

STANDING UP FOR FIRST RESPONDERS

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Serve Others. Live Without Fear.™

Lance LoRusso is a civil litigator with a law enforcement background. He focuses his practice on critical incident & media response, catastrophic personal injury and wrongful death cases. He is licensed in Georgia, Arkansas & Tennessee.

Lance has been a certified peace officer in the State of Georgia since 1989, including his tenure in law school. As a Cobb County officer, Lance worked patrol and in the training division. He is honored to serve as General Counsel to the Georgia State Lodge of the Fraternal Order of Police.

Lance has represented over 120 officers in on-duty shootings and uses of force, and he has a long record of success in agency and POST appeals. In the aftermath of the violent summer of 2020, Lance secured the job reinstatements of the high-profile cases of Atlanta Police officers, Rolfe, Gardner and Streeter.

Lance has secured Grand Jury “No Bill” verdicts for all of his clients involved in shootings. He has been a firearms instructor for over 25 years, serves as a use of force expert, and regularly consults with attorneys defending law enforcement officers in use of force and criminal cases brought against them in the performance of their duties.

Lance’s Public Safety legal team consists of three additional attorneys plus multiple support staff to handle matters for first responder clients.

Lance holds an undergraduate degree from Emory University and a Master’s degree from Kennesaw State University. He graduated with honors from Georgia State University College of Law.

Lance’s books, *When Cops Kill* about use of force incidents and *Blue News* covering police and media response, were written to raise money for law enforcement charities. To date, over \$35,000 has been donated to assist officers, their families and their survivors. His first full-length police detective novel, *Hunting of Men*, debuted in January of 2020. Learn more at www.lancelorussobooks.com.

Atlanta, GA – Columbus, GA – Macon, GA – Chattanooga, TN

10 STEPS TO LOWERING THE RATE OF PUBLIC SECTOR DISCIPLINE AND AVOIDING LAWSUITS

BY LANCE J. LORUSSO, ESQ.

Police1.com – posted on Mar 6, 2019

I am honored to represent several thousand Georgia law enforcement officers and firefighters. My firm has represented more than 70 officers following shootings or in-custody deaths. We handle employment, licensing board, and disciplinary appeals. As an attorney since 1999, I have represented private corporations including one with 22,000 employees, as well as private and public sector employees. These companies seem to be able to function, under stressful circumstances and quite efficiently, without writing up, suspending, and firing employees on a regular basis.

Lately I find myself asking, “Why are so many LEOs and firefighters written up, suspended, and fired?” This is a critical question when law enforcement and firefighters are having a difficult time recruiting and retaining talent.

HOW THE PRIVATE SECTOR HANDLES DISCIPLINE

The private sector in the United States employs almost 127 million people. [1] Firefighters and law enforcement officers total approximately 1.8 million. [2] It is a notable and relatively rare event for private sector employees to be suspended, or even written up, much less terminated. These companies seem to be able to function – under stressful circumstances and quite efficiently – without writing up, suspending and firing employees on a regular basis.

When first hired, private sector employees may receive, on the high end, a day or two of orientation and an employee manual. Police and fire recruits receive hundreds of hours of training with minimum standards and voluminous SOP manuals for their agency, codes of conduct and government employee manuals. So why can't we seem to go a week without reading about the suspension or firing of an LEO or firefighter? Apparently, more training does not equal less discipline.

Does the difficulty and stress of the work performed by public sector employees lead to more errors that require discipline? Probably not. Private sector employees work on extremely strict deadlines with performance pressure, and companies may fail if the employees perform poorly. Public sector employees are called upon to make “split-second judgments in circumstances that are tense, uncertain, and rapidly evolving,” [3] where the mountain of manuals, memos and guidelines may take a backseat to intuition, improvisation and bravery. A private sector employee who thinks outside the box will likely be rewarded with a bigger bonus, while a public sector employee may be rewarded with a counseling session or time off without pay even though they cannot predict their schedules, their duties or the people who stand in the way of their success on a daily basis.

DO WE HOLD PUBLIC SECTOR EMPLOYEES TO A HIGHER STANDARD?

The theory of “we hold public sector employees to a higher standard” to explain higher discipline rates fails. That's an excuse and generally not true. For example, courtesy toward people served is critical in

both environments; the difference lies in how violations are handled. A rude receptionist will receive more training, a counseling session and be monitored more closely. Discipline, including termination, may occur if these remedial steps do not correct the problem. However, a rude officer risks being suspended or terminated irrespective of the manner in which they were treated on the scene by their “customer.” The private sector does not view the receptionist as a disposable commodity or view the taking of money from an employee’s paycheck as a first-level solution. The public sector does.

It is astonishing that this continues in an environment when law enforcement agencies and fire and emergency services are fighting a war of attrition and sagging recruiting. According to an NBC poll, law enforcement recruiting is down all over the United States. Here are my recommendations for best practices that may lower the rate of discipline issues in the public sector:

1. If several people commit the same violation, it is a training, supervision, or management problem – agencies must fix the underlying problem.
2. Most errors are the result of inadequate training or communication. Use your internal investigations to get to the root cause of the problem. The medical field and airline industry use root cause analysis to understand why a rule or policy violation occurred. Too many internal investigations are solely focused on the end goal of catching people in a policy violation.
3. Make taking pay away from the people you recruited, selected, trained, work to retain and in whom you invested thousands of dollars and your trust, the last resort.
4. NEVER be flippant or casual about suspending or firing someone. Snide remarks like, “A few days off would do them some good” or, “We’ll just hire another one to take his place” are evidence of arrogance and ignorance, not leadership. Never forget that officer or firefighter must explain to a spouse or child why their paycheck is short. Take it seriously or take yourself out of the equation.
5. Ensure your process to suspend or terminate someone is fair, thorough, and free from personal bias. My principal piece of advice to command level public sector employees is simple: NEVER fire or discipline someone when you are angry, having a bad day, or tired. You can always fire them tomorrow.
6. Have the courage to listen when people in your organization are screaming for help about a supervisor or manager. Public sector employees understand fairness – they are the guardians of due process and discretion when enforcing the law. One bad supervisor or manager can destroy an agency, deflate morale and get you and your agency sued – successfully.
7. Expect employees to make mistakes. Rare is the person who makes errors born of malice.
8. Take exit interviews seriously and follow up to get details. I have seen things that are nothing short of horrible like one personnel file that grew by over 60 pages after the officer resigned. This is amazing and inexcusable.

9. Take “name clearing sessions,” “pre-disciplinary hearings,” and Loudermill hearings seriously. Listen to what people say and encourage them to speak. Whether required or not, these proceedings are the last opportunity for your agency to learn of a serious problem. I have successfully sued agencies that ignored the opportunity to address issues and prevent a lawsuit by listening prior to taking adverse action.
10. Communicate with people openly and do not let the “chain of command” get in the way of common sense. I have seen the chain of command used as a weapon when an employee was justifiably seeking help because they were being treated poorly, and at times in an unlawful manner, by a supervisor.

There is too much at stake in keeping good, caring, competent, dedicated, brave, and honest public servants on the street. It’s not about egos or the time it will take to do things differently. It takes a few minutes to write an order suspending someone. It takes longer to perform a root cause analysis to determine why the behavior or incident took place.

Agencies that practice these principles have better success at recruiting and retaining staff and morale than their peers. If these reasons don’t convince you, they are also sued less often.

Change takes time and effort. Your officers and firefighters deserve your time and effort. I’ve told many journalists during interviews when they are ready to bash law enforcement, “If you don’t like the current crop of law enforcement officers, wait until you see the second string when recruiting standards drop in order to fill positions.” There’s too much at stake to keep doing things “the way we’ve always done it.” Stay safe.

References

1. U.S. Census Bureau. 2016 SUSB Annual Data Sets: U.S. and States Totals, (last revised Dec. 4, 2018).
2. The numbers are a total estimate from the year 2017 for law enforcement officers and the year 2015 for firefighters. See Federal Bureau of Investigation, Criminal Justice Information Services Division, Uniform Crime Reporting Program: 2017 Crime in the United States – Table 70 (indicating 670,279 sworn officers with a total of 13,128 law enforcement agencies reporting in 2017); see also National Fire Protection Association, The U.S. Fire Department Profile Through 2015 Fact Sheet (Indicating 1,160,450 firefighters – 345,600 career and 814,850 volunteer – for the year 2015).
3. See *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

Lance's 10 Things To Do After a Shooting

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If you are involved in an officer involved shooting (OIS) or other critical incident:

1. Render aid to anyone who is injured and seek medical attention for yourself.
2. Ensure the scene is safe and secured to preserve all evidence.
3. Make certain your family knows you are safe.
4. Contact an attorney ASAP. Our firm will contact you immediately and respond to the scene.
5. Do not make any statements to criminal investigators or prosecutors without your attorney present.
6. Remember that statements to criminal investigators and prosecutors are VOLUNTARY!
7. Do not make statements to other officers or to family members while wearing a live body camera or microphone.
8. Do not make any statements to bystanders or reporters.
9. You CAN be forced to speak to your chain of command or internal investigators, but ask them to order you to do so, if possible.
10. Do not leave the scene until you are authorized to do so by your chain of command.

BONUS TIP: File a claim with the Fraternal Order of Police Legal Defense Plan at foplegal.com or call 866-857-3276 and follow the prompts.

There is NO better law enforcement legal defense plan than the Fraternal Order of Police. Join today! Learn more at www.foplegal.com or 866-857-3276. You must be a current FOP member or join a lodge within 30 days of signing up for the FOP Legal Plan to get benefits.

READ ON FOR BONUS INFORMATION!



Lance's 10 Things To Do When Your Badge Is Threatened

Lance J. LoRusso, Esq.

If you are notified of an internal investigation, charges against you, criminal investigations regarding your work as a LEO, or a POST investigation:

- 1. Contact an Attorney ASAP. Our firm will contact you immediately.**
- 2. Request to have an attorney present before making ANY statements.**
- 3. If you are told or ordered to speak with investigators, document who ordered you to do so.**
- 4. Confirm that the investigation is administrative. If it is criminal, remember statements to criminal investigators & prosecutors are VOLUNTARY!**
- 5. Gather all of the documents & evidence you will need to defend yourself.**
- 6. For Internal investigations write: "I have been ordered to provide this statement as part of a compelled, administrative investigation."**
- 7. Do not make ANY statements to POST without an attorney involved.**
- 8. Do not speak with anyone in your department or others about the investigation to avoid any allegations of influence.**
- 9. ALL investigations are serious! Do NOT try to handle it without an attorney.**
- 10. If you are a member of the Fraternal Order of Police Legal Plan, file a claim at foplegal.com or 1-866-857-3276. If not, JOIN TODAY!**

BONUS TIP: We represent LEOs who are injured in serious car crashes, tractor trailer wrecks, and defamation cases. Call our office ASAP if you, a friend, or family member is injured. Evidence can be lost quickly!

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EXAMPLE PRESS RELEASE re: OIS

Contact: Lance LoRusso, Esq.
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For Immediate Release

Atlanta, GA – March 31, 2015

On March 24, 2015, City of Smyrna Police Sergeant K.B. Owens was involved in an on-duty incident during which he was forced to use deadly force to protect the life of a fellow uniformed law enforcement officer. Sergeant Owens was the only officer on the scene to use deadly force. The officers were serving a felony warrant.

Prior to beginning his career in law enforcement, Sergeant Owens served four years active duty and four years as a reservist in the United States Marine Corps. He received an Honorable Discharge as a Sergeant. Sergeant Owens has faithfully served the Cobb County community for nearly twenty years. For eleven years, he served in the Smyrna Police Honor Guard attending events and the funerals of fallen law enforcement officers (LEOs). During that time, he has interacted with thousands of citizens, made hundreds of arrests, contacted numerous armed individuals, including barricaded suspects, and encountered numerous wanted felons. He has been involved in more than thirty-five foot or vehicle pursuits and has made more than 100 felony arrests. However, he has never before fired a weapon at anyone during the course of his sworn duties.

Sergeant Owens is a highly trained and dedicated law enforcement officer. He has been named the Smyrna Police Department Officer of the Year and Smyrna Public Safety Foundation Officer of the Month. He also received the Cobb County Chamber of Commerce Life Saving Award and two Meritorious Service Awards. He has attended and successfully completed hundreds of hours of training on the proper and lawful use of deadly force.

The Cobb County Police Department is currently investigating this officer involved shooting (OIS) and the resulting death of Nicholas Taft Thomas. This shooting occurred within the jurisdiction of the Cobb County Police and it is not only appropriate, but also a standard law enforcement procedure throughout the United States for the local agency to investigate any use of deadly force that occurs within its jurisdiction. The Cobb County Police Homicide Unit is comprised of highly trained and decorated officers with many years of experience. It is our understanding that the Georgia Bureau of Investigation will be asked to review the investigation when it is complete. This is also a standard practice throughout the United States.

Nearly every year, according to the Federal Bureau of Investigation, LEOs are killed and assaulted by suspects who choose to use a vehicle as a weapon. A person using a vehicle as a weapon is not “unarmed.” Shooting the engine or the tires will not stop the person assaulting the LEO nor will it stop the vehicle. Such assaults are nearly always fatal due to the mass of the vehicle and the inability of the LEO to escape injury based upon the speed of the vehicle. The suspect in this case, Nicholas Taft Thomas, pled guilty on May 18, 2014 to Aggravated Assault on a Law Enforcement Officer and other charges. The weapon he used was a vehicle. Those records are available at the Cobb County Superior Court Clerk’s Office and through the Kennesaw State University Police Department.

The investigation into this OIS will take time and will involve the Cobb County Police Department, the Georgia Bureau of Investigation, and the Cobb County District Attorney’s Office. In addition, there will be a separate administrative inquiry into Sergeant Owens’s actions likely conducted by the City of Smyrna Police Department. This is again the national standard for these internal or administrative investigations. At the conclusion of these investigations, the results will be available in accordance with the Georgia Open Records Act.

The loss of any life is tragic and four investigations will determine if Sergeant Owens acted lawfully and appropriately. During this time, just like any other person who is the focus of a criminal investigation, Sergeant Owens is entitled to a presumption of innocence. He is also entitled to due process, the right to counsel of his choosing, and other constitutional protections afforded to all citizens under the United States and Georgia Constitutions. Although he was not legally required to do so, Sergeant Owens cooperated with the Cobb County Police Department's investigation. As has become the norm for LEOs involved in deadly force incidents, Sergeant Owens has consulted with an attorney of his choosing. This is his constitutional right.

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For more information, you may contact counsel for Sergeant K. B. Owens, Lance J. LoRusso, Esq. at 770-644-2378 or at lance@lorussolawfirm.com.

References & Resources

ForceScience.org

NationalCops.org

JackHarris.org

PSF.org (Police Suicide Foundation)

Green, (2008) Chapter 4 Attention and Conspicuity In Forensic Vision: With Application to Highway Safety. Issues: “attentional capacity” & “cognitive conspicuity”

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Vickers & Lewinski, 2012, *Performing Under Pressure: Gaze control, decision making and shooting performance of elite and rookie officers*, Human Movement Science Vol. 31

The following articles, plus additional resources, are available at www.LoRussoLawFirm.com under Front-Line Stories.

The Last Man or Woman Standing: Training Until The Lights Go Out...or Come On!

By Lance J. LoRusso, Esq.

In every training class, we see varying levels of abilities. Some folks are able to grasp the concepts of defensive tactics, vehicle operations or firearms immediately while others require additional assistance, guidance and instruction. Likewise, a constitutional law class may cause some students to pull their hair out while others are fascinated and motivated to excel. While these differences are generally obvious and expected during the initial training and certification classes to be a LEO, I have found that this gap increases with advanced classes. So, what does a law enforcement trainer do with this challenge? What are your obligations as a trainer? What is your liability? This is a common topic of conversation when I meet with fellow trainers.

Training, in any context, is different from a formal education process. For instance, in a college course, the professors present the material to every member of the class and test the students with the same evaluation tool commonly known as an exam. The goal in this environment is to place the burden on the student to study, memorize and learn to apply the material in a single testing event. For example, the student who is able to pull an "all-nighter", achieve an "A" on the final exam and move on to the next semester may be a top performer in college. However, one week after the exam, he may not retain any of the knowledge imparted during that semester.. In the college setting, this is generally fine as he achieved success on the single evaluation event. Nothing could be further from the truth in the training context. This is especially true in law enforcement training.

Training is very different from formal education. Webster's Online Dictionary defines training as, "to form by instruction, discipline, or drill; to teach so as to make fit, qualified, or proficient." The essential difference between formal education and training is the end goal. While college professors probably want students to retain the knowledge they impart and evaluate through exams beyond the end of the semester, there is a definite beginning and end to the college class and evaluation. Such is not the case with law enforcement training. As the definition above states, you are forming skills in your students toward goals of proficiency.

So what is the measure of proficiency for law enforcement training? While some classes have a written or skills exam at the end of the training period, that should never be the end goal of the process. No one who takes or teaches an Advanced Firearms or Patrol Rifle class believes that the student's proficiency is no longer an issue when we are able to write a qualifying score on the roster! The proficiency goal of the class is to make the student better able to survive and protect the public. The same is true of every class in law enforcement. Each new skill puts another arrow into the quiver of the LEO to help ensure survival and effectiveness in the sworn duties we undertake.

As a trainer, you signed on for the obligation to work hard to impart skills to every student. You agreed to be patient with the remedial student and take the proficient student to the next level. For many, the former is far less enjoyable. However, this is the role of the law enforcement trainer.

Consider this thought when you begin each training class as I have done as a law enforcement trainer for over 20 years. "The least talented student in this class who needs the most coaching and patience from me may very well be the LEO who arrives to protect the life of my wife, my friends or myself. I need to do whatever is necessary to get them to the next level." While we cannot compromise training standards and may need to fail students who cannot meet those standards, we should always have a plan to get them through another session in a continued effort to *raise their level of proficiency*. Think of it this way: look at all of the people in society who choose not to participate in the efforts of LEOs to keep our streets safer and improve the quality of life of strangers. Every person in a law enforcement training class stepped up and asked to serve. As trainers, we owe them our best efforts every day in every class. If they fail, let it be due to a lack of effort on their part. Law enforcement trainers never give up on students.

Any trainer who has met with a former student who used the skills he taught to return home at the end of a shift knows what an incredible honor and obligation you carry as a law enforcement trainer. In the early 1990s, a recruit I trained used deadly force to save himself and one of my best friends. While there may not be any awards or honors for being a law enforcement trainer, you prove your effectiveness every day when your students come home. No plaque on the wall will mean more and the true trainer needs no further recognition.

Casual Conversations, Formal consequences!

By Lance J. LoRusso, Esq.

More often than not, when a LEO is "under investigation," the entire agency knows about it! Let's face it, as a profession we are good at respecting the privacy rights of the public, but "scoop" on our co-workers is generally fair game! This article is about the pitfalls of those casual conversations and the ever churning rumor mill present in so many, if not most, agencies.

Investigations into misconduct should be conducted in a confidential manner for several reasons. First and foremost, LEOs are professionals. An allegation into misconduct of a fellow professional is a serious matter. Therefore, the details, as well as the existence, of an investigation should be closely guarded to the same degree as a sensitive criminal allegation. Just as a false criminal allegation can destroy the reputation of a private citizen, the mere allegation of misconduct, even if unfounded, can signal the end of a LEO's career.

The second reason to keep these matters confidential is simple; until proven, an allegation is just that and nothing more! Agency administrators are very sensitive to keeping criminal allegations under wraps until investigators possess sufficient probable cause to bring charges against a citizen. The same respect and presumption of innocence should be afforded to LEOs who are under investigation. Sounds like a due process issue to me, but what do I know. I'm just a lawyer!

The third reason to avoid casual conversations about pending investigations is to protect the integrity of the process. Standard investigative techniques mandate that we separate witnesses to avoid tainting their impressions and potential testimony. When the agency is buzzing with rumors and innuendo about an administrative investigation, you risk tainting the information to be gleaned from interviews. Those tainted statements will surface again in personnel hearings, criminal cases and lawsuits. By then, it is too late to "unring" the bell.

Finally, LEOs who are under investigation should beware of any casual conversations with anyone. Remember that Garrity protections apply to statements compelled by management. Any statements you make to a deputy chief who asks you what happened "off the record" may not be protected under Garrity. If this occurs, you will be required to show a court that you subjectively believed that you were required to answer those questions. While I would hope that such "off the record" conversations are not an attempt to entrap you, I was not born yesterday! This is particularly important in any use of force investigation.

So here is my advice for administrators and LEOs who are under investigation as well as any LEO in the agency. For the folks in charge, your agency should have a strict policy to keep any allegation of misconduct confidential. This includes investigations

conducted by a criminal division, internal affairs or at the supervisor level. The consequences for failing to keep such allegations confidential should be the same as the consequences for leaking information on a sensitive criminal investigation to the public.

For the LEOs under investigation, speak only to the investigators and your attorney. Nothing good will come from discussing these matters with your co-workers. At the very least, you may taint the very testimony that can exonerate you. In the worst case scenario, you may place a friend at the center of an investigation that does not concern her. If you are approached by anyone who desires to speak "off the record," you should respectfully decline the opportunity irrespective of the rank of the person who initiates the conversation. Tell them you are under orders from your attorney not to discuss the matter without counsel present. Any lawyer will give you this instruction once the lawyer is engaged to represent you. If you do not have an attorney to assist with your defense of the allegations, perhaps you should reconsider that decision.

For the rest of the LEOs in the agency, preserve and exemplify the highest standards of our profession by respecting the investigative process. Refuse to engage in the idle banter and rumor sharing and discourage others from doing so. Remember that your "off the record" statement could change the direction of the investigation and become the pivotal piece of evidence in a discipline hearing or trial. How will you defend the fact that your statement was based upon a rumor? Most important, recognize that you could be under investigation tomorrow. What level of professionalism should you expect from your fellow professionals?

I don't need an attorney yet.....do I?

By Lance J. LoRusso, Esq.

You receive a letter that you are under investigation. "I do not need a lawyer yet. I will just see what this is about." You go through the interview and it is pretty intimidating. "I do not need a lawyer yet. I will see if they clear me." You receive a notice to appear before the head of your agency to discuss the results and findings of the investigation. "I do not need a lawyer yet. I'll see what the chief has to say." The chief meets with you and advises the charges were sustained and she says you have an opportunity to state your case one last time. "I wish I had a lawyer. How did this happen?!??"

So you hire a lawyer to appeal the chief's decision. The lawyer will now file the appeal based on the letter you received, the interview you gave and the meeting you had with the chief. For better or worse, your attorney can only work with the case you hand him.

The role of a lawyer in an internal investigation is complicated. Your rights during investigations may arise from a Peace Officer's Bill of Rights, your state constitution, the United States Constitution, a collective bargaining agreement or the policies of your department. Even though the role of an attorney may be limited in many instances, the role of the attorney as a counselor is never limited. An attorney can help you ensure that your rights are protected, make certain that you review the appropriate policies and documents prior to making any statements and help you organize your thoughts.

When you do not involve an attorney until the appeal phase, your attorney is forced to appeal the "record" you hand him. Any missteps you commit along the way will affect the strength of your appeal. In some instances, a mistake on your part could preclude an appeal entirely. As I stated in previous posts on this blog, administrative deadlines are "hard" deadlines. Missing a deadline affects your rights.

So, here is the bottom line. You should begin protecting your appeal rights as soon as you believe you may be subject to discipline. Develop a relationship with an attorney early to make it easier to reach out to him. When it comes to consulting an attorney early, an ounce of prevention is worth a pound of cure.