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# Fire Service Leadership and the Impact of Civil and Criminal Litigation on Officer Recruitment and Retention

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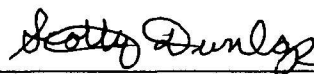
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Fire Service Leadership and the Impact of Civil and Criminal Litigation on Officer Recruitment  
and Retention

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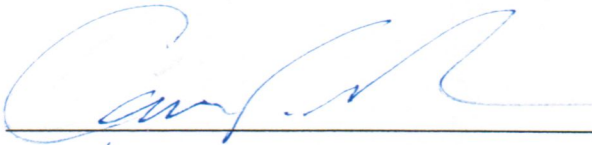
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Fire Service Leadership and the Impact of Civil and Criminal Litigation on Officer  
Recruitment and Retention

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Master of Science  
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2014

Submitted to the Faculty of the Graduate School of  
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## DEDICATION

This thesis is dedicated to my wife Brenda and our daughters Talin and Aria for their unconditional love and for their unwavering support. Without them, this project would not have been possible.

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## **Abstract**

Litigation in any industry is a driving force in the need for change management. There are very few industries that have not felt the direct effects of liability and litigation. For generations the fire service has enjoyed a sort of protected status as a result of the general good will the public has offered. There are many reasons for this, not the least of which being that firefighters routinely will risk their lives in the service of others. However, in recent years, fire departments across the United States have experienced increasing incidents of civil and criminal litigation. The core issue and purpose of this paper is a growing concern over the possibility of being sued due to work related activities. The question at hand is what effect, if any, has legal liability had on the recruitment and retention of fire officers? This research will determine whether or not this perception has migrated into the collective psyche of the fire service and if so, to what degree.

There is little academic literature available that deals with this core issue relating to the fire service. Most of the evidence regarding the impact of litigation on the fire service is anecdotal. However, there are many examples of related disciplines, such as medical practice, law enforcement, and social workers, and the effect that litigation has had on the recruitment and retention of qualified individuals in these disciplines. The literature review will be comprised of case studies of how liability and litigation has affected these disciplines in order to properly frame the issue for the fire department.

The data collection was accomplished by the distribution of a survey designed to clearly identify factors that either support or refute the hypothesis. The survey established a demographic comparison as well as specific aspects that either directly or indirectly

influence the decision to promote. Survey results were compiled, analyzed, and measured against the hypothesis.

Survey results did not support the presumption that litigation is an active or critical issue facing the fire service. However, the results did show that 7% of the respondents turned down a promotion while 77% had at least considered the potential impact litigation would have on their decision to promote. Volunteer firefighters were demonstrably more sensitive to the topic of liability and litigation than their full-time brethren. Education levels also highlighted a trend in how a firefighter viewed the issue of litigation in the fire service. Results of the survey did identify that litigation is something of which firefighters are aware. For this question to be more thoroughly explored, or to determine if this issue continues to develop, more research is required.

## Chapter I

### Introduction

Liability and litigation are two words that have a tremendous effect on fire department education, training, preparedness, readiness, and staffing. Firefighters must be physically and mentally prepared to deal with all situations and typically in an all-hazards environment. Fire officers and fire leaders must continuously deal with an ever-changing political and legal environment that expects perfection in all circumstances.

Edwards (2005) contends that fire department leaders, and those that aspire to be, must recognize that the law and personnel management are very much intertwined. Separation is no longer possible. Litigation can result from inaction where action was required, or from negligence, or from failure to follow policy, procedure, laws, mandates, or consensus standards. Wallace (2006) argues that in many cases there are so many rules and regulations that firefighters are not sure what they are supposed to do or not supposed to do.

The discipline of firefighting has become more complex and hazardous through the development of highly flammable building materials and rapidly developing technology as well as increased budgetary pressure to do more with less. The demands placed upon fire officers require individuals who not only understand responsibility but also understand accountability. Fire officers are accountable for ensuring a work environment free of unreasonable risk and responsible for all personnel under their charge. When errors in judgment or tactics are made, fire officers will be held accountable commensurate with the severity of the error.

Fire officers will also have to deal with personnel issues that are secondary to that of typical training and fire ground operations. Fire officers will be held accountable for not only their mistakes, but mistakes of those individuals for which they are responsible. This level of accountability previously equated to disciplinary action at the organizational level. It now encompasses the potential for civil action and incarceration at the individual level.

Additionally, practical firefighting experience is less available due to the increased fire prevention measures employed by the fire departments and local and state governments. According to the Karter (2011) there were approximately 484,500 structure fires in 2011 as compared to 1,098,000 in 1977. This reduction in practical fire experience has transformed what used to be high frequency/moderate risk to a low frequency/high risk problem. This information is important to properly frame the environment in which today's fire officers must contend.

Firefighters are not immune to the thoughts, feelings, or reactions that are common to the human condition. This sentiment can be described as a socio-behavioral continuum; people will typically react to the same stimuli in the same ways regardless of background, influence, or contact (or lack thereof). The socio-behavioral continuum I am asserting is most closely related to cultural determinism. "...[T]he expression "cultural determinism" should correspondingly be restricted to the shared behavioral and psychological characteristics of social actors that they acquire as a consequence of the transmission of the traditional values, norms, and ideas of the social group...not only in reference to those behavioral and psychological characteristics that are caused by culture, but also in reference to those that are shaped by it..." (Spiro, 2003, p. xiv). While other

disciplines are well represented on the socio-behavioral continuum, the cited examples show that fire departments are no longer immune to civil and criminal action. No longer is the local fire department immune to the legal reach of the court system.

Firefighters, as individuals, are no different than any other individual in society; logic would dictate that it is only a matter of time for the legal liability environment of the fire service to catch up, and become comparable in this regard, to other disciplines. The key concern is not to assume that just because there may not be an issue now that the issue will not eventually develop if ignored. City fire service leaders must recognize the threat (real or perceived) to future leadership ranks now and begin to develop strategies to stay ahead of the problem.

The issue of officer recruitment and retention is often overlooked by the department due to the nature of that role. Most firefighters, even those who do not promote for other reasons, stay on the job until they retire or are medically no longer able to perform their job duties. “Firefighters are in general very satisfied with their choice of career, and the majority of those who leave do so in the first few years. Those who remain for the first six years tend to stay for twenty” (Princeton Review, n.d., pp. 3). This “long term” aspect of the job has allowed a certain complacency to creep into the thinking among the leaders of the department. Presumably, the assumption is that since firefighters in general remain on the job for twenty plus years there will always be fire personnel willing to promote, so officer recruitment/retention will not be an issue.

There are tangible consequences involved if fire departments continue to conduct business under the status quo. Leadership ranks may fall below the required staffing levels and there may not be a program, policy, or procedure in place to deal with the issue

in a timely manner. As previously stated, this fact is only offered as a litmus test for the environment where these same individuals are being asked to promote to the company officer level and assume even more responsibility.

The fire service has enjoyed a reputation of professional service delivered quickly, safely, and efficiently. As such, an earned benefit has been limited public exposure to litigation. However, over the last few years there have been an increasing number of high-profile cases of fire departments and department personnel facing civil and criminal trials for on and off-duty actions.

The fire service is fraught with examples of civil or tort litigation. “A tort is an act committed by one or more parties that causes injury to another, for which the law allows a remedy of monetary damages. The purpose of tort law is to compensate the victim or wrongdoing, at the expense of the wrongdoer” (Varone, 2007, p. 185). Examples of civil litigation within the fire service are: sexual harassment, negligence, wrongful death, failure to follow policy/procedure, disparate treatment, and racism. Additionally, fire departments are no longer afforded the protections of sovereign immunity. “Generally, the idea of sovereign or government is immune from lawsuits or other legal actions except when it consents to them”. (Cornell University Law School, n.d.). In simple terms, the fire departments and fire personnel can be sued for anything by anyone.

Fire service leaders now must not only contend with the inherent responsibilities of leadership, but also the potential for life-changing litigation. Litigation resulting from decisions made on and off the fire ground. What follows are a few examples of the new litigious reality that firefighters and fire departments must prepare for and protect

themselves against. Unfortunately, fire personnel must also understand that even when they do everything right, they can still be the subject of a lawsuit.

The court system has become a primary mechanism for plaintiffs to seek remedy in any case of wrongdoing, real or imagined. Unfortunately, not every litigious action is pure in motive or warranted. Regardless, the effects of litigation can have tremendously negative outcomes to the firefighters involved as well as throughout the departments and communities they serve.

The issues of potential litigation span civil and tort law to criminal prosecution. While criminal suits are not as common as civil suits, they do happen.

“Occasionally, the training officer and staff may be a litigation target under two possible scenarios: One is to be charged under a criminal statute where the local, state, or federal prosecuting attorney files charges (after the investigation) against the department or individuals, and jail time is the remedy. The other cause of action is to be individually sued by the injured party or the surviving family or estate under a civil tort action where money is the remedy”. (Murphy, J., 2012, pp. 8).

Aside from the potential leadership gap, costs will also rise as a consequence of not meeting the leadership recruitment/retention challenge. Overtime pay will rise because the officers currently in place will have to cover other shifts to offset staffing shortages. Furthermore, the added responsibility of overtime will invariably contribute to burnout of current officers. “Job burnout is a physical and mental state caused by severe strain placed on the body until all resources are consumed”. (Carlton, J., 2009, pp. 10). If

more seasoned officers leave the officer ranks, additional pressure will be placed on those who remain. This in turn compounds the difficulty in recruiting new officers.

The cost of litigation is a significant driver for change. This context is exemplified by the healthcare industry. As costs for healthcare services continue to rise, so too does the potential for litigation and malpractice suits. Datz (2010) reported "... Harvard School of Public Health (HSPH) researchers found that medical liability costs totaled about 2.4% of annual health care spending in the United States, or \$55.6 billion per year in 2008". Because of this, physicians are finding it difficult to justify remaining in practice. Governmental, industry, and organizational regulations further complicate the atmosphere in which the physicians are expected to work and practice.

As the research will show, the healthcare industry delayed dealing with these increasing pressures until the issue of recruitment/retention became a crisis and plans were put in place to address the root causes. According to Cohn (2009), organizations must be proactive when it comes to physician retention. This will enable the organization to attract and retain the best and the brightest and to avoid physician shortages. Doctors, nurses, and social workers are all dealing with the effects of external stimuli including malpractice lawsuits, client dissatisfaction, and job-created stressors, which all can lead to litigation. As a result, it negatively impacted the recruitment and retention of qualified and talented individuals.

Much like the healthcare examples, fire personnel are also significantly influenced by their environment; they too can make significant life changing decisions based upon the perception of increased civil accountability. As incidents of civil and



criminal litigation increase all across society, it will be increasingly difficult to ignore the problem and the implications on officer recruitment and retention.

The alternative in this case is to continue to ignore the potential impact of litigation on the recruitment and retention of fire officers. It is incumbent upon fire service leaders to recognize the inherent liability of the work that firefighters perform on a daily basis. This commitment to developing leadership must also be balanced by recognizing the fire department personnel perceptions regarding the responsibility and accountability environment in which the fire service is asking the future leaders of the department to promote.

Nosich (2012) states that critical thinking skills are used to properly answer a question or solve a problem. However, it is a mistake to try to eliminate emotion from the logical equation. It is the emotions and perceptions of firefighters and fire officers that will be measured in this study. In many cases of human behavior, perception becomes reality. If the reality of the changing litigious environment does not synchronize with the general perception of the target population, the consequences can be dire and far-reaching. Fire departments across the U.S. must not only aggressively research this potential threat, but actively put in place measures to mitigate the potential threat and follow the lead of the healthcare industry.

## Chapter II

### Literature Review

Fortunately for the fire service, there are other disciplines that are currently dealing with the thesis hypothesis. There are four primary fields that will be examined: physicians, nurses, educators, and social workers. These fields are currently struggling with recruitment and retention of qualified people. As previously mentioned, the issue of officer recruitment/retention in a litigious environment is a relatively new phenomenon that fire service leaders must understand. Within the context of litigation, and the inherently negative effects it has on individuals and organizations, there are similarities between the fire service and these other disciplines.

While there are numerous reasons why these fields are struggling, the core issues that will be examined are litigation, malpractice, and accountability. All three have the potential to bring about a critical shortage of fire officers across the country. The primary concern that arises from the aforementioned references is clarifying the tacit relationship between the struggles within the healthcare industry and malpractice, and those struggles within the fire service and litigation as a legitimate comparative measurement.

Much like healthcare, the fire service is a business that serves people from a health and safety perspective. There are no laws that state cities, towns, or villages must provide fire or emergency services. As such, fire departments can be a) kept from forming due to insurance and/or potential litigation concerns, b) can become insolvent due to financial obligations litigation, c) can simply close their doors due to staffing/recruitment difficulties. The institutional makeup of the healthcare industry very much mirrors that composition and makeup of the fire service industry. Ergo the impetus

for this thesis is attempting to ascertain the effect, if any, of litigation on fire officer recruitment/retention via comparative statistics with the healthcare industry.

The literature review documents how working environments are negatively impacted and affected by external stimuli (i.e. stress, burnout, malpractice, and litigation). The recruitment and retention crisis due to negative external stimuli is a very real problem. The primary take-away is that any negative external stimuli left unchecked will eventually lead to a real-time shortage of personnel in key areas.

Cohn, Bethancourt and Simington (2009) performed a study that looked into the issue of physician shortages in the healthcare industry. Among the chief complaints of physicians were the issues of “powerlessness” in relation to the rapidly changing medical environment, outpatient care, and nursing shortages, which all led to emotional burnout. This burnout was leading to a critical shortage of qualified physicians. In their study of 382 participants, nearly a third of the respondents reported some form of burnout relating to their jobs. This relatively high rate of emotional distress was leading to increased turnover, which in turn increased the pressure to retain those physicians left as well as to recruit new physicians to the field. The study resulted in the creation of a proactive program that targeted the retention of physicians. One of the keys to retain physicians was to create a mentoring program. This program would take a physician who was new to the group and assign a more senior physician to work closely with them in order to ease the transition into the new environment. During the first year, the senior physician would help with any issues or obstacles that were encountered. This mentoring program resulted in a significant reduction in physician turnover.

MacKusick and Minick (2010) conducted research that looked into the reasons why nurses were leaving the nursing field. The alarming rate at which nurses were leaving was creating a critical shortage of nurses. This shortage placed additional pressure on those nurses who remained as well as the increased stress of needing to recruit new nurses at a rate that could keep up with the high turnover. In their study of 187 nurses, nearly half of all respondents had indicated they had considered leaving the medical field. What made this revelation so dire was that the nurses who had indicated this feeling were saying this within their first year as nurses. After three years of working as nurses, a third of the respondents had left the nursing field or had drastically reduced the total number of hours they were working. This could not be attributed to the stresses of dealing with death and dying. Among some of the reasons the nurses were contemplating leaving were: fatigue and exhaustion, emotional distress, and workplace dissatisfaction. Components of workplace dissatisfaction reported by the nurses included sexual harassment, physical and verbal abuse, and a lack of support from their peers. “Medical-surgical nurses may benefit from a recognition that perceptions of the workplace appear to cause some RN’s to leave nursing” (MacKusick and Minick 2010, p.340).

Cooper, Stoflet and Wartman (2003) argue that at the current rate of physician attrition, there will be a critical shortage of physicians in the healthcare industry. In their study, 89 percent of the respondents reported physician shortages. These respondents also reported on the negative impact that the shortages were having on their schools. One of the negative factors was in the recruitment and retention of faculty. This study did not look at litigation or malpractice as a cause for physician turnover. However, the study did

highlight the issues that result from a negative workplace environment. In particular, it focused on the increased importance and focus needed to address physician recruitment and retention, and the elimination of negative workplace stimuli. The issue of physician shortages both today and tomorrow must be addressed immediately if physician shortages are to be kept from becoming critical. There is a tangible disconnect between the need for more physicians and the barriers in place that inhibit the recruitment of new physicians.

Cotten (1995) highlighted the obvious disconnect between educators and their functional understanding of liability. While most understood what liability was in the aggregate, most could not identify who would be liable in a given example of negligence. The demonstrable ignorance of educators would not, and will not, serve as a defense against liability. Teachers, professors, teaching assistants, principals, and administrators must become “students” of liability in order to protect themselves and the organizations for which they work. Cotten (1995) proposes four principles to determine negligence and liability. First, the standard of care in the educational setting must equate to reasonable care. Second, the assigned teachers are responsible for the safety of the students in their class, unless the teachers are not physically present. Third, administrators are liable for the actions of their subordinates if those actions did in fact increase the likelihood of an accident. Finally, the school district is liable for the actions of its employees unless a court deems otherwise.

Evans and Huxley (2009) investigated the shortage of social workers in Wales and the need to develop a program to aggressively address the critical issue of recruiting new social workers and retaining those who are already working. Respondents reported a turnover rate of 15%. A third of the respondents felt valued “occasionally” and a fifth of

the respondents felt “not valued”. Core issues with the low morale were: lack of quality leadership to include supervision, lack of administrative support, and lack of training. The study identified traineeship (mentoring) programs as a viable way of positively affecting the recruitment and retention of social workers. Not having a support structure in place to handle the new employee transition is a recurring theme in exploring why disciplines are experiencing high turnover. While pay and benefits packages are being developed to recruit and retain physicians, there is little evidence available to support the idea that pay and benefits are primary reasons for physicians to leave the profession. “The fact that turnover rates did not differ significantly by any pay, benefits or training variables suggests the impact of such incentives is limited to attracting new staff, and does not influence the retention of staff” (Evans & Huxley, 2009, p.11).

Smith (2005) discusses the predicament the healthcare industry currently finds itself in: one of litigation and skyrocketing malpractice insurance costs. To emphasize her point, she points to the fact that the healthcare industry, through failed vision and leadership, lost sight of what quality patient care was and how to deliver it. Because the healthcare industry ignored the basic tenets of patient advocacy, the cost of doing business quickly became prohibitive. In this general healthcare context, Smith correctly places the responsibility of the current crisis on the leadership. The solution is known and has been for some time, yet the leadership failed to act. The insurance industry has identified the threat and reacted by increasing liability and malpractice insurance rates. “We have the ability to discern good and bad practitioners. We have the ability to see where danger lies in our convoluted and manual systems of care” (Smith, 2005, p. 97).

Adrianson (2003) also looks into the issue of medical doctors leaving their practice due to the high costs of malpractice insurance. This paper cited a few examples where, due to malpractice insurance, doctors and specialists were forced to alter their practice platform, relocate to a less regulated market, or simply retire. In one extreme case, an entire trauma unit had to be shut down for a period of days because the trauma doctors were not able to afford their collective malpractice insurance premiums. One issue in particular are the rising costs involved in the defense against lawsuits for alleged malpractice and the rising costs of settlements resulting from the suits. Adrianson estimates the costs to fight malpractice suits are estimated to be in the billions of dollars. It is this litigious environment that physicians must not only navigate, but also decide if it is worth the effort and risk to remain in practice. Adrianson also describes an environment where doctors, protesting the soaring costs of malpractice insurance, have staged work slowdowns and have actually walked off the job. While this behavior is extreme, the actions that the physicians must take to protect themselves against potential lawsuits are no less extreme.

Many fire departments have already experienced the effects of civil litigation. “During the last decade, numerous court decisions...have affected the legal position of all members of the fire service. Changes in legal doctrine and standards for fire service performance have placed greater responsibility on every member of the fire department”. (Callahan, 1987, p. xiii).

According to Varone (2007), in 1987 the City of New York, the Fire Department of New York (FDNY), a FDNY Captain, and a FDNY Apparatus driver were all sued over the death of a fellow firefighter. The plaintiff accused the defendants of negligence

during the course of their duty in the death of the plaintiff's spouse (a firefighter that was on the scene). The jury found for the plaintiffs. In 1992, the City of Lowell and the fire department were sued over chosen tactics that led to the destruction of additional defendant property. The jury found for the plaintiff.

Chris Schilling at *The Republic* (2010) reported that the State of Ohio, the City of Columbus, the county, eight police, fire and water rescue agencies along with various other agencies were all sued as a result of a citizen drowning. The plaintiff contends that even though the local emergency rescuers were not capable of responding to the specific incident in question, that due to the exigent circumstances, they all had a duty to a) be prepared for such an incident and b) had a duty to act. This case has yet to be decided.

Varone (2014) posits, on September 12, 2014 a man (plaintiff) was rescued after being trapped in his vehicle by rising flood waters. The man was trapped for approximately two hours before firefighters arrived. The man is suing the department for \$500,000 to cover his medical expenses. The plaintiff's attorney contends that it was negligence on behalf of the fire department that caused the delay in his rescue, and as such, is liable for all of the incurred medical expenses.

The *CompanyOfficer.com* (2011) reported that a suit, which was originally brought in 2002, was being revived due to a recent Appellate Court ruling regarding immunity and volunteer fire departments. The original suit was brought against two New York fire departments along with named fire officers and officials that stemmed from a fire which resulted in two firefighter fatalities. In this case, the widow of one of the firefighters alleged negligence on behalf of the fire departments and of the fire officers involved in fighting the blaze.



Varone (2014) continues, on June 20, 2013, a nineteen year-old girl (passenger) was killed in a vehicle crash with a Poway Fire Department engine that was responding to an emergency medical call. The family's attorney has filed a civil suit against the department and the driver under the premise that the driver of the fire engine was not properly certified to operate the vehicle.

Varone (2014) concludes in 2009 a man ran into the rear of a fire truck with his vehicle. The driver of the car sued the city and the driver of the fire apparatus for negligence. According to the police report, the fire truck was stopped in the travel lane waiting to make a right-hand turn into a parking lot. The man received a citation for causing the accident, but sued for damages anyway.

Sudhin Thanawala (2014), writing for the Associated Press, covered what is arguably the most recent high-profile law suit involving the fire department in many years. Following the 2013 crash of an Asiana Airliner in San Francisco, one of the survivors who had initially survived the crash and was thrown from the plane, was subsequently run over by two separate fire vehicles and died as a result of her injuries. The family is suing the department for negligence and patient abandonment.

In an opinion paper, Varone (2011) reviewed the issue of litigation in the fire service. In his review, he discovered that fire departments are statistically more likely to be sued by a member of the department than by someone outside the department. Varone (2011) contends that employee-related lawsuits account for seventy percent of all lawsuits brought against the fire service. While firefighters may be distracted by the potential for being sued by the general public, the actual risk from within could have some effect on the decision to seek promotion. Examples of internal lawsuits/criminal

actions are: discrimination, reverse discrimination, sexual harassment, employment discrimination, and theft. While there are many more examples, these represent the largest percentage of all fire-department-related legal actions. Eighty five percent of all suits brought by firefighters name the fire department and/or municipality specifically. In many of these cases, fire officers or other department leadership were aware of potential issues, but failed to act. Failing to act, for any reason, further exposes leaders and their departments to legal action.

Varone (2014) continues, on November 9, 2012 a high school cross country runner died at the scene of the Championship race. The runner fell during pre-race warm-ups and died as a result of a head injury. The family filed a wrongful death suit against multiple entities including the local volunteer fire company (that was never at the scene).

As previously stated, for the thesis question at hand there is very little peer reviewed research available to address the specific effects of litigation on firefighters. The thesis premise is based on the relationship between being sued, or the potential of being sued, and the subsequent stress that develops as a direct result of the experience. More specifically, Tunajek discusses the phenomenon of “Malpractice Litigation Stress Syndrome. The experience of being sued is unexpected, overwhelming, and difficult to process”. (2007, pp. 1).

### **Contextual Relevance**

The context of the issue within the fire department is much the same as other fields/disciplines: securing and retaining the future leaders of the field in a litigious environment. The fire service must examine the internal need and context for this issue to be properly addressed. The departments must evaluate current officer

recruitment/retention programs in order to accurately gauge the risk to current, as well as future, officer candidate pools. The need for a national evaluation is overdue and the critical nature of the evaluation is growing due to the increased cases and examples of internal and external litigation regarding the fire service.

It is reasonable to connect the impetus of nurse departure with the subsequent potential for litigation that would result from the aforementioned environments. Liability, which used to be an organizational problem, is now an individual problem as well. As the case examples demonstrate, individuals within the organization are being held to account. While vicarious liability for the organization is very much in effect, individuals within the organizational structure are no longer immune to litigation. It is important to note that in many of these examples, the leadership ignored the pleas for help and/or was oblivious to the environment that was developing.

Litigation, no matter how warranted or not, will presumably still have a decidedly negative effect on the individual and organization as a whole. Employees may see these events unfolding and incorporate these experiences into their decision making process; whether to remain in their current role, leave, or promote within the organization. One possible perception is that because there are significant risks involved with leadership, that it will be easier and safer to avoid the position of leadership because a certain amount of the risk is beyond the control of the individual officer.

This perceptual context is not to be dismissed out of hand. While there is the argument that many instances of litigation are a result of negligence, not all are related to negligence. To choose to not act or not do anything when there is a duty to act is by definition negligent behavior. Cornell University Law School (2014) defines negligence

as “ A failure to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. The behavior usually consists of actions, but can also consist of omissions when there is some duty to act (e.g., a duty to help victims of one’s previous conduct).”

Furthermore, in tort law there are four elements of a negligent action. “ The defendant owed a duty to the plaintiff, the defendant violated that duty, as a result of that violation, the defendant suffered injury, and the injury was a reasonably foreseeable consequence of the defendant’s action or inaction” (Larson, 2003, pp. 6).

Fire departments share the same organizational structure as many healthcare and educational institutions. The parallels drawn between them serve as a real-world reminder as to how far negligence, liability, and litigation can reach. While firefighters may be held to account for their actions, department administrators and chief officers will be held to account for the actions of employees under them. Ultimately, the fire department, to include the city, may also be held to account for the actions of its departments.

Officers, and those interested in promoting to the officer rank, must intimately understand the litigious environment that comes with the added responsibility of leadership. Departments must make a concerted effort to properly educate their members in the areas of litigation and leadership. To ignore the potential effects of liability is to invite disaster.

Defending the organization against potential litigation, liability reduction, and future success is proactivity. Smith (2005) states that every organization should be asking themselves, “what don’t we know, and for how long haven’t we known it?” (p. 97). Fire departments, much like their healthcare counterparts, must objectively review the current

business climate in order to accurately gauge performance in an effort to realistically lower their liability exposure.

Fire departments must be able to discern the good officers from those officers needing improvement. Liability is inextricably tied to poor decision-making. Ill-informed leaders allowed to remain in leadership roles will invariably have a negative impact on those around them. This further supports the idea of mentors and their effect on positive organization growth and liability reduction. To ignore this central point is to increase liability exposure.

Effective mentoring programs are real-world solutions that identify growth potential and the barriers to growth. Senior leadership with pertinent knowledge and experience can help younger, less experienced personnel understand and deal with issues of liability within the workplace. This mentoring will help all personnel to make sound decisions, or at the very least accurately understand the legal environment in which they work.

Fire departments must be aggressive when it comes to developing a strategy that acknowledges the legal environment that now exists as well as putting in place procedures and policies to better protect not only the department, but the members as well. An emphasis on quality leadership will instill confidence in the fact that firefighters contemplating promotion can do so without the overbearing concern of being sued.

## Chapter III

### Theoretical Framework

The theoretical framework consists of a series of factors and the subsequent decisions that a firefighter must make in eventually deciding if promoting to the next level is an acceptable risk. In this context, risk is synonymous with legal risk as well as risk to established norms and comfort zones. It is not only the struggle with the unknown that promoting will bring, but the relinquishing of the known that a promotion will bring. It will be the process of critically thinking through this method that will eliminate inconsequential or irrelevant factors from the decision. No other external factors (positive or negative) were looked at or accounted for.

The basis for the theoretical framework of this research proposal is loosely based upon Maslow's Hierarchy of Needs. According to Boeree (2006) Maslow believed that more primal, defensive needs take precedence over more transcendent, creative needs. The needs are balanced against the desires of the individual. The path that Maslow laid out was a pyramid that formed a series of steps. The bottom step was psychological needs, followed by safety needs, belonging needs, esteem needs, and concludes with the felt need for self-actualization.

Each person is driven by their needs and those needs are influenced by the environment in which they live and work. It is the need to work in an environment that is free of fear of potential litigation that this thesis is addressing. The theoretical framework for this project is taking into consideration this perspective. The individual firefighter may forgo, or object to, the desire to advance via promotion in an effort to avoid the

potential hardships (triggering more primal defensive needs) that could go along with the promotion and new position.

Obstacles along the framework path are challenges to change management. Challenges are divided into two categories: Department Controllable and Department Uncontrollable. Department Controllable challenges consist of training, pay and benefits, practical experience, morale, and physical fitness. All these factors have a tangible and direct influence on the environment in which a firefighter and fire officer must work. At this point in time, most agencies already have policies and procedures to mitigate these controllable challenges or to make them more attractive to current employees, thereby making them less significant or removing them as obstacles all together. Additionally, at some point they will factor into the decision-making process, however, they are not currently germane to the research question at hand so they are represented as background information only.

Department uncontrollable challenges are those pressures, both internal and external, that the department cannot control. Examples of internal pressures are physiological and psychological. Physiological pressures are health concerns that can result from actual diagnosis or an industry predisposition to a specific illness. While many departments do what they can to encourage good health and physical conditioning, an agency cannot control what happens after the diagnosis of a major health issue, nor can personnel be forced to implement self-improvement processes no matter how beneficial those processes may be.

Psychological pressures are those stressors such as sleep deprivation, emergency response, and team conflicts, which cause acute and chronic mental stress to an

individual. “In 2012, firefighting [was] second on the list of most stressful jobs in America. This stress has led to early retirements, injuries, divorces, suicides, and firefighters partaking in risky behaviors”. (Norwood, P. & Rascati, J., 2012, pp. 3).

The link between physiological and psychological fitness and decision making is not to be understated. Firefighters, due to the nature of the profession, will invariably deal with acute environments where they will experience the potential for poor decision making and thus, expose themselves to the latent personal accountability that typically accompanies poor decision making. If things go bad enough in the fire service, as the examples have shown, litigation is a very real possibility.

It must be pointed out that the term “Uncontrollable” is not meant to imply that there are no steps that the department can take to attempt to mitigate or lessen the pressures on department personnel. However, regarding the question at hand, there is currently no way to inoculate department personnel from pressures internal to the individual or external to the department so as to be immune to those pressures or the effects of those pressures. Regarding the external department pressures, Varone (2008) contends that the principle of sovereign immunity has been abolished or severely restricted in all jurisdictions in the United States. Abolishment of sovereign immunity is the primary reason for the increases in fire service litigation.

External pressure in the form of potential litigation is the focus of this research proposal. Accepting or rejecting the risk of litigation is a personal process that the individual must make based upon all the applicable factors and available data. It is at this point in the decision-making process that the individual will choose to promote or not to promote. If the individual chooses to promote, then that individual will typically enjoy



the benefits that come with the added responsibility, such as pay and benefits, increased stature, and increased responsibility. The department also benefits in that another firefighter has accepted the challenge of leadership and will in turn train other firefighters to someday become fire officers too.

If firefighters elect to forgo promotion (temporarily or permanently) due to external pressure, then there are three possible paths available to the firefighter: change departments, leave the fire service, or remain at their current position. The department is significantly affected when a firefighter leaves for other opportunities. The money and resources that were expended in recruiting, hiring, and training these individuals will not have been maximized due to high turnover. “Thirty case studies taken from the 11 most-relevant research papers on the costs of employee turnover demonstrate that it costs businesses about one-fifth of a worker’s salary to replace that worker”. (Boushey, H. & Glynn, S., 2012, pp. 3. With firefighters leaving prematurely, this process must start anew. Additionally, even if firefighters decide to remain but not to promote, the lack of vertical movement of personnel in the department raises additional concerns. These concerns include stagnation in the leadership culture that drives the vision and direction of the department, the underutilization of new and developing talent, and overall department morale would drop due to the negative perception of leadership.

These premature departures will invariably increase the pressure of responsibility being exerted on those officers that are left. Leadership, leadership training, and succession planning are all dependent on a steady stream of personnel entering and leaving the leadership ranks at a rate that can be calculated, and consistent enough to

ensure that the required personnel are identified, educated, trained, and experienced prior to the need for those personnel.

In the event the firefighter does accept the risks and challenges associated with promotion, this does not eliminate the risk that at any point the officer can relinquish his/her leadership position. Those same risks that were accepted early on can still exert pressure on the individual down the road. The department must remain cognizant of this potential and work to mitigate the external pressures as much as possible. The choice to accept the risks satisfies the recruitment aspect of leadership but not the retention of said leadership.

## **Chapter IV**

### **Methodology**

The purpose of the research is to identify if, and to what degree, litigation brought against fire department personnel impacts fire officer recruitment and retention. The data collection survey will not be limited in geographical scope. While the number of variables that could impact a firefighters decision to promote, there are three prime influencers from the research survey that are focused on: there is no issue with potential litigation and the desire to promote, there is awareness of a potential threat but the impact is negligible/manageable, or there is significant awareness of the problem and it is negatively influencing the decision to promote; ergo, negatively impacting officer recruitment and retention.

Methodology further explores the relationship between awareness of litigation and personal characteristics. Examples of these personal characteristics that could impact awareness or sensitivity to litigation are: marriage status, children, time on the job, experience on the job, and age of the respondent. The purpose of the sub-demographics is to ascertain whether or not certain personal characteristics impact how someone views or appreciates the potential litigation would have on their personal lives.

The methodology chosen for this research proposal will utilize a survey populated with questions designed to measure for the presence of decision influence resulting from the real threat or perceived threat of litigation while on the job. The first step in the process was to “pilot” the survey. A limited number of copies were given to key stakeholders and personnel representative of the target sample pool. Based upon the feedback, the survey was utilized with no changes.

The second step in the process was to finalize the survey version, including the specific survey timeline, which was then forwarded to the committee chair for Institutional Review Board (IRB) approval. After securing IRB approval, coordination commenced with the identified outlets for survey dissemination and to reiterate the need and the importance of the survey to the research. These outlets were then able to properly support the research process and ensure that the survey reached the intended audience.

The third step was the execution of the survey. Respondents were given six weeks to complete and return the survey. The six week time frame gave those members on vacation or otherwise indisposed an opportunity to respond. Furthermore, those members that were unavailable during the survey period were allowed to complete the survey upon their return if the survey was still open for additional data at that time.

The fourth step was to organize and analyze the data for measurement against the research hypothesis. There was no effort made to skew the results one way or another. The purpose of the survey is to confirm or refute the base premise of the hypothesis.

The fifth and final step was the publishing of the research survey results. All completed materials were authorized prior to actual release. The data from the survey was presented to the thesis committee chair first to give him an opportunity for feedback and final approval.

For the research to adequately answer the question at hand, the survey needed to be administered to the appropriate subjects. What follows is a breakdown of who received the survey, the method used to circulate the survey, and the timeframe required to ensure that subjects have enough time to respond. Only through the careful, strategic,

and disciplined administration of the survey was the resulting information credibly and scientifically accurate and appropriate.

### **Recruitment of Survey Subjects**

The potential survey subject pool consisted of firefighters and fire officers. The survey was not prejudiced against any specific identifiers regarding the individual. There is an expanded demographics section to identify the various individual characteristics and experience levels of the respondents that can influence the survey results. Only active members of the fire service were eligible to participate in the study. Members from volunteer departments, combination departments, and professional departments were all eligible to participate.

The survey participants were free to participate of their own volition. Participants were not required to complete the survey or participate in it if they did not desire to. Additionally, no attempt was made to solicit department leadership to encourage members to participate nor from coaxing, coercing, or influencing in any way, the survey participants and/or their answers to the survey.

### **Research Design**

The research design consisted of two steps, the survey measurement instrument (data collection) and the measurement results (data analysis). Participants did not have prior knowledge of what questions were posed within the survey. Additionally, no special knowledge was required of the participants to complete the survey. The survey simply measured the perceptions of eligible fire department personnel.

It was extremely important that as many as possible eligible fire department members had the opportunity to participate in order for any collected data to be

statistically relevant. In addition, all survey participants were given an adequate and reasonable amount of time to complete the survey. Therefore, from the time the survey was sent out, participants had six weeks to complete and return the survey. Any mitigating factors regarding the available time needed for an individual to complete the survey (i.e. injury leave, vacation, etc.), were addressed on a case by case basis for those that still desired to participate but could not within the established timeframe. It was important that all individuals who wished to participate in the study to have had that opportunity as long as their situation did not impede the delivery and conclusion of the study.

The survey was developed and administered utilizing SurveyMonkey.com. Survey Monkey was chosen for their data collection, analysis, and cross-tabulation capabilities. Additionally, Survey Monkey is an established and respected survey company with reliable customer service for data analysis questions.

Distribution of the survey was done through the Fire Engineering website. Fire Engineering has approximately 180,000 subscribers. Utilizing the *Fire Engineering* site offers the largest potential participation rate regarding survey participants. The Chief Editor agreed to post the link for the survey and has also expressed interest in the results of the survey and thesis. Unfortunately, there is no way of determining response rate. While the survey was open to anyone who met the criteria, subscribers had to be aware of the survey within Fire Engineering's site.

### **Measurement Instrument**

The survey (Appendix A) consists of two parts: demographic information and the research question component. The two sections work in conjunction to identify who is

aware of the impact of litigation and how their personal status/experience factors into their awareness and/or decision making process. What follows is a detailed description of each survey question and what each question is designed to identify.

### **Demographic Question Breakdown**

The demographic questions (about the participant) are designed to establish the context of who believes, or does not believe, that litigation is a potential risk, personally or professionally, while engaged in the duties of a firefighter/fire officer. The various demographic sections will clarify whether the concern does manifest itself, and if so, at what point along the age or experience continuum it does so.

It is essential to note that how a person identifies and deals with potential litigation does not happen in a vacuum. Age, experience, marital status, children, etc. may affect an individual's answers of feelings about leadership and responsibility. Simply recording yes or no answers to whether or not firefighters are aware or influenced by potential litigation is woefully inadequate. The survey questions were developed to identify specific individual conditions and/or environments that could elucidate the disparities in survey participant's responses.

The perceptions between male and female firefighters are also an important data point. Do male firefighters view litigation differently than female firefighters? A disparity in answers can highlight a gender issue that will need to be explored further. Participant education level can also highlight a difference in thinking or perspective that may be directly attributable to education level. Whether or not a department member has the added responsibilities of being married or being a parent may influence when during his/her career that potential exposure to litigation has more power as a deterrent to

promotion. It is not enough to ask whether or not a firefighter is aware of, or appreciates the issue of liability and if it affects their decision making process, we also need to understand why they do or they do not. This information will properly set the tone for developing a strategy to properly address the issues of litigation within the fire service.

### **Survey Question Breakdown**

The sole purpose of the survey is to identify whether the base premise of the thesis is supported, and if so, to what degree. This information will accurately frame not only the contextual reason for change, but identify the need for instituting a rapid change management strategy. Survey questions were developed to identify if firefighters and officers are aware of litigation and just as important, why people responded the way they did. The obvious criteria were participant age and rank. However, these two areas alone would be inadequate. Survey questions needed to properly group respondents in categories to better gauge the responses and to place them into their proper context.

For example, will a married firefighter look at liability differently than an unmarried firefighter? Will a respondent look at liability differently if they have children or more time on the job? Answers to these questions will enhance and further clarify the survey findings. Additionally, by further exploring the survey responses, the validity and credibility of the findings will better translate to real world solutions.

### **Data Measurement**

The data collected will be measured by collating the information from the survey respondents. All the survey questions (non-demographic) will have a “No” or “Yes” answer with questions 4 and 5 having “Unknown” and question 11 having “N/A (Not Applicable)” as additional options. The returned survey data will track trends in



respondents' answers and further break down the data through the established demographic filters.

If there is any statistical relevance detected in the data, either supporting or refuting the hypothesis, those results will be included in the research findings. There will be no effort made to alter the survey results in any way. The purpose of the survey is to identify whether litigation is an influencing factor, not to prove litigation exists.

## Chapter V

### Survey Results

The survey period was open from January 11, 2013 to March 1, 2013. A total of 172 participants started the survey and 163 finished the survey. It is unknown why the nine people were unable to complete the survey.

### Comparable National Statistics

The total number of potential survey participants (180,000) represents 16.4% of the targeted total number of firefighters in the U.S. (1,100,450), reported by the National Fire Protection Association (NFPA, 2011). Utilizing *Fire Engineering* as the vehicle to deliver the survey represented the greatest possible return without duplication of effort. Unfortunately, *Fire Engineering* does not break down the total number of subscribers by professional, volunteer, or any other demographic. Additionally, there was no way to control for non-firefighters to attempt to take the survey other than the survey questions themselves. Due to the sheer number of firefighters in the U.S., coupled with the diversity of specific locations, job types, and technology restraints, there is no reasonable way to reach a majority of the firefighter population. Further complicating the process is the fact that some of the needed comparative statistics simply are not available. In cases where statistics that dealt directly with firefighter were not available, general statistics were used in an attempt to simply identify a correlation between that target group and the thesis premise.

According to the U.S Census (2010), there were 173,226,669 married people out of a population of 300,758,215 or 57%. Currently there is no statistical data available regarding the number of married firefighters. In this question 73% of the respondents

indicated that they were married. The only way to give this number contextual meaning, since there are no firefighter statistics on this, was to compare it to a national census standard.

NFPA (2012) reported that there were a total of 1,129,250 firefighters in the U.S. Of the 1.1million, 345,950 were career firefighters and 783,300 were volunteer firefighters. The NFPA (2012) also reported that 10,000 of all career firefighters in the nation were female. Statistically speaking, the results of the survey were inversely proportional to the actual national statistical breakdown between volunteer firefighters and their full time counterparts. Nationally, the total number of volunteers represents 68% of the total number of firefighters. This number is juxtaposed by the 72.4% of the total survey respondents being full time.

Currently there are no statistics available regarding education levels within the fire fighting industry. The assumption here is that the educational breakdown of the fire service is at least equal to that of general society utilizing available societal cross-sectional data. What follows in Table 1 is the educational breakdown, nationally, according to the U.S. Census (2012) based upon an adult population of 234,719,000:

Table 1

*US Census National Breakdown by Educational Level Age 18+*

Educational Level	Population	Percentage
High School Graduate (does not stipulate HS diploma or G.E.D.)	70,441,000	30%
Some College	45,685,000	19%
Associate of Arts (AA)/Associate of Science (AS)	21,480,000	9%
Bachelors	43,277,000	18%
Masters	16,625,000	7%
Doctoral	3,191,000	1%

Source: 2010 U.S. Census, “Households and Families:2010”.

One hundred percent of the survey respondents had at least a high school diploma/G.E.D. By comparison, 90% of the survey participants pursued higher education to varying degrees as compared to 54% nationally. Statistically, the survey participants completed advanced educational levels at a significantly higher rate than their civilian counterparts.

The final two demographic categories have no national statistical counterpart to reference. These questions were to highlight survey responses, or a disparity in survey responses, between other identified demographic differences. For instance, did respondents with more experience view a particular question(s) differently than a

respondent with less experience did? The only way to identify this disparity was to allow for identification of demographic sub-categories.

### **Justification of Population Representation and Demographic Analysis**

Firefighters as the target population were specific and intentional. Demographic sub-categories were absolutely necessary to properly address the thesis question.

Comparison has been made of the US Census, and available national firefighter population data, and the survey data, to examine the relationship between the sample population and the national numbers regarding representativeness and consistency.

Utilizing the Standard Deviation Calculator (Calculator.net, 2014), based on the NFPA number of 1,100,450 total firefighters as a population size, using a confidence level of 95% and a sample error of +/- 7.5%, the survey sample size of 170 is a representative sample of the population.

Evaluation of career specific data from NFPA shows female firefighters make up 4.5% of the national career firefighter population and similarly 5.9% of the sample population. The lack of data for female volunteer firefighters explains the small difference in these numbers. Comparison of education levels achieved within the general national population to the survey population is generally consistent.

Demographics of marital status, children, and age of the respondent, were gathered not to define the population but to see if these factors individually affected the awareness or decision making of the respondent, so they were not compared to national data. While national data of career length, department type, and previous experience in firefighting would be statistically valuable, at the time of this writing the NFPA is not currently collecting such data nor was the data available from any other source.

## **Survey Responses**

What follows are the relevant survey responses with the accompanying percentages based on the answers given. These percentages are based on the total number of respondents who completed each question on the survey. Note that if the respondent answered “no” to question 16 (question 7 on this list) they were automatically directed to question 20 (question 11 on this list). Further analysis for each and every question will follow in Appendix D in addition to the actual number of completed responses for that question.

Nearly 62% of the respondents had no general knowledge and 68% had no specific knowledge or experience with any litigation taking place within their fire department. This equates to roughly 30-40% of respondents having at least some knowledge or experience regarding litigation in their specific work environment.

Of the respondents, 8% had been specifically named in job-related litigation. This is an area where the relative age and experience further clarified the statistic. The percentage was greater amongst the older and more experienced respondents than the younger or less experienced respondents. Additionally, all of the respondents who had been specifically named were or had experience as an officer.

Nearly all (95%) respondents understand that fire departments are not immune to civil or criminal litigation. This is significant in that demonstrated awareness of the potential for litigation means that their daily thought process regardless of individual demographic differences, to a point is influenced out of self-preservation from a litigious perspective. If the percentage was reversed, it would demonstrate a dangerous naiveté or ignorance to the law.

More than 75% of the respondents have weighed the possible impact of litigation on their families. Additionally, 84% of single firefighters, 76% of the married firefighters, and roughly 76% of firefighters with children had considered the impact. On the job training (OJT) experience measured 61%-88% of the total respondents weighing the potential impact. OJT of eleven to fifteen years represented the low measurement and OJT of six to ten years represented the high. There was no discernible trend based on OJT. Regarding age, data ranged from a low of 67% (30-45) to a high of 100% (60+). Again there was no trend. Education level measured a low of 66% (AA/AS) to a high of 81% (HS/GED). This is noteworthy in that those firefighters that identified themselves as only having a high school diploma or GED had the highest sensitivity to potential litigation. If the firefighter was from a volunteer department, those firefighters responded at 93% versus a low of 74 from paid on call departments. Full time firefighters were at 75%. The disparity of nearly 20% between professional and volunteer firefighters is striking. Male firefighters responded 76% to the female counterparts 89%. Finally, 79% of firefighters with current or previous officer experience contemplated the impact of litigation on their personal lives.

Nearly two-thirds of the respondents were eligible for promotion at the time of the survey. Of those, nearly 6% had turned down an opportunity to promote. Remarkably, 25% of all female respondents had turned down an opportunity to promote.

Of the firefighters who were not currently eligible for promotion, 22% would consider the possibility of litigation in the decision to seek promotion. Current officers (6%) indicated that litigation would also influence their decision to promote again. This goes against the assumption that younger firefighters were less concerned with potential

litigation. Volunteers registered 47% versus the professional at 21%. This is developing into a trend whereas volunteers are significantly more sensitive to the potential threat of litigation. Additionally, 50% of the firefighters with only a high school education indicated that they would consider the impact of litigation. Other educational demographics registered a range from 7% (AA) to 27% (some college). In this case as higher education levels were attained, the sensitivity to the impact of litigation lessened.

Firefighters who were currently fire officers and asked if they have ever considered resigning due to litigation concerns responded between the ranges of 0% (0-5 years on the job and age 60+) to 27% (volunteer). Only the sub demographics of age and education level offered something of a trend. As the age of the firefighter increased, so did the relative percentage associated with each age group. Firefighters who identified themselves as 60+ years old recorded 0%. This presumably is more a factor of the firefighter nearing retirement. As firefighters attained higher levels of education, they were also more likely to contemplate resigning.

A little more than 10% of the respondents had either first or second hand knowledge of fire service members leaving the fire service due to litigation concerns. This is significant when you consider the aforementioned personalities, culture, and general individual longevity of the profession. In some cases, it is safer for firefighters to seek another profession rather than continue to expose themselves to potential litigation.

Seven percent of the respondents indicated that they had turned down a promotion. Percentages ranged from 0% to 50% (volunteer firefighters). The average between all demographics was 9%. One in ten respondents turned down a promotion due



to the potential risk. Much like the other data, there were no discernible trends between the sub-demographics.

Respondents were asked if the potential for litigation would impact their decision to promote in the future. Percentages ranged from 0% (only high school diploma, female firefighters, and age 60+) to a high of 50% (volunteers). This is the second question where the responses were lopsided to the volunteer side. Most of the other demographics registered low teens in percentages to mid-twenties with no apparent trends.

Asking fire officers if they had resigned as a result of the potential impact from litigation, volunteers again topped the percentages at 13%. Only the demographic of education level did a trend appear. High school respondents responded 0%, some college 7%, AA 0%, BA 4%, and MS 10%. Aside from the AA/AS respondents, beyond high school, the higher the education level attained, the more likely it was that they had resigned.

## Chapter VI

### Discussion

The results of the survey show that litigation or the perceived threat of litigation appears to have an effect on the decision making processes of only a limited number within the general population of firefighters and not at the anticipated intensity. Survey respondents were asked to identify which aspects of litigation they were aware of both personally and organizationally. In an effort to further clarify the answers, certain demographic information was requested.

This demographic information would be used to identify personal factors that may or may not increase the individual's sensitivity to litigation or the potential for litigation. For example, the attempt was made to ascertain if married firefighters viewed liability differently than single firefighters. Do firefighters with more time on the job view liability differently than less experienced firefighters, etc.

Actual survey results were contrary to what was anticipated. For instance, 77% of the respondents stated that they had weighed the risks of litigation versus almost 80% of the respondents who would not believe that the potential for litigation would influence their decision to promote. In this case, liability/litigation is important enough to contemplate, but not significant enough to have an impact in the decision making process. Nearly 22% of those respondents who were not currently eligible for promotion indicated that litigation would influence their decision to promote in the future.

Overwhelmingly, respondents said that they were aware that fire departments are not immune to civil and criminal litigation. This translates into the fact that educational

institutions and fire department training regiments have succeeded in conveying the risks of liability exposure. Ignorance has been removed from this aspect of the research.

One in ten respondents indicated that they had been specifically named in a lawsuit that dealt specifically with a work incident. Not surprisingly, it was the demographic of older, more experienced firefighters that had experienced litigation first hand. It is not known if this is a simple matter of impulse time, as in the more time on the job equals more opportunity/exposure to potential litigation. One factor that was not controlled for was the size and number of annual calls of the department that the respondent worked for. Statistically speaking, larger more active departments would have significantly more exposure to liability and litigation than small less active departments. Another factor not accounted for was the general nature of firefighting versus other jobs/disciplines. Firefighting by its very nature is dynamic and dangerous. As an example, the opportunity for negative outcomes is far greater than that of the typical office worker.

Firefighters eligible for promotion turned down a promotion at a rate of 6%. Additionally, 6% of fire officers stated that the threat of potential litigation was a legitimate reason to not accept a future promotion. There were also 4% of the total respondents that indicated that they had resigned from an officer position due to the threat of litigation. Volunteer firefighters responded the highest at 12%. This disparity can also be a simple fact of numbers; there are far more volunteers than paid firefighters.

Nearly 15% of the respondents indicated that they were aware of a firefighter turning down a promotion due to the increased exposure to litigation. Here is a case where that actual number of firefighters who have turned down a promotion (reality) is

significantly less of a problem than the impact that resignation had on the organization (perception). It would be beneficial for future researchers to look at this question and break it down further by rank in an attempt to see any trends affected by the continued advancement through the officer ranks.

Of the respondents 13% indicated that they were aware of a fire officer who had contemplated resigning due to potential litigation. Another 10% indicated that they were aware of a fire officer resigning their position due to the threat. This is yet another example of the negative effects of reality versus perception.

While percentages range from a low of 7% for those that have actually turned down a promotion to a high of 77% who have considered the impact of litigation on themselves and their families, it is clear that litigation and liability are on the radar of the general membership. However, the data does not support the suspicion that the effects of litigation have reached a tipping point or that there is a crisis regarding officer recruitment and retention due to the hypothesis.

The majority of respondents, while aware of liability and litigation, are still choosing to promote. There may be any number of other reasons or factors that influence this decision. Examples include higher rate of pay, increased benefits, increased stature, and increased responsibility, to name a few. It may be as simple as the benefits outweigh the risks. Unfortunately the scope of this project was limited and thus further exploration is necessary to better identify and understand the most common and most influential factors that motivate firefighters to promote.

## Chapter VII

### Conclusion

Limited scope regarding the data collected highlights the need for conceptual understanding of all the factors that affect officer recruitment and retention. Clearly there are more factors that influence a firefighter's decision to promote. It is more likely that external conditions or factors will influence the decision to advance over devised incentives to make the same choice.

However, at this time the data collected does not support the thesis. Data does highlight the fact that the issue of litigation is not an unknown. Hopefully this exploratory effort to ascertain the potential impact of litigation will spur on more investigative efforts. As long as the potential for litigation exists, the fire service will benefit by staying in front of this potentiality.

It is imperative that the fire service continue to aggressively explore the potential impact that litigation will have on fire officer recruitment and retention. It takes many years to not only groom and train future leaders, but it also takes time to gain critical on-the-job experience. By delaying research and investigation, crucial time may be lost. If instances of fire service litigation continue to develop, the time, effort, and resources that will be necessary to catch up to the growing issue will far outweigh the resources needed to stay in front of the issue.

As discussed earlier, based on the socio-behavioral continuum and the examples from other like-disciplines, we can predict that if incidences of fire-service-related litigation increase we will see a proportional increase of members who will be adversely affected. Additionally, the documented incidences of fire service litigation also begin to

crystallize the picture regarding the potential future impact, if in fact examples like these continue. Fire service leaders should not look at this issue as isolated or unimportant.

Firefighters are clearly aware of the trend.

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## **Appendix A**

## Appendix A

### Survey Questionnaire

#### The Effects of Litigation on Officer Recruitment and Retention Survey

##### **Informed Consent-**

The purpose of this survey is to explore the potential relationship between increasing incidents of fire service litigation and whether this affects the decision making process amongst firefighters and fire officers on whether to promote. Participants are free to participate or not participate in the survey. There will be no personal information collected in the survey that can be tied directly to any individual participant. Only the aggregate statistical data will be used to confirm or disprove the hypothesis.

##### **About You-**

Marital Status-           Single   Married   Divorced   Widowed  
Do you have children? No   Yes  
Gender-                    Male                    Female  
Age-   18-29   30-45           46-59           60+  
Years on the Job-   0-5           6-10           11-15           16-20           21+  
Highest Education Level           H.S. Diploma/GED           Some College           Associates  
Bachelors   Masters   PhD  
Previous or current experience as an officer   No   Yes  
Type of department-   Volunteer                   Combination                   Full Time

##### **Survey Questions-**

- 1) Are you generally aware of the department or any of its members being named in a law suit within the last 10 years for a work related incident?  
No   yes
- 2) Are you specifically aware of any department member being named in lawsuit in the last 10 years for a work related incident?  
No   yes
- 3) Have you personally been named in a lawsuit in the last 10 years for a work related incident?  
No   yes
- 4) Do you believe that a fire department and its members are immune to criminal litigation?  
No   Yes   Unknown
- 5) Do you believe that a fire department and its members are immune to civil litigation?  
No   Yes   Unknown
- 6) Have you considered the potential impact to your family if litigation is brought against you for your on the job decisions/responsibilities?  
No   Yes
- 7) Are you currently eligible for promotion?

- No Yes
- 8) If you are eligible, have you ever turned down a promotion due to the increased exposure to litigation or is potential litigation a reason to not accept a future promotion?  
No Yes
- 9) Have you ever resigned from a leadership position due to the increased personal exposure to litigation?  
No Yes
- 10) If you are not currently eligible for promotion, do you believe the potential for exposure to litigation may influence your decision to promote in the future?  
No Yes
- 11) If you are currently an officer, have you ever considered resigning your position/commission due to personal exposure to litigation?  
No Yes N/A
- 12) Are you generally aware within the department of an eligible member turning down a promotion due to the increased exposure to litigation?  
No Yes
- 13) Are you generally aware within the department of a member resigning from a leadership position due to the increased personal exposure to litigation?  
No Yes
- 14) Are you generally aware within the department of an officer considering resigning his/her position/commission due to personal exposure to litigation?  
No Yes
- 15) Are you generally aware within the department of an officer resigning/leaving the department due to personal exposure to litigation?  
No Yes

## **Appendix B**



Appendix B

Survey Data (raw)

Survey Filtered Responses-Raw Numbers

		Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	Q23	Q24	Q25
Marital Status-Single	<b>Yes</b>	36	40	8	0	0	84	68	6.3	12.5	6.3	37.5	8.3	12.5	8.3	16.7	25
	<b>No</b>	64	40	92	96	96	16	32	93.8	87.5	93.8	62.5	16.7	87.5	91.7	83.3	75
	<b>Unk.</b>	-	40	-	4	4	-	-	-	-	-	-	75	-	-	-	-
Marital Status-Married	<b>Yes</b>	38.2	40	8.4	3.1	4.6	77.1	64.1	7.4	17.3	4.9	20.3	8.6	15.6	11.7	13.3	7.8
	<b>No</b>	61.8	40	91.6	96.2	93.9	22.9	35.9	92.6	82.7	95.1	79.7	57	84.4	88.3	86.7	92.2
	<b>Unk.</b>	-	40	-	0.8	1.5	-	-	-	-	-	-	34.4	-	-	-	-
Marital Status-Divorced	<b>Yes</b>	46.2	40	7.7	0	0	69.2	69.2	0	12.5	0	8.3	8.3	16.7	0	0	8.3
	<b>No</b>	53.8	40	92.3	100	100	30.8	30.8	100	87.5	100	91.7	58.3	83.3	100	100	91.7
	<b>Unk.</b>	-	40	-	-	-	-	-	-	-	-	-	33.3	-	-	-	-
Children-Yes	<b>Yes</b>	35.7	40	7.6	2.3	3.8	77.9	64.1	6.3	17.5	3.8	19.7	9.4	16.5	11	12.6	8.7
	<b>No</b>	64.1	40	92.4	96.9	94.7	22.1	35.9	93.8	82.5	96.3	80.3	55.1	83.5	89	87.4	91.3
	<b>Unk.</b>	-	40	-	0.8	1.5	-	-	-	-	-	-	35.4	-	-	-	-
Children-No	<b>Yes</b>	46.2	40	10.3	2.6	2.6	74.4	69.2	7.7	11.5	7.7	28.9	5.3	10.5	7.9	13.2	15.8
	<b>No</b>	53.8	40	89.7	94.9	94.9	25.6	30.8	92.3	88.5	92.3	71.1	39.5	89.5	92.1	86.8	84.2
	<b>Unk.</b>	-	40	-	2.6	2.6	-	-	-	-	-	-	55.3	-	-	-	-
Gender-Male	<b>Yes</b>	38.5	40	6.8	2.5	3.7	76.4	66.5	5.9	16.7	4.9	20.5	8.3	14.7	10.3	12.8	9
	<b>No</b>	61.5	40	93.2	96.3	94.4	23.6	33.5	94.1	83.3	95.1	79.5	51.9	85.3	89.7	87.2	91
	<b>Unk.</b>	-	40	-	1.2	1.9	-	-	-	-	-	-	39.7	-	-	-	-
Gender-female	<b>Yes</b>	33.3	40	33.3	0	0	88.9	44.4	25	0	0	44.4	11.1	22.2	11.1	11.1	33.3
	<b>No</b>	66.7	40	66.7	100	100	11.1	55.6	75	100	100	55.6	44.4	77.8	88.9	88.9	66.7
	<b>Unk.</b>	-	40	-	-	-	-	-	-	-	-	-	44.4	-	-	-	-
Age-18-29	<b>Yes</b>	38.1	40	0	4.8	4.8	85.2	71.4	7.1	7.1	0	20	5	30	10	25	25
	<b>No</b>	61.9	40	100	90.5	90.5	4.8	28.6	92.9	92.9	100	80	20	70	90	75	75
	<b>Unk.</b>	-	40	-	4.8	4.8	-	-	-	-	-	-	75	-	-	-	-
Age-30-45	<b>Yes</b>	36.8	40	4.6	2.3	2.3	69	70.1	10.2	18.6	8.5	25.9	7.1	10.6	10.6	11.8	11.8
	<b>No</b>	63.2	40	95.4	96.6	95.4	31	29.9	89.8	81.4	91.5	74.1	49.4	89.4	89.4	88.2	88.2
	<b>Unk.</b>	-	40	-	1.1	2.3	-	-	-	-	-	-	43.5	-	-	-	-
Age-46-59	<b>Yes</b>	37.3	40	15.3	1.7	3.4	81.4	57.6	0	15.6	0	17.5	12.3	17.5	10.5	10.5	3.5
	<b>No</b>	62.7	40	84.7	98.3	96.6	18.6	42.4	100	84.4	100	82.5	64.9	82.5	89.5	89.5	96.5
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	22.8	-	-	-	-
Age-60+	<b>Yes</b>	100	40	33.7	0	33.3	100	33.3	0	0	0	0	0	0	0	0	0
	<b>No</b>	0	40	66.7	100	66.7	0	66.7	100	100	100	100	66.7	100	100	100	100
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	33.3	-	-	-	-
Years-0-5	<b>Yes</b>	18.8	40	0	6.3	6.3	68.8	50	14.3	28.6	0	33.3	0	20	0	13.3	20
	<b>No</b>	81.3	40	100	93.8	93.8	31.3	50	85.7	71.4	100	66.7	6.7	80	100	86.7	80
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	93.3	-	-	-	-
Years-6-10	<b>Yes</b>	24	40	0	0	0	88	60	15.4	15.4	7.7	30.4	8.7	26.1	21.7	30.4	21.7
	<b>No</b>	76	40	100	96	92	12	40	84.6	84.6	92.3	69.6	30.4	73.9	78.3	69.6	78.3
	<b>Unk.</b>	-	40	-	4	8	-	-	-	-	-	-	60.9	-	-	-	-

Survey Filtered Responses-Raw Numbers (Cont.)

Years-11-15	<b>Yes</b>	37.5	40	6.3	0	0	62.5	78.1	8	24	4	28.1	6.3	18.8	6.3	6.3	12.5
	<b>No</b>	62.5	40	93.8	96.9	100	37.5	21.9	92	76	96	71.9	50	81.3	93.8	93.8	87.5
	<b>Unk.</b>	-	40	-	3.1	-	-	-	-	-	-	-	43.8	-	-	-	-
Years-16-20	<b>Yes</b>	45.9	40	5.4	0	2.7	75.7	81.1	3.3	10	3.3	18.9	10.8	8.1	10.8	16.2	2.7
	<b>No</b>	54.1	40	94.6	100	94.6	24.3	18.9	96.7	90	96.7	81.1	59.5	91.9	89.2	83.8	97.3
	<b>Unk.</b>	-	40	-	0	2.7	-	-	-	-	-	-	29.7	-	-	-	-
Years-21+	<b>Yes</b>	45	40	16.7	5	6.7	83.3	55	3.2	12.9	6.5	13.8	10.3	12.1	10.3	6.9	6.9
	<b>No</b>	55	40	83.3	95	93.3	16.7	45	96.8	87.1	93.5	86.2	67.2	87.9	89.7	93.1	93.1
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	22.4	-	-	-	-
Ed-HS	<b>Yes</b>	12.5	40	0	0	6.3	81.3	62.5	0	0	0	50	12.5	25	12.5	12.5	6.3
	<b>No</b>	87.5	40	100	93.8	93.8	18.8	37.5	100	100	100	50	37.5	75	87.5	87.5	93.8
	<b>Unk.</b>	-	40	-	6.3	0	-	-	-	-	-	-	50	-	-	-	-
ED-Some	<b>Yes</b>	52.3	40	9.2	301	301	80	70.8	9.3	20.9	7	25.8	302	11.3	9.7	9.7	11.3
	<b>No</b>	47.7	40	90.8	95.4	92.3	20	29.2	90.7	79.1	93	74.2	45.2	88.7	90.3	90.3	88.7
	<b>Unk.</b>	-	40	-	1.5	4.6	-	-	-	-	-	-	51.6	-	-	-	-
ED-AA	<b>Yes</b>	35.7	40	0	3.6	7.1	67.9	60.7	0	5.9	0	7.1	7.1	7.1	3.6	14.3	10.7
	<b>No</b>	64.3	40	100	96.4	92.9	32.1	39.3	100	94.1	100	92.9	46.4	92.9	96.4	85.7	89.3
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	46.4	-	-	-	-
ED-BA	<b>Yes</b>	26.1	40	2.2	2.2	2.2	78.3	60.9	7.7	15.4	3.8	15.9	11.4	20.5	11.4	15.9	9.1
	<b>No</b>	73.9	40	97.8	97.8	97.8	21.7	39.1	92.3	84.6	96.2	84.1	61.4	79.5	88.6	84.1	90.9
	<b>Unk.</b>	-	40	-	0	-	-	-	-	-	-	-	27.3	-	-	-	-
ED-MS	<b>Yes</b>	46.7	40	46.7	0	0	73.3	66.7	10	30	10	20	20	20	20	13.3	13.3
	<b>No</b>	53.3	40	53.3	100	100	26.7	33.3	90	70	90	80	73.3	80	80	86.7	86.7
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	6.7	-	-	-	-
Prev. Exp.-Yes	<b>Yes</b>	43.9	40	12.3	1.8	3.5	79.8	65.8	7	16.9	5.6	17.3	11.8	16.4	10.9	12.7	11.8
	<b>No</b>	56.1	40	87.7	97.4	95.6	20.2	34.2	93	83.1	94.4	82.7	70.9	83.6	89.1	87.3	88.2
	<b>Unk.</b>	-	40	-	0.9	0.9	-	-	-	-	-	-	17.3	-	-	-	-
Prev. Exp.-No	<b>Yes</b>	26.8	40	0	3.6	3.6	71.4	64.3	5.7	14.3	2.9	30.9	1.8	12.7	9.1	12.7	7.3
	<b>No</b>	73.2	40	100	94.6	92.9	28.6	35.7	94.3	85.7	97.1	69.1	12.7	87.3	90.9	87.3	92.7
	<b>Unk.</b>	-	40	-	1.8	3.6	-	-	-	-	-	-	85.5	-	-	-	-
Type-Vol.	<b>Yes</b>	13.3	40	6.7	6.7	6.7	93.3	53.3	50	50	12.5	46.7	26.7	26.7	20	26.7	20
	<b>No</b>	86.7	40	93.3	93.3	93.3	6.7	46.7	50	50	87.5	53.3	26.7	73.3	80	73.3	80
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	46.7	-	-	-	-
Type-Comb.	<b>Yes</b>	40	40	10	0	3.3	73.3	53.3	0	13.3	6.7	17.2	3.4	13.8	17.2	10.3	13.8
	<b>No</b>	60	40	90	100	93.3	26.7	46.7	100	86.7	93.3	82.8	69	86.2	82.8	89.7	86.2
	<b>Unk.</b>	-	40	-	0	3.3	-	-	-	-	-	-	27.6	-	-	-	-
Type-F/T	<b>Yes</b>	40.8	40	8	2.4	3.2	76	69.6	3.6	13.3	3.6	19.8	7.4	14	7.4	11.6	8.3
	<b>No</b>	59.2	40	92	96	95.2	24	30.4	96.4	86.7	96.4	80.2	50.4	86	92.6	88.4	91.7
	<b>Unk.</b>	-	40	-	1.6	1.6	-	-	-	-	-	-	42.1	-	-	-	-

## **Appendix C**

Appendix C

Survey Data (percentage)

Survey Filtered Responses-Percentages

		Q10	Q11	Q12	Q13	Q14	Q15	Q16	Q17	Q18	Q19	Q20	Q21	Q22	Q23	Q24	Q25
Marital Status-Single	Yes	36	40	8	0	0	84	68	6.3	12.5	6.3	37.5	8.3	12.5	8.3	16.7	25
	No	64	40	92	96	96	16	32	93.8	87.5	93.8	62.5	16.7	87.5	91.7	83.3	75
	Unk.	-	40	-	4	4	-	-	-	-	-	-	75	-	-	-	-
Marital Status-Married	Yes	38.2	40	8.4	3.1	4.6	77.1	64.1	7.4	17.3	4.9	20.3	8.6	15.6	11.7	13.3	7.8
	No	61.8	40	91.6	96.2	93.9	22.9	35.9	92.6	82.7	95.1	79.7	57	84.4	88.3	86.7	92.2
	Unk.	-	40	-	0.8	1.5	-	-	-	-	-	-	34.4	-	-	-	-
Marital Status-Divorced	Yes	46.2	40	7.7	0	0	69.2	69.2	0	12.5	0	8.3	8.3	16.7	0	0	8.3
	No	53.8	40	92.3	100	100	30.8	30.8	100	87.5	100	91.7	58.3	83.3	100	100	91.7
	Unk.	-	40	-	-	-	-	-	-	-	-	-	33.3	-	-	-	-
Children-Yes	Yes	35.7	40	7.6	2.3	3.8	77.9	64.1	6.3	17.5	3.8	19.7	9.4	16.5	11	12.6	8.7
	No	64.1	40	92.4	96.9	94.7	22.1	35.9	93.8	82.5	96.3	80.3	55.1	83.5	89	87.4	91.3
	Unk.	-	40	-	0.8	1.5	-	-	-	-	-	-	35.4	-	-	-	-
Children-No	Yes	46.2	40	10.3	2.6	2.6	74.4	69.2	7.7	11.5	7.7	28.9	5.3	10.5	7.9	13.2	15.8
	No	53.8	40	89.7	94.9	94.9	25.6	30.8	92.3	88.5	92.3	71.1	39.5	89.5	92.1	86.8	84.2
	Unk.	-	40	-	2.6	2.6	-	-	-	-	-	-	55.3	-	-	-	-
Gender-Male	Yes	38.5	40	6.8	2.5	3.7	76.4	66.5	5.9	16.7	4.9	20.5	8.3	14.7	10.3	12.8	9
	No	61.5	40	93.2	96.3	94.4	23.6	33.5	94.1	83.3	95.1	79.5	51.9	85.3	89.7	87.2	91
	Unk.	-	40	-	1.2	1.9	-	-	-	-	-	-	39.7	-	-	-	-
Gender-female	Yes	33.3	40	33.3	0	0	88.9	44.4	25	0	0	44.4	11.1	22.2	11.1	11.1	33.3
	No	66.7	40	66.7	100	100	11.1	55.6	75	100	100	55.6	44.4	77.8	88.9	88.9	66.7
	Unk.	-	40	-	-	-	-	-	-	-	-	-	44.4	-	-	-	-
Age-18-29	Yes	38.1	40	0	4.8	4.8	85.2	71.4	7.1	7.1	0	20	5	30	10	25	25
	No	61.9	40	100	90.5	90.5	4.8	28.6	92.9	92.9	100	80	20	70	90	75	75
	Unk.	-	40	-	4.8	4.8	-	-	-	-	-	-	75	-	-	-	-
Age-30-45	Yes	36.8	40	4.6	2.3	2.3	69	70.1	10.2	18.6	8.5	25.9	7.1	10.6	10.6	11.8	11.8
	No	63.2	40	95.4	96.6	95.4	31	29.9	89.8	81.4	91.5	74.1	49.4	89.4	89.4	88.2	88.2
	Unk.	-	40	-	1.1	2.3	-	-	-	-	-	-	43.5	-	-	-	-
Age-46-59	Yes	37.3	40	15.3	1.7	3.4	81.4	57.6	0	15.6	0	17.5	12.3	17.5	10.5	10.5	3.5
	No	62.7	40	84.7	98.3	96.6	18.6	42.4	100	84.4	100	82.5	64.9	82.5	89.5	89.5	96.5
	Unk.	-	40	-	0	0	-	-	-	-	-	-	22.8	-	-	-	-
Age-60+	Yes	100	40	33.7	0	33.3	100	33.3	0	0	0	0	0	0	0	0	0
	No	0	40	66.7	100	66.7	0	66.7	100	100	100	100	66.7	100	100	100	100
	Unk.	-	40	-	0	0	-	-	-	-	-	-	33.3	-	-	-	-
Years-0-5	Yes	18.8	40	0	6.3	6.3	68.8	50	14.3	28.6	0	33.3	0	20	0	13.3	20
	No	81.3	40	100	93.8	93.8	31.3	50	85.7	71.4	100	66.7	6.7	80	100	86.7	80
	Unk.	-	40	-	0	0	-	-	-	-	-	-	93.3	-	-	-	-
Years-6-10	Yes	24	40	0	0	0	88	60	15.4	15.4	7.7	30.4	8.7	26.1	21.7	30.4	21.7
	No	76	40	100	96	92	12	40	84.6	84.6	92.3	69.6	30.4	73.9	78.3	69.6	78.3
	Unk.	-	40	-	4	8	-	-	-	-	-	-	60.9	-	-	-	-

Survey Filtered Responses-Percentages (Cont.)

Years-11-15	<b>Yes</b>	37.5	40	6.3	0	0	62.5	78.1	8	24	4	28.1	6.3	18.8	6.3	6.3	12.5
	<b>No</b>	62.5	40	93.8	96.9	100	37.5	21.9	92	76	96	71.9	50	81.3	93.8	93.8	87.5
	<b>Unk.</b>	-	40	-	3.1	-	-	-	-	-	-	-	43.8	-	-	-	-
Years-16-20	<b>Yes</b>	45.9	40	5.4	0	2.7	75.7	81.1	3.3	10	3.3	18.9	10.8	8.1	10.8	16.2	2.7
	<b>No</b>	54.1	40	94.6	100	94.6	24.3	18.9	96.7	90	96.7	81.1	59.5	91.9	89.2	83.8	97.3
	<b>Unk.</b>	-	40	-	0	2.7	-	-	-	-	-	-	29.7	-	-	-	-
Years-21+	<b>Yes</b>	45	40	16.7	5	6.7	83.3	55	3.2	12.9	6.5	13.8	10.3	12.1	10.3	6.9	6.9
	<b>No</b>	55	40	83.3	95	93.3	16.7	45	96.8	87.1	93.5	86.2	67.2	87.9	89.7	93.1	93.1
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	22.4	-	-	-	-
Ed-HS	<b>Yes</b>	12.5	40	0	0	6.3	81.3	62.5	0	0	0	50	12.5	25	12.5	12.5	6.3
	<b>No</b>	87.5	40	100	93.8	93.8	18.8	37.5	100	100	100	50	37.5	75	87.5	87.5	93.8
	<b>Unk.</b>	-	40	-	6.3	0	-	-	-	-	-	-	50	-	-	-	-
ED-Some	<b>Yes</b>	52.3	40	9.2	301	301	80	70.8	9.3	20.9	7	25.8	302	11.3	9.7	9.7	11.3
	<b>No</b>	47.7	40	90.8	95.4	92.3	20	29.2	90.7	79.1	93	74.2	45.2	88.7	90.3	90.3	88.7
	<b>Unk.</b>	-	40	-	1.5	4.6	-	-	-	-	-	-	51.6	-	-	-	-
ED-AA	<b>Yes</b>	35.7	40	0	3.6	7.1	67.9	60.7	0	5.9	0	7.1	7.1	3.6	14.3	10.7	
	<b>No</b>	64.3	40	100	96.4	92.9	32.1	39.3	100	94.1	100	92.9	46.4	92.9	96.4	85.7	89.3
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	46.4	-	-	-	-
ED-BA	<b>Yes</b>	26.1	40	2.2	2.2	2.2	78.3	60.9	7.7	15.4	3.8	15.9	11.4	20.5	11.4	15.9	9.1
	<b>No</b>	73.9	40	97.8	97.8	97.8	21.7	39.1	92.3	84.6	96.2	84.1	61.4	79.5	88.6	84.1	90.9
	<b>Unk.</b>	-	40	-	0	-	-	-	-	-	-	-	27.3	-	-	-	-
ED-MS	<b>Yes</b>	46.7	40	46.7	0	0	73.3	66.7	10	30	10	20	20	20	20	13.3	13.3
	<b>No</b>	53.3	40	53.3	100	100	26.7	33.3	90	70	90	80	73.3	80	80	86.7	86.7
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	6.7	-	-	-	-
Prev. Exp.-Yes	<b>Yes</b>	43.9	40	12.3	1.8	3.5	79.8	65.8	7	16.9	5.6	17.3	11.8	16.4	10.9	12.7	11.8
	<b>No</b>	56.1	40	87.7	97.4	95.6	20.2	34.2	93	83.1	94.4	82.7	70.9	83.6	89.1	87.3	88.2
	<b>Unk.</b>	-	40	-	0.9	0.9	-	-	-	-	-	-	17.3	-	-	-	-
Prev. Exp.-No	<b>Yes</b>	26.8	40	0	3.6	3.6	71.4	64.3	5.7	14.3	2.9	30.9	1.8	12.7	9.1	12.7	7.3
	<b>No</b>	73.2	40	100	94.6	92.9	28.6	35.7	94.3	85.7	97.1	69.1	12.7	87.3	90.9	87.3	92.7
	<b>Unk.</b>	-	40	-	1.8	3.6	-	-	-	-	-	-	85.5	-	-	-	-
Type-Vol.	<b>Yes</b>	13.3	40	6.7	6.7	6.7	93.3	53.3	50	50	12.5	46.7	26.7	26.7	20	26.7	20
	<b>No</b>	86.7	40	93.3	93.3	93.3	6.7	46.7	50	50	87.5	53.3	26.7	73.3	80	73.3	80
	<b>Unk.</b>	-	40	-	0	0	-	-	-	-	-	-	46.7	-	-	-	-
Type-Comb.	<b>Yes</b>	40	40	10	0	3.3	73.3	53.3	0	13.3	6.7	17.2	3.4	13.8	17.2	10.3	13.8
	<b>No</b>	60	40	90	100	93.3	26.7	46.7	100	86.7	93.3	82.8	69	86.2	82.8	89.7	86.2
	<b>Unk.</b>	-	40	-	0	3.3	-	-	-	-	-	-	27.6	-	-	-	-
Type-F/T	<b>Yes</b>	40.8	40	8	2.4	3.2	76	69.6	3.6	13.3	3.6	19.8	7.4	14	7.4	11.6	8.3
	<b>No</b>	59.2	40	92	96	95.2	24	30.4	96.4	86.7	96.4	80.2	50.4	86	92.6	88.4	91.7
	<b>Unk.</b>	-	40	-	1.6	1.6	-	-	-	-	-	-	42.1	-	-	-	-

## **Appendix D**

## Appendix D

### Actual Survey Results

The survey period was open from January 11, 2013 to March 1, 2013. A total of 172 participants started the survey and 163 finished the survey. It is unknown why the nine people were unable to complete the survey. What follows is a breakdown of the qualifying and demographic data. Percentages in bold type represented the highest percentage in that category.

Informed Consent -	<b>100%</b>	
Marital Status-	Responses	Percentage
Single-	25	14.7%
Married-	<b>133</b>	<b>73.1%</b>
Divorced-	13	7.6%
Other-	1	.6%
Children-		
Yes-	<b>133</b>	<b>77.3%</b>
No-	39	22.7%
Sex-		
Female-	10	5.9%
Male-	<b>162</b>	<b>94.1%</b>
Age-		
18-29-	21	12.4%
30-45	<b>89</b>	<b>51.2%</b>
46-59	59	34.7%

60+	3	1.8%
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Years on the Job-

0-5	16	9.4%
6-10	26	14.7%
11-15	33	19.4%
16-20	37	21.2%
21+	<b>34.9</b>	<b>35.3%</b>

Highest Education Level Attained-

H.S. Diploma/G.E.D.-	16	9.4%
Some College-	<b>66</b>	<b>38.8%</b>
A.A./A.S.-	29	17.1%
B.A./B.S.-	46	26.5%
Masters-	15	8.2%
Doctoral	0	0%

Officer Experience-

Yes-	<b>114</b>	<b>66.5%</b>
No-	58	33.5%

Type of Fire Department Currently Working for-

Volunteer-	17	10.0%
Combination-	30	17.6%
Full Time-	<b>125</b>	<b>72.4%</b>



**Question 1-** Are you generally aware of the department or any of its members being named in a lawsuit within the last 10 years, for a work-related incident?

There were a total of 169 responses. Of the total respondents 61.8% indicated in the negative.

Establishing whether the respondent's department has experienced a lawsuit within the last 10 years will establish the extent to which such litigation is happening. Additionally, we will also start to see a picture of how many departments have already experienced litigation. If there are very few respondents' departments that have suffered from litigation, then the hypothesis lacks statistical credibility.

In the last 10 years nearly four in ten are aware of a member or members of their department that were named in a lawsuit. It is this knowledge or awareness that has the potential to serve as impetus for the individual to not actively seek promotion. There is no statistical relevance between this question and the demographic filters.

**Question 2-** Are you specifically aware of any department member being named in a lawsuit in the last 10 years for a work-related incident?

There were a total of 169 responses. Of those respondents 67.6% responded in the negative.

If the respondent has personal awareness to a co-worker being sued, then the respondent may have a heightened sense or awareness of the effects of litigation on their person, family, and friends. With one in three respondents having first-hand knowledge of lawsuits within the department, the sentiment of ignorance or naiveté is significantly reduced. Decisions regarding the likelihood of promoting are less dependent on rumors

and innuendo. There is no statistical relevance between this question and the demographic filters.

**Question 3-** Have you personally been named in a lawsuit in the last 10 years for a work-related incident?

There were a total of 169 responses. Of those respondents 91.8% responded in the negative.

If the respondent has personally experienced work-related litigation then it is more likely that any decision to promote will be directly influenced by that experience. With nearly one in ten members being specifically named in a lawsuit, the first-hand accounts and testimony will carry significant credibility when their specific ordeal is discussed with other members.

Furthermore, the bleed-over information or rumors will invariably reach many more members not directly affected or involved. The percentage dramatically increased amongst members in the categories of age (46-59 and 60+) as well as experience level (21+). This may be a simple relationship between increased impulse time (the time they have been in the environment) and the litigious nature of the environment; those in the service longer will invariably have more opportunities to experience a litigious event.

**Question 4-** Do you believe that a fire department and its members are immune to criminal litigation?

There were a total of 169 responses. Of those respondents 96.5% responded in the negative.

If the respondent answers yes then they are aware of the potential for criminal litigation exposure. This question highlights the fact that the membership in general is

aware that despite their civil standing, they and their department are not immune to criminal litigation despite the heavier burden of proof. All demographic filters recorded high (90%+) responses in the negative. No other statistical relevance is present.

**Question 5-** Do you believe that a fire department and its members are immune to civil litigation?

There were a total of 169 responses. Of those respondents 94.7% responded in the negative.

If the respondent answers yes then they are aware of the potential for civil litigation exposure. This question highlights the fact that the membership in general is aware that despite their civil standing, they and their department are not immune to civil litigation. All demographic filters recorded high (90%+) responses in the negative. No other statistical relevance is present.

**Question 6-** Have you considered the potential impact to your family if litigation is brought against you for on-the-job decisions/responsibilities?

There were a total of 169 responses. Of those respondents 77.1% responded in the affirmative.

Has the respondent weighed the negative aspects of being sued? Have they thought about the effects of being sued on their family? If they have, then the hypothesis gains credibility.

As incidents of fire service related litigation increase, it is logical to conclude that more members are aware of, and factoring in, this information in their decision making process. All of the demographic filters recorded a high percentage of those that have considered the impact of potential litigation.

**Question 7-** Are you currently eligible for promotion?

There were a total of 169 responses. Of those respondents 65.3% responded in the affirmative.

Fire personnel who are not currently eligible to sit for a promotional exam (not enough time on the job or not enough time in grade) may not be actively thinking about the conditions or factors involved with promotion. This question was designed to establish, out of the members currently eligible for promotion, who was identifying themselves as being aware of liability and to what degree. Are those eligible for promotion more sensitive to the additional liability? No other statistical relevance is present. In retrospect, this question would have had more relevance as an initial demographic question.

**Question 8-** If you are eligible, have you ever turned down a promotion due to the increased exposure to litigation?

There were a total of 105 responses. Of these respondents 93.4% responded in the negative.

If the respondent answers yes, this confirms on a personal level that the threat, real or perceived, does have an effect on officer recruitment. This question directly asked whether or not liability or the threat of liability outweighed the benefits of promotion. Regarding the demographic filters, most were unremarkable except for the female firefighter category. Here, 25% of the respondents had turned down a promotion due to the increased exposure to personal litigation. Most of the other filtered demographics averaged seven percent.

**Question 9-** If you are currently an officer, do you believe that potential future litigation is a reason to not accept a future promotion?

There were a total of 105 responses. Of these respondents 94% responded in the negative.

If the respondent answers yes, this confirms on a personal level that the threat, real or perceived, does have an effect on officer retention. After promotion, had the litigious environment changed that member's way of thinking in a way that they would not consider or accept another promotion in the future? Demographic filters again remain constant and unremarkable with the exception of the volunteer demographic. Here, 50% of the respondents answered in the affirmative. It cannot be said that a potential problem exists in the volunteer ranks with regard to this question, but it does qualify for more research to explore if volunteers, as a general body, view this potential differently.

**Question 10-** Have you ever resigned from a leadership position due to the increased personal exposure to litigation?

There were a total of 105 responses. Of these respondents 95.3% responded in the negative.

If ineligible fire personnel are currently thinking about the possible consequences of promotion, then the hypothesis gains credibility. Another direct question about the relationship between the member's perspective and the litigious environment that was present at the time the decision to resign was made. While five percent is a relatively low number, as incidents of litigation increase, it can be reasonably concluded that the number of members resigning will also increase. All demographic filters answered this question relatively similarly with percentages ranging from 0% to 12.5% with volunteers again responding with the highest affirmative response.

**Question 11-** If you are not currently eligible for promotion, do you believe the potential for exposure to litigation may influence your decision to promote in the future?

There were a total of 164 responses. Of these respondents 78.2% responded in the negative.

If a current fire officer is contemplating resigning his/her position, then the hypothesis gains credibility. This question was generally for newer firefighters. Are they thinking about the liability and accountability that accompanies increased responsibility? With 20% responding that liability is a genuine concern, as incidents of litigation increase, so too should this number. This question got a wide range of responses within demographic filters with single (37.5%), female (44.4%), and high school education only (50%) recording the highest percentages.

**Question 12-** If you are currently an officer, have you ever considered resigning your position/commission due to personal exposure to litigation?

There were a total of 164 responses. Of these respondents 51.5% responded in the negative with another 40% indicating that the question was not applicable to them.

Knowing of an eligible department member declining promotion due to litigation potential may influence another eligible member to also decline promotion. Much like question eleven, not quite one in ten current officers have contemplated resigning their position. While we do not know the factors that were involved in the decision to remain, again the conclusion is that as incidents of litigation increase, that threshold value or factor may be enough to change the decision making process of these current officers. Demographic filters were unremarkable in this area with the exception of volunteers with an affirmative response rate of 26%.

**Question 13-** Are you generally aware within the department of an eligible member turning down a promotion due to the increased exposure to litigation?

There were a total of 164 responses. Of those respondents 84.8% responded in the negative.

Knowing of another department member in a leadership position resigning due to the possibility of litigation exposure may influence another leader to resign their leadership position.

Being aware of a fellow member turning down a promotion can carry significant weight and credibility when it comes to influencing the decision making of others. With fifteen percent of the respondents, volunteer (26.7%), high school (25%), BA (20.5%), and MS (20%) represented the highest affirmative responses. Education in this area seems to be the greatest factor.

**Question 14-** Are you generally aware within the department of a member resigning from a leadership position due to the increased personal exposure to litigation?

There were a total of 164 responses. Of these respondents 89.7% responded in the negative.

A current officer's awareness of another officer considering resignation of position/commission due to litigation exposure may influence them to also consider resignation. Being aware of a fellow member resigning a promotion can carry significant weight and credibility when it comes to influencing the decision making of others. With ten percent of the respondents acknowledging that they were aware of members resigning, the act of resigning can further shrink the future pools of qualified candidates willing to promote. It is easier to turn down something that you have never had; it is far

more difficult to give up something that you do have. Understanding what influences officers to give up their responsibility is critically important for the fire service to understand. Those firefighters with six to ten years on the job responded 21.7% in the affirmative. The remaining filters were unremarkable.

**Question 15-** Are you generally aware within the department of an officer considering resigning his/her position/commission due to personal exposure to litigation?

There were a total of 164 responses. Of these respondents 87.3% responded in the negative.

The knowledge of a former officer resigning/leaving the department due to litigation exposure may influence a current officer to consider resignation. If an officer is considering resigning his/her leadership position, what effect might that have on the rank and file under their command? As younger members look up to leaders for guidance and mentoring, will they be discouraged by the resignation? The demographic filters of volunteer (26.7%) and 6-10 years on the job (30.4%) recorded the highest affirmative responses.

**Question 16-** Are you generally aware within the department of an officer resigning/leaving the department due to personal exposure to litigation?

There were a total of 164 responses. Of these respondents 89.7% responded in the negative.

It is one thing to resign a position due to the increased exposure to litigation. It is another to leave the department/service completely. People who leave the service due to litigation exposure create the paramount issue regarding the relationship between litigation and officer recruitment and retention; things are so bad that their only



alternative is to seek another place to work. The demographic filters of single (25%), age 18-29 (25%), and female (33.3%) recorded the highest percentages in the affirmative.