

# Police should bear more of burden in civil cases

By Martin J. Siegel

Imagine being seriously injured by a truck driver as he rushes to finish a job. When you sue for compensation, you aren't limited to recovering damages from the driver individually; after all, he might be unable to pay. Instead, you can recover from the driver's company under a centuries-old principle holding employers liable for injuries caused by their employees. It's called *respondere superior* — Latin for "let the master answer."

Now suppose you're seriously injured by a police officer who uses excessive force. Although the officer, like the driver, probably doesn't have the money or insurance to pay a sizeable award, the law usually lets police departments off the hook.

This is true no matter how stark the violation — including incidents like the widely publicized shooting of Walter Scott in the back in South Carolina a little over a week ago.

After so many recent high-profile cases — as well as more systematic Justice Department critiques of police departments from Philadelphia to Cleveland to Albuquerque — this rule should be scrapped.

Change is already in the air. Police departments, including the Houston Police Department, are rapidly moving to expand officers' use of body cameras. Several states are debating proposals to change how grand juries and prosecutors investigate officers. And Attorney General Eric Holder has suggested revising federal law to lower barriers to prosecution.

But we should also update the law governing private civil suits against police departments in order to fairly compensate victims and prevent such abuses in the first place.

Current case law limits a department's responsibility to instances where its policy violates citizens' rights, or where it acted with "deliberate indifference" to those rights. Employing the officer who perpetrated the violation — or even committing obvious and gross negligence in training or monitoring him — isn't enough.

This legal bar is too high, and it has bred a lottery-like system of widely disparate decisions. Like many elastic standards invented by judges, "deliberate indifference" means one thing to some and quite another thing to others.

A recent police shooting case I handled in Houston illustrates the problem. The officer involved had amassed 10 complaints from other citizens for excessive force. At one point, he led the entire department in Taser usage. Then he shot and killed a suspect who several witnesses said had stopped resisting arrest and was standing nearby unarmed.

Before the shooting, the department "investigated" the previous complaints,

but it failed to reach conclusions about what happened and no discipline resulted. Still, the officer was supposed to be considered for a special program of extra training, monitoring and counseling. Inexplicably, this never happened.

The victim's family's case against the officer is proceeding to trial, but a significant verdict will almost certainly go unpaid.

Meanwhile, Texas federal courts ruled that the case against the department wasn't strong enough to reach a jury. The department's weak internal investigations and failure to abide by its own policy on retraining officers didn't add up to "deliberate indifference." Yet previous similar cases suggest that courts in other jurisdictions may well have decided differently.

Given this patchwork of civil rights protection and the stringent-but-hazy legal standard, any changes to federal civil rights law should include language clarifying that police departments will be liable if their officers are found liable — just as with every private employer. At the least, departments should be culpable for their own negligence.

After all, police departments are supposed to make sure their officers avoid trampling on civil rights. What greater incentive could we give them to meet this basic goal than holding them liable when their officers commit violations?

Alternatively, Texas and other states can enact laws providing that police departments will fully pay awards against their officers, or require departments to fully insure them. Many states and localities already have such provisions.

In Houston, though, an ordinance limits the city's payment of judgments against police officers and other employees to \$100,000 per plaintiff. This is far too low to compensate victims of serious abuse, especially when much of it has to cover legal fees and litigation expenses. Nor would changing this rule break the bank; individual officers enjoy immunity from liability in many cases, and verdicts against them are rare.

Of course, the vast majority of police officers respect citizens' civil rights and do their jobs admirably under hazardous conditions. They deserve our praise and respect.

But private civil lawsuits are a crucial check on the few who cross the line. One way or the other, we should make sure police departments take full responsibility for their officers. The just and long-standing principle of "let the master answer" should apply to everyone, especially those we entrust with guns and the right to shoot.

*Siegel is a Houston appellate lawyer.*