Police Organization & Administration

CJ 3600
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Week 14
Liability for Police Conduct

- Perhaps one of the most troubling legal problems facing agencies today is the impact of criminal and civil liability.
- The amount of police litigation appears to be increasing with a movement toward larger monetary damage awards.
- **Tort** is a private injury inflicted on one person by another.
  - **Plaintiff** is the injured party
Basic types of Police Tort Actions

- **Negligence** is alleged when a defendant should have anticipated their acts or omissions would result in an injury. The key in these types of cases is *reasonableness*.

- **Intentional torts** is a voluntary commission of an act that to a substantial certainty will injure another person.

- **Constitutional torts** are brought under Title 42, U.S. Code, § 1983.
1983 Action

- Based on the Civil Rights Act of 1871.
- Prohibits depriving any person of
  - Life
  - Liberty
  - Property
  - Without due process.
- Occurs when an officer (agency), under color of authority (state law), violates a person's civil rights.
Bivens Action

- Section 1983 is used primarily against local and state officers due to the construction of the Act which states “under color of State law.”
- *Bivens* is used in cases involving federal officers. It applies to the officer, not the government.
Vicarious liability

- A legal doctrine that holds the employer is responsible for the actions of the employee, if the actions of the employer can be shown to ignore or overlook the possibility of errors or wrongdoing.

  - Training is a key factor in many torts grounded in vicarious liability.
Who can be sued?

- Negligent hiring
- Negligent assignment
- Negligent retention
- Negligent entrustment

- Negligent direction
- Negligent supervision
- Negligent training
Due Process for Police

- Police, like all other citizens, enjoy the protections of the U.S. Constitution

- Discipline of officers is required to protect
  - Liberty rights
    - Your good name
    - Reputation
    - Position within the community
  - Property rights
    - Your employment

- Two categories of due process
  - Procedural
  - Substantive
Procedural due process

- Refers to the legality of the procedures used to deprive officers of status or wages.

- Requires
  - Timely and adequate notice
  - Present witness and evidence
  - Confrontation of adverse witnesses
Substantive due process

- A more difficult process to define
- Generally considered the requirement that the basis for government disciplinary action be
  - Reasonable
  - Relevant
  - Justifiable
Constitutional rights of officers

- Free speech restrictions cannot be
  - Overly broad
    - Prohibiting criticism of the department
  - Restricting actions that have not been demonstrated to adversely affect the operation of the department.

- Other First Amendment rights issues
  - The Hatch Act
    - Prohibits partisan political activity at the federal level
Search and Seizure

- Fourth Amendment prohibitions against unwarranted search and seizure has been limited in applications to law enforcement personnel under certain conditions:
  - Police equipment
    - Lockers
    - Desks
    - Computers
  - Lineups
    - Officers do not enjoy the full privacy and liberty of citizens due to the nature of their work.
Rights against self-incrimination

- *Garrity v. New Jersey* – a U.S. Supreme Court decision prohibiting the use of compelled testimony to be used against the employee.
  - You cannot order someone to speak with you and then use the information against them.

- *Gardner v. Broderick* – an officer refused to speak before a grand jury and was fired.
Deadly Force

  - Supreme Court ruled a Tennessee law allowing the use of deadly force to prevent a felon from fleeing was unconstitutional.
  - The use of deadly force amounts to a seizure in the sense of the Fourth Amendment and is subject to the reasonableness standard.
Other Use of Force Issues

- Written Directives
- Vehicles
- Warning shots
- Destruction of animals
- Back-up guns
- Off-duty weapons
- Registration of privately owned guns

- Pursuits
  - Purpose
  - Conditions
  - Speed
  - Roadblocks
  - Liability
Alcohol and Drug Testing

- Common practice to prohibit alcohol use on duty.
  - Disciplinary action warranted when violated
  - The same considerations for drug use.
  - These restrictions have been upheld as reasonable.

- Drug and alcohol screening is lawful
  - Random
  - Reasonable suspicion