If a jail inmate trying to kill himself ends up with a significant brain injury, instead, should the county offer taxpayer dollars to settle a lawsuit from his family? How about if a suspect tries to run over a law enforcement officer with his car, but bungles the effort and is paralyzed in a crash? Or, what if a suspect expires while full of drugs and resisting arrest?

It’s no surprise that tragic cases can lead to multimillion-dollar jury payouts – against government agencies with deep pockets – even when officers followed lawful protocol and committed no wrongdoing.

These examples illustrate why it’s hard to judge law-enforcement litigation without knowing the details and optics of each case. At times, yes, officers make mistakes. But, often, a settlement says more about risk management than the merits of the claim. That is why trend lines and tallies – lawsuits filed, dollars paid out – offer little real insight into litigation patterns, in Riverside County or elsewhere.

Even in the best of times, lawsuits shadow law enforcement. The work of officers, in jails and on patrol, is inherently risky. Deputies interact with dangerous, unpredictable people every day in the course of their jobs. As confrontations unfold, would-be critical incidents are nearly always de-escalated by trained officers. These successes don’t make the news, but they happen daily.

A small fraction of the time, an incident is not, or cannot be, de-escalated. In many of these cases, split-second decisions made in violent confrontations are later pored over with 20/20 hindsight in the court of public opinion. Complexities are dismissed in favor of easy narratives. And officers are measured against an expectation of perfection, not reasonableness.

These perceptions further explain why lawsuits might be settled rather than litigated in court, even if the facts fall in favor of law enforcement.
Moreover, insurance carriers can add pressure to settle a case rather than risk an even larger jury verdict. The municipality can refuse the insurer’s offer – but if jurors rule for the plaintiff, the public agency must pay the full amount awarded, effectively nullifying the insurance.

Such dynamics can form powerful inducements to settle claims – based on risk aversion alone. Even so, cities and counties should avoid reflexively settling, and instead carefully weigh which cases are worth the risk of defending. Riverside County and others should continuously improve their litigation triage.

Reflexive settlements, in the aggregate, can be more costly than rolling the dice with juries. From a plaintiff’s perspective, if government will settle almost any case filed, why not present a flimsy claim and take the payout?

Chicago, formerly “The City that Settles,” recently proved this theory. After shifting gears to aggressively fight defensible cases, the number of lawsuits filed against the city dropped by 50 percent in the first year alone.

Meanwhile, at the department level, the sheriff’s office provides extensive expert instruction, first to ensure safety and second to reduce risk and litigation. Mandatory use-of-force training includes critical-incident simulation, tactical options review, advanced communications, quarterly firearms testing and defense techniques against mixed martial arts. In all, the department offers hundreds of training courses, many highly specialized, to enhance safety and peacefully defuse threats.

So how should a county respond to litigation if the suspect in the lawsuit precipitated his own injury or death? Communities discuss and debate the actions of police in the wake of such tragic circumstances, and properly so. The good guys have an obligation to behave like good guys at all times. But, sometimes, the good guys can’t save the not-so-good guys from the consequences of their own poor choices.

Candor and accountability do not lessen tragedies or dilute pain, of course. But the more people examine the whole picture – with respect to cases individually and law-enforcement litigation generally – the better they’ll understand the different dimensions of multiple issues involved. Numbers on a spreadsheet or lines on a graph will never capture the reality behind legal claims and settlements, much less the cost-benefit ratio of public safety, delivered daily.
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http://www.pe.com/articles/litigation-804723-cases-law.html