

ITEM 5
HANDOUT
PowerPoint Presentation

Oakland Police Oversight Commission
East Oakland Youth Development Center
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First Amendment---Freedom of Assembly

Congress shall make no law.....restricting the freedom of speech or the right of the people to peaceably assemble

- First Amendment protection includes the right to peaceful assembly, however the right is not absolute. Government can impose reasonable restrictions on time, place, and manner of peaceful assembly. Can not restrict content of
- The First Amendment does not protect speech where there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threats to public safety or order. Speech that incites imminent lawless action or violent action will not be protected.
- Police may only break up a demonstration if people are not adhering to the time, place, and manner restrictions. A gathering may be dismantled if there is a clear and present danger of riot, disorder, interference with traffic on public streets, or other immediate threats to public safety. Papineau v. Parmley, 465 F.3d 46, 56-57 (2d Cir. 2006).
- Orders to disperse are governed by Cal. Pen. Code § 416, which makes it a crime for refusing to disperse upon lawful command. The officers must provide a reasonable escape route,
- The Ninth Circuit has found excessive force where police failed to ensure protestors heard the police order to move and wearing riot gear violently shoved, struck with clubs, and fired pepper spray at protestors. Moss v. United States Secret Service, 711 F.3d 941 (9th Cir. 2013).

Fourth Amendment

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.

Detention/Seizure

- The Supreme Court has held that, a seizure occurs when a reasonable person would not “feel free to decline the officer’s requests or otherwise terminate the encounter.” Fl. v. Bostick, 501 U.S. 429 (1991).
- Reasonable suspicion has been defined as something more than a “hunch” but less than probable cause. Reasonable suspicion must be supported by articulable facts. United States v. Sokolow, 490 U.S. 1 (1989).
- **Terry Stops-** police may briefly detain a person for investigative purposes, so long as the officer has reasonable suspicion the person is involved in criminal activity or was involved in a reported crime. The investigative stop must be supported by articulable facts. A limited frisk of the detainee’s outer clothing may be conducted if there is reasonable suspicion the detainee is armed and dangerous. Terry v. Ohio, 392 U.S. 1 (1968).

Fourth Amendment -- Arrest

Arrests- An arrest occurs when the police take a person into custody for the purposes of criminal prosecution or interrogation. Police must have probable cause for arrest to bring a suspect to the police station against the suspect's will for questioning or fingerprinting.

- Probable cause exists, where an officer has within his knowledge reasonably trustworthy facts and circumstances sufficient to warrant a reasonably prudent person to believe that the suspect has committed or is committing a crime for which arrest is authorized by law. Beck v. Ohio, 379 U.S. 89 (1964). A detention for an unreasonable period of time can turn into an arrest.

Fourth Amendment – Non Lethal Force

Use of Force- An officer may use reasonable force to prevent escape, responding to force, threat of bodily harm . Specifically, use of force is justified where there is probable cause that there is a serious threat of harm. The threatened harm may be an imminent threat of a weapon or probable cause that a past crime was committed with serious physical harm. The force used must be reasonable Graham v. Connor, 490 U.S. 386 (1989). Every department including Oakland have general orders, training manuals, Peace Officers Standards and Training “POST” that establishes standards for using force

Weapons used by Police:

- Batons
- Flashlights
- Tasers
- Canines
- Pepper Spray
- Bean bag
- Pepper spray
- Carotid hold
- Compliance holds

Fourth Amendment—Deadly Force

Deadly Force- Deadly force may only be initiated if reasonable under the circumstances.

- Deadly force, use of gun or any weapon that cause death or bodily injure can be used when an officer or another person is threaten with immediate of loss of life or great bodily injury Scott v. Harris, supra.
- Fleeing suspect: It is unreasonable for an officer to shoot a fleeing burglar who refused to stop when ordered to do so and there was no evidence that the suspect was armed or posed a threat of danger to the police or others. Tennessee v. Garner, 471 U.S. 1 (1985).
- Determining whether the officer's use of deadly force was reasonable under a given set of circumstances requires a balancing of interests, where the government has interests in public and officer safety, in addition to effective law enforcement, and the individuals' interests in the right to life. Officer are trained to stop the threat and generally shoot center mass.

Fourth Amendment: Searches

Automobile

A stopped automobile by police constitutes a seizure of the driver and passengers. A car may not be stopped unless there is at least reasonable suspicion a law has been violated. Brendlin v. Ca., 551 U.S. 249 (2007).

If stop lawful can order everyone out of car. Permitted to search anyone in car on probation or parole

Car search interior of car if observation of contraband in plain sight e.g. drugs, weapons which can lead to search drug

During stop can create danger by reaching in under seat, glove compartment or “furtive movements”

Car can be searched for inventory purposes when driver is being arrested and car is towed.

Driver can refuse consent if officer wants permission to search

Fourth Amendment - Searches

Persons

Terry vs Ohio allows for pat down of a person when stopped by the police without a warrant if the officer has reasonable suspicion that the person is armed. Commonly referred to as "Stop and Frisk". Reasonable suspicion must be supported by articulable facts.

A search of person is permitted as an incident to an arrest

A person probation or parole is subject a search of their person for any reason or no reason

Sobriety check points can be set up and can serve as a bases for detention

Fourth Amendment Searches

Home

- Valid search of home requires a warrant signed by a judge
- If no search warrant and there is probable cause and exigent circumstances and in “hot pursuit” of suspected serious felon
- Search warrant should include name, correct address, items, name of person looking for.
- Search warrant should indicate time for the search,
- Warrantless entry can be made to prevent destruction of evidence
- Warrantless entry can occur pursuant to a safety check, emergency services

State law- False Imprisonment

False imprisonment occurs when a person is unlawfully detained without legal process. The cause of action begins accruing immediately following the false arrest and the arrestee may file suit at that time.

- Under Cal. Pen. Code § 236, false imprisonment consists of two elements. First, the offense occurs when restraint is not authorized by law and, thus includes unauthorized taking of person into police custody. People v. Brock, 220 Cal. App. 2d 605 (1963). Additionally, unreasonable delay in bringing an arrested person before a magistrate would constitute the confinement as false imprisonment. Kangieser v. Zink, 134 Cal. App. 2d 559 (1955).
- An officer charged under Cal. Pen. Code § 236, will not be held liable for false imprisonment where arrestee is briefly detained in handcuffs and confined to the patrol car while the supervisory officer is evaluating a given situation. Uganda Knapps v. City of Oakland, 647 F. Supp. 2d 11129 (N.D. Cal. 2009).

State Law- False Arrest

A valid claim for false arrest arises where a person is arrested without a warrant and without probable cause to believe the person committed or was committing a crime.

- The claim is valid even if the officer's actions were not flagrant or malevolent. Joseph v. Rowlen, 402 F.2d 367 (Cal. 1968).
Specifically. False arrest is the unlawful restraint of a person's liberty, such that the person is held against their will or is taken into custody without consent or legal justification to do so.
- Probable cause is a complete defense to false arrest.

State law- Battery

Battery by a peace officer is recognized in California, where an individual claims an officer harmed her using unreasonable force to execute an arrest, to prevent her escape, or to overcome her resistance.

The person did not consent to the use of force and the person was harmed by the force; and the officer's use of unreasonable force was a substantial factor in causing the plaintiff's harm.

- Determining whether an officer used unreasonable force requires consideration of the nature of the crime, whether an immediate threat of harm existed and whether the individual actively resisted arrest. Where an officer has engaged in unreasonable force, a valid claim of battery may be asserted against the officer.
- The use of reasonable force by an officer is governed by Cal. Pen. Code § 835(a), and the duty of individuals to submit to arrest is governed by Cal. Pen. Code § 834(a).

Police Defenses- Qualified Immunity

Qualified immunity protects government officials from liability where the elicited conduct violated the constitutional rights of an individual while the official was acting under color of state law.

- Although qualified immunity protects government officials extensively, the Court and the Ninth Circuit have found situations in which the immunity is appropriate and situations which it is not.
- California law regarding absence of government immunity for false arrest is governed by statute, Cal. Gov. Code § 820.8. The statute focuses on the nature of the alleged tort, rather than the nature of the governmental duties performed by the defendant. Asgari v. City of Los Angeles, 15 Cal. 4th 744 (Cal. 1997).
- Qualified immunity is analyzed by considering two questions. First, whether there was probable cause to arrest, and second, whether it is reasonably arguable that there was probable cause for the arrest (whether reasonable officers could disagree about the legality of the arrest such that the arresting officer would be entitled to qualified immunity). Rosenbaum v. Washoe County, 663 F.3d 1071, 1076 (9th Cir. 2011).
- Substantively, qualified immunity is available when a reasonable officer would not have known his actions would violate a constitutional right that was “clearly established” at the time of the incident.
- For a person to prevail against qualified immunity defense, the person must show the police exceeded reasonable bounds, infringed on constitutional rights of the individual, and produced some injury or damage.

Police Officers' Bill of Rights

- Public Safety Officers Procedural Bill of Rights Act-

Cal. Gov. Code § 3302- No officer shall be prohibited from engaging in or required to engage in political activity.

Cal. Gov. Code § 3304- No officer shall be subjected to punitive action or denied promotions because of lawful exercise of rights afforded.

- Police are permitted to lawfully take photos and videos of events open to the public. California's right to privacy, however, prohibits state and local police from maintaining unnecessary information about people.

Police Officers' Bill of Rights

Cal. Gov. Code § 3303- Conditions under which an officer investigation may be interrogated

- Conducted at reasonable hour
- Officer informed of command officer in charge of interrogation prior to being interrogated
- Shall be informed the nature of investigation
- Interrogation shall be for reasonable time
 - Shall only be subjected to press with consent of officer
- No existence of coercion or undue influence during interrogation
- Statements made by the officer during interrogation are not prevented from admissibility in a civil action
- Interrogation may be recorded
- Immediate informing of constitutional rights if criminal offense is charged
- No temporary reassignments

Cal. Gov. Code § 3307- No officer shall be compelled to submit to a polygraph test against his will; no discipline for refusing to take such test.

Cal. Gov. Code § 3308- No officer shall be required or requested to disclose personal items unless required by state law or legal procedure.

- Personal items include property, income, assets, sources of income, debts or personal expenditures

Cal. Gov. Code § 3309- No officer shall have his assigned storage locker be searched unless it is in his presence or with his consent; valid search warrant permits search

- no department shall deny or refuse any officer the protections afforded
- Superior court has jurisdiction
- Injunctive relief shall be rendered if superior court finds public safety department to have violated this provision



The End