Quick Reference

Legal Guide For Law Enforcement

Critical Tasks In Law Enforcement ★ 2023-2024 Session

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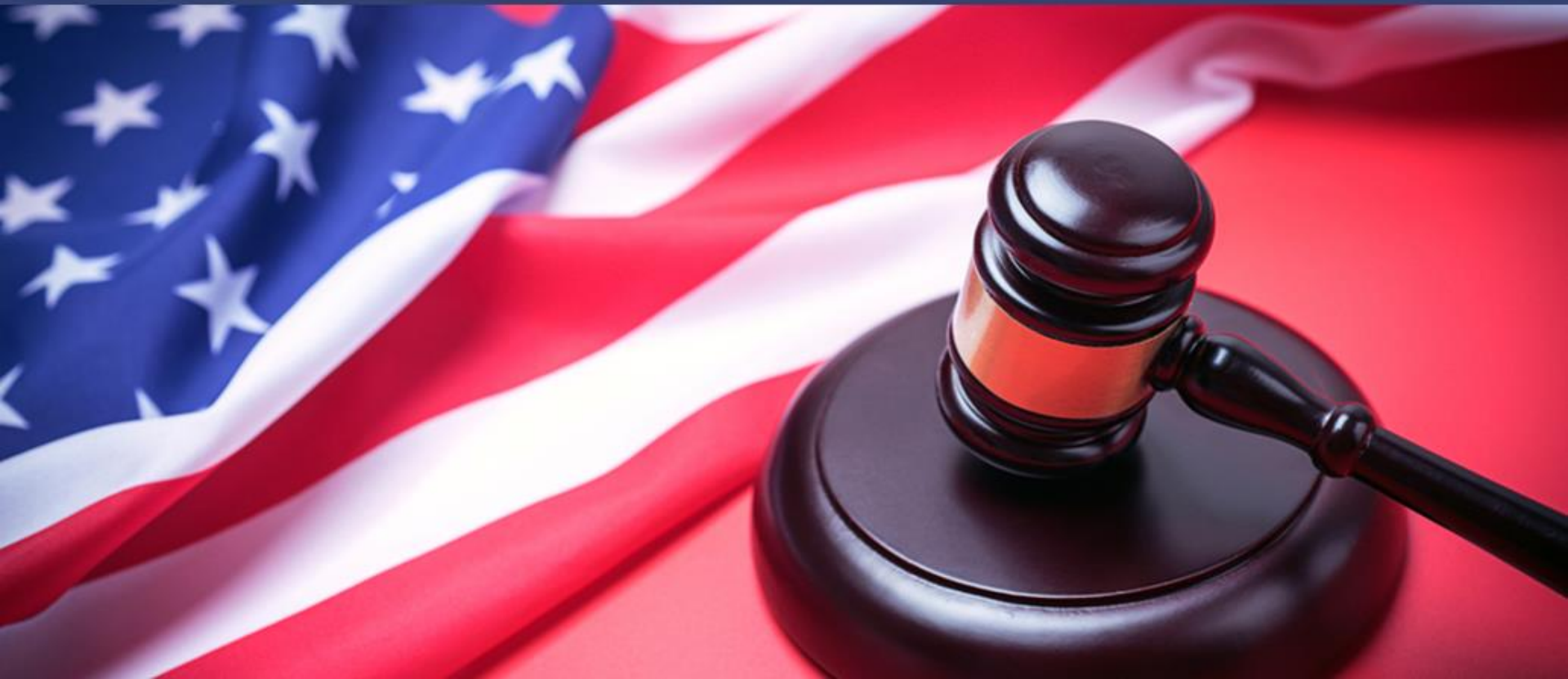

A Legal Guide for
Officers & Supervisors
2024

Critical Tasks in Law Enforcement

JACK RYAN

Online Video Training

- The cases covered in this manual are the subject of more than one hundred video segments which run 3-5 minutes and are an excellent resource for roll-call type training. The videos provide the factual background facts the officer(s) faced and how the officer's conduct was analyzed and judged by the Court.

- For more information go to www.llrmi.com
- For free weekly legal update articles go to www.llrmi.com

New cases this edition…

1. Chiaverini v. City of Napoleon…Arrest/lawsuit 32
2. Gonzalez v. Trevino…Retaliatory Arrest 33
3. United States v. Rahimi… Arrest/Firearm/TRO 47

Introduction

The purpose of this manual is to provide law enforcement officers with a reference guide to the law impacting critical tasks in law enforcement. The guide is arranged by topic in accordance with the recurring tasks that law enforcement officers are called upon to respond to. This guidebook will assist officers in preparing for critical tasks as well as providing a checklist of the necessary elements to support officer conduct. Supervisors can utilize the guidebook to review officer actions to determine its consistency with the law as interpreted by the United States Supreme Court as well as the developing trends in the United States Circuit Courts of Appeal. At the outset it should be noted states may be more restrictive in certain aspects of the law relating to police powers based upon the state's constitution. Officers are advised to always be aware of state court decisions as well as state laws that may be more restrictive on police conduct.

Note: Cites containing ___"U.S".___ refer to U.S. Supreme Court Cases, while those cited as "F.3d", "F.Supp," "F. Appx" refer to lower federal court decisions.

Further Information on Cases

Officers are encouraged to sign up for the Legal & Liability Risk Management Institute's weekly, electronic briefing at www.llrmi.com. The briefing regularly provides case updates on law enforcement topics and is a free service to law enforcement officers. All articles are archived and searchable.

Officers using this text are also encouraged to read the cases on which the principles in this manual are based. Cases can be found by using free internet databases such as www.findlaw.com. By entering the case name or case citation into the database search engine, officers will be able to locate and download the entire case for a more extensive review. A search of the database will also provide additional cases that apply the same legal principles enunciated in these cases. The United States Supreme Court as well as many of the lower courts also maintain written decisions on their websites.

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Consensual Contacts
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Task: Consensual Contact

Florida v. Bostick, 501 U.S. 429 (1991).

A police officer need not have reasonable suspicion or probable cause when his or her encounter with a citizen is consensual.

Distinguishing consensual contact from seizure:

- Would the words or conduct used by the officer, lead a reasonably objective innocent person to believe they were not free to leave, refuse the officer' "or otherwise terminate the encounter."
- Mere questioning by police is insufficient to establish coercion on the part of the officers.

Task: Physical Seizure of The Person

Brower v. Inyo County, 489 U.S. 593 (1989).

A physical seizure occurs only when physical force to stop a person is used through a means intentionally applied.

- Force that is accidentally applied to innocent third parties is not a seizure or use of force under the 4th Amendment.

- Force intentionally applied to an innocent third party due to a mistaken belief that the third party is a suspect does constitute a 4th Amendment seizure

Task Physical Seizure of The Person

Torres v. Madrid, 141 S. Ct. 989 (2021).

- Where an officer intentionally applies force to a person's body with the intent to restrain that person, a Fourth Amendment seizure has occurred irrespective of whether the force applied to the person's body accomplished a stopping of their movement.

  - Two Elements
    - Force Applied to Body
    - Intention to restrain

Task: Show of Authority Seizure of The Person

California v. Hodari D., 499 U.S. 621 (1991).

A seizure based upon a show of authority does not occur until the person who has been subjected to the show of authority complies with that show of authority by submitting to the officer's commands.

Until submission takes place or there is a physical seizure an officer's actions need not be justified by some level of proof and items discarded by the suspect prior to seizure under these rules are not protected by the 4th Amendment since they are abandoned prior to seizure.

Task: Seizure of the Person

Terry v. Ohio, 392 U.S. 1 (1968).

An officer may briefly detain an individual for further investigation where the officer has reasonable suspicion to believe the person stopped is involved in criminal activity.

- An officer may use reasonable force, short of deadly force, to accomplish a seizure based upon reasonable suspicion.

- An officer may conduct a limited pat-down/frisk of the person's outer clothing where the officer also has reasonable suspicion to believe the suspect is armed and dangerous.

Task: Seizure Based on Reasonable Suspicion

Illinois v. Wardlow, 528 U.S. 119 (2000).

The unprovoked flight of a citizen upon seeing a police officer, while in a high crime area, is sufficient to establish reasonable suspicion to make an investigatory stop.

- Officer must be able to articulate factors, beyond mere flight, in order to justify stop.
- In this case, Court found articulation of "high crime" area sufficient when coupled with other factors.
- In a footnote, the Court asserted that it was not deciding whether a frisk would be justified under these circumstances.

Task: Reasonable Suspicion-Length of Detention

U.S. v. Sharpe, 470 U.S. 675 (1985).

Officers may detain for the period of time in which they diligently pursue a means of investigation that is likely to confirm or dispel the suspicion quickly during which time detention was necessary.

Key Points to determine reasonableness of length of detention:

- Diligent Investigation Taking Place
- Detention Necessary for Investigation

Task: Frisk Based on Anonymous Tip

Florida v. J.L., 529 U.S. 266 (2000).

An anonymous tip that fails to predict future conduct of the suspect being informed on, is insufficient to establish the requisite reasonable suspicion to support of valid frisk.

- Where tip is such that any passerby could pass along the information a frisk will not be upheld.
- Note, the Supreme Court indicated they may not hold police to this standard when dealing with an anonymous tip relating to a weapon in a school or airport.

Task: Stop Based on Anonymous Tip

Navarette v. California, 134 S. Ct. 1683 (U.S. 2014).

- Anonymous reports may support reasonable suspicion to make a vehicle stop however two essential components must be met:
- The anonymous report must have some indicia of reliability going beyond simply describing location and description. Such as Reporting in First Person that they were actual witness.
- The reliable anonymous information must add up to reasonable suspicion to believe that criminal activity is afoot.
- Here, the Court placed an indication of reliability, on the fact that the caller used the 911 system to make the call such that the caller would assume their call was traceable and thus less likely to falsely report.

Task: Stop Based on Corroborated Anonymous Tip

Alabama v. White, 496 U.S. 325 (1990).

Where the anonymous tipster goes beyond a general description and present location of the suspect and provides information predicting future conduct of the suspect which law enforcement can corroborate prior to the stop, reasonable suspicion may be established.

Task: Frisk

Arizona v. Johnson, 555 U.S. 323 (2009).

- In a traffic-stop setting, the first *Terry* condition -- a lawful investigatory stop -- is met whenever it is lawful for police to detain an automobile and its occupants pending inquiry into a vehicular violation. The police need not have, in addition, cause to believe any occupant of the vehicle is involved in criminal activity.
- To justify a pat-down of the driver or a passenger during a traffic stop, however, just as in the case of a pedestrian reasonably suspected of criminal activity, the police must harbor reasonable suspicion that the person subjected to the frisk is armed and dangerous.

Task: Frisk of Persons in Commercial Establishment

Ybarra v. Illinois, 444 U.S. 85 (1979).

An officer may not frisk patrons of a commercial establishment where officers are executing a search warrant unless the officers have individualized reasonable suspicion to believe that the person to be frisked is armed and poses a danger to officers.

Task: Detaining Persons at Scene of Search Warrant

Michigan v. Summers, 452 U.S. 692 (1981).

Law Enforcement may detain individuals who are on the scene, or who come upon the scene, where the police are conducting a search pursuant to warrant at a residence.

- Persons present may be detained until the search is concluded.
- Note, the manner of detention must be reasonable.

Task: Detaining Persons During Execution of Search Warrant

Bailey v. United States, 568 U.S. 186 (2013).

•The categorical authority to detain incident to the execution of a search warrant must be limited to the immediate vicinity of the premises to be searched.

•Factors to consider when deciding if a person is in the immediate vicinity are:

- the lawful limits of the premises,
- whether the occupant was within a line of sight of the premises being searched,
- the ease of reentry from the occupant's location, and
- other relevant factors. (Undefined by Court).

Task: Handcuffing at the Scene of Search Warrant

Muehler v. Mena, 544 U.S. 93 (2005).

- Officers may handcuff individuals present when they execute a dangerous search warrant at a residence.
- Subjects may remain handcuffed during the remainder of the search.
- Where the duration of the search is such that a person may be injured by continuous restraint officers should find a way to accommodate the individual so that such injury does not occur.
- Where it is readily apparent to officers that the person(s) pose no danger to them, officers should remove restraints.

Arrest and Search Incident

Task: Involuntary Transport Constitutes Arrest

Dunaway v. New York, 442 U.S. 200 (1979).

An officer may only transport a person to the station where the officer has probable cause to believe that a crime has been committed and probable cause to believe that the person being transported is the person who committed the crime.

Hayes v. Florida, 470 U.S. 811 (1985).

A person cannot be involuntarily transported to the police station for identification purposes without probable cause to arrest.

NOTE: It doesn't matter what you call it, involuntary transport from a location requires probable cause.

Task: Involuntarily Transporting a Person to the Station

Kaupp v. Texas, 538 U.S. 626 (2003).

A person involuntarily transported to a police station has been arrested for 4th Amendment purposes. No person can be involuntarily transported to a police station unless the police have probable cause to believe that person has committed a crime.

- Confessions obtained as the result of such an arrest are invalid unless illegality has been overcome by:
  - Proper Miranda warnings and;
  - Passage of time between illegal arrest and confession.
  - Presence of Intervening Circumstances.
  - Consider the flagrancy and purpose of the official misconduct or the inverse, the lack of flagrancy and the good purpose behind the official misconduct.

Task: Arrest

Virginia v. Moore, 553 U.S.164 (2008).

The Fourth Amendment does not require the suppression of evidence obtained incident to an arrest that is based upon probable cause, where the arrest violates a provision of state law. (i.e. state law requires the officer to cite and release)

NOTE: A state may exclude the evidence based upon state law.

Task: Arrest

Atwater v. City of Lago Vista, 532 U.S. 318 (2001).

•If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment, arrest the offender.

NOTE: State Law may have specific requirements for custodial arrest that must be followed, however a custodial arrest for a minor criminal offense based on probable cause is not a false arrest under the U.S. Constitution.

Task: Arrest of Person Who Fails to Identify Themselves During Valid "Terry" Stop

Hiibel v. Humboldt County, 542 U.S. 177 (2004).

Police may enforce state laws that require a person to identify themselves during a valid "Terry" stop.

Requirements:

1. Must have a valid "Terry" stop.
2. Can ask subject for name. (Court did not go any further in deciding whether a demand for valid and credible identification could be made and suggested that such a demand cannot be made)
3. In order to arrest, there must be a state statute requiring that person's validly stopped relative to criminal activity identify themselves.

Task-Probable Cause Determination for Valid Arrest

Devenpeck v. Alford, 543 U.S. 146 (2004).

An arrest based upon probable cause for any offense is sufficient to meet constitutional requirements.

- Officers need not assert a specific offense for which they are arresting a suspect at the moment of arrest
- Officers need not "stack charges" in order to cover all possible offenses for which there is probable cause
- Even if the charged offense fails in court, probable cause for a non-charged offense will satisfy constitutional requirements
- In determining the existence of probable cause-Is there probable cause to believe that some offense has occurred?
- See Next Page

Task: Arrest and Malicious Prosecution

Chiaverini v. City of Napoleon, 2024 U.S. LEXIS 2710 (2024).

- The Fourth Amendment and common-law torts held that probable cause for one charge does not preclude a malicious prosecution claim under the Fourth Amendment.
- Although not decided, the decision suggests that the charge for which there was no probable cause, must cause a seizure that would not have otherwise would have occurred. For example, the bad charge leads to no bail or a longer pretrial confinement.
- Officers must only seek charges for which there is probable cause.

Task: Arrest and First Amendment

Gonzalez v. Trevino, 144 S. Ct. 325 (2023).

- "The existence of probable cause does not defeat a plaintiff's claim of a retaliatory arrest if he/she produces objective evidence that he/she was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been."

Task: Probable Cause and Arrest

District of Columbia v. Wesby, 2023 U.S. LEXIS 760 (2018).

- A court will examine the events leading up to the arrest, and then decide whether these historical facts viewed from the standpoint of some objectively reasonable officer amounted to probable cause.
- Probable cause is determined not by taking each fact in isolation, but instead is a combination of all the known facts as the totality of circumstances.
- Probable cause is a fluid concept that is not readily or even usefully reduced to a neat set of legal rules.
- Probable cause requires only a probability or substantial chance of criminal activity, not an actual showing of activity.

Task: Probable Cause and Arrest

District of Columbia v. Wesby, 2023 U.S. LEXIS 760 (2018).

- Officers should document all fact and circumstances that led them to infer that there was probable cause of criminal activity even those innocent factors that when mixed into the totality of circumstances support the officers' conclusions
- Probable cause is not a high bar. Officers must be aware that when questioned by attorneys on individual factors in isolation the officer should always premise their answer on the fact that the officer did not consider that fact or circumstance in isolation but instead put all the facts in a measuring cup and then looked at the whole mix rather than one ingredient.

Task: Incident to Arrest Search of Cellular Phone

Riley v. California, 189 L. Ed. 2d 430 (U.S. 2014).

- A Cellular Device May not be Searched Incident to Arrest
- Exigency may Justify a Search but the Possibility of a Remote Wipe or Data Encryption due to Phone Lock is Insufficient to Establish Exigency

Task: Search Incident to Arrest Based on Mistake-Warrant

Herring v. United States, 555 U.S. 135 (2009).

- Where an officer relies upon the validity of a warrant from another law enforcement agency and makes an arrest, evidence seized incident to that arrest is admissible even if it turns out that due to a negligent omission by the agency holding the warrant that the warrant was not valid.
- If the mistake is the result of deliberate, reckless, or grossly negligent conduct or the result of systemic problems (pattern of repeated mistakes on validity of warrants) the exclusionary rule may apply to evidence seized incident to arrest on a bad warrant.

Task: Search Incident to Arrest-Mistake of Law

Heien v. North Carolina, 135 S. Ct. 530 (2014).

- Where an officer stops a vehicle as the result of a reasonable mistake of the law, evidence seized during the course of the stop will not be suppressed under the exclusionary rule.
- Reasonable suspicion can be based on a reasonable mistake of the law.

Task: Search Incident to Arrest following Bad Stop: ”Attenuation of Taint”

Utah v. Strieff, 136 S. Ct. 2056 (2016).

•Fruit of Poisonous Tree may not apply where stop was bad, arrest warrant discovered during bad stop, contraband/evidence discovered incident to arrest for warrant.

•Factors Court will consider to decide if bad stop was sanitized:

- How mush time passed between bad stop and the search. (Temporal Proximity)
- Was there any intervening factors.
- Was the officer’s conduct flagrant such that it should be punished by exclusion of the evidence to deter future misconduct by officers

Task: Seizing Cell-Phone Location Records from Providers

Carpenter v. United States, 138 S. Ct. 2206 (2018).

- Obtaining Cell phone location records of an individual's cell phone is a 4th Amendment Search.
- A person has a 4th Amendment right to privacy in such records.
- The fact that the records are held by a 3rd party (cell service provider) does not overcome suspect's right to privacy.
- A court order is insufficient to overcome the right to privacy.
- A search warrant must be obtained for an individual's cell phone location records.

Task: Forced Blood and Breath Tests

Birchfield v. North Dakota, 136 S. Ct. 2160 (2015).

- Forced Blood Test under implied consent statute where refusal is criminal under state law violates the Fourth Amendment and cannot be saved as a search incident to arrest.
- Forced Breath Test under implied consent statute where refusal is criminal under state law DOES NOT violate the Fourth Amendment because it is valid as a search incident to arrest.
- THIS CASE HAS NO IMPACT IN STATES WHERE REFUSAL IS CIVIL INFRACTION RATHER THAN CRIMINAL OFFENSE

Task: Blood Draw-Unconscious DUI Suspect

Mitchell v. Wisconsin, 139 S. Ct. 2525 (2019).

- When police have probable cause to believe a person has committed a drunk-driving offense and the driver's unconsciousness or stupor requires him to be taken to the hospital or similar facility before police have a reasonable opportunity to administer a standard evidentiary breath test, they may almost always order a warrantless blood test to measure the driver's BAC without offending the *Fourth Amendment*.
- A warrantless blood draw from unconscious suspect may not be valid:
  - If suspect can show that only reason blood was taken was due to law enforcement's desire to prosecute AND
  - That officers could not have reasonably determined that a warrant application would interfere with other pressing needs or duties.

Task: Forced Blood Draw DUI Suspects

Missouri v. McNeely, 133 S. Ct. 1552 (2013).

- Irrespective of state implied consent laws, there is no automatic exigency in driving while impaired cases under the 4th Amendment which would allow officers in all cases to force a blood draw to prevent the loss of evidence. i.e. dissipation of alcohol levels in blood.
- A forced blood draw would have to be supported by articulated exigency beyond the simple dissipation of substances in the blood over time.

Task: DNA Swab Following Arrest for Serious Crime

Maryland v. King, 133 S. Ct. 1958 (2013).

•When officers make an arrest supported by probable cause to hold for a serious offense and bring the suspect to the station to be detained in custody, taking and analyzing a cheek swab of the arrestee's DNA is, like fingerprinting and photographing, a legitimate police booking procedure that is reasonable under the Fourth Amendment.

Task: Arrest in a Public Place

U.S. v. Watson, 423 U.S. 411 (1976).

A police officer who has probable cause to believe that a citizen has committed a felony may take that citizen into custody without a warrant when the citizen is located in a public place.

- For Constitutional purposes, no distinction has been made with respect to arrest for misdemeanors in a public place.
- Warning: The arrest laws of most states place statutory limits on the power of police officers in making misdemeanor arrests.

Task: Arrest for Possession of “Stun Gun”

Caetano v. Massachusetts, 136 S. Ct. 1027 (2016).

- Stun Guns (TASER) are protected by 2nd Amendment-check with prosecutor before bringing charges for simple (mere) possession.
- Weapons that were not available when 2nd Amendment written may be protected.
- Weapons that are unusual and unavailable to the military may not be protected by the 2nd Amendment.
- TASERs are not unusual and are available to the military.

Task: Arrest for Possession of Firearm/Protective Order

United States v. Rahimi, 144 S. Ct. 1889 (2024).

- When a restraining order contains a finding that an individual poses a credible threat to the physical safety of an intimate partner, that individual may—consistent with the Second Amendment—be banned from possessing firearms while the order is in effect.

Disorderly Conduct

Task: Disorderly Conduct Arrests/Speech

Houston v. Hill, 482 U.S. 451 (1987).

Police officers are not justified in making arrests for disorderly conduct-type charges, where an individual questions or otherwise criticizes an officer's actions.

- The Court suggested that even fighting words, when directed at an officer should be treated differently since trained officers are unlikely to respond to such words.
- "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state."

Disorderly Conduct-Interference: Exercise of Religion

Sause v. Bauer, 138 S. Ct. 2561 (2023).

- The *First Amendment* Protects the right to pray but it is not absolute.
- "There are clearly circumstances in which a police officer may lawfully prevent a person from praying at particular time and place. For example, if an officer places a suspect under arrest and orders the suspect to enter a police vehicle for transportation to jail, the suspect does not have a right to delay that trip by insisting on first engaging in conduct that, at another time would be protected by the *First Amendment*."
- If an officer orders a subject to stop praying during an investigation, the officer's action implicates the *Fourth Amendment*.
- Where an officer makes an arrest in a home based on conduct in the home, the validity of the officer's entry will always be scrutinized and may impact the validity of the arrest.

Task: Arrest Based on Policy of Intimidation Though Supported by Probable Cause May Violate 1st Amendment

Lozman v. City of Riviera Beach, 201 L. Ed. 2d 342 (2018).

- Where arrest for speech or other expression of 1st Amendment right is pursuant to a city or county policy, the fact that officer has probable cause to arrest for some other charge will not protect the City of County from a lawsuit based on violation of the 1st Amendment.

Task: Arrest in Retaliation for Exercise of First Amendment Rights

Nieves v. Bartlett, 139 S. Ct. 1715 (2019).

- Generally, in the case of an arrest by an officer, probable cause will defeat a plaintiff's allegation that the officer's arrest was in retaliation for the exercise of the subject's First Amendment rights

UNLESS:

- Plaintiff can show that officers generally exercise their discretion and do not arrest for this crime but arrested in the subject's case because of the protected speech.
- Discovery will review data related to other arrests for the particular offense.

Task: Officers Being Filmed in Public Place

While the U.S. Supreme Court has not addressed this issue there have been a number of lawsuits relating to allegations that officers have retaliated when filmed by a citizen in a public place. The nature of these lawsuits is retaliation for an exercise of 1st Amendment Rights.

•While there may be some reasonable time, place, manner restrictions that can be placed on those filming, most current cases have gone against officer action.

• Actions of officers that have been criticized include: arresting person who is filming; seizing the recording device as evidence; temporarily seizing recording device and deleting or manipulating recording or photograph.

•Example: Glik v. Cunniffe, 655 F.3d 78 (1st Cir. Mass. 2011)

Task: Public Protests/Speech

Snyder v. Phelps, 131 S. Ct.1207 (2011).

- All states, cities, towns, and local governments would be well advised to review local statutes and ordinances on funeral and other protests to determine if the ordinances are content neutral which means rules are not directed at the type of speech but rather apply to all speech, good or bad, and are based on some reasonable time, place or manner restriction.
- When notified of a protest or demonstration, law enforcement should apply reasonable time, place, and manner restrictions currently in existence, in an impartial and content neutral manner, in other words, don't ever consider what is going to be said or expressed, instead look to the existing laws on time, place, and manner of speech.
- Always note that if there is no immediate public safety issue, immediate enforcement is not likely the best avenue for law enforcement to take when dealing with 1st Amendment speech/expression issues

Strip Search &
Body Cavity Search

Task: Strip Search at Jail Booking

Florence v. Board of Chose Freeholders of County of Burlington, 132 S. Ct. 1510 (2012).

- The Court has authorized jail officials to visually strip search all individuals who are going to be placed in general population.
- Jails should consider, based upon the concurring opinions in this case, whether minor offenders can be held separately in the short term until their release such that a strip search is unnecessary.
- Based on the concurrence if a jail holds all pre-trial detainees separately and there is no intermingling the rule announced in this case may not apply.

Task: Manner of Strip Search Must Be Reasonable

Evans v. City of Zebulon, 2003 U.S. App. LEXIS 23479 (11th Cir. 2003).

- Degree of privacy
- Searcher of same sex
- Hygienic conditions
- Physical contact
- Professional manner

Task: Body Cavity Search

Fuller v. M.G Jewelry, 950 F.2d 1437 (9th Cir. 1991).

Body Cavity Searches are more intrusive and must be supported by probable cause and a search warrant in the absence of exigent circumstances.

Rodriguez v. Furtado, 950 F.2d 805 (1st Cir. 1991).

Body cavity searches must be done in accordance with medically approved procedures and in sanitary conditions.

Eyewitness Identification

Task: Identification Generally

While the U.S. Supreme Court has not yet recognized a requirement, many states and some circuits now require or strongly suggest that photo identifications should be done as a “double-blind sequential” whereby an uninvolved officer who does not know which photo is the suspect presents the witness with one photo at a time as dealing from a deck of cards thus disabling the witness from comparing six photos at once and selecting the one that looks most like the involved criminal.

See e.g. United States v. Ford, 683 F.3d 761 (7th Cir. Ill. 2012).

Note: A recent USDOJ study from January 2018 indicates that simultaneous (6-Pack) is not more suggestive than sequential administration and that most important factor is level of confidence of the eyewitness in their identification.

See: https://www.justice.gov/file/923201/download

Task: Identification Generally

Neil v. Biggers, 409 U.S. 188 (1972).

The issue with all identification procedures is that the conduct of the police in conducting the procedures cannot be overly suggestive.

Considerations:

- Witness' opportunity to view suspect at the time of the crime.
- Witness' focus of attention at time of crime.
- Accuracy of witness' description of suspect prior to identification procedure.
- Level of certainty exhibited by the witness in making the identification.
- The length of time that has passed between the crime and the identification.

Note: Police should articulate these points when documenting an identification procedure.

Task: Show-Up Identification

Neil v. Biggers, 409 U.S. 188 (1972).

Police officers may conduct "on-scene" or "show-up" identifications notwithstanding the fact that they are considered inherently suggestive.

Considerations in Overcoming Suggestiveness:

- See General Considerations on identification
- Witness should be brought by suspect to avoid appearance of arrest.
- Staging of suspect should avoid appearances of arrest.
- Statements of officers should not give appearance of guilt.

Task: Eyewitness Identification

Perry v. New Hampshire, 132 S. Ct. 716 (2012).

•If the defendant cannot establish improper conduct by law enforcement which created an unnecessarily suggestive identification, the defendant is not entitled by the Constitution to a judicial pretrial screening of the reliability of the eyewitness identification.

Use of Force

Task: Use of Force

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

All uses of force in arrest and seizure of a free citizen are judged by 4th Amendment's objective reasonableness standard.

Objective Reasonableness Analysis Considers:

- Severity of offense suspected.
- Did suspect pose an immediate threat to the officer or others?
- Is suspect actively resisting or attempting escape

  Note: Judged by totality of circumstances known to officer at the time the force was used.
- Step into the shoes of the officer.
- 20/20 hindsight is not considered in reasonableness inquiry.

Task: Use of Force

White v. Pauly, 137 S. Ct. 548 (2017).

- An officer generally takes the scene as they find it and are not required to second-guess the actions of officers who are already present to make sure they have acted properly.
- Clearly established federal law does not prohibit a reasonable officer who arrives late to an ongoing police action in circumstances like this from assuming that proper procedures, such as officer identification, have already been followed. No settled Fourth Amendment principle requires that officer to second-guess the earlier steps already taken by his or her fellow officers in instances like the one White confronted here [which involved subjects with guns]

Task: Use of Force

Kingsley v. Hendrickson, 135 S. Ct. 2466 (2015).

- Use of Force in jail when dealing with pretrial detainees will be judged using the objective reasonableness standard but taking into account the need to maintain security and order in the jail.

- Use of Force in jail when dealing with sentenced prisoners, continues to fall under the 8th Amendment's Cruel and Unusual Punishment analysis.

Task: Handcuffing

Baskin v. Smith, 50 Fed. Appx. 731 (6th Cir. 2002).

Handcuffing too tightly and failing to double-lock the handcuffs may lead to an excessive force claim, particularly when the officers have been placed on notice by a suspect's complaints.

Note: *An officer may document proper handcuffing by including documentation in the arrest report:*

"Subject was arrested, handcuffed (checked for fit, double-locked)"

Task: Pepper Spray

Martinez v. New Mexico Dept. Of Public Safety, 47 Fed. Appx. 513 (10th Cir. 2002).

It is unreasonable to use pepper-spray as a pain compliance technique where the suspect is restrained in handcuffs and is only being verbally resistant.

- Pain Compliance techniques can be immediately stopped when the suspect responds with compliance. The effects of pepper-spray cannot be immediately stopped upon compliance.
- See also, Vineyard v. Wilson, 311 F.3d. 1340 (11th Cir. 2002) for a similar conclusion.

Task: Seizure at Gunpoint

Robinson v. Solano County, 278 F.3d 1007 (9th Cir. 2002).

Pointing a firearm toward the head of an apparently unarmed suspect during an investigation can be a violation of the 4th Amendment, especially where the individual poses no particular danger.

Task: Use of Canine as Force

Kuha v. City of Minnetonka, 328 F.3d 427 (8th Cir. 2003).

A jury could properly find it objectively unreasonable to use a police dog trained in the bite and hold method without first giving the suspect a warning and opportunity for peaceful surrender.

Robinette v. Barnes, 854 F.2d 909 (6th Cir. 1988).

The use of a properly trained police dog to apprehend a felony suspect does not constitute a use of deadly force. In this case the canine seized the suspect's neck because it was the only part of his body exposed. As a result, the suspect died.

Task: Restraint Process-Sudden Death

Lombardo v. City of St. Louis, 141 S. Ct. 2239 (2021).

- The Supreme Court recognized that the failure to get a person off their stomach as soon as they are handcuffed is a factor to consider in a prone restraint death case.
- The Supreme Court recognized that resistance may actually be caused by lack of oxygen (fighting for oxygen) rather than a desire to or conscious non-compliance.
- The duration of prone restraint is a factor to consider in the excessive force analysis.
- The fact that mechanical restraints have been applied is a factor in a prone restraint excessive force analysis.
- There is no automatic rule allowing for prone restraint based on resistance alone.

Task: Hog-Tie/Hobble Tie

Cruz v. Laramie, 239 F.3d 1183 (10th Cir. 2001).

An officer may not use a hog tie where the suspect's diminished capacity is apparent and the hog-tie is likely to result in a significant risk to the arrestee's health or well-being.

Diminished Capacity may be based on:

- Severe intoxication
- The influence of a controlled substance
- Discernible mental condition
- Any other condition apparent to the officer that would make use of a hog-tie a significant risk to the arrestee's health

Deadly Force

Task: Deadly Force

Tennessee v. Garner, 471 U.S. 1 (1985).

All uses of Deadly Force must be objectively reasonable based upon the totality of circumstances surrounding its use.

Objective Reasonableness is satisfied where:

•Suspect poses an immediate threat of serious bodily harm or death to officer or some other person who is present. OR;

•Officer has probable cause to believe that the suspect has committed a violent felony involving the infliction or threatened infliction of serious bodily harm or death. And,

• By his or her escape poses an imminent danger of serious bodily harm or death to others. (It is noted that this last provision has been generally added by law enforcement agencies-though the Supreme Court assumed danger to the community at large based on prior Act).

•Warning should be given where possible.

Task: Deadly Force

White v. Pauly, 137 S. Ct. 548 (2017).

- Officers should recognize that where officers, through improper conduct, do not properly alert a subject that law enforcement is present when such a warning was feasible, liability may occur.

- Note that feasibility is a combination of timing and the circumstances the officer is being confronted with to include the immediacy of the threat.

Task: Deadly Force

Scott v. Harris, 550 U.S. 372 (2007).

"Garner did not establish a magical on/off switch that triggers rigid preconditions whenever an officer's actions constitute deadly force."

Garner's was an application of the reasonableness test to a fleeing unarmed subject. Its reach does not apply to every use of deadly force.

Task: Shooting at Moving Vehicles That Pose Danger

Plumhoff v. Rickard, 134 S. Ct. 2012 (U.S. 2014).

An officer's use of deadly force (shooting driver) to prevent the continuation of a a dangerous high-speed and reckless pursuit did not violate the 4th Amendment.

Even if there was a Constitutional violation, the law was not clearly established thus the officers would be entitled to qualified immunity.

Note: decision is limited to 4th Amendment Analysis and does not necessarily shield an officer from exposure under state law.

Task: Shooting at Moving Vehicles That Pose Danger

Brosseau v. Haugen, 543 U.S. 194 (2004).

The law with respect to shooting at moving vehicles is not Clearly Established:

Where an officer has fired upon a moving vehicle to protect themselves, other officers, or other persons, the officer may be entitled to qualified immunity.

Task: Shooting at Moving Vehicles That Pose Danger

Mullenix v. Luna, 136 S. Ct. 305 (2015).

Where officer fired a rifle from overpass killing fleeing driver who had threatened to kill officers during high-speed pursuit, the Court held: that the law was not clearly established whether such action violated the 4th Amendment stating: The Court has thus never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity.

The Court did not address whether the shooting was constitutional-merely that the officer was entitled to qualified immunity because the law was not clearly established.

NOTE: STATE LAW MAY BE MORE RESTRICTIVE

Task: Deadly Force: Pre-Shooting Tactics

St. Hilaire v. City of Laconia, 71 F.3d 20 (1995).

Officer conduct leading up to the need to use deadly force is being considered by some courts in the reasonableness analysis of the ultimate use of force.

- Some circuits are considering whether the officer's actions leading up to the need to use deadly force somehow created that need.
- *But see San Francisco County v. Sheehan, next page and* County of Los Angeles v. Mendez following Sheehan.

Task: Deadly Force: Pre-Shooting Tactics

San Francisco County v. Sheehan, 135 S. Ct. 1765 (2015).

•[A plaintiff] "cannot establish a Fourth Amendment violation based merely on bad tactics that result in a deadly confrontation that could have been avoided." *Id.,* at 1190. Courts must not judge officers with "the 20/20 vision of hindsight."

•"…so long as "a reasonable officer could have believed that his conduct was justified," a plaintiff cannot "avoi[d] summary judgment by simply producing an expert's report that an officer's conduct leading up to a deadly confrontation was imprudent, inappropriate, or even reckless."

Deadly Force: Pre-Shooting Conduct

County of Los Angeles v. Mendez, 137 S. Ct. 1539 (2017).

- The 9th Circuit analysis (Provocation Theory) that a constitutional violation that precedes an otherwise valid use of force cannot be used to establish excessive force.
- A plaintiff can sue for the independent pre-shooting constitutional violation.
- A plaintiff who can establish that a constitutional violation that preceded a valid use of force proximately caused their injury because the violation created foreseeable risks that caused the foreseeable harm, can recover for their harm.

Property Seizure

Task: Seizure of Property

Soldal v. Cook County, 506 U.S. 56 (1992).

A seizure of property occurs when there is some meaningful interference with an individual's possessory interest in property.

- A police officer's interference with the use of property when he or she assists with an eviction or a repossession is a seizure under the 4th Amendment for which liability may accrue.

Task: Interference with Property

Illinois v. MacArthur, 531 U.S. 326 (2001).

It is reasonable for a police officer to secure a person's home and not allow the occupant entrance while a search warrant is sought in order to prevent the destruction of evidence.

Duty of Officers/Supervisor to Protect Citizens from Harm Caused by Officers

Failure to Intervene

Task: Failure to Intervene to Protect Citizen From Officer

Mick v. Brewer, 76 F.3d 1127 (10th Cir. 1996).

- A law enforcement officer has an affirmative duty to intercede on behalf of a citizen whose constitutional rights are being violated in his or her presence by other officers.

- The law enforcement officer who fails to intervene to prevent another officer's use of excessive force may be liable if he or she had the opportunity to intervene.

Task: Duties of Supervisor

Shaw v. Stroud, 13 F.3d 791 (4th Cir. 1994).

Supervisor may be liable for acts of subordinate even where supervisor has no direct involvement if the supervisor has failed to document and take corrective action for prior similar acts of misconduct.

Elements of Supervisory Liability:

- Supervisor had actual or constructive knowledge that subordinate was engaged in conduct that posed a pervasive and unreasonable risk of constitutional injury.
- Supervisor's response or lack of response showed deliberate indifference or tacit authorization of the officer's conduct.
- Causal Link between supervisor's inaction and the injury that occurred.

Ride-Along Programs

Task: Citizen Ride-Along

Wilson v. Layne, 526 U.S. 603 (1999).

Law Enforcement agencies may be liable for 4th Amendment violations where they bring non-law enforcement persons into areas protected by the 4th Amendment.

- Ride-Along guests, including the media, who have no law enforcement function must not be allowed to enter areas protected by the 4th Amendment without the consent of a person with authority to consent.
- Liability for entry without consent will be imputed back to the law enforcement agency.

Home Entries

Task: Home Entry

Payton v. New York, 445 U.S. 573 (1980).

Officers may not enter a person's home to make a routine felony arrest without a warrant.

- Severity of an offense does not create exigency.
- Officers must get warrant unless exigency can be established or consent can be obtained.
- Officer may only force entry with an arrest warrant into the home of the subject of the warrant where they also have reason to believe that the subject of the warrant is home at the time.
- Knock and Announce rules would also apply.

Task: Home Entry

Steagald v. U.S., 451 U.S. 204 (1981).

Absent exigency or consent, officers must obtain a search warrant before entering the home of a third party to make an arrest of a non-resident. An arrest warrant is insufficient when the subject of the warrant is in a 3rd parties home.

- The interest protected by this case belongs to the 3rd Party who is not the subject of the arrest warrant.
- The failure to get a search warrant will render any evidence found that implicates the 3rd party resident in a crime, inadmissible.

Task: Limits on Home Curtilage

Florida v. Jardines, 133 S. Ct. 1409 (2013).

- The area immediately surrounding and associated with the home--the curtilage--is part of the home itself for *Fourth Amendment* purposes.
- A police officer not armed with a warrant may approach a home and knock, precisely because that is no more than any private citizen might do.
- The implied invitation to knock does not carry with it the further authorization to conduct a search while on the property unless the officer has a warrant, exigency or consent.

Task: Limits on Home Curtilage

Carroll v.Carman, 135 S. Ct. 348 (2014).

- The law is not clearly established as to whether an officer approaching a home to conduct a knock and talk has to begin at the front door when other parts of the property are open to visitors.
- This was a lawsuit where the officer was sued for going to the back door to conduct a knock and talk without going to the front door. The officer was given qualified immunity because the law was not clear, however the Court did not decide whether or not it was appropriate to go to back door.

Task: Limits on Curtilage

Collins v. Virginia, 138 S. Ct. 1663 (2018).

- The Automobile Exception does not permit the Warrantless Entry of a Home or its curtilage in order to search a vehicle therein
- Curtilage: “the area immediately surrounding and associated with the home—[is considered] to be part of the home itself for Fourth Amendment purposes…The protection afforded the curtilage is essentially a protections of families and personal privacy in an area intimately linked to the home, both physically and psychologically where privacy expectations are most heightened.”

Task: Curtilage v. Open Fields

Oliver v. United States, 466 U.S. 170 (1984).

- Courts have extended Fourth Amendment protection to the curtilage; and they have defined the curtilage, as did the common law, by reference to the factors that determine whether an individual reasonably may expect that an area immediately adjacent to the home will remain private.
- Curtilage is the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'
- Conversely, the common law implies, as we reaffirm today, that no expectation of privacy legitimately attaches to open fields.

Task: Curtilage Test

United States v. Dunn, 480 U.S. 294

- Curtilage questions should be resolved with particular reference to four factors:
  - The proximity of the area claimed to be curtilage to the home;
  - Whether the area is included within an enclosure surrounding the home;
  - The nature of the uses to which the area is put; and
  - The steps taken by the resident to protect the area from observation by people passing by.

Task: Canine Sniff at Residence

Florida v. Jardines, 133 S. Ct. 1409 (2013).

- The use of a canine to sniff for contraband within the curtilage of a residence is a search under the 4th Amendment.
- As such, the search must be supported by a warrant, exigency, or consent.
- The implied invitation which exists for anyone to knock on someone's front door does not authorize law enforcement to bring a drug-sniffing canine to sniff the air while the officer is knocking.

Task: Search Warrants

Groh v. Ramirez, 540 U.S. 551 (2004).

Four Requirements of search warrant:

1. Must set forth probable cause.
2. Must be supported by oath or affirmation.
3. Must particularly describe place to be searched.
4. Must particularly describe the item(s) to be siezed.

Where a warrant fails to describe the items to be seized, the warrant is invalid, even if the description is set forth in the affidavit/ application. Officers may incorporate the affidavit/application to the warrant by reference, however if this is done the application must be left with the warrant at the scene of the search.

Task: Anticipatory Search Warrant

United States v. Grubbs, 547 U.S. 90 (2006).

While the search warrant must specifically describe the place to be searched and specifically describe the items to be seized; the search warrant does not have to specifically identify the anticipated triggering event which allows law enforcement to execute the warrant.

Task: Warrants and Liability

Messerschmidt v. Millender, 132 S. Ct. 1235 (2012).

- An officer who obtains a warrant has a high degree of protection from liability with respect to any argument that the search was not supported by probable cause.
- A person bringing a lawsuit against an officer where the officer has sought a warrant has a high bar to get over in order to prevail against the officer.
- It is only where the officer is plainly incompetent and where the person bringing the lawsuit can establish that an objectively reasonable officer would know that the affidavit did not set out the necessary probable cause.

Task: Consent Search and Authority of Consenting Party

Illinois v. Rodriguez, 497 U.S. 177 (1990).

Reliance by the law enforcement on the appearance of authority to consent will not invalidate a search where it turns out that the person granting consent lacked the authority to consent as long as such reliance is reasonable under the circumstances articulated by law enforcement.

Some Factors to consider:

- Age of person.
- Fact that person had keys.
- Appearance (clothing etc.) that would lead officer to believe that person resides at the location.

Task: Consent Search-Contradictory Co-Occupants

Georgia v. Randolph, 547 U.S. 103 (2006).

In seeking consent from a person to enter a home to conduct a search, law enforcement may not enter if a co-occupant of equal authority is present and objecting to the law enforcement entry, even though the other co-occupant is consenting to the entry.

Note: If the police have probable cause, they may freeze the scene and get a search warrant or where exigent circumstances (and probable cause) exist, may enter under the exigent entry exception to the warrant requirement.

Task: Consent Search-Contradictory Co-Occupants

Fernandez v. California, 134 S. Ct. 1126 (U.S. 2014).

- Consent is valid if made by someone who has authority to consent and no co-occupant is physically present and objecting.
- In the event that law enforcement has removed a co-occupant, even one who has previously objected to law enforcement's entry, the consent of the occupant who is present is valid as long as the removal of the objector was objectively reasonable.
- Where the removal was the result of a valid detention or valid arrest, the removal is objectively reasonable.

Task: Exigent Home Entry-Hot Pursuit-Misdemeanor

Lange v. California, 141 S. Ct. 2011 (2021).

- There is no automatic rule authorizing an officer to pursue a fleeing misdemeanant into their home. The officer must be able to articulate an additional exigent circumstance such as:

    - To render emergency assistance to an injured occupant.
    - To protect an occupant from imminent injury.
    - To protect the officer's safety.
    - To prevent the imminent destruction of evidence.
    - To prevent a suspect's escape.

Task: Exigent Home Entry

Illinois v. MacArthur, 531 U.S. 326 (2001).

Officers may enter a dwelling without a warrant based on exigent circumstances when they have probable cause to believe that evidence of a "jailable" offense will be found in the dwelling to be searched AND exigent circumstances exist to justify the entry.

Minnesota v. Olson, 495 U.S. 91 (1990).

Exigency for purposes of home entry defined:

- Hot pursuit of a fleeing felon.
- Imminent destruction of evidence.
- Need to prevent suspect's escape.
- Risk of danger to police or others inside or outside the dwelling.

Task: Exigent Home Entry

Brigham City, Utah v. Stuart, 547 U.S. 398 (2006).

Police may enter a home without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.

Task: Exigent Home Entry

Ryburn v. Huff, 132 S. Ct. 987 (2012).

An exigent entry may be justified under the Fourth Amendment if there was an objectively reasonable basis for fearing that violence was imminent.

Task: Home Entry-Emergency Aid

Michigan v. Fisher, 130 S. Ct. 546 (2009).

Law enforcement officers may enter a home without a warrant to render emergency assistance to an injured occupant or to protect an occupant from imminent injury. This emergency aid exception does not depend on the officers' subjective intent or the seriousness of any crime they are investigating when the emergency arises. It requires only an objectively reasonable basis for believing, that a person within the house is in need of immediate aid.

Task: Exigent Home Entry-Destruction of Evidence

Kentucky v. King, 131 S. Ct. 1849 (2011).

When does law enforcement created exigency violate the 4th Amendment:

Where law enforcement does not create the exigency by engaging or threatening to engage in conduct that violates the Fourth Amendment, warrantless entry to prevent the destruction of evidence is reasonable and thus allowed. For these reasons, we conclude that the exigent circumstances rule applies when the police do not gain entry to premises by means of an actual or threatened violation of the Fourth Amendment. This holding provides ample protection for the privacy rights that the Amendment protects.

Task: Exigent Home Entry-Crime Scene

Mincey v. Arizona, 437 U.S. 385 (1978); Flippo v. W. Virginia, 528 U.S. 11 (1999).

There is no crime scene exception to the warrant requirement.

- Severity of crime and probable cause are insufficient to justify a warrantless search where no other exigency exists.
- Unless exigency is clear, officers should obtain a search warrant before extensively searching a crime scene in a home and seizing evidence.
- Investigators who enter a homicide scene after it has been determined that the killer is not present and no other victims are present, must obtain a search warrant before searching for and seizing evidence.

Exigent Home Entry-Community Caretaking-Dangerous Items

Caniglia v. Strom, 141 S. Ct. 1596 (2021).

- The “Community Caretaking Function” which is an exception to the warrant requirement with respect to motor vehicles, does not apply to homes, however the other exigent home entry exceptions are not impacted by this decision.
- Officers violated Fourth Amendment when they made a warrantless entry into a home to seize firearms belonging to a subject who had left the scene for a voluntary mental health evaluation.

Task: Forced Entry into a Dwelling

Wilson v. Arkansas, 514 U.S. 927 (1995).

Before forcing entry into a dwelling based on a warrant or exigent circumstances, officer must knock and announce their presence and purpose before such forced entry (such forced entry would include walking in an unlocked door unannounced) is made unless:

- The officer's purpose is already known to the occupant.
- When the personal safety of the officer or others would be jeopardized by the announcement.
- When the delay caused by the announcement may enable the suspect to escape.
- When a prisoner has escaped and retreated to his home.
- When the announcement may cause evidence to be destroyed.

Note: Where warrant is sought and "no-knock" is anticipated, outline the reasons from the list above in the warrant application.

Task: How Long Must Officers Wait Following a Knock and Announce

United States v. Banks, 540 U.S. 31 (2003).

Following a knock and announce, officers may force entry in order to prevent the occupants from destroying evidence. When forcing entry for this purpose officers need not wait any longer than it would take for an occupant to begin destroying the evidence. In a drug case the Court found a 15-20 second wait for a response at the door, prior to forcing entry, to be sufficient.

The Court noted that if officers are seeking a stolen piano, they may have to wait longer since it would be more difficult to destroy such an item. Thus the focus here is on the nature of the item sought.

Task: Knock and Announce Violation

Hudson v. Michigan, 547 U.S. 586 (2006).

Evidence seized in a search where the knock and announce rule was violated will not be excluded in the criminal prosecution of the subject.

Officers violating the knock and announce rule are still subject to civil suit or departmental discipline.

Task: Search Warrant Execution

Los Angeles County v. Rettele, 550 U.S. 609 (2007).

Officers may detain persons while executing search warrants. When officers make a reasonable mistake in warrant execution, a brief detention to secure the premises and determine that a mistake has been made, does not violate the 4th Amendment.

Note: Upon realizing the error, the officers reacted immediately to correct the error and diminish the injury to the innocent parties.

Task: Home Search Incident to Arrest

Maryland v. Buie, 494 U.S. 325 (1990).

- When making a valid arrest in a home, officers may conduct a search incident to the arrest at the time of the arrest and limited by the following rules: **3 Zones of Search:**
- The room where the arrest has been made-in any area or container that is within the arrestee's immediate area of control.
- Officers may look into (not go into) areas adjoining the room where the arrest has been made from which an attack could be launched.
- Where officers have reasonable suspicion to believe that a confederate of the arrested person or some other third party is present in the home and poses a danger to officers; officers may do a cursory search of the home to ensure their safety.
- The second and third zone are limited to areas where a person could hide since both contemplate officer safety from an attack.

Plain View-Plain Touch

Task: Plain View Seizure

Horton v. California, 496 U.S. 128 (1990).

Officers may seize, without a warrant, items of evidence and contraband that are in plain view, subject to the following limitations:

- Officer must be lawfully present in an area protected by the 4th Amendment when he observes the item in plain view.
- Officer must immediately have probable cause to believe the item is evidence or contraband without making any further intrusion.
- The slightest movement to determine if the item is evidence or contraband will constitute a "further intrusion" and invalidate the plain view seizure.
- The finding of the evidence need not be "inadvertent" as had been required in previous cases.

Task: Plain Touch Seizure

Minnesota v. Dickerson, 508 U.S. 366 (1993).

An officer who is conducting a lawful frisk for weapons and feels an item that he or she immediately recognizes as contraband or evidence may then seize the item notwithstanding the fact that the officer knows it is not a weapon, subject to the following limitations:

- The officer must be conducting a lawful frisk (one supported by reasonable suspicion to believe the subject has a weapon).
- The officer's immediate recognition must amount to probable cause to believe the item is evidence or contraband.
- The officer must immediately recognize the item as evidence or contraband without squeezing or manipulating the item.

Employment Search

Task: Employment Search

City of Ontario v. Sergeant Quon, 560 U.S. 746 (2010).

A search conducted for a non-investigatory work related purpose or for work related misconduct will be reasonable without a warrant if:

- the search is justified at its inception
- the measures adopted are reasonably related to the objectives of the search and
- The search is not excessively intrusive in light of the circumstances giving rise to the search.

Agency Policy which informs employees of diminished expectation or no expectation of privacy will reduce an employee's privacy claims.

Forensic Analysis

Task: Forensic Analysis of Evidence

Bullcoming v. New Mexico, 131 S. Ct. 2705 (2011).

In cases where evidence which underwent forensic analysis is to be presented against a defendant in a criminal prosecution, the defendant has a 6th Amendment Right to confront and cross-examine the actual analyst who tested the evidence being presented.

Exculpatory Evidence

Task: Exculpatory Evidence

Brady v. Maryland, 373 U.S. 83 (1963).

The suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Thus, the prosecution, which includes law enforcement has an obligation to turn over evidence favorable to the defendant before trial.

Note: The requirement for law enforcement is to turn the information/ evidence over to the prosecutor.

Task: Exculpatory Evidence

Giglio v. United States, 405 U.S. 150 (1972).

- When evidence, bearing on the credibility of a witness, is withheld from the defendant, irrespective of the good or bad faith of the prosecution, then there may be a violation of Due Process, requiring the granting of a new trial, if the undisclosed exculpatory evidence has "any reasonable likelihood of [having] affected the judgment of the jury.
- It is this case that requires law enforcement agencies to notify prosecutors of any dishonesty in an officer's background before the officer testifies in a criminal case.

Note: The requirement for law enforcement is to turn the information/ evidence over to the prosecutor.

Task: Exculpatory Evidence

Turner v. U.S., 137 S. Ct. 1885 (2017).

- The prosecutor has an obligation to disclose exculpatory information to the defense in a criminal case.
- The prosecution's obligation cannot be avoided by law enforcement not giving the information to the prosecutor.
- Exculpatory evidence includes any information, which bears on the credibility of a witness who will testify in the prosecution's case.
- Good or bad faith on the part of the prosecutor is irrelevant to whether or not a *Brady* violation has occurred.
- There is no *Brady/Giglio* violation if it is determined that the exculpatory evidence that the prosecution failed to turn was not material to the case.

Duty to Protect Citizens

Task: Duty to Protect Citizens

DeShaney v. Winnebago County, 489 U.S. 189 (1989).

Law enforcement officers, like all government actors, generally have no duty under the constitution to protect citizens from harm caused by third party, non-government actors.

- Law enforcement officers have an obligation to protect citizens who they have taken into custody because in depriving the person of liberty, officers have also deprived the individual of the ability to care for him or herself.

Task: Duty to Enforce Domestic Protection Order

Town of Castle Rock v. Gonzalez, 545 U.S. 748 (2005).

- Law Enforcement Officers have no duty under the procedural due process clause of the constitution to enforce protection orders in order to protect citizens from harm.
- Law Enforcement generally has no constitutional duty to protect citizens from third party harm.
- A duty may be found when law enforcement officers have in some way created or enhance the danger to an individual.
- A duty will be found in cases where the person to be protected is in the custody of government against their will and are powerless to protect themselves.

Task: Duty to Protect

Sinthasomphone v. Milwaukee, 785 F. Supp. 1343 (W.D. Wis. 1992).

Although officers generally have no duty to protect citizens from 3rd party harm, an officer will be held to a duty where some affirmative act of the officer has created the danger to the person or otherwise enhanced the danger to that person.

- Officers and Agencies may be liable for "state created dangers."
- Officer's conduct must have created or enhanced the danger in order for liability to attach.
- In many cases danger is enhanced by depriving the person of other available assistance.

Task: Duty to Protect

Munger v. City of Glasgow, 227 F. 3d 1082 (9th Cir. 2000).

Officers may have a duty to protect an individual where actions of the officers create or enhance the danger to that individual.

Example: Officers eject bar patron into freezing temperatures without his coat and refuse to allow his re-entry into the building or him going to his vehicle due to the risk of him driving while intoxicated.

Task: Duty to Protect Prisoners

Deshaney v. Winnebago County, 489 U.S. 189 (1989).

The Supreme Court acknowledged in this case that police have a duty to protect prisoners, who, due to the restriction on their liberty, are deprived of any means to protect themselves.

Estelle v. Gamble, 429 U.S. 97 (1976).

Although this case dealt with prisoners who had been sentenced, courts use the standard from this case in concluding that police officers must not be deliberately indifferent to the medical needs of a person in their custody.

Deliberate Indifference means that the officers learn of a medical condition and fail to take steps to get medical treatment for the person in their custody.

Motor Vehicles

Task: Vehicle Pursuit

Sacramento v. Lewis, 523 U.S. 833 (1998).

In order to establish officer liability for a violation of rights where the officer did not use force to cause the crash, an injured person must show that the officer's actions were "shocking to the conscience."

- Shocks Conscience-Officer must have had an intent and purpose to cause harm unrelated to the legitimate object of arrest. This standard is much higher than gross negligence and deliberate indifference, thus, it is difficult for a plaintiff to meet.
- This same standard for police conduct has been applied to non-pursuit cases where persons make due process claims against officers where the person has suffered some injury as the result of officer conduct in an "emergency" situation. See, Radecki v. Barella, 146 F.3d 1227 (10th Cir. 1998).

Task: Vehicle Pursuit

Brower v. Inyo County, 489 U.S. 593 (1989).

> Where an officer applies force, through a means intentionally applied, which causes the suspect to crash; the suspect has been physically seized and the officer's actions will be judged by 4th Amendment reasonableness standards.

Thus,

- Roadblocks
- PIT Maneuvers
- Stop Sticks

Use judged by 4th Amendment Standards in terms of application to suspect.

Task: Vehicle Pursuit-Force

Scott v. Harris, 550 U.S. 372 (2007).

- A police officer's attempt to terminate a dangerous high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even when it places the fleeing motorist at risk of serious injury or death.

Plumhoff v. Rickard, 134 S. Ct. 2012 (U.S. 2014).

- An officer's use of deadly force (shooting driver) to prevent the continuation of a a dangerous high-speed and reckless pursuit did not violate the 4th Amendment.

- Even if there was a Constitutional violation, the law was not clearly established thus the officers would be entitled to qualified immunity.

Task: Vehicle Pursuit

Mullenix v. Luna, 136 S. Ct. 305 (2015).

Where officer fired a rifle from overpass killing fleeing driver who had threatened to kill officers during high-speed pursuit, the Court held: that the law was not clearly established whether such action violated the 4th Amendment stating: The Court has thus never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity.

The Court did not address whether the shooting was constitutional-merely that the officer was entitled to qualified immunity because the law was not clearly established.

NOTE: STATE LAW MAY BE MORE RESTRICTIVE

Task: Vehicle Pursuit

Sykes v. United States, 131 S. Ct. 2267 (2011).

Fleeing from law enforcement in a vehicle qualifies as a violent felony under federal sentencing requirments if the state where the flight occurred has a felony fleeing statute and the subject being sentenced has been found or pled guilty to it.

Task: Motor Vehicles Generally

Stops:

- Running License Plates
- Ordering occupants from vehicles
- Pre-textual stops
- Arrests in Vehicles

TYPES: Several types of searches with differing rules and scope for each:

- Canine
- “Frisk of a Vehicle”
- Incident to Arrest Search-Vehicle
- Consent Search of a Vehicle
- Probable Cause Search of a Vehicle
- Inventory Search of a Vehicle
- Community Caretaking Function
- Roadblocks

Task: Randomly Running License Plates

United States v. Matthews, 615 F.2d 1279 (10th Cir. 1980).

United States v. Walraven, 892 F.2d 972 (10th Cir. 1989).

Olabisiomotosho v. City of Houston, 185 F.3d 521 (5th Cir. 1999).

Federal and State Courts which have considered whether or not an officer may randomly run vehicle license plates in a public place have concluded that there is no privacy/Fourth Amendment interest in a license plate which is visible on the outside of a vehicle. Thus, officers may randomly run license plates.

Task: Stopping Vehicle when Owner Info Reveals Revocation

Kansas v. Glover, 140 S. Ct. 1183 (2020).

- Where registration check pre-stop reveals that registered owner's license is revoked, the officer may draw inference that registered owner is the driver unless officer can observe driver and driver does not fit DMV descriptive information i.e. owner is 21 year old, driver is clearly elderly.

- Officer Can Make Brief Stop of Vehicle where Registered Owner's License is Revoked to determine if driver is the registered owner whose license is revoked based on the reasonable suspicion from the DMV data.

Task: Ordering Driver and Passenger from Vehicle

Maryland v. Wilson, 519 U.S. 408 (1997).

An officer may order the driver and passengers to exit any lawfully stopped vehicle for the duration of the traffic stop.

Caution: The Court has not defined what degree of force, if any, would be justified in removing a driver or passenger where the driver or passenger refused the officer's command to exit the vehicle.

See also, Pennsylvania v. Mimms, 434 U.S. 106 (1977).

Task: Right to Privacy in Rental Vehicle

Byrd v. United States, 138 S. Ct. 1518 (2018).

- The mere fact that a driver in lawful possession or control of a rental car is not listed on the rental agreement will not defeat his or her otherwise reasonable expectation of privacy.

- Generally, the person in possession of a rental vehicle will generally have a right to privacy in the vehicle.

Task: Passengers' Rights

Brendlin v. California, 551 U.S. 249 (2007).

A passenger in a vehicle is seized when a vehicle is stopped and therefore has a right to privacy which allows the passenger to challenge the stop in cases where evidence is found on the passenger.

Note: The case also upholds the authority of officers to control the movements of a passenger during the vehicle stop.

Task: Passengers' Rights

Arizona v. Johnson, 555 U.S. 323 (2009).

- A passenger in a car that is lawfully stopped is lawfully seized under the 4th Amendment
- "An officer's inquiries into matters unrelated to the justification for the traffic stop...do not convert the encounter into something other than a lawful seizure, so long as those inquiries do not measurably extend the duration of the stop"
- Where an officer has reasonable suspicion to believe that a person in a lawfully stopped vehicle is armed and dangerous, the officer may conduct a pat-down of the subject without any further justification.

Task: Car Stop Based on Pretext

Whren v. United States, 517 U.S. 806 (1996).

The fact that the particular officer used the traffic violation as an excuse to stop the vehicle for investigative purposes does not make the stop unlawful under the 4th Amendment if some objectively reasonable police officer would have stopped the vehicle for the violation in question.

Caution: Traffic stops based upon an impermissible classification such as race may still be challenged under the Constitution's Equal Protection Clause.

Task: Car Stop Based on Mistake of Law

Heien v. North Carolina, 135 S. Ct. 530 (2014).

- Where an officer stops a vehicle as the result of a reasonable mistake of the law, evidence seized during the course of the stop will not be suppressed under the exclusionary rule.
- Reasonable suspicion can be based on a reasonable mistake of the law.

Task: Probable Cause to Arrest Motor Vehicle Occupants

Maryland v. Pringle, 540 U.S. 366 (2003).

Where police officers discover and seize illicit narcotics during a lawful vehicle search, the officers have sufficient probable cause to arrest all of the occupants of the vehicle.

Note: Officers must recognize that states vary with respect to the interpretation and recognition of "constructive possession." As such, a state's interpretation of constructive possession may impact the viability of this rule.

Task: Electronic Surveillance of Vehicle

U.S. v. Jones, 132 S. Ct. 945 (2012).

- The placement of a global positioning device as well as the retrieval of location data from the vehicle constitutes a search under the Fourth Amendment and therefore must be supported by a warrant or an exception to the warrant requirement.

Task: Canine Search of a Vehicle

U.S. v. Place, 462 U.S. 696 (1983).

A dog's free-air sniff of an inanimate object does not constitute a search for 4th Amendment purposes.

- When a properly trained canine alerts while free-air sniffing an inanimate object, officers then have probable cause to believe the inanimate object contains contraband and may proceed to search the vehicle based on the motor vehicle exception to the warrant requirement.

See next page…

Task: Canine Sniff of Vehicle

Illinois v. Caballes, 543 U.S. 405 (2005).

- Where officers have lawfully stopped a vehicle, they may use a drug-detection dog to sniff the exterior of the vehicle as long as the sniff occurs within the duration of the purpose for the initial stop. Example, if the stop is for writing a citation, the sniff would have to occur within the time it takes to write a citation.

- If an officer has to wait for a canine for a period of time that exceeds the time it takes to complete the initial stop, based upon the reason for the initial stop, the sniff will be the result of an unreasonable detention.

Task: Canine Sniff of Vehicle

Rodriguez v. United States, 135 S. Ct. 1609 (2015)

- Any action, which measurably prolongs a stop beyond the law enforcement mission that justified the stop to begin with will invalidate the additional enforcement action.
- Prolonging a stop beyond the initial law enforcement mission requires reasonable suspicion to support the continuation of the stop.
- Where motorist denies consent to walk canine around car after motor vehicle violation was issued officer could not hold vehicle to await backup so that canine sniff could be conducted.

Task: Canine Sniff of Vehicle-K-9 Reliability

Florida v. Harris, 133 S. Ct. 1050 (2013).

- There is no rigid checklist for determining the reliability of a canine's reliability to detect contraband, instead courts should apply a totality of circumstances approach.
- False positives in the field are not indicative of unreliability due to canine's ability to detect residual odors.
- Canine's initial and weekly training performance records were sufficient to establish reliability.

Task: Vehicle Search-Frisk

Michigan v. Long, 463 U.S.1032 (1983).

A police officer who has reasonable suspicion to believe that a vehicle contains a weapon may search the vehicle subject to the following limitations:

- The search is limited to the passenger compartment in which the subject of the stop could reach for a weapon.
- The search is limited to those areas in the passenger compartment capable of holding a weapon.

Task: Motor Vehicle Search Incident to Arrest

New York v. Belton, 453 U.S. 454 (1981).

Upon making a lawful arrest of a person who is in a vehicle, an officer may search the passenger compartment of the vehicle including all containers, subject to the following limitations.

- The search must take place at the time of the arrest.
- The arrest itself must be lawful.
- While containers may be searched, other passengers present who have not been arrested cannot be searched. See, U.S. v. Di Re, 332 U.S. 581 (1948).
- Notwithstanding the rule from Di Re, officers may search packages belonging to passengers who are not the subject of the arrest. Wyoming v. Houghton, 526 U.S. 295 (1999).

Task: Motor Vehicle Search Incident to Arrest

Arizona v. Gant, 556 U.S. 332 (2009).

> Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.

Note: all other rules of search incident to arrest apply.

Task: Pre-Gant Searches

Davis v. United States, 131 S. Ct. 2419 (2011).

The exclusionary rule does not apply to searches incident to arrest of vehicles which resulted in seizures before the Arizona v. Gant decision. The purpose of the exclusionary rule is to deter law enforcement misconduct. Since these seizures occurred under the existing rules at the time, the exclusionary rule's purpose would not be served by suppression of evidence.

Task: Motor Vehicle Search Incident to Arrest

Knowles v. Iowa, 525 U.S. 113 (1998).

Only in cases where an officer is making a custodial arrest, will a search incident to arrest be justified. Where a statute grants an officer discretion over whether or not to make a custodial arrest and the officer has decided to issue a summons instead of making a custodial arrest, a search incident to arrest will not be justified.

Task: Search of Motor Vehicle Incident to Arrest

Thornton v. United States, 541 U.S. 615 (2004).

Where an officers makes a valid arrest of a subject, who had moments before the arrest exited a vehicle, the officer may search the vehicle's passenger compartment at the time of the arrest as a valid incident to arrest search.

Note: Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest. See Gant at p. 92

Task: Consent Search of Vehicle

Schneckloth v. Bustamonte, 412 U.S. 218 (1973).

In cases where an officer receives a voluntary consent to search an auto, the search of the auto and the seizure of evidence or contraband will be valid.

- An officer obtaining consent need not tell the person that they have the right to refuse the officer's request however where the person is informed, it is more likely that consent will be found to be voluntary.
- Voluntariness determined by factors such as age, experience, cooperative atmosphere of stop, whether there was any coercive conduct on the part of the police.

Caution: Initial stop must be valid and some lower courts have determined that consent obtained after the reason for the stop has been concluded invalidates the consent as the result of an illegal detention.

Task: Consent Search of Vehicle

Florida v. Jimeno, 500 U.S. 248 (1991).

Where an individual has consented to a search of his or her vehicle, an officer may search containers within the vehicle as long as it is objectively reasonable for the officer to have believed that such consent extended to the containers searched.

Where an officer has obtained consent to search a vehicle for narcotics, it is objectively reasonable for the officer to have believed that such consent extended to containers capable of containing narcotics.

Task: Search of Vehicle Based on Probable Cause

Maryland v. Dyson, 527 U.S. 465 (1999).

Where an officer has probable cause to believe that a vehicle contains evidence or contraband and the vehicle is capable of being moved; the officer may make a warrantless search of the vehicle. See also, Pennsylvania v. Labron, 518 U.S. 938 (1996).

- Officers will need a warrant in cases where the vehicle is located on private property unless exigent circumstances to enter the property exists.
- Capable of movement does not mean that the car is presently occupied, merely means that the vehicle can be driven off by the turn of a key.

Task: Probable Cause Search of a Motor Vehicle

U.S. v. Ross, 456 U.S. 798 (1982).

An officer who has probable cause to search a vehicle may search the entire vehicle and its contents that are capable of containing the items being searched for.

- The search may be limited by the size of the item sought.
- The search may be limited by the information that established probable cause as where an informer indicates exactly where in the vehicle the item will be found. See, California v. Acevedo, 500 U.S. 565 (1991).

Task: Probable Cause Searches of Motor Vehicles

California v. Acevedo, 500 U.S. 565 (1991).

An officer who observes a container being placed in a vehicle, and who has probable cause to believe the container contains evidence or contraband, may search the container under the motor vehicle exception to the warrant requirement.

- This case overruled previous decisions that would have required the police to immobilize the item and then obtain a search warrant.

Task: Motor Vehicle Exception-Residential Property

Collins v. Virginia, 138 S. Ct. 1663 (2018).

- The Automobile Exception (probable cause) does not permit the Warrantless Entry of a Home or its curtilage in order to search a vehicle therein.
- Thus, if no other exception applies, officers must obtain a search warrant to enter the property before conducting a search of the vehicle.
- Curtilage: “the area immediately surrounding and associated with the home—[is considered] to be part of the home itself for Fourth Amendment purposes…The protection afforded the curtilage is essentially a protections of families and personal privacy in an area intimately linked to the home, both physically and psychologically where privacy expectations are most heightened.”

Task: Inventory Search of a Vehicle

South Dakota v. Opperman, 428 U.S. 364 (1976).

When a vehicle is impounded for any reason, an officer may conduct an inventory search of the vehicle subject to the following limitations:

- The search is in accord with a department policy that does not give discretion to the individual officer but instead requires an inventory in cases of impoundment.
- The areas in the vehicle to be searched are spelled out in the department's policy on such searches.

Task: Motor Vehicle and the Community Caretaking Function

Cady v. Dombrowski, 413 U.S. 433 (1973).

Where officers have reason to suspect that a vehicle contains a dangerous item, which, if left unattended will endanger public safety, the officer may search the vehicle to remove the dangerous item for safekeeping.

Note: *Community Caretaking Exception has no application to home entry or seizure of items in a home-See* Caniglia v. Strom, 141 S. Ct. 1596 (2023).

Roadblocks

Michigan v. Sitz, 496 U.S. 444 (1990).

Drunk driving roadblocks are constitutional as long as conducted according to pre-set guidelines which limits discretion and arbitrariness of officers involved with respect to which vehicles are stopped.

Indianapolis v. Edmond, 531 U.S. 32 (2000).

Roadblocks conducted for purposes of drug interdiction are unconstitutional since the purpose behind such roadblocks is general crime control and not to take dangerous motorists off road.

Illinois v. Lidster, 540 U.S. 419 (2004).

Informational roadblock that sought the assistance of motorists in the area of a hit and run fatality is constitutional.

Questioning Suspects of Crime

Task: Questioning of Non-Custody Suspect

Salinas v. Texas, 133 S. Ct. 2174 (2013).

- Where a suspect is NOT in-custody and has not asserted any privilege, a prosecutor may comment on the suspect's reactions to law enforcement's questions, including a suspect's silence.
- Officers and Investigators who find themselves in this situation should document all responses; lack of responses; and body language which occurs during such questioning as the prosecution may use silence and reaction which tends to show evidence of guilt in the prosecution's case.

Task: Questioning In-Custody Suspects

Miranda v. Arizona, 384 U.S. 436 (1966).

A police officer who questions a suspect, who is in custody, must first advise the suspect of his or her right to remain silent, right to counsel before and during interrogation and the right to the appointment of counsel if the suspect cannot afford counsel.

- The warnings are only necessary when custody and questioning occur at the same time. The lack of one or the other dispenses with the need for any warnings.

Task: Questioning In-Custody Suspects

Miranda v. Arizona, 384 U.S. 436 (1966).

[A suspect] must be warned prior to any questioning

[1] that he has the right to remain silent,

[2] that anything he says can be used against him in a court of law,

[3] that he has the right to the presence of an attorney, and

[4] that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Task: Questioning of In-Custody Suspects-The Warnings

Powell v. Florida, 130 S. Ct. 1195 (2010).

In determining whether police officers adequately conveyed the four warnings, reviewing courts are not required to examine the words employed as if construing a will or defining the terms of an easement.

Thus, the words do not need to be exact:

The inquiry is simply whether the warnings reasonably convey to a suspect his rights as required by *Miranda.* If so, the requirements are met and his or her statements following such a warning are admissible.

Task: Police Questioning of In-Custody Suspects

Missouri v. Seibert, 542 U.S. 600 (2004).

A Mirandized statement that is taken after officers have already questioned the suspect pre-Miranda on the same crime and as a two-step process to undermine Miranda is not valid and will not be admitted in the prosecution's case.

A police tactic of getting the suspect to "let the cat out of the bag" pre-Miranda invalidates subsequent Mirandized statements.

Task: Questioning of In-Custody Suspects

Bobby v. Dixon, ___U.S.___; 132 S. Ct. 26 (2011).

- A suspect who is given Miranda warnings and exercises his right to counsel, can be re-approached on the same crime if he was not in custody at the time the warnings were given. The exercise of a right under Miranda cannot be exercised anticipatorily to actual custody.
- There is no precedent supporting an argument that the Fifth Amendment is violated when law enforcement urges a suspect to confess by falsely telling the suspect that a confederate is providing information.
- An un-coerced statement subsequent to proper Miranda warnings may be admissible even thought there was a previous intentional violation of Miranda. The admissibility will be fact driven.
- Officers should never intentionally violate Miranda.

Task: Questioning of In-Custody Suspects

Corley v. United States, 556 U.S. 303 (2009).

An unreasonable delay in presenting an arrestee before the court for arraignment may impact the admissibility of a confession particularly where the delay is not due to transportation and distance to court issues.

Note: This case was largely based on federal statutory laws regarding interrogation, however the principle of unreasonable delay will likely make its way to state court proceedings.

Task: Miranda and Field Sobriety Tests

Pennsylvania v. Bruder, 488 U.S. 9 (1988).

A suspect is not "in-custody" for purposes of Miranda warnings, when police are administering a field sobriety test.

Berkemer v. McCarty, 468 U.S. 420 (1984).

Where suspect has not been informed that they are under arrest and are merely subject to a traffic stop, statements admitting to intoxication are admissible at trial, notwithstanding the lack of Miranda warnings and the officer's unspoken intent to arrest the subject for DUI.

Task: Routine Booking Questions and Miranda

Pennsylvania v. Muniz, 496 U.S. 582 (1990).

A police officer is not required to give Miranda warnings before asking routine booking questions.

Questions that may be asked:

- Name
- Address
- Height
- Weight
- Eye Color
- Date of Birth and Current Age
- Biographical data necessary to complete booking process

Task: Miranda Warnings

Beckwith v. United States, 425 U.S. 341 (1976).

A suspect does not have to be given Miranda warnings unless they are in the custody of a law enforcement officer when questioned. The absence of either custody or questioning eliminates the need to give the warnings.

See, Oregon v. Mathiason, 429 U.S. 492 (1977).

A suspect who voluntarily comes to the police station at the invitation of an officer and is told prior to questioning that he is not under arrest, need not be given warnings since he or she is not in "custody."

Task: Sentenced Prisoner-May Not Need Warnings

Howes v. Fields, 132 S. Ct. 1181 (2012).

- There is no per se rule that a sentenced prisoner is in-custody for Miranda purposes while serving his sentence. The jail or prison is his home.
- Part one of determining custody: Custody Factors that Court outlined in this case:
  - The location of the questioning,
  - statements made during the interview,
  - the presence or absence of physical restraints during the questioning,
  - and the release of the interviewee at the end of the questioning,
- Part two of determining custody:
  - Whether the relevant environment presents the same inherently coercive pressures as the type of station house questioning at issue in *Miranda*.

Task: Miranda Warnings and Questioning

Arizona v. Mauro, 481 U.S. 520 (1987).

Where an officer knows or should know that his or her words or conduct are likely to elicit an incriminating response from the suspect who is in custody; questioning has occurred irrespective of whether any express questions have been posed.

- Incriminating statements made by the suspect in response to a police officers words or conduct under these circumstances will only be admissible in the prosecution's case where the requirements of Miranda have been met.

See also, Rhode Island v. Innis, 446 U.S. 291 (1980).

Examples:

- Confronting one suspect with the confession of a co-conspirator.
- Confronting suspect with autopsy photos.

Task: Miranda and Reasonable Suspicion Based Stops

Berkemer v. McCarty, 468 U.S. 420 (1984).

A police officer is not required to give Miranda warnings for questioning that takes place during a traffic stop or questioning that takes place during a reasonable suspicion based stop justified by *Terry v. Ohio, 392 U.S. 1 (1968).*

- These type of stops are presumptively brief
- These type of stops occur in public
- These type of stops do not involve the police dominated atmosphere that Miranda is intended to overcome

Task: Miranda's Public Safety Exception

New York v. Quarles, 467 U.S. 649 (1984).

An officer need not give Miranda warnings to question an in-custody suspect regarding items that pose a danger to public safety.

Example:

- Where's the gun?
- Where's the bomb?

Task: Miranda and Volunteered Statements

Miranda v. Arizona, 384 U.S. 436 (1966).

Where a suspect volunteers statements to a law enforcement officer, the officer need not stop the suspect and all such statements are admissible in the prosecution's case notwithstanding the lack of Miranda warnings.

- Volunteered statements are not the result of government coercion that Miranda warnings are designed to overcome.

Task: After Suspect Invokes Right to Counsel

Edwards v. Arizona, 451 U.S. 477 (1981).

A police officer may not reinitiate interrogation of a suspect once the suspect has invoked his or her right to counsel. No interrogation may take place unless counsel is present at the interrogation even if the suspect has had an opportunity to speak with counsel.

See Next Page for How Long this Restriction Lasts

Task: After Suspect Invokes Right to Counsel

Maryland v. Shatzer, 130 S. Ct. 1213 (2010).

Fourteen Days after a break in *Miranda*-based custody, investigators may re-initiate questioning of a subject who had previously invoked his right to counsel for the same investigation.

Miranda-Based Custody: To determine whether a suspect was in *Miranda* custody the court asks there is a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.

A sentenced prisoner's return to general population constitutes a break in Miranda Custody. A release from custody altogether would also constitute such a break.

Task: Interrogation of Prisoner Who Has Invoked Right to Counsel

Minnick v. Mississippi, 498 U.S. 146 (1990).

Once a prisoner invokes their right to counsel under Miranda, all questioning must cease (Edwards Rule) and no further interrogation may take place unless counsel is physically present, even if the suspect has had an opportunity to confer with counsel.

Note: Maryland v. Shatzer rules which would allow re-initiation of questioning after a 14 day break in *Miranda* Custody.

Task: Questioning Defendant Represented by Counsel

Montejo v. Louisiana, 556 U.S. 778 (2009).

In determining whether a Sixth Amendment waiver was knowing and voluntary, there is no reason categorically to distinguish an unrepresented defendant from a represented one. It is equally true for each that the *Miranda* warnings adequately inform him of his right to have counsel present during the questioning, and make him ‘aware of the consequences of a decision by him to waive his Sixth Amendment rights.

Thus, there is no automatic violation of the Sixth Amendment when law enforcement attempts to interrogate a suspect following arraignment and appointment of counsel.

Task: Reinitiating Dialogue by Suspect

Oregon v. Bradshaw, 462 U.S. 1039 (1983).

Police may question a suspect who has previously invoked his right to counsel in cases where the suspect has reinitiated the conversation with officers. Police must prove that, in addition to re-initiation by the suspect, there was also a valid and knowing waiver of rights prior to the second interrogation.

Note: Conversation by the suspect relating to the routine incidents of the custodial relationship such as requests for food or use of a telephone, are insufficient to establish that the suspect has initiated a conversation to overcome the previous invocation of the right to counsel.

Task-Questioning of In-Custody Suspects and Invocation of Silence

Berghuis v. Thompkins, 130 S. Ct. 2250 (2010).

A suspect's silence during interrogation is not an invocation of their right to remain silent.

An invocation of the right to remain silent under *Miranda* must be clear and unambiguous.

Task: Further Questioning After Invocation of Right to Silence

Michigan v. Mosley, 423 U.S. 96 (1975).

Unlike the invocation of the right to counsel, an invocation of the right to silence does not create a per se rule against all further interrogation. Cases indicate that a second interrogation may be allowed when:

- The suspect's right to remain silent was clearly honored in the first interrogation.
- A significant amount of time passed between the first and second interrogation.
- The suspect was given a fresh set of warnings before the second interrogation.
- No pressure tactics or illegal tactics were used to get the suspect to relent.

Task: Questioning Juveniles-Custody Determination

J.D.B. v. North Carolina, 131 S. Ct. 502 (2010).

In determining whether a juvenile is "in-custody" for purposes of requiring Miranda warnings, an officer must take into account the juvenile's age.

In making this determination the officer should consider: whether a person of the suspect's age faced with the circumstances the suspect is facing, would believe they were formally arrested or that their freedom of movement was restrained to the degree normally associated with formal arrest.

Task: Questioning Juveniles

Fare v. Michael C., 442 U.S. 707 (1979).

In determining whether or not a juvenile is capable of waiving their rights under Miranda a totality of circumstances approach is taken:

which considers the:

- Age
- Education
- Experience

A juvenile's request for someone other than an attorney is not an invocation of Miranda but may be considered as part of the totality of circumstances approach.

Task: Interviewing Juvenile Victim

Camreta v. Greene, 130 S. Ct. 2023 (2011).

A government actor's interviewing of a suspected child abuse victim without a warrant, court order, consent, or parent present did not clearly violate the Constitution.

Task: Questioning Any Public Employee/Officer

Garrity v. New Jersey, 385 U.S.493 (1967).

If an agency compels an employee to speak after the employee has invoked their privilege against self-incrimination, the statement cannot be used against the officer in a criminal case.

Gardner v. Broderick, 392 U.S. 273 (1968).

An employee who exercises their privilege against self-incrimination cannot be terminated for the exercise of a Constitutional Right

Note: An employee can be compelled to give a statement which will be used for administrative purposes (including discipline) or face punishment up to and including termination for their insubordination in refusing to provide the statement

Task: Evidence Seized as Result of Miranda Violation

United States v. Patane, 542 U.S. 630 (2004).

Evidence that is located and seized as the result of a Miranda violation is not the "fruit of the poisonous tree" and is admissible in the prosecution's case where the statement by the suspect was otherwise voluntary.

Task: Recording Statements Taken in Violation of Miranda Rule

Harris v. New York, 401 U.S. 222 (1971).

Officers who have taken statements in violation of the Miranda rule, should nevertheless document these statements. While statements taken in violation of the Miranda rule cannot be used against the defendant in the prosecution's case-in-chief, these statements may be admissible to impeach a defendant who takes the witness stand and testifies in a manner that is inconsistent with his prior admissions.

Statements may also be used to clear other offenses and may, in some cases be used against other defendants.

Task: Miranda Violations and Lawsuits

Vega v. Tekoh, 2023 LEXIS 3053 (2022).

Miranda warnings are a court-created rule and not a Constitutional right, thus a person whose un-Mirandized statement is used against them in a criminal case cannot bring a lawsuit claiming a violation of 5th Amendment rights

Note: Where a confession is improperly coerced in violation of the 5th Amendment, a person could make a claim that their 5th Amendment rights were violated.

Task: Admissions Obtained in Violation of Sixth Amendment

Kansas v. Ventris, 556 U.S. 586 (2009).

In a case where law enforcement obtains admissions from a defendant in violation of the Sixth Amendment, the admissions may be used for impeachment purposes as the exclusionary rule does not apply to these statements for impeachment purposes.

Task: Statements Made by Victims and Witnesses

Davis v. Washington, 547 U.S. 813 (2006). companion cases

Hammon v. Indiana, 547 U.S. 813 (2006).

Where a crime victim or witness refuses to testify at trial, non-testimonial statements made by the victim or witness during the law enforcement contact may be used against the defendant while testimonial statements cannot be used.

Non-Testimonial: made in the course of police interview under circumstances objectively indicating that the primary purpose of interrogation is to enable police assistance to meet an ongoing emergency. (i.e. frantic 911 call)

Testimonial: when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interview is to establish or prove past events potentially relevant to later criminal prosecution. (i.e. Officer gathering information at scene).

Task: Statements Made by Victims and Witnesses

Michigan v. Bryant, 131 S. Ct. 1143 (2011).

In deciding whether out of court statements violate the confrontations clause a court must determine the ‘primary purpose of the interrogation’ by objectively evaluating the statements and actions of the parties to the encounter, in light of the circumstances in which the interrogation occurs. The existence of an emergency or the parties' perception that an emergency is ongoing is among the most important circumstances that courts must take into account in determining whether an interrogation is testimonial because statements made to assist police in addressing an ongoing emergency presumably lack the testimonial purpose that would subject them to the requirement of confrontation.

Task: Statements and Witness Unavailability

Giles v. California, 554 U.S. 353 (2008).

A statement pre-death (not including a dying declaration) is not admissible at trial where the defendant has made the witness/victim unavailable (i.e. murdered the victim/witness) unless the murder was for the very purpose of making the witness unavailable to testify.

Investigators should recognize that when a witness/victim is unavailable for trial due to actions of the defendant, the defendant's motive will be the key to determining whether a prior statement by the witness will be admissible for purposes of the prosecution.

Task: Statements from Juveniles and Unavailability for Trial

Ohio v. Clark, 135 S. Ct. 2173 (2015).

- Child's Statements to Teachers May Sometimes be Used Against Abuser Even Though Child is Unavailable for Cross-Examination
- Law Enforcement should document statements made during an ongoing emergency whether made to dispatchers, law enforcement officers on the scene or others. (Non-Testimonial-thus may be admissible).
- Law enforcement should document and recognize that statements made outside of the emergency i.e. interviews during the investigation may not be admitted when the witness/victim is unavailable (in the legal or literal sense) for trial.

Agencies

Critical Tasks for Policy

Task: Policy on Critical Tasks

Monell v. Department of Social Services, 436 U.S. 658 (1978).

An agency may be liable for the unconstitutional conduct of their employees but only when some policy or custom, rule or regulation instituted by the law enforcement agency's final policy maker has led to a foreseeable violation of a federally protected right.

- An agency that fails to develop policy on critical tasks in law enforcement may be found "deliberately indifferent" to the rights of citizens that the agency serves.

Task: Participation of Chief

Pembauer v. Cincinnati, 475 U.S. 469 (1986).

In cases where the final policy maker (the police chief in many instances) is involved in a decision that impacts the rights of individuals, agency liability may attach.

In cases where the chief of police is on the scene of some police event and makes decisions that in some way causes a constitutional injury, the agency may be liable based on this single event as if a written policy in conformity with that decision was in place.

Task: Policy or Lack of Policy

Garrett v. Unified Government of Athens-Clarke County, 246 F.Supp.1262 (M.D. GA. 2003).

The fact that an agency has no policy or training on a specific type of police use of force will not exonerate the agency from liability where the specific type of force is customarily used by officers with the tacit approval of supervisors.

- Although an agency does not list hog-ties in their policy nor trains in the use of hog-ties; the agency has a custom of using hog-ties if notwithstanding the lack of policy or training, officers regularly hog-tie individuals.

Training

Task: Training

City of Canton v. Harris, 489 U.S. 378 (1989).

An agency that fails to train officers for recurring tasks that law enforcement officers face, may be liable for failing to train the officers, where the lack of training or poor training foreseeably leads to a constitutional violation.

Failure to Train Established where:

- Agency fails to train an officer in a subject where there is an "obvious need" for training. i.e. firearms and deadly force.
- Agency is aware, or should be aware of a pattern of conduct by officers, which evidences the need for training or better training to avoid constitutional violations and the agency fails to take action on this need.

Task: Training

Munger v. City of Glasgow, 227 F.3d 1082 (9th Cir. 2000).

It is not enough for an agency to merely have a policy that governs officer actions; the agency must train the officers on the policy to effectively avoid liability.

Walker v. City of New York, 974 F.2d 293 (2nd Cir. 1992).

If the conduct of an officer is such that a common person would know the right response without training, the agency would not be required to conduct training on the matter. i.e. an agency does not have to train officers not to commit perjury.

Task: Training and Supervision

Perrin v. Gentner, 177 F.Supp.2d 1115 (D.Nevada 2001).

An agency may be liable for the conduct of an officer when the agency fails to adequately guard against constitutional injuries through training and supervision.

"A law enforcement agency's policy may be inferred from widespread practices or evidence of repeated constitutional violations for which the errant municipal officers were not discharged or reprimanded."

Duty to Intervene

Task Duty to Intervene (Force)

Valazquez v. City of Hiahleah, 484 F.3d 1340 (11th Cir. 2007)

- "An officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer's use of excessive force, can be held liable for his nonfeasance…Therefore, an officer who is present at such a beating and fails to intervene may be held liable though he administered no blow."

Task: Duty to Intervene (Force)

Samuels v. Cunningham, 2003 U.S. Dist. LEXIS 17592 (Dist. CT. 2003).

- Two elements to establish a failure to intervene:
  - Present when excessive force occurs
  - Reasonable opportunity to intervene

Task: Duty to Intervene in **Any** Unconstitutional Conduct

Crawford v. City of Chicago, 2014 U.S. Dist. LEXIS 57720 (N. Dist. Illinois 2014).

- In order for an officer to be held liable under section 1983 in cases of inaction, the plaintiff must show (1) that excessive force was being used, (2) that a citizen has been unjustifiably arrested, or (3) **that any constitutional violation has been committed by a law enforcement official;** and that officer had a realistic opportunity to intervene to prevent the harm from occurring.

Note: Some Federal Circuits have only applied Duty to Intervene in Force cases

Duty to Render Aid

Task: Duty to Render Aid

As a general matter, officers have a duty to render aid to the degree they are trained or to immediately summon medical aid:

- For any person in law enforcement custody who has an injury or illness that a lay person would recognize as requiring medical aid;
- Any person who has been the subject of force who has an observed injury which a lay person would recognize as requiring medical aid;
- Any person who has been the subject of force who is reporting an injury; or requesting medical aid; or who is showing signs of physical distress

  NOTE: Err on the side of medical care

Task: Duty to Render Aid

Kimbrough v. City of Cocoa, 2005 U.S. Dist. LEXIS 43794 (Middle Dist. FL. 2005)

- Where arrestee had obvious injuries and was begging for help, the failure to have EMTs check the subject can lead to liability for the officers who are present.
- This liability can extend to officers at station who were responsible for screening the individual when he is brought to station

Qualified Immunity

Qualified Immunity Cases Not Reaching Merits

In some cases, the federal courts do not decide whether the officer's actions were unconstitutional or not, but simply decide that because there have been no other factually similar cases, an officer would not be on notice that his or her actions were unconstitutional thus the law was not clearly established and therefore the officer is dismissed from the suit based on qualified immunity.

Task: Shooting at Moving Vehicles That Pose Danger-QI Granted

Brosseau v.Haugen, 543 U.S. 194 (2004).

The law with respect to shooting at moving vehicles is not Clearly Established:

Where an officer has fired upon a moving vehicle to protect themselves, other officers, or other persons, the officer may be entitled to qualified immunity.

Task: Shooting at Moving Vehicles That Pose Danger QI Granted

Mullenix v. Luna, 136 S. Ct. 305 (2015).

Where officer fired a rifle from overpass killing fleeing driver who had threatened to kill officers during high-speed pursuit, the Court held: that the law was not clearly established whether such action violated the 4th Amendment stating: The Court has thus never found the use of deadly force in connection with a dangerous car chase to violate the Fourth Amendment, let alone to be a basis for denying qualified immunity.

The Court did not address whether the shooting was constitutional-merely that the officer was entitled to qualified immunity because the law was not clearly established.

NOTE: STATE LAW MAY BE MORE RESTRICTIVE

Task: Deadly Force/Officer Created Jeopardy-QI Granted

City of Tahlequah v. Bond, 142 S. Ct. 9 (2021).

- The Qualified Immunity Question in the Case was: Whether it was **clearly established for qualified immunity purposes** that advancing toward an intoxicated individual wielding a deadly weapon inside a garage was a "reckless" act that would render unconstitutional any subsequent use of lethal force in response to a threat to officer safety.
- The Court did not answer whether the deadly force was constitutional or whether reckless conduct impacted the use of deadly force.
- The Court simply held that the law was not clearly established thus the shooting officers were entitled to qualified immunity.

Task: Knee on Back for 8 seconds of armed violent criminal QI Granted

Rivas-Villegas v. Cortesluna, 142 S. Ct. 4 (2021).

Court did not decide whether placing a knee on the back of violent suspect who still had a knife in his pocket and appeared to be reaching for it was constitutional or not.

The Court held that since no similar case had been decided, the law was not clearly established such that an officer would know his or her conduct violated the Constitution, therefore the officer was entitled to a dismissal of the lawsuit based on qualified immunity.

Task: Limits on Home Curtilage QI Granted

Carroll v.Carman, 135 S. Ct. 348 (2014).

- The law is not clearly established as to whether an officer approaching a home to conduct a knock and talk has to begin at the front door when other parts of the property are open to visitors.
- This was a lawsuit where the officer was sued for going to the back door to conduct a knock and talk without going to the front door. The officer was given qualified immunity because the law was not clear, however the Court did not decide whether or not it was appropriate to go to back door.

Vehicle Search Checklist

Checklist-Vehicle Search

Type of Search:

- Frisk of Motor Vehicle
- Probable Cause Search of Motor Vehicle
- Consent Search of Motor Vehicle
- Incident to Arrest Search of Motor Vehicle
- Inventory Search of Vehicle
- Community Caretaking Search of Vehicle
- Canine Sniff of Vehicle

Frisk of Vehicle

- Identify-using your five senses reasonable suspicion to believe that the vehicle passenger compartment contains a weapon that indicates occupant is armed and dangerous.
- Limited search to those areas capable of containing a weapon.
- Scope of search limited to weapons

Probable Cause Search of Vehicle

- Using five sense identify the facts and circumstances based on your observation or information that you have received that leads you to believe that the vehicle contains evidence and/or contraband.
- Scope of Search only limited by:
  - Information i.e. Confidential Informant provides specific location in vehicle where item is hidden.
  - Size of Item i.e. large item may cut against a search of center console.
  - Finding of item where the finding would not support a belief that additional items would be in vehicle.
- As with any search, the manner of the search must also be reasonable.

Consent Search of Vehicle

- Initial stop of vehicle must lawful.
- Must establish that consent was freely and voluntarily given.
- Body-worn camera/Dash-Cam or written document, although not required by U.S. Supreme Court cases, will establish consent was freely and voluntarily given.
- Scope of search is limited by person given consent both with respect to length of time search continues and areas that may be searched.

Incident to Arrest Search of Vehicle

- Must occur at time of arrest and cannot be done once subject is handcuffed and placed in law enforcement vehicle.
- A search can occur once subject is secured if officer can articulate a reasonable belief that vehicle contains evidence of the crime for which the arrest is being made.
- Incident to Arrest Search is limited in scope to the area that the arrestee could reach to destroy evidence or to obtain a weapon

Inventory Search

- This is not a search for evidence related to criminality but instead is an administrative search to protect the person's property and to protect law enforcement generally and from false claims related to property.
- Must be supported by agency policy and limits of search controlled by policy.
- Inventory searches must be done any time law enforcement directs the towing or seizure of a vehicle, not just in incidents of criminal acts.
- Conduct and document in accord with agency policy.

Community Caretaking Search of Vehicle

- Officer must be able to articulate a reason to suspect that a vehicle contains a dangerous item, which, if left unattended in the vehicle, would pose a threat to public safety.
- Scope of Search would be limited to the size of the item for which there is a reasonable belief and the information known to the officer with respect to any specific location, if identified, within the vehicle of the item.
- Articulate through the use of the officer's senses (sight, hearing, touch, smell, taste) the facts and circumstances supporting the reason to suspect the dangerous item is in the vehicle.

First Amendment

Demonstrations, Protests, Riots

Task: First Amendment Protest Protection

- The Supreme Court "has repeatedly held that **police** may not interfere with orderly, nonviolent **protests** merely because they disagree with the content of the speech or because they simply fear possible disorder." *Jones v. Parmley*, 465 F.3d 46, 57 (2d Cir. 2006) (citing *Cox*, 379 U.S. at 550; *Edwards v. South Carolina*, 372 U.S. 229, 237, 83 S. Ct. 680, 9 L. Ed. 2d 697 (1963)).
- However, once a protest evidences a "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order," the **police** may take action to disperse those **protests**. *Cantwell v. Connecticut*, 310 U.S. 296, 308, 60 S. Ct. 900, 84 L. Ed. 1213 (1940).

Task: First Amendment Protest Protection

- The Supreme Court has declared that the First Amendment protects political demonstrations and protests - activities at the heart of what the Bill of Rights was designed to safeguard. Indeed, the Court has repeatedly held that police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they simply fear possible disorder.
- That said, First Amendment protections, while broad, are not absolute. . It is axiomatic, for instance, that government officials may stop or disperse public demonstrations or protests where "clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears." Indeed, where a public gathering threatened to escalate into racial violence and members of a hostile crowd began voicing physical threats, the Supreme Court expressly sanctioned police action that ended the demonstration and arrested the speaker, who defied police orders to cease and desist. The police, the Court reasoned, were not "powerless to prevent a breach of the peace" in light of the "imminence of greater disorder" that the situation created. *(Cites Omitted)*

Papineau v. Parmley, 465 F.3d 46, 56-57 (2nd Cir. 2006).

Task: Use of Force During Demonstrations, Protests, Riots

- *Graham v. Connor* factors apply thus consider:
  - Is there a criminal offense being committed-if not, there is no enforcement authority, e.g.,
    - Curfew violations
    - Lawful dispersal order followed by reasonable opportunity to leave and failure to disperse
    - Throwing objects
    - Blocking roadways with order to move and followed by reasonable opportunity to get out of road
  - Is there an immediate physical threat to officers or others
  - Is the subject actively resisting or attempting to evade arrest by flight
  - Force options must be proportional to conduct of subjects

Task: Detention During Protest

- When directing protestors officers must ensure that protestors have avenues of egress whereby, they are not encircled or detained without lawful authority.
- A common complaint relates to officers moving protestors into an area where they have no avenue of egress and are essentially detained.
- Unless there is lawful authority to detain or arrest, detention in the form of no opportunity to leave the area must be avoided.

Task: Dispersal of Unlawful Assembly

- Know your state's unlawful assembly and riot statutes as well as any required dispersal order
- When a dispersal order is given, protestors must have reasonable avenues of egress and must be informed of the avenues
- Ensure that dispersal order can be heard by all persons that are being dispersed
- Must give reasonable time to disperse following issuance of lawful order to disperse

Task: Proper Dispersal Order and Opportunity to Comply

- On the morning of November 17, 2011, Plaintiffs were arrested while "peacefully assembling and demonstrating with others in the Wall Street area in connection with an OWS-related demonstration." They assert that, prior to their arrests, neither they "nor other non-NYPD persons present were causing or creating the risk of any substantial blockage of vehicular or pedestrian traffic, or any other serious public ramifications,"such as "real public inconvenience, annoyance, and/or alarm," They allege that, "[w]ithout first having given a clearly communicated dispersal order or clearly communicated orders . . . and a meaningful opportunity. . . to comply, police began to make arrests." Facts specific to each plaintiff are set forth below.

  Case v. City of New York, 233 F. Supp. 3d 372, 379 (2017)

Task: Response to being Filmed in Public

Glik v. Cunniffe, 2011 U.S. App. LEXIS 17841 (1st Cir. 2011).

"[T]he First Amendment protects a significant amount of verbal criticism and challenge directed at police officers."). Indeed, "[t]he freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state. "The same restraint demanded of law enforcement officers in the face of "provocative and challenging" speech, must be expected when they are merely the subject of videotaping that memorializes, without impairing, their work in public spaces."

Task: Importance of Documentation in Mass Arrests

- Plaintiffs' "Declination of Prosecution" forms explain that the district attorney decided not to file charges against each plaintiff because each one's arresting officers were unable "to personally attest to" their criminal conduct.
- According to the officer's deposition testimony, some arresting officers became separated from their arrestees while the arrestees were being moved into transport buses; as a result, other officers were designated as arresting officers and completed processing paperwork for their newly acquired arrestees on the basis of information provided to them by other officials.

Caravalho v. City of New York, 2016 U.S. Dist. LEXIS 44280, *11

Task: Cannot Arrest based on Heckler's Veto

Bible Believers v. Wayne County, 805 F.3d 228, 250 (6th Cir.2015).

- When a peaceful speaker, whose message is constitutionally protected, is confronted by a hostile crowd, the state may not silence the speaker as an expedient alternative to containing or snuffing out the lawless behavior of the rioting individuals. Nor can an officer sit idly on the sidelines—watching as the crowd imposes, through violence, a tyrannical majoritarian rule—only later to claim that the speaker's removal was necessary for his or her own protection.

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