



Minimizing Liability **WITHOUT** Forgetting the Mission in Law Enforcement

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June, 2025

It is vital to agency operations that police leaders continuously consider the ramifications of their leadership decisions in the context of liability and risk management. Lawsuits alleging officer misconduct bring with them financial costs, organizational stress, and potential damage in the court of public opinion. But law enforcement is, by its very nature, a high risk and high liability profession. Unfortunately, some of the easiest ways to limit liability are often found in de-policing or a “no contact, no complaint” approach to policing that undermines a law enforcement agency’s core mission. It is critical that police leaders pursue a balanced and thoughtful approach to liability *without* sacrificing proactive policing strategies that make communities safer.

The first principle of law enforcement, articulated in 1829 by Sir Robert Peel, the founder of modern policing, asserts that the role of the police is to *prevent crime and disorder*.¹ A failure to follow this guiding principle, in the name of limiting liability by *any* possible means, poses a fundamental threat to police operations, officer morale, and public trust.

Conversations about police misconduct and police liability tend to be overwhelmingly focused on instances of what could best be described as sins of *commission*. These sins of commission typically involve allegations of excessive use of force, racial targeting, unlawful search and seizure, and other violations of citizens’ rights by way of unlawful police action. The focus on this

type of police misconduct is understandable, as these cases tend to result in the largest financial liability and violate a very American sense that citizens should generally be left alone by government officials as they go about their daily lives.

But what is often overlooked in conversations regarding police misconduct and police liability are sins of *omission*. In an era when de-policing, disengagement, and a “no contact, no complaint” mentality are so pervasive in too many departments, police leaders should feel compelled to be vigilant for this type of misconduct.

In the book *Emotional Survival for Law Enforcement*, Dr. Kevin Gilmartin describes this phenomenon and largely attributes it to a victim mentality adopted by officers frustrated by the stresses of police work. Gilmartin writes, “Good officers do not show their victim status by going out and doing something wrong. They go out and stop doing something right.”ⁱⁱⁱ Gilmartin further illustrates this damaging mindset by articulating the common refrain of disengaged officers: “You never get in trouble for the stop you don’t make.”ⁱⁱⁱ Without a doubt, this mentality is often adopted with the unconscious assistance of agency leaders who fail to give cops on patrol a clear sense of the rules of engagement to be followed when encountering crime and disorder in the field. The need to clarify the rules of engagement and recognize successful proactive police work is painfully clear.

Many police leaders, elected officials, and commentators like Heather Mac Donald, justifiably point out that placing officers in situations where they are genuinely at a loss as to what is expected of them is bound to have dangerous effects in favor of de-policing.^{iv} In too many agencies across the country, the concerning lack of clear rules of engagement can turn into demoralization and devolve into the adoption of a victim mentality for officers, which can manifest itself in the form of a staggering degree of disengagement that police leaders cannot ignore.

In particularly egregious cases, sins of omission in law enforcement may do just as much damage to public trust as sins of commission, even if the likelihood of financial liability may not be as significant. Furthermore, at their worst, cases of police inaction in the face of the public’s call for help may prove to be the most effective argument for defunding the police that has ever been formulated. After all, it is predictable that members of the public will ask: *if more cops just means more people putting up tape and passing the time during a shift, what’s the point of more cops?*

But it *must* be possible to emphasize minimizing liability without falling into an *over-emphasis* on avoiding legal liability at all costs. This may seem like a strange point to be made by an attorney who focuses his work on helping police leaders to address liability risks, but hopefully my position underscores its importance.

Legal liability should be minimized, it should be managed, and it should serve as a necessary “wake up call” in cases of leadership failures within a department. However, **the idea that the goal is to *never* get sued and *never* incur legal liability in a line of work as chaotic, complicated, and hazardous as law enforcement is unrealistic and potentially dangerous insofar as it punishes proactive policing strategies.**

If the *only* goal is to avoid legal liability, there is an unethical and self-destructive pathway that some may take: **they may just stop doing police work.** Traffic stops, *Terry* stops, and all other forms of proactive policing carry with them risks of lawsuits. But the true costs of police misconduct and negligence are much more about the costs to society than the costs incurred financially for police departments, cities, counties, or states.

The police *alone* cannot improve society, but society cannot be improved without the police. As former NYPD police commissioner Bill Bratton once noted: “I can't solve the unemployment problem, the school problem. But if I can create safety, then companies will invest, jobs will be created, schools might be improved. We can't do it all alone, but it can't be done without us.”^v We can see plainly what happens to a neighborhood or a city that is unsafe. Political arguments about tax policy and education policy and zoning are important, but if people don't feel safe, they will move to other communities or, in the case of the extremely wealthy, they will hire their own private police that the rest of us could never afford.

It seems clear that there are two distinct paths that will take law enforcement agencies and their communities toward two distinctly different futures in the coming years. One is focused on depolicing and defensive police strategies. This path *may* result in fewer allegations of discrimination, wrongdoing, and police negligence, but it will just as likely result in more crime and disorder.

The other path is **focused on proactive policing strategies that are ethically and legally defensible, in keeping with the Constitution, and are always evolving with the needs and concerns of the people who rely on the police.** This path *may* result in more lawsuits than anyone would like to deal with, and an ongoing process of learning and improving agency operations accordingly. But this path *will also* result in a level of safety which allows people to go about their days and plan for their futures without the constant threat of crime. I would encourage any law enforcement leader who reads this article to choose this second, ethically defensible path.

About the Author

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Matt Dolan is a licensed attorney who specializes in training and advising public safety agencies in matters of legal liability, risk management, and ethical leadership. His training focuses on helping agency leaders create ethically and legally sound policies and procedures as a proactive means of minimizing liability and maximizing agency effectiveness.

A member of a law enforcement family dating back three generations, he serves as both Director and an instructor with Dolan Consulting Group. He has trained thousands of law enforcement professionals over the last decade.

In December of 2024, he published his first book, [*Police Liability: A Guide for Law Enforcement Leaders of All Ranks.*](#)

His training courses include [*Internal Affairs Investigations: Legal Liability and Best Practices*](#), [*Supervisor Liability for Law Enforcement*](#), [*Recruiting and Hiring for Law Enforcement*](#), [*Confronting the Toxic Officer*](#), [*Performance Evaluations for Public Safety*](#), and [*Confronting Bias in Law Enforcement*](#).

Disclaimer: This article is not intended to constitute legal advice on a specific case. The information herein is presented for informational purposes only. Individual legal cases should be referred to proper legal counsel.

References

- ⁱ John Dempsey and Linda Forst. *An Introduction to Policing* (Belmont, CA: Thompson-Wadsworth, 2008), 7.
- ⁱⁱ Kevin M. Gilmartin, *Emotional Survival for Law Enforcement* (ES Publishing, 2002), 102.
- ⁱⁱⁱ Ibid.
- ^{iv} Heather Mac Donald, *The War on Cops: How the New Attack on Law and Order Makes Everyone Less Safe*. (Encounter Books, 2017), 65.
- ^v John H. Richardson, "What I've Learned: NYPD Commissioner Bill Bratton," *Esquire*, September 10, 2016. Accessed May 13, 2024 at: <https://www.esquire.com/news-politics/a32470/bill-bratton-0315/>.