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Police Reports

Risk Management and Litigation Issues

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Reports are Central to Avoiding/Winning Litigation

Complex Case Law

New Legislation

Changing Public Opinion

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Topics for Today

Different Reports for Different Situations

Use of Force Report-Writing

Police Reports in the Age of Video

General Tips/Issues

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Different Reports for Different Situations

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Different Reports for Different Situations

Four Situations a Police Report Seeks to Describe/Justify (for risk management/litigation purposes)

- Social Contact
- Terry Stop (reasonable suspicion)
- Arrest (probable cause)
- Use for Force

Each Situation Has Different Reporting Issues

- Different rights/responsibilities of the public
- Different rights/responsibilities of the officer
- Different standards for state law vs. federal law
- Different litigation issues/concerns for each
- *Combination incidents are especially difficult*
- *New legislation has made reports even more important*

Failure to Understand/Differentiate Makes Litigation Difficult

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Different Reports for Different Situations

Social Contacts

Main Legal Issue

- Social contact is not a detention
- Report must establish person was free to leave

Legal Standards

- “We conclude that a person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” *United States v. Mendenhall* (S.Ct. 1980)
- A police officer has restrained the liberty of the citizen if, “taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business.” *Florida v. Bostick*, (S.Ct. 1991)
- “[A] series of police actions may meet constitutional muster when each action is viewed individually, but may nevertheless constitute an unlawful search or seizure when the actions are viewed cumulatively.” *State v. Harrington* (WA S.Ct. 2009)

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Different Reports for Different Situations

Social Contacts

Purpose of Report: a reasonable person would have felt free to leave.

Factors to Consider and REPORT

- Time and place: public/private – day/night – crowded/alone
- Number of officers present (more officers = more likely a detention)
- Nature of approach and positioning
- Requests vs. demands (language/tone of voice)
 - Documents
 - Hands out of pockets
- Retaining documents/property
- Lights/sirens
- “Display” of weapons
- **Specific advisement: “free to leave” “not being detained”**

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Different Reports for Different Situations

Social Contacts

Tips

- Remember the standard: “Would a reasonable person feel free to ignore me and walk away?”
- Explicitly address as many factors as possible (previous slide)
- Explain what you did NOT do!
- If it’s a *Terry* stop, admit it!
- Sergeants are first line of defense

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Questions?

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Different Reports for Different Situations

Terry Stops

Four Main Elements

Reasonable suspicion

Reasonable Investigative Measures

Length of Time

Patdown

Use of Force

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Different Reports for Different Situations

Terry Stops – “Reasonable Suspicion”

Legal Standard

- **Reasonable** belief that **criminal activity** is happening
- Based on **specific and articulable facts**
- Together with **rational inferences**
- **Individualized** to the person stopped

Reporting “Reasonable Suspicion”

- Specific facts received
 - Type/nature of crime
 - Suspect information: description, location, movement, etc.
- Specific facts observed
 - Atmospheric
 - Suspect information: description, location, actions, etc.
- Rational inferences
- Specific training/experience of officer

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Different Reports for Different Situations

Terry Stops: “Reasonable Investigative Measures”

Legal Standard

- Investigation must be “reasonably related in scope to the circumstances which justified” the initial stop. *Hiibel v. 6th Jud. Dist.* (S.Ct. 2004)
- Question is whether officers “pursued a means of investigation that was likely to confirm or dispel their suspicions quickly...” *US v. Sharpe* (S.Ct. 1985)

Reporting “Reasonable Investigative Measures”

- Describe each step in “investigation”
 - People contacted
 - Questions asked
 - Records reviewed
 - Misc. actions taken
- Specify how each step was relevant to probable cause
 - Specific crime suspected
 - How was step likely to confirm or deny PC?

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Different Reports for Different Situations

Terry Stops: “Reasonable Amount of Time”

Legal Standard

- “Must ...last **no longer than is necessary** to effectuate **the purpose** of the stop.”
 - *i.e.*, depends on reason for stop and specific suspicion
- Officer must “**diligently pursue**” investigation
 - Diligence > specific amount of time
- Examples
 - *U.S. v. Place*: No K9 at LaGuardia (90 minutes NOT ok)
 - *U.S. v. Hernandez*: internal smuggler (16 hours ok)

Reporting “Reasonable Amount of Time”

- Why did each step take as long as it did?
 - Complex investigative steps = more time to complete
 - Suspect delays are relevant: refusal to ID – false/unverifiable information
- Always consider relevance to PC
- Clarify distinctions/transitions from one investigation to another

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Different Reports for Different Situations

Terry Stops: "Patdown"

Legal Standard

- "[O]fficers are allowed to make a brief, nonintrusive search for weapons if...a reasonable safety concern exists... *State v. Day* (WA S.Ct. 2007)
- "The purpose of this limited search is not to discover evidence of crime, but to allow the officer to pursue his investigation without fear of violence...." *Adams* (S.Ct. 1972)

Reporting "Patdown"

- Describe *specific* basis for concern
 - Must be concern of weapons
 - Concern must be objectively reasonable
- Describe limited extent of patdown
 - Only in areas with potential weapon
 - Only until weapon is ruled out
- If contraband is found...
 - Recognize concern that patdown was pretext for evidentiary search
 - Must explain how incriminating character was obvious BEFORE weapon was ruled out!

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Different Reports for Different Situations

Terry Stops: Review

Reasonable Suspicion

- Specific criminal activity suspected
- Training/experience of officer

Reasonable Investigative Steps

- Each step must be likely to confirm/dispel PC

Reasonable Time

- Officer must diligently pursue investigation
- Time must be reasonable, based on facts/circumstances

Patdown

- Only for weapons
- Objectively reasonable concern
- Contraband: knew it was contraband before ruling out it was a weapon

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Different Reports for Different Situations

Terry Stops: Review

Traffic Stops

- Type of *Terry* stop (“criminal activity exception”)
- Actions must be relevant to purpose of the stop (*i.e.*, traffic purpose)
- Clarify actions toward passengers during traffic stop
- Traffic stops that lead to other investigations...
 - WA Courts are on the lookout for pretextual traffic stops.
 - If it’s a *Terry* stop for something else... admit it
 - Standard for *Terry* stop applies regardless of on foot or in a vehicle.
 - Clarify purpose of each investigative step (investigation of traffic vs. other issue)

Supervisory review is critical!

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Questions?

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Different Reports for Different Situations

Probable Cause Arrest

Legal Standard: Reasonable belief, based on all facts and circumstances, that suspect has committed a crime

Common Issues to Remember

- Officer training/experience is important!
- Must have PC for all elements of the crime
- Differentiate information known at time of arrest vs. learned later
- Probable Cause DOES NOT REQUIRE
 - Known victim or cooperating witness
 - A prosecutor who will charge
 - An actual arrest

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Questions?

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Different Reports for Different Situations

Combination Incidents

Social Contact → Terry Stop

- When specifically did reasonable suspicion arise?
- At what point would suspect believe they could not leave? (not necessarily same time as RS arising)
- Don't call it a social contact if it was really a *Terry Stop* to begin with.

Traffic Stop → Criminal Terry Stop

- Transition to *Terry* raises suspicions of pretextual stop
- Identify specific bases for transition to *Terry* suspicion
- Did officer do anything inconsistent with normal traffic stop techniques?
- Is traffic something the officer does in general? (if not, concern of pretext increases)

Terry Stop → Custodial Arrest

- Clarify transition point from articulable suspicion to probable cause
- What specific *Terry* investigation results led to PC?
- Particularly important if force is used (HB 1310/RCW 10.12.020)

Make sure officers understand differences and can identify transition points

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Different Reports for Different Situations

General Overview

Every incident is one/combination of these types

Social Contact

Terry Stop

PC Arrest

Understand differences in these types of contact

Different rights/responsibilities for officer/citizen

Different reporting concerns

Think about the contact type ahead of time

What will a report require?

How might this transition from one type to another?

Review flow of an incident with officers after incident

First line supervisors are critical

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Questions?

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Use of Force Report Writing

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Reporting Use of Force

Federal Standards

When can force be used? when reasonably necessary to...

- Make a *Terry* stop
- Make an arrest
- Prevent a crime
- Overcome resistance to lawful action
- Defend self or others from bodily harm

What force can be used? Must be objectively reasonable under the totality of the circumstances

- *Graham* factors (*Terry* stop/arrest)
 - Severity of the crime at issue
 - Whether suspect posed an immediate threat
 - Whether suspect was actively resisting/evading
- General factors
 - Suspect attributes/actions
 - Officer's training/experience
 - Situation: time of day, location, # of officers, bystanders, etc.

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Reporting Use of Force

WA State Standards (RCW 10.120.020)

When can force be used?

- Protect against criminal conduct if PC exists
- Make an arrest
- Prevent escape
- Protect against imminent threat of bodily injury to self/others/subject
- **NOT *Terry* stops**
- **NOT necessarily ITA**
- **NOT necessarily juveniles, etc.**

Pre-Force De-escalation: When possible, exhaust all available/appropriate de-escalation tactics

- Tactical positioning/repositioning
- Use single- point of contact
- Use crisis/mental health resources
- Call for backup
- "Take as much time as necessary"
- Consider leaving the area

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Reporting Use of Force

WA State Standards (RCW 10.120.020)

Amount of Force Allowed: **least amount necessary** to overcome resistance... **considering**

- Subject claims or appears to be pregnant/minor/vulnerable adult
- Mental/behavioral/physical impairments or disabilities
- Perceptual or cognitive impairments based on drugs/alcohol
- Limited English proficiency
- Presence of children

When Force Must End: “as soon as the necessity for such force ends”

Deadly Force Rules

- When allowed: Only allowed if “imminent threat of serious physical injury or death” (ability + opportunity + intent)
- Less lethal: When possible, use available and appropriate less lethal alternatives before deadly force

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Reporting Use of Force

Key Report Elements (WA State)

General Basis for Force: Identify/establish which of the 4 allowable “force” situations apply

Pre-Force De-Escalation Tactics

- Expand understanding of “de-escalation”
- Explain ALL de-escalation tactics employed (use statute as guide)
- Explain what you did NOT do: why other de-escalation tactics were NOT used
- Explain how you refrained from force even when allowed

Use of Force

- Explain how force used was “least amount of physical force necessary”
 - Address subject characteristics outlined in 10.120.020 (even those that do not apply)
 - Explain other available force, and why it was rejected (too much or too little)
- Continue to address traditional “totality of the circumstances” factors for use of force
 - Time/location/crime suspected/etc.

Termination of Force

- Explain *when* force ended
- Specify *why* force ended (describe how necessity ended)

Emphasize individual training and experience

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Questions?

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Report Writing in the Video Age

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Report Writing in the Video Age

Addressing/preventing conflicts between reports and videos

Introductory Principle: Video is here to stay. Officers should assume they are always being recorded

Main Concern: Reports not matching video

- Can make officers look like they lack attention to detail
- Can make officers look like their memory isn't great
- Can make officers look like they are only including what helps them
- Can make officers look like they are lying

Main Question: Why do reports not match video?

Sometimes it's the video's fault

- Different perspective than officer
- Poor audio
- Only captures part of interaction

These are things we can deal with in litigation

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Report Writing in the Video Age

Addressing/preventing conflicts between reports and videos

Sometimes it's report-writing techniques

- Quotes!!!
- Questions → Answers
- Numbers (commands, strikes, shots, etc.)
- Order of information received
- Order of events
- Specific body movements
- Information "learned" later...communicated as "known"

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Case Study – DV Call

He stepped out onto the front porch to talk to us. When the male exited I could immediately smell a strong odor of intoxicants coming from his person. I also noticed he had a small bump on his forehead that was bleeding. The blood on his forehead was still bright red in color and looked wet.

I asked the male if his son was home and he told me he was not. I asked him where he was and he told me, "I sent him packing." He told me his son had been drinking and he told him not to drive. I asked the male what had happened to his forehead and he explained his son had bit him. The injury to his forehead did look like a bite mark. As I continued to ask questions the male started to become agitated. I explained I was investigating a Physical DV and he told me, "I don't know what to tell you."

I asked him if he hit his son back and he did not answer. As I spoke to the male a female exited the residence and onto the porch. She also had a strong odor of intoxicants coming from her. I continued to talk to the male and as I was speaking to him he said he was done and turned to the front door. He told the female to get in the house and she opened the door. I was still concerned for the safety of the caller's son and not knowing if he was injured in anyway.

He stepped into the residence and I followed. The male turned and place his hand on my chest telling me I was not allowed in his residence. I told him I was investigating a physical assault and I need to make sure everyone was ok. He again told me I was not allowed in his residence. I told him if he did not want me in his house it was fine as long as he spoke to me on the porch. The male said, "Ok." and I took a step back. As soon as I stepped back the male attempted to slam the door shut. I had placed my foot in the door stopping it and pushed it open. The male was pushed back and he fell to the floor where I detained him by placing him into handcuffs.

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Case Study – DV Call

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Report Writing in the Video Age

Addressing/preventing conflicts between reports and videos

Watch Out for Irrelevant Information/Details

“Quotes”

- Exact words are almost never important.
- “The suspect indicated _____.”
- “The witness informed me _____.”
- “I ordered the suspect to stop”

Suspect/Witness Interviews

- *Questions* are not generally important.. focus on the *answers*
- *Sequence* of information received is generally not important
- “During the interview, the suspect/witness relayed the following information...”

Specific bodily movements

- *Specific* movements often not important
- “Resisted” “blocked”

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Report Writing in the Video Age

Addressing/preventing conflicts between reports and videos

Watch Out for Irrelevant Information/Details

Numbers (commands, strikes, shots, etc.)

- I ordered the suspect to stop multiple/numerous times.
- I struck the suspect multiple times.

Distances/Locations -- What Information is Important?

- I maintained what I believed was a safe distance
- The suspect was close enough to me that I was concerned he could...”
- “Officer Jones was close enough to me that the suspect could easily reach either of us...”

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Report Writing in the Video Age

Addressing/preventing conflicts between reports and videos

Tips

Assume every interaction has been recorded

- When we assume that, we are more careful when we describe it later

When Writing/Reviewing a Report, ask...

- What is the purpose for this statement?
 - General background?
 - Establish reasonable suspicion for *Terry Stop*?
 - Establish PC to search?
 - Establish PC to arrest?
 - Demonstrate de-escalation?
 - Justify use of force?
- Does this portion serve one of those purposes?
 - Is it relevant?
 - Is it more detailed than it needs to be?

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Questions?

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General Report-Writing Tips/Issues

Use plain language

- Ex: "The suspect exhibited pre-flight indicators"
- "His eyes were darting around nervously. Based on my experience, I was concerned he was preparing to run."

Emphasize individual training/experience

- Training/experience/prior assignments/etc.

De-escalation language throughout

- Expand your understanding of what can be called "de-escalation" (things we already do)
- Things you DID NOT do, and why

Don't relate facts you don't have personal knowledge of (as if you do)

- Things heard over dispatch
- Things related by other officers

Communicate personal concerns/feelings

- Ex: "The suspect was actively resisting, leading me to conclude he presented a threat of great bodily harm to myself or the public."
- "I was on the ground with the suspect on top of me, trying to grab my weapon from its holster. I was worried he would get my gun and shoot me or a bystander."