all of the family members had expected to be shot.

The police officers on duty that day were functioning as members of the regional drug task force and were following instructions to “detain any person standing on or near” the corner of Locust and Maple. The instructions

and the way they were implemented blatantly violated the Fourth Amendment. The family sued.

Several months later, the African-American Williams family sat with their lawyer on one side of a federal courtroom and the Caucasian task force officers, police chiefs, municipal administrators, and defense lawyers assembled on the other side. The U.S. magistrate explained the purpose of mediation. Each side would be permitted to state its position while everyone was in one room, and then the groups would be separated for the actual negotiations.

As village administrator at the time of the mediation, I spoke first. I stood, turned, and faced the Williams family. I explained that I could see my daughters in the faces of the Williams children. I told them that if my daughters had been held at gunpoint by strangers wearing ski masks, I would be outraged and angry at anyone associated with those actions.

I also told them that I was extremely sorry the Williams family had this terrible experience in my village. I did not want any residents subjected to this treatment in the future. I hoped the Williams’s would accept my apology. Donna Williams wept as I spoke.

The case settled quickly with agreement on compensation for the family and agreement on a training program to be instituted for the task force to prevent any further violations of the law. For the family members and their legal counsel, the apology was critical to the resolution. It was clear that the village was not going to let it happen again.

Case 2: Harmless Grandma Wrongfully Arrested

Jennifer Starks is an elderly grandmother. In May 2009, Starks was called to help her daughter who was being forced to leave the apartment she shared with a friend. It was late at night. The young grandkids needed to get to bed. Starks

TAKEAWAYS

› A sincere effort by a local government manager to make amends for a public safety situation that went horribly wrong can lead to a far better emotional and financial outcome for all parties involved.

› The openness of a local official to account for such a public situation can reduce bias and build more trust.



arrived to pick up her grandchildren about the same time the police responded to complaints.

Without investigation, the officers physically arrested Starks. She spent her first night ever in jail. The charges were promptly dismissed by the prosecutor. Starks threatened to sue. She said she wanted fair compensation, training for the officers, and a meeting with them. As Lockland administrator, I agreed.

The case was settled before filing, and the agreement included training for the officers and a personal meeting that included Starks, the police officers, and the attorneys. During that meeting, she explained to the officers how she felt while being arrested and held in jail, being falsely charged, and having her car impounded.

That opportunity to meet in a respectful fashion with the officers was more valuable to her than the money. The village settled the case for less money by identifying the real goal of the plaintiff and offering both economic and noneconomic terms for settlement.

The Trouble (and Opportunity) With Lawsuits

Many people have no political or economic power. Among them are mentally ill prisoners, discharged workers, inner-city African Americans, and others of different racial and ethnic backgrounds. Lawsuits may be the only way to secure their rights.

But lawsuits are limiting. A jury trial ends with a verdict that allows the jury to take only one action if it finds liability—awarding money to the plaintiff. An injunction claim can be more comprehensive, but an injunction

puts the local government under a court order. This is intrusive and is often resented by rank-and-file officers and police administrators.

Lawsuits as traditionally pursued are simply one way to solve a problem and not a good one at that. Some lawsuits have no merit, and they need to run their course and be vigorously defended. But often the issues are clear and wrongs were indeed committed.

Apologies, training, policy changes, plaques, and dialogue can all be considered to make sure the plaintiff is heard and the government expends only the appropriate amount of time and resources.

In those instances, monetary damages can be minimized if the parties explore ways to ensure that the problem will not be repeated. That might be an apology; that might be targeted training; or that might be a face-to-face dialogue pursued under ground rules of respect and civility.

Other Examples

Symbolic or noneconomic terms have been parts of settlements in many cases:

Unarmed man shot at crash site. An officer confronts a drunken driver at the scene of a one-car crash. With a single command, he orders the driver to turn around, show his hands, and get down on the ground. When the suspect turns, the officer shoots him in the face. The settlement includes training on threat assessment, implementation of performance evaluations, and better screening of officers.

Corpse abuse at the morgue. A county coroner allows a commercial photographer to enter the morgue and photograph bodies after placing props on them. The settlement includes a

formal, written apology from the county commissioners, complete destruction of all images and copies of any of the photos, and the installation of a plaque at the morgue entrance that states, “The bodies entrusted to the county coroner are sacred and shall be treated with the utmost respect.”

Protecting battered women. In two cases, police departments were accused

of failing to protect battered women. The settlements included training and also memorials placed near the department entrance. Examples of the memorials can be found at www.gbfirm.com/thompson_photos.php or at www.gbfirm.com/culberson_photos.php.

Outcome Options

Not every lawsuit should be settled. In the majority of cases, public servants do remarkably well in extremely trying circumstances. But, occasionally, mistakes are made. Although not every lawsuit has merit, some do. In those cases, the parties should sit down early and consider more than money as tools for resolution.

Apologies, training, policy changes, plaques, and dialogue can all be considered to make sure the plaintiff is heard and the government expends only the appropriate amount of time and resources. **PM**



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