LEGAL DEFENSE TRUST TRAINING BULLETIN

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POLICE TRAINERS CANNOT BE HELD CIVILLY LIABLE FOR TRAINEES' INJURIES DURING TRAINING

COURT OF APPEAL AFFIRMS DISMISSAL OF LAWSUIT BASED ON "FIREFIGHTER'S RULE"

by Michael P. Stone, Esq., and Marc J. Berger, Esq.

In a case of first impression in a published appellate decision, our clients, Dr. Ron Martinelli and Martinelli and Associates Justice Consultants, LLP prevailed against an Unarmed Defensive Tactics ("UDT") trainee who claimed she suffered neck and back injuries while performing a maneuver designed to teach her how to throw an assailant off her back while being choked in a prone position. She sued for negligence and assault.

The precedent decision, *Hamilton v. Martinelli & Associates*, 2003 DJDAR 8199 (July 24, 2003), turned back an attempt by Probation Correctional Officer ("PCO") Barbara Hamilton, to impose liability on the training instructor, Dr. Ron Martinelli of Martinelli & Associates Justice Consultants, for alleged back and neck injuries suffered while attempting the UDT maneuver.

Hamilton's attorneys sought to invoke the benefits of some statutory enactments in the hope of establishing an exception to the well-settled and familiar legal defenses known as *assumption of the risk* and the *Firefighter's Rule*. In 1980, the California Supreme Court applied the Rule to bar a San Diego officer's personal injury suit against a fleeing motorist. The officer was injured in a crash while attempting to pursue the evading motorist (*Hubbard v. Boelt* (1980) 28 Cal.3d 480, 484.) In response to much justified criticism of the holding, the legislature enacted statutory exceptions to the Rule, that are triggered when certain conditions prevail, such as for example, when the defendant is "aware of the officer's presence," and thereafter acts negligently, recklessly or intentionally to cause injury to the officer. Thus, as in the *Hubbard* case, were the same facts to occur today, Officer Hubbard's claims against the fleeing driver Boelt would not be barred, because it could not be gainsaid that Boelt was unaware of Hubbard's presence. After all, Hubbard was the very reason Boelt was fleeing. Had not these exceptions in *Civil Code* §1714.9 been enacted, officers similarly-situated to Officer Hubbard would continue to be "burned by the Firefighter's Rule."

In rejecting Hamilton's arguments that the Rule should not be applied to her case, the Court reinforced the common-sense limitations on civil liability that enable socially useful but dangerous activities such as law enforcement training, to be carried on without the deterrence and fear that the prospect of enormous exposure to civil liability would otherwise bring. ***If the decision had been otherwise, civil liability could result from necessary and ordinary activities associated with dynamic and reality-based law enforcement training. Entire training curricula would need to be scaled back to provide a level of safety for the trainees that would leave the trainer without the latitude necessary to be able to sufficiently challenge trainees toward***

acquiring the skills they need to protect themselves and others in the field, and to test their ability to apply the training. We would return to those times when law enforcement training was primarily static, and did not involve dynamic methods. Everything from ground-fighting techniques to "RedMan gear" would largely disappear. Trainers would be disinclined to engage trainees in any dynamic training if there is any risk of injury.

The "Firefighter's Rule" is well-known in law enforcement circles. The defense is often deplored, especially by officers who have encountered it as a barrier against recovering damages for on-duty injuries inflicted by the intentional, reckless and negligent conduct of third parties. As anyone who has tried to file a civil claim for an on-duty injury knows, a person whose conduct caused an officer to respond and to suffer injury while confronting that conduct ordinarily has no liability to the officer. The paradigm proposition for which the "Firefighter's Rule" was named is that a person who negligently starts a fire is not liable to a firefighter who is injured while responding to the fire. That rule has long been fully applicable against police officers, where the officer is injured confronting the very risk or conduct which occasioned his response or presence.

The "Firefighter's Rule" is a particular class of a more general defense doctrine known as "assumption of the risk." The assumption of risk defense bars liability when a person is injured as a result of the normal dangers of an activity in which the person voluntarily engages, such as competitive sports, hang-gliding, skydiving and bungee-jumping, to name a few out of hundreds of such "dangerous activities." All who voluntarily engage in activities that inevitably bear obvious risks of injury, are assumed in the law to have likewise voluntarily assumed the risk of such injuries. Not surprisingly, a great number of the leading cases applying assumption of the risk arise out of injury claims from competitive, contact and "extreme" sports event participation. Put simply, enjoying the sport involves acknowledging a risk of injury. So when it happens, one cannot sue the sponsor.

Hamilton based her claim for damages on Martinelli's alleged negligent and reckless training methods, in having students engage instructors in limited grappling maneuvers designed to teach and test the skills. Essentially, she claimed he pushed her beyond reasonable limits challenging her to do the maneuvers faster and with more physical exertion.

Common sense indicates that those claims by trainees should be barred by either assumption of the risk or the Firefighter's Rule, since the plaintiff's theory could easily make a civil case of every unintended injury a trainee suffers in training. The rule advocated by the plaintiff would necessarily impose on police training activities the same *universal duty of care* imposed by the tort law throughout the country, which may be roughly paraphrased as a duty to refrain from negligently exposing others to injury.

While law enforcement managers and trainers appreciate the need for vigorous dynamic and realistic training methods, and while assumption of the risk and the Firefighter's Rule are well-established, neither of these defense doctrines had been applied under facts parallel enough to the facts of this case to give the Court a clearly binding precedent to follow. And, the legislature has thrown in the statutory exception that is drafted in a way that requires careful judicial interpretation.

In the course of resolving these issues, the Court clarified that the recent assumption of risk analysis developed in sports cases can be applied to employment-related activity, including training and practice. The Court also eliminated any doubt that the Firefighter's Rule can apply to bar liability for injuries suffered in training activity.

The *Hamilton* case enabled the Court to clarify the boundaries of both of these defenses in uncharted water; that is, involving mandatory police training provided by an "independent contractor" trainer. If the Court had found neither doctrine applicable, it would mean that police trainers would have no protection at all from civil liability for injuries resulting from ordinary accidents and excesses in the course of teaching and practicing self-defense and ground-fighting skills that are essential to police work. The Court resolved both issues in favor of the trainer, and in doing so, also clarified the poorly-drafted statutory exception to the

Firefighter's Rule that has raised more questions than it has answered (§1714.9).[1]

[1] *Civil Code* §1714.9 reads:

§1714.9 Responsibility for willful acts or want of ordinary care causing injury to peace officers, firefighters or emergency service personnel; circumstances; comparative fault; subrogation; exception

(a) Notwithstanding statutory or decisional law to the contrary, any person is responsible not only for the results of that person's willful acts causing injury to a peace officer, firefighter, or any emergency medical personnel employed by a public entity, but also for any injury occasioned to that person by the want of ordinary care or skill in the management of the person's property or person, in any of the following situations:

(1) Where the conduct causing the injury occurs after the person knows or should have known of the presence of the peace officer, firefighter, or emergency medical personnel.

(2) Where the conduct causing injury violates a statute, ordinance, or regulation, and the conduct causing injury was itself not the event that precipitated either the response or the presence of the peace officer, firefighter or emergency medical personnel.

(3) Where the conduct causing the injury was intended to injure the peace officer, firefighter or emergency medical personnel.

(4) Where the conduct causing the injury is arson as defined in Section 451 of the Penal Code.

(b) This section does not preclude the reduction of an award of damages because of the comparative fault of the peace officer, firefighter, or emergency medical personnel in causing the injury.

(c) The employer of a firefighter, peace officer or emergency medical personnel may be subrogated to the rights granted by this section to the extent of the worker's compensation benefits, and other liabilities of the employer, including all salary, wage, pension, or other emolument paid to the employee or the employee's dependents.

(d) The liability imposed by this section shall not apply to an employer of a peace officer, firefighter, or emergency medical personnel.

(e) This section is not intended to change or modify the common law independent cause exception to the firefighter's rule as set forth in Donohue v. San Francisco Housing Authority (1993) 16 Cal.App.4th 658.

In the *Hamilton* case, the County contracted with Martinelli & Associates to provide Probation Officers and Probation Correctional Officers ("P.O." and "P.C.O.") with training in UDT. Hamilton claims she suffered orthopaedic injuries while attempting the maneuver that called for her to throw the instructor off her back. Both the course and the trainer were certified and mandated by the California Board of Corrections; Standards and Training Council ("STC") for all sworn county probation officers.

The exception to the Firefighter's Rule, *Civil Code* 1714.9, if read literally, would entirely eliminate the Firefighter's Rule and assumption of risk defenses to liability for injuries caused by simple negligence that occurs after the defendant knows, or should know, of the presence of an officer at the location.[2] To dispel any idea that this narrow literal reading is correct, the *Hamilton* court construed this statutory exception to require an act of negligence separate from the one that occasions the officer's presence at the scene. The Court concluded "the statute does not apply unless the conduct causing injury is additional and subsequent to the conduct necessitating the officer's presence at the scene." 2003 DJDAR at 8203.

At oral argument, Hamilton sought to construe the Court's tentative ruling as having an anti-police tendency, given that the outcome of the case is that the injured officer did not recover damages, and that the resulting rule of law will deny recovery of damages to officers injured in training and similar activities. However, most officers in our experience are familiar with the Firefighter's Rule and understand its role in the tort system. Most officers understand that public safety departments are

[2] *See*: footnote 1., *ante*.

empowered to take care of their own through worker's compensation and disability benefits. When, for example, an officer like Hamilton, suffers an injury during department-mandated training, the officer is entitled to benefits under worker's compensation and disability law. If the allegedly negligent trainer is employed within the same agency, it is quite clear that the injured officer's remedies are limited exclusively to these compensation systems. ***However, had the Hamilton case gone the other way, an independent contractor-trainer, like Dr. Martinelli, would be exposed to liability for tort damages, while his agency-employed counterparts would be immune. This would create an anomaly in the law, leading to an absurd result.*** The result would be the unwillingness of private contractors with special expertise to continue to train officers in critical skills, fearing exposure to a multitude of suits.

From the perspective of the law enforcement profession, the *Hamilton* decision protects the ability to engage peace officers in challenging training activities, and to retain outside contractors to teach physical tactics, maneuvers and skills to members of the profession. The appellate court's decision turns back an effort to use sophistry and legal mischief to achieve a narrow personal benefit for the plaintiff in the case, regardless of the pernicious consequences to the profession and to the safety of its members. We are therefore pleased that the Court decided this important case correctly for the benefit of the law enforcement profession and society as a whole.

Stay safe!
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and
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Note: Marc J. Berger is a civil litigation, writs, appellate and constitutional law specialist with the firm of Michael P. Stone, P.C., Lawyers. Mr. Berger has bee associated with Michael since 1986. He argued this case before the Court of Appeal, Fourth Appellate District, Division Two.