

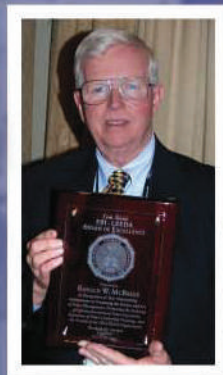
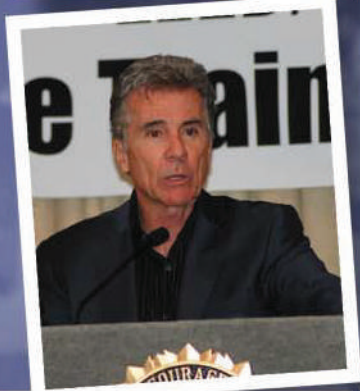
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## 2008 CONFERENCE HIGHLIGHTS

Memorable moments during our 17th Annual Executive Training Conference in Daytona Beach, Florida







# Feature Articles

## ■ Tactical Operations Liability

— *By Attorney Eric Daigle*

Over the past decade, the use of tactical operation teams to conduct high-risk warrant entries has significantly increased. Agencies using tactical teams must ensure that the teams have adequate resources and proper support in order to proceed safely and without resulting liability. This article will explore best practices in the use of tactical operation teams, specifically in situations such as high risk entries of premises during warrant service and related activities.

The term “high-risk” generally refers to a situation where the entry poses a risk to law enforcement officers, the occupants of the premises and/or third parties. In order to justify the risk, law enforcement officers must obtain articulable intelligence and supporting information during a pre-raid investigation. Possible danger to law enforcement officers in these situations can be assessed by examining factors such as weapon availability, past history of occupants, environmental conditions, geographic conditions and the presence of dogs.

Liability analysis regarding the use of tactical operation teams is a necessary requirement for command staff. This analysis requires particular attention to the operation, training and application of tactical teams. The agency should first analyze whether it has the necessary resources available for proper support of the team. Proper and adequate personnel, training and equipment are essential; without them the agency would be open to liability. One factor that should be considered is whether an agency has sufficient personnel to provide an appropriate number of candidates to have a meaningful selection process. The selection process should contain requirements for candidates’ physical ability, firearms capability, and situational reasoning. If the agency does not have adequate resources, or resources are strained, it should consider joining with other agencies to form a regional team. Sharing of resources can easily be accomplished with a memorandum of understanding between the agencies.

Another factor that should be considered when analyzing liability is the training an agency requires of team members. In *McCracken v. Freed*,<sup>1</sup> the Federal District Court in Pennsylvania analyzed whether the use of and methods employed by a tactical team to execute a high-risk warrant constituted excessive force. In *McCracken*, a regional tactical team was used to execute several arrest warrants on the plaintiff, a violent felon. During the execution of the warrants the tactical team created a diversion at the front of the residence and entered through the rear. McCracken was arrested without incident and treated for superficial injuries, including exposure to pepper spray.

The *McCracken* court explored the sufficiency of the team’s training and policies as a basis for liability. In examining the training requirements, the court found that it was reasonable for team members to complete a forty-hour initial training program and participate in ongoing sixteen-hour, monthly in-service trainings. The regional team members were also sent to schools based upon individual assignments, such as those specific to the duties of snipers and K-9 officers. The court concluded that this training regiment was adequate for team members, thereby defeating the plaintiff’s argument that team members were not properly trained.

The *McCracken* court also analyzed whether the use of the tactical team itself was excessive force. The court considered information the Chief had when he made the decision to activate the team, and concluded that the use of the team was reasonable, based upon articulable information including McCracken’s criminal history, two outstanding felony arrest warrants and other facts within the Chief’s personal knowledge. The court warned that “the decision to activate a tactical team can constitute excessive force if it is not objectively reasonable in light of the totality of the circumstances.”

<sup>1</sup> *McCracken v. Freed*, 2006 U.S. Dist. Lexis 924 (E.D. Pennsylvania 2006).

Lastly, the *McCraken* court examined policies governing the tactical operations of the team. The court found appropriate that a tactical team have a policy to govern the command and operation of the team, as well as its use of force standards. As a result of the *McCraken* decision, command staff at agencies who utilize tactical teams should ensure a clear policy that identifies particular situations when the team will be used and who has the authority to activate it.

The importance of clear policy and adequate training was also stressed in the case of *Neace v. City of Massillon, et al*<sup>2</sup>. In the *Neace* case, a drug raid was conducted, ultimately resulting in the shooting of Shay Neace. The police department did not activate their tactical team; instead they gathered available officers, some of whom had no prior specific training, to conduct the raid. The *Neace* court found that the City's lack of policies or regimental training in the conducting of raids resulted in a defective raid with too few officers, some of whom were inadequately experienced. As such, even detectives who execute warrants on occasion without a tactical team should receive training in proper tactics and have some governing policies in place.

<sup>2</sup> *Neace v. City of Massillon*, 2006 U.S. Dist. Lexis 65678 (N.D. Ohio Eastern Div. 2006).

While the use of a tactical operation team is a highly effective law enforcement tool, it is necessary to ensure that team members have proper training, that sound governing policies are in place and that the decision to deploy the team rests on sufficient analysis to justify its use. Only then will command staff and team members be protected from liability.

### Author's Biography

**Attorney Eric Daigle**, of Halloran & Sage, practices civil litigation defense in federal and state court, with an emphasis on defending municipalities and public officials. He focuses on defending municipal clients in civil rights actions, including police misconduct litigation and employment actions, as well as premises and general tort liability cases. Mr. Daigle acts as legal advisor to police departments across the State of Connecticut providing legal advice to law enforcement command staff and officers in the areas of legal liability, policy drafting, employment issues, use of force, laws of arrest and search and seizure. His experience focuses on officers' use of force, specifically in the training, investigation and supervision of force and deadly force incidents involving law enforcement. Attorney Daigle is a former member of the Connecticut State Police and currently an Officer with the Southington Police Department in Connecticut.



### CONFERENCE CANDIDS



Various speakers presented a variety of topics to highlight this year's Conference program