Preparing Police for Deposition

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Complaint Served

- Contact Department and request all offense reports and any related video (ICC and BWC).
- Schedule in-person meeting with officer to discuss incident and how the lawsuit will proceed. Advise that he will likely be deposed and that we will meet again to prepare for the deposition. Prior to the deposition, the officer will likely be needed to assist with responding to written discovery.

Preliminary Pre-Deposition Advisements:

- Explain distinctions between testifying as a witness in a criminal matter versus being a defendant in a civil action.
- Explain your role as the officer's attorney.
- Gain his confidence and trust.
- Explain the breadth of civil discovery.
- Active listening and understanding.
- The officer should not feel compelled to give a "yes" or "no" answer.
- The officer should not be concerned if Plaintiff's counsel understands his response.

Preliminary Pre-Deposition Advisements: (Continued)

- Do not guess or speculate.
- Be mindful of word choice and how it will read on the transcript.
- Do not respond to hypothetical questions.
- Discuss any potentially embarrassing or damaging information prior to the deposition.
- Be readily familiar with all offense reports.
- Be readily familiar with prior responses to written discovery.
- Discuss strategic and tactical alternatives.

The 4th Amendment

Amendment IV – The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Three Types of Police/Citizen Encounters

1. Consensual Encounter

The most frequent interaction between police and citizens. The officer can ask any questions he wishes and can obtain consent to search the person or questions or refuse to identify themselves. No evidence of a crime is needed to initiate a consensual encounter.

If the citizen's movement is restrained or he/she is directed to a different location, typically any directive, the encounter is not likely to be considered consensual.

The Three Types of Police/Citizen Encounters

2. Investigative Detention

Often referred to as a "Terry Stop" (392 U.S. 1 (1968)). In Terry, the Supreme Court acknowledged the investigative detention as a reasonable investigatory tool that does not rise to the level of an arrest, but does restrain movement.

The Officer must have a reasonable, articulable suspicion that the citizen is committing, or has committed, or is about to commit a crime. The stop cannot be made on a "mere suspicion" or a "hunch." It must be supported by facts and observations that the officer can articulate as likely criminal behavior based on his training and experience.

The citizen is not allowed to leave. However, if the detention lasts beyond a reasonable amount of time, it would likely be considered a de facto arrest. Other factors turning a detention into an arrest are the number of officers involved, how the citizen is being restrained, the location of the stop, how the questioning takes place.

The key factor or word in the analysis of whether a stop is an investigative detention is "reasonable." The standard of reasonableness is typically defined by the appellate authority of your circuit.

The Three Types of Police/Citizen Encounters

3. Arrest

Must be supported by probable cause, not just a reasonable suspicion. If probable cause exists, the Officer does not need a warrant to make a felony arrest. This also goes for misdemeanor arrests in most jurisdictions, but in some jurisdictions a warrantless misdemeanor arrest can only be made if the Officer witnesses the crime.

During an arrest, the citizen is not allowed to leave and can be searched without additional probable cause.

City of SACRAMENTO

Reasonable Suspicion vs. Probable Cause

1. Reasonable Suspicion

Defined by *Terry*. Based on the officer's relevant training and experience, he has a reasonable suspicion the person has committed a crime. It is somewhat subjective, but still must be informed by the facts and circumstances.

Reasonable Suspicion vs. Probable Cause

2. Probable Cause

Required to issue warrants to search or seize property, or to make an arrest. It also must exist to make an arrest or to search and seize property without a warrant.

PC exists "where the facts and circumstances within the officers' knowledge, and of which they have reasonably trustworthy information, are sufficient in themselves to warrant belief by a man of reasonable caution that a crime is being committed." *Brinegar v. U.S.*, 338 U.S. 160 (1949).

When applying for a warrant, law enforcement officers must be able to clearly articulate their use of probable cause in an Affidavit of Probable Cause.

Your Department's Use of Force Policy

The Sacramento Police department values the sanctity of human life and the freedoms guaranteed by the United States and California constitutions. An officer shall only use the amount of force that the officer reasonably believes is necessary under the totality of circumstances. An officer shall consider the principles of proportionality in looking at the totality of the circumstances by weighing the severity of the offense, the reasonably perceived level of resistance and the need for apprehension prior to the utilization of force. An officer shall use only the force that is reasonable to effect an arrest, prevent escape, or to overcome resistance. During these situations, an officer shall continually evaluate their tactics when determining the appropriate use of force response. If necessary, an officer shall render, if properly trained, or otherwise request medical aid as soon as reasonably possible.

UOF Policy continued…

An officer shall employ de-escalation and crisis intervention techniques when feasible and when doing so does not increase the risk of harm to officers or others. When making use of force decisions, an officer should be mindful that subjects may be physically or mentally incapable of responding to police commands due to a variety of circumstances including, but not limited to, alcohol or drugs, mental conditions, or language and cultural barriers.

Officers use deadly force only when necessary in defense of human life or serious bodily injury. The decision by an officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force. The Sacramento Police Department shall evaluate the use of force used by its employees to ensure officers only use force that is lawful and consistent with this policy.

Any Other Applicable Department Policy

- Use of Deadly Force
- Canine Deployment
- Vehicle/Foot Pursuit
- Use of BWC and/or ICC
- Preparation of Arrest Reports

Reasonable Force

Based on totality of circumstances.

Factors include:

- Severity of the crime;
- Whether the suspect posed a threat; and
- Whether the suspect was attempting to flee or was actively resisting.

(*Graham v. Connor*, 490 U.S. 386 (1989))

Deadly Force

Used only when an officer has probable cause to believe that a suspect poses a threat of serious harm to the officer or others. (*Tennessee v. Garner*, 471 U.S. 1 (1985).

The threat must be *immediate*. Warnings should also be issued when possible.

Use of Force Training

- POST (Police Officer Standards and Training) and Academy training.
- Minimum of 664 hours of training and testing in 42 separate learning domains.
- Other agency training (Force Science Institute).

Use of Force Continuum

- Officer Presence-No force.
- Verbalization-Force is not physical. Most often commands.
- Empty Hand Control-Bodily force to gain control.
- Less Lethal-Blunt impact weapons, CEDs, chemicals, K9.
- Lethal.