

## Manager/Supervisor Risk Management

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A twice weekly e-mail training for YCPARMIA members

### TOPIC: LAW ENFORCEMENT EXPOSURES

We are taking a very cursory look at a complex and seemingly ever changing area of federal law. Under 42 U.S.C., section 1983 an individual acting under government authority cannot violate a person's rights or break a federal law without being exposed to damages. The employing entity can share in that liability under 1983 if it has a policy, custom or practice that violates the claimant's constitutional rights (a Monell exposure). These actions are most commonly brought against law enforcement departments, and usually involve (but are not limited to) reoccurring allegations of excessive force and/or false arrest.

Excessive force: It all comes down to the severity of force used balanced against the need for the force. The court balances the nature and quality of the intrusion on the individual's 4<sup>th</sup> Amendment interests against the countervailing government interests at stake in a three step analysis:

1. The court assesses the gravity of the intrusion looking at the type and amount of force used;
2. Then the court assesses the severity of the crime, whether the person posed an immediate threat to the safety of the officers or others, and whether the person was actively resisting or attempting to flee. Other factors like intoxication or mental illness are also considered.
3. Then the court weighs the gravity of the intrusion against the government's interests to determine whether the amount of force was constitutionally reasonable.

The question is whether the officer's actions are objectively reasonable in light of the facts and totality of circumstances confronting them. The inquiry is how much force a reasonable officer would perceive needing, as opposed to how much was actually used. While this is not supposed to be a 20/20 hindsight analysis, the 9<sup>th</sup> Circuit has been pushing to add a fourth element – what alternative methods of subduing the suspects were available – in essence second guessing the officer's decisions made in the moment. The officer has a delicate continuing balancing act; they can use only reasonable force, and as the situation escalates they must maintain that balance without ever crossing over into excessive force.

False arrest: The Fourth Amendment to the Constitution protects individuals from "unreasonable searches and seizures," but goes on to qualify "but upon probable cause..." A wrongful arrest occurs when law enforcement physically detains someone without probable cause or a valid arrest warrant – which is grounded on a judge's decision that there is probable cause. An officer may arrest an individual if they have reasonable and probable cause to believe that the individual has committed a criminal offence – a "reasonable" seizure under the Fourth Amendment. After an individual is convicted to a crime they generally cannot bring an action under 1983 for false arrest until they get their conviction overturned (the Heck Doctrine). "Probable cause" is more than a reasonable suspicion, but less than which is necessary to get a criminal conviction. This means that charges being dropped or a criminal acquittal does not automatically mean that the individual was falsely arrested.

Next topic: Law Enforcement – Section 1988 Attorney Fees