

## Failure to Train

### OBJECTIVES

The objectives of this large loss claim review are to:

- Examine a CIRMA Liability-Auto-Property (LAP) loss resulting from claims about law enforcements failure to train.
- Discuss CIRMA's and other resources on reducing liability associated law enforcement training,
- Develop specific risk management best practices to either prevent or mitigate future losses for members based on lessons learned.

### INCIDENT BACKGROUND

On the date of the incident, the claimant was driving his newer model Ford Explorer when he “rolled” through a stop sign. The officer observed this infraction and initiated a traffic stop, activating his emergency warning lights and siren. The driver pulled his vehicle to the side of the road after noticing the activated emergency lights. The plaintiff opened his window and placed his arms outside of the vehicle, with his hands in the open position. The officer exited his marked police vehicle yelling to the plaintiff to stay in the vehicle. As the officer approached the vehicle he continued to yell commands at the plaintiff, who did not respond. After several requests, the officer became frustrated and ordered the driver out of the vehicle. The driver did not comply and was pulled out of the vehicle by the officer and thrown to the ground. While the plaintiff was on the ground with his hands behind his back, the officer continued to yell at the plaintiff asking him, “who he thought he was”. Upon impact with the ground, the driver struck his face breaking 2 teeth and also sustained a laceration to his chin.

### INVESTIGATION

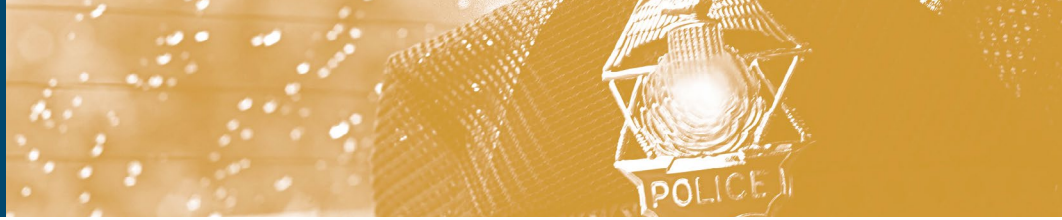
- The plaintiff is a 26-year-old male who is deaf in both ears.
- The plaintiff stated that he placed his hands out side of the window as precaution so that the officer did not think he was reaching for a weapon. His intent was to grab the note pad on the passenger seat to communicate to with the officer.
- The plaintiff stated that he tried telling the officer “No Ears”. Meaning that the plaintiff could not hear the officer’s commands.
- While on the ground, the plaintiff attempted to use sign language to communicate however, the officer perceived this as resisting behaviors and continued to yell at the plaintiff.
- Once the plaintiff was put in the seated position it was observed by the officer that he was bleeding from the chin and mouth. The officer at this time requested Emergency Medical Services (EMS) to respond to the scene.
- EMS arrived on scene and began to treat the plaintiff for his injuries.
- EMS determined fairly quickly that the plaintiff was deaf and needed to communicate through writing or American Sign Language.
- The plaintiff was transported to the hospital where he received initial treatment for his laceration and broken teeth.
- The plaintiff was referred to an oral surgeon, to whom he followed up with.
- The officer filed charges against the plaintiff ranging from resisting a police officer, failure to stop, failure to obey a traffic control device and disturbing the peace.
- All charges were eventually dismissed.

### INJURY AND DAMAGES

As a result of this incident, the plaintiff suffered the following injuries:

- Two (2) broken teeth requiring further oral surgery to extract and place permanent implants
- A laceration to the chin requiring 5 sutures to close, resulting in permanent scarring;
- Ongoing anxiety

The plaintiff filed their notice of intent to sue, with an initial demand of damages for \$150K. After successful pre-trial negotiations, this claims settled for \$75K.



## CONCLUSION

At some point during an officer's law enforcement career, they may need to communicate with a deaf or hard-of-hearing person during the course of their duties. According to the National Institute on Deafness and Other Communication Disorders<sup>1</sup>, approximately 2% of adults between the ages of 45 and 54 have disabling hearing loss. The rate increases to 8.5% in adults between the ages of 55 and 64. For those between the ages of 65 and 74 the disabling hearing loss rate increases to nearly 25% while for those who are ages 75 and older, the rate can reach 50%. The same report notes that about 28.8 million Americans could benefit from using hearing aids.<sup>2</sup>

Knowing that 1 out of 20, or as many as 1 out of 10, people in the United States may have a hearing disorder, is the law enforcement community doing enough, or anything at all, to assure that members of the deaf community are receiving a comparable level of service to those that are not hearing impaired?

To address this topic, the U.S. Department of Justice (DOJ) has reviewed the American with Disabilities (ADA) Act and how it relates to law enforcement, and has published a guide for law enforcement agencies. The guide includes recommendations on how to best serve the deaf community and how to comply with the Americans with Disabilities Act. The guide from the U.S. DOJ is entitled *Communicating with People who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*. The guide discusses the requirements per ADA, provides recommendations for law enforcement agencies and how to comply with those requirements, recommends training for individual officers, and provides scenarios to illustrate what actions may be appropriate for a given situation.

People who immediately exit their vehicle during a traffic stop, whom have sudden and rapid hand movements and are reaching into a pocket to retrieve a notepad (or possibly a weapon in the officer's mind) are all actions that can immediately cause concern for a police officer. Since police officers want to provide the highest level of service possible to all members of the community, a little training, preparation and understanding, will help to reduce the likelihood of this type of situation arising and resulting in an officer's use-of-force and lead to positive interactions between the officer and members of the deaf community.<sup>3</sup>

## KEY RECOMMENDATIONS/ACTION ITEMS

CIRMA Risk Management team is seeking feedback from the Law Enforcement Advisory Committee on the recommended best practices to prevent these incidents from occurring.

- Providing training to officers on how to recognize signs associated with those whom have difficulty hearing or are deaf.
- Provide training to officers based on the recommendations contained in U.S. DOJ publication entitled *Communicating with People who Are Deaf or Hard of Hearing: ADA Guide for Law Enforcement Officers*.
- Consider providing officers with basic American Sign Language (ASL) signs to attempt to communicate with a person when a threat is not present.

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<sup>1</sup> <https://www.nidcd.nih.gov/health/statistics/quick-statistics-hearing>

<sup>2</sup> <https://blogs.cdc.gov/publichealthmatters/2022/03/asl-glossary/>

<sup>3</sup> <https://www.lifeprint.com/asl101/topics/lawenforcementandthedeaf.htm>

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Questions on this topic? Ask your Supervisor or CIRMA Risk Management Consultant.

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