

Using Subject Matter Experts To Identify High-liability Tasks

by John Sample



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In more pristine times, the primary reason for requiring and providing effective instruction was to increase the probability of correct and consistent performance on the job. Corporate executives and their performance improvement managers are now becoming concerned for a second reason. This second reason for instruction involves avoiding or limiting civil liability for failure to train to standard for a business or governmental entity (Sample, 1993, 1995). Given this second reason, instruction becomes a defense to a suit alleging failure to instruct or train to standard. The second reason probably would not exist, or would be minimal, if the first reason were attended to more effectively. Unfortunately, it is the second reason that gets the attention of corporate CEOs and governmental executives.

Framework for Identifying High-liability Tasks

There are several approaches for determining the likelihood of organizational liability for failure to instruct to standard. The most traditional approach is to monitor civil (and sometimes criminal) case law for precedent cases that guide the legal system in its deliberations and findings. Such an approach is largely reactive since the performance improvement manager must rely on advice from legal counsel to stay informed about decision in pertinent cases.

A second approach uses existing statutes and regulations to guide strategies and instructional programs for compliance.

Examples include the Equal Employment Opportunity, Occupational Safety and Health Administration, Nuclear Regulatory Commission, and most recently, the Americans for Disability Act. This approach has the advantage of technical assistance from the regulating agency (Ledvinka & Scarpello, 1991). Although too much assistance can become unwelcome, at least there is a source of legal and technical information for designers of training programs.

A third approach is more proactive in nature, and when combined with the first two approaches, will ensure the identification of potential high-liability tasks. This approach uses a validated task inventory, routinely maintained risk management and personnel records, and subject matter experts (SMEs) to identify high-liability tasks. Although the context for this article is a mid-sized sheriff's department, the process may be easily modified for business and industry.

Identifying High-liability Tasks—A Law Enforcement Example

Most task analysis efforts result in a list of tasks and the identification of knowledge, skills, and attitudes (KSAs) necessary for selecting, training, and supervising personnel to standard (Swanson, 1994).

The conventional wisdom in law enforcement today is to group potential high-liability tasks into several general areas: driving, first responder/first aid,

use of force, firearms, and sometimes civil rights issues (Berringer, 1987). These broad areas serve to put administrators, supervisors, and training personnel on general notice about potential liability. What has been lacking is a specific process for the identification of tasks within those broad areas that carry potential high liability.

Given the above framework, the first step was to develop an inventory of tasks performed by sworn personnel in the sheriff's department. The second step, the needs assessment, was to analyze routinely kept risk management and personnel records for tasks associated with auto accidents, workers compensation claims, professional liability, and internal affairs complaints. The third step was to have SMEs review the results of the needs assessment to determine which tasks have the most potential for high liability.

Step 1: Development of Task Inventory

The task inventory used in this study was generated from the "Job and Task Analysis of Florida Law Enforcement Officers." The original task list of 528 items was updated by 18 cite representatives of the department. This group identified an additional 22 tasks performed by sworn personnel in the department.

An inventory consisting of 550 tasks and 11 demographic variables (sex, assignment, etc.) was distributed to sworn deputy sheriffs and their sergeants. Each "Law Enforcement Task Inventory" included a mark-sensitive optical scanning scoring form. Instructions for completing the task survey were also included, and the respondents were given two weeks to complete the assignment. Each booklet and scoring form was assigned a number that corresponded to the deputy's identification number.

Each deputy was to determine if he or she had performed each task during the past year, and if so, to then use a five-point scale to estimate "relative time

spent" on the task (1 = very much below average; 5 = very much above average). One hundred fifty-four (92%) task surveys were returned to the personnel unit for processing. The optical scanning forms were scored by the testing and evaluation center of a major state university. Statistical analysis was provided by the computing center at Florida State University.

Step 2: Needs Assessment and Data Analysis

The author and a representative of the staff services unit of the sheriff's department reviewed incident reports to determine what specific tasks were being performed at the time an incident occurred. In this context, incident means any single occurrence of an automobile accident, professional liability claim, internal affairs/citizen complaint, or workers compensation claim. A summary report was written for each of these areas. In many instances, multiple tasks were performed during each incident. Both ana-

lysts had to agree that one or more tasks were performed before a task(s) was assigned to a specific incident. Incidents were determined for an 18-month period.

ment context, SMEs must have the experience and ability to provide credible testimony and to withstand cross-examination if they were required to testify in their area of expertise. SMEs must be chosen carefully, for a department's future liability may depend on their expertise. It was recommended that the sheriff's department use external and internal SMEs for the required type of expertise. In this regard, the use of SMEs is similar to using external observers for assessment center activities.

In this instance, the sheriff requested the assistance of seven internal and external subject matter experts. The SMEs for this project represented driving, firearms, first responder/first aid, defensive tactics, and general law enforcement administration. Also included as SMEs were a representative of the state sheriff's association and an attorney from the insurance company that represented the department. They did not receive any compensation for their assistance.

It is of some significance that the two methods essentially resulted in similar rankings. Multiple methodologies are always preferable in applied research of this nature, and, in this instance, confidence is increased in the validity of the final task list because both methods yielded similar results.

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Step 3: Use of SMEs

SMEs are those individuals who have specialized expertise and whose judgment and professional opinion will withstand rigorous scrutiny. In a law enforce-

The SMEs met for a half-day to assist the department with identifying tasks of high-liability potential. As a group, the SMEs reviewed the summaries of the automobile accidents, internal affairs complaints, professional liability cases, and workers compensation claims.

The next objective for the SMEs was to determine a practical definition of high-liability tasks. After lengthy discussion,

the SMEs agreed on the working definitions. A high-liability task:

- results in claims involving death or significant injury to members of the public or deputies; or
- results in a loss (settlement or judgement) of \$50,000 or more; or
- results in multiple incidents of the same task or deputy, each incident \$5,000 or more loss; or
- a combination of the above.

Having reviewed the report summaries and given the above definition, the seven

SMEs were instructed to review the task inventory to determine potential high-liability tasks for the department. Working independently, the SMEs used their experienced judgement to determine tasks with potential high liability. For tasks of their choice, the SMEs assigned an "H" (for high), an "M" (for moderate), or "L" (for low) potential liability.

The SMEs were also instructed to determine potential high-liability tasks using an alternative method, nominal group technique (Martinko & Gepson, 1983;

Moore, 1987). This approach to group decisionmaking requires that subject matter experts identify high-liability tasks and silently vote to determine a priority ranking. In this instance, each of the seven SMEs were instructed to assign 10 votes to the ten tasks having the potential for the highest liability. The task with the highest liability received 10 votes, the next highest liability task received nine votes, and so on.

Triangulation: Task List, Needs Analysis, SMEs

The following list of tasks (see Figure 1) is the consensus of subject matter experts from the above-described procedures for determining high-liability tasks for the sheriff's department.

- The rank order in the left-hand margin is the result of the SMEs assessing each task in terms of high-liability potential.
- The second list of rankings represents the rank order from the nominal-group technique (NGT).

Note that the NGT method resulted in two additional tasks that were not identified by the first method:

- conduct active patrolling of assigned areas; and
- set up road blocks, each ranked fifth and ninth respectively.

It is of some significance that the two methods essentially resulted in similar rankings. Multiple methodologies are always preferable in applied research of this nature, and, in this instance, confidence is increased in the validity of the final task list because both methods yielded similar results (Cascio, 1991).

There is no particular magic to be attributed to the final consensus list of high-liability tasks reported in this article. A different group of equally competent SMEs could have identified a different mix of high-liability tasks. What is defensible is the process by which the tasks were systematically and rigorously identified. In this instance, the sheriff's department has confidence that a

Rank	Nominal Group Technique Rank	Task Description
1	4	Pursue vehicles or vessels.
2	2	Apprehend suspects.
3	3	Control disorderly or irate persons.
4	1	Make arrest.
5		Confront or monitor groups.
6	6	Conduct felony stop.
7	7	Administer first aid.
8		Rescue trapped persons.
9		Act or respond to extortionist or kidnapper.
10		Use animals to control crowds.
11		Conduct traffic stop.
12		Detain suspect vehicle or vessel.
13		Participate in the execution of arrest warrants or make return of to proper authority.
14		Protect victim or other threatened person.
15		Seize or confiscate illegal apparatus (such as distillery, traps, drug equipment, or gambling devices).
16		Guard prisoners outside of jail.
17	8	Search for explosives related to bomb threats.
18		Use animals to detect or apprehend intruders.
19		Transport ill or injured persons from remote area to meet emergency medical team.
20		Investigate hazardous materials violations.
—	5	Conduct active patrolling of assigned areas.
—	9	Set up road blocks.

Figure 1. Ranking of high-liability tasks by SME.

grand jury or civil trial jury would conclude that reasonable steps were taken to identify high-liability tasks.

Strategies for Preventing Liability

The results of this applied research project cast the identified high-liability tasks into what the courts refer to as foreseeable field incidents that officers could be reasonably expected to experience (*Canton v. Harris*, 1989). Having identified high-liability tasks, the sheriff's department is now on notice to adequately prepare sworn deputy sheriffs and their supervisors to respond competently to situations in which these tasks are required (Sample, 1990). Failure to do so could result in civil liability against the department's insurer and the county. It is important that CEOs require extensive written policies, training, supervision, and discipline for such foreseeable tasks (Ward, 1988).

Further research using the above-indicated procedures is in progress. A statistical procedure for assessing the level of inter-rater agreement of subject matter experts known as Kendall's coefficient of concordance (Siegel & Castellan, 1988) has been utilized with SMEs in a correctional setting. ■

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