

**THE POLICE OFFICER'S GUIDE  
TO CIVIL LIABILITY**

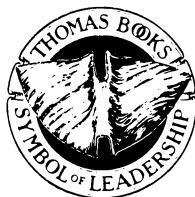


# THE POLICE OFFICER'S GUIDE TO CIVIL LIABILITY

*By*

**CARL J. FRANKLIN**

*B.A. (Law Enforcement Admin.) (University of Oklahoma)  
Juris Doctor (University of Oklahoma)  
State of Oklahoma Council of Law Enforcement Education and Training  
University of Oklahoma Police Department  
Norman Police Department, Norman, Oklahoma  
Oklahoma City Police Department, Oklahoma City  
Oklahoma Reserve Law Officers Association  
American Bar Association  
Oklahoma Bar Association*



**CHARLES C THOMAS • PUBLISHER**  
*Springfield • Illinois • U.S.A.*

*Published and Distributed Throughout the World by*

CHARLES C THOMAS • PUBLISHER  
2600 South First Street  
Springfield, Illinois 62794-9265

This book is protected by copyright. No part of  
it may be reproduced in any manner without  
written permission from the publisher.

© 1993 by CHARLES C THOMAS • PUBLISHER

ISBN 0-398-05881-4 (cloth)

ISBN 0-398-06130-0 (paper)

Library of Congress Catalog Card Number: 93-4935

*With THOMAS BOOKS careful attention is given to all details of manufacturing  
and design. It is the Publisher's desire to present books that are satisfactory as to  
their physical qualities and artistic possibilities and appropriate for their particular  
use. THOMAS BOOKS will be true to those laws of quality that assure a good  
name and good will.*

*Printed in the United States of America  
SC-R-3*

**Library of Congress Cataloging-in-Publication Data**

Franklin, Carl J.

The police officer's guide to civil liability / Carl J. Franklin.

p. cm.

Includes index.

ISBN 0-398-05881-4. — ISBN 0-398-06130-0 (pbk.)

1. Police—Malpractice—United States. 2. Actions and defenses—  
United States. I. Title.

KF1307.F73 1993

346.7303'3—dc20

[347.30633]

93-4935

CIP

**TO MY WIFE**

*For the Long Hours on Shift, the Longer Hours in Study,  
and for All the Support You Have Given*



## FOREWORD

**P**olice departments must take a pro-active approach to civil liability exposure, just like they do with criminal activity. If you wait until officers and departments become defendants to civil action, you are forced to be reactive. Unfortunately, this is the situation in many departments that learn through costly lawsuits what the law is or why a certain policy or practice fails to meet the expectations of the court.

Some of the major concerns of police administrators must be the policy and procedures of officers during high-speed pursuits, use of force during arrest, and the laws of search and seizure. Everyday departments are being sued for serious allegations in both federal and state courts. Each department should conduct internal inspections to ensure that officers are properly trained and are following the department's policy and procedures.

Often, policies are found to be outdated or no longer in use and should be updated. It is much more pro-active to complete this inspection before you have a lawsuit than to have experts from across the country come in and inspect your department during the course of the trial. One of the best defenses your department can have is a sound internal review process to monitor and improve its policy, training, discipline, and supervision.

This pro-active approach must involve the entire department and will require some assistance from a police legal advisor or other attorney in reviewing current policy and procedures to identify areas of change and additional training. Documentation of the review process and accurate accounting of officer training is very important to quickly show that your department does have a pro-active and professional approach to internal inspection and control.

Often, internal controls fail to recognize the citizen perceptions of officer contacts that can be useful indicators of problems external to the department. Citizen complaints should be closely monitored and investigated to compare to internal inspections. Common areas of concern are

often identified that are problems both internal and external to the department. Citizen complaints based upon perceptions that differ from the officer are difficult to investigate and often, when unresolved, lead to civil action against the officer and the department. One of the tools currently available to protect the officer are low-cost audio and video equipment. This equipment not only provides additional evidence when needed for prosecution, but it also protects the officer by documenting the citizen interaction and circumstances that lead to probable cause for arrest or search.

Civil liability will continue to be a major law enforcement issue and should be a concern in every policy, procedure, evaluation process, and training program. This book takes an important step in filling some of the gaps left in today's training, and should be the foundation upon which police civil liability training is based.

CHIEF DAVID BOYETT  
*Norman Police Department*  
*Norman, Oklahoma*



## FOREWORD

**H**ow can it be that lawyers are having greater impact than laws in shaping American police procedure and administration as we grind toward the twenty-first century? It happens because of the bull market in civil litigation aimed at law enforcement in America and a failure to prepare officers to understand its dynamics. The nature and scope of the problem is set out in cogent terms by Carl J. Franklin in his forthright and timely book, *The Police Officer's Guide to Civil Liability*.

Franklin, a former lawman, was typical of hundreds of thousands of American police officers. He was thoroughly trained by the Oklahoma City Police Department for more than a year, and was made fully competent to do the job and to do it well. And he did! But he had had no preparation for the trauma that hit him like a ton of bricks when he was named in a civil rights lawsuit in which he was characterized in hot and absolutely false terms. Among other deeds Franklin was alleged to:

... not know the constitutional rights of the Plaintiff, or if he knew said rights he intentionally deprived said Plaintiff of such rights . . .

... have the propensity for violence and intentionally deprived the Plaintiff of his constitutional rights . . .

... was careless, abusive, grossly negligent and lusted in abusing and oppressing prisoners . . .

Reading about yourself in these terms sure makes your day!

You know that this is baloney, *Alice in Wonderland* fiction and totally false, but someone is alleging that this is what YOU did. Dumbfounded, you wonder where to turn now that you have been thunderstruck, shattered, degraded.

As a police officer, you should have been made to understand, in lay terms, the nature of civil rights lawsuits, how they come about, the games that are played as the suits run their course and of the hurt and humiliation that accompany litigation. And police administrators and trainers

should understand how urgent it is that officers be made to understand just what lawsuits are. This is why Carl Franklin's book should be a part of recruit training across America so that officers will no longer be befuddled by the publicity and terror of facing a civil rights lawsuit. Franklin's book achieves that goal in a straightforward fashion.

In summary, Carl Franklin's book declares that to successfully defend oneself from a civil lawsuit an officer must go about doing one's job in accord with the department's rules, regulations and policies; perform as trained to do each task and do so in good faith; keep good notes and records of each event; and have faith that helping others within guidelines is in everyone's best interest. Doing all these things, none of which is inconvenient or unconventional, will result in a higher level of police service and stronger protection from police civil liability.

PROFESSOR SAMUEL CHAPMAN

*University of Nevada*

*Sparks, Nevada*

PROFESSOR, LAW ENFORCEMENT ADMINISTRATION (RETIRED)

*University of Oklahoma*

*Norman, Oklahoma*

## PREFACE

**I**n 1976 I took my first job in law enforcement. I became a Community Service Officer for the University of Oklahoma Police Department, and was assigned to serve as a dispatcher. I received three days of on-the-job training and was turned loose on the world.

Within a couple of years I found myself sitting behind a desk at the training academy for the Oklahoma City Police Department. I was just ten days past my twenty-first birthday, and I was learning to be a police officer. I spent eighteen weeks in the academy, and learned everything a modern police academy could teach a young recruit. I would spend another seven months riding with senior officers learning how to be a cop. What no one had bothered to tell me, though, was how important police civil liability would become to me within the next year.

I was at work when the lawsuit came. The first page was an awful sounding document. It was a *Subpoena Duces Tecum*. This alone made me cringe, but behind it was even more. The next page was the *Summons* and then came twelve pages of horror. I had been accused of “brutally beating a handcuffed prisoner about the head and shoulders until he lost consciousness.” I was also accused of “violating section 1983 of the Civil Rights Act.” I was being sued for more than two million dollars, and I had been on the job for less than a year.

The first thing I did? I panicked. I shuffled up to my sergeant with the paperwork in hand and thrust it upon him. “What’s this?” I cried. He laughed.

“Hey look, the rookie’s already being sued.” He cackled to the other sergeants in the office. Their attitude didn’t help. I was told that lawsuits were a part of the job. Get used to them, they insisted. “Call the city attorney the next day and he’ll take care of it.” I was told. Yet, no one seemed to be able to give any concrete explanations of what was happening. The fact was they simply didn’t know.

I worked the entire night in fear of that lawsuit, and things didn’t get much better the next day. I called the city attorney and told him what I

had received in my departmental mail box. I asked what a *Subpoena Duces Tecum* was and was told not to worry about it. No explanation. I was told the department would take care of it, but I was not convinced.

I read over the paragraphs in the lawsuit again and again. It didn't make any sense. I remembered the call, but the allegations in the lawsuit didn't match the facts of the case. How could I be sued for just doing my job? I simply did not understand, and there were few who seemed to be able to help.

I went over the whole incident again and again. It came out of an arrest I had made in my first two weeks on the job. We had been called to an economically depressed neighborhood near the stockyards section of town. The call had come in as a shooting, and when my training officer and I arrived we were met by a fifty year old man in his undershirt.

He told us that he had shot his brother during an argument, and as we entered the house we found the victim slumped in a chair with five bullet holes in his chest. Other officers quickly arrived, and before anything else happened one of the other officers commanded the suspect to put his hands on his head. The suspect refused and the officer stepped forward. The suspect raised his hand and the officer grabbed it. The fight was on.

During the struggle the suspect received a single cut to his forehead. He was quickly subdued without any punches being thrown. There were no other injuries to anyone else involved.

Since I was the rookie on the scene it was agreed that I should take credit for the arrest. It was also agreed that I would do all the paperwork. As a result my name appeared first on the reports and again on the lawsuit.

The murder was an open and shut case. The district attorney brought charges against the man and made an offer of 15 years in exchange for a guilty plea. The suspect refused and the case was set for trial. I testified at trial (my first major case) and the man was convicted of murder in the second degree. He got 25 years in prison instead of the 15 the DA had offered.

As I sat there looking at the lawsuit I wondered how such a thing could happen. The guy was guilty. He had gone to prison. How, then, could he sue me and the other officers. I learned very quickly how little I understood of civil liability. I had gone through a well respected training academy and received top notch training. Yet, I had no idea of what civil liability was or how much it could cost me for doing my job.

Things have not changed a lot since that fateful day in the late 1970s. The only real change has been in the number of lawsuits against the police. The other change is that I worked my way through law school. Since my graduation I have been active in helping officers understand their civil liability. This book is one way of continuing that work.

I've written this book from the perspective of a ten-year police veteran. It is written by a cop for cops. It is written to help the average cop understand and cope with a frightening area of today's society. It is also written to help current and future police administrators understand how to deal with civil liability. I hope it is put to good use, and especially hope that it helps you to better understand something that I did not the first time I was sued.



## ACKNOWLEDGMENTS

**I**would like to thank the officers of the following departments for their assistance:

University of Oklahoma Department of Public Safety

University of Oklahoma Police Department

Norman Police Department, Norman, Oklahoma

Oklahoma City Police Department, Oklahoma City, Oklahoma





## CONTENTS

	<i>Page</i>
<i>Foreword—David Boyett</i>	vii
<i>Foreword—Samuel Chapman</i>	ix
<i>Preface</i>	xi
<i>Acknowledgments</i>	xv
<b>Section One</b>	
Chapter 1—Introduction	5
Chapter 2—Why Police Officers Get Sued	9
Chapter 3—The Future of Police Civil Liability Suits	15
<b>Section Two: Anatomy of a Police Liability Lawsuit</b>	
Chapter 4—The Case	21
Chapter 5—The Initial Inquiry	27
Chapter 6—The Answer	55
Chapter 7—Discovery	75
Chapter 8—Adjudication Without Trial	99
Chapter 9—The Trial	111
Chapter 10—Post-Trial Procedure	147
<b>Section Three</b>	
Chapter 11—Early Foundations of Police Liability	157
Chapter 12—Tort Claims Against the Police: Prosecution, Exemptions, & Defenses	193
Chapter 13—Constitutional Issues	219
Chapter 14—Enforcing Constitutional and Statutory Claims Under Section 1983	227
Chapter 15—Qualified Immunity Issues	237
<i>Appendix—The Constitution of the United States</i>	245
<i>Index</i>	269



**THE POLICE OFFICER'S GUIDE  
TO CIVIL LIABILITY**

