



Law Enforcement Training Seminar
Kane County State's Attorney's Office
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Police Civil Rights Liability

Presented by:

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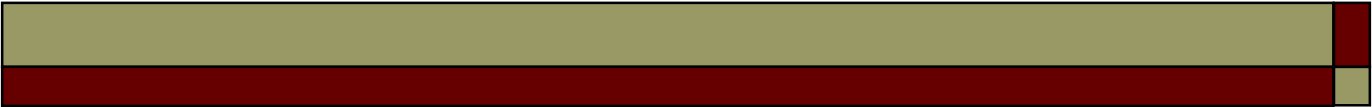
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Civil Rights Act of 1871: 42 U.S.C.
§ 1983

□ Section 1983 Litigation:

- “Every person who, under color of any [law] . . . subjects, or causes to be subjected, any . . . person . . . to the deprivation of any rights . . . secured by the Constitution and laws, shall be liable to the party injured in an action at law”



Common Civil Rights Claims Against Police

- Use of Force – Fourth Amendment – objective reasonableness standard - Graham v. Conner, 490 U.S. 386 (1989)
- False Arrest – Fourth Amendment - probable cause
- State Law Assault/Battery – common law – intent to cause physical harm or offensive contact
- Malicious Prosecution – filing charge without probable cause and with malice



Anatomy of Police Civil Rights Case

- Individual Liability: personal involvement
- Supervisor Liability: officer's misconduct occurred at supervisor's direction or with the supervisor's knowledge and consent.
- Municipal Liability: failure to train



What To Expect When You Get Sued:

- Assignment of Counsel
- Answering the Complaint
- Discovery of personnel file, discipline, citizen complaints and OPS investigations
- Interrogatories/Requests to Admit
- 7 hour deposition
- Dispositive motion
- Settlement
- 3-5 day trial



Indemnification

- Compensatory v. Punitive Damages

- § 9-102 of Tort Immunity Act
 - Local public entity is required to pay tort judgment or settlement for employee acting within scope of employment.
 - Insurance/Risk Pools

- § 2-102 of Tort Immunity Act
 - Local public entity is not liable to pay punitive damages awarded against police officer.
 - Conflict counsel: IMLRMA v. Seibert, 223 Ill. App.3d 864 (4th Dist. 1992)



Prevailing Attorney's Fees

- Civil Rights Attorney's Fee Act of 1976: 42 U.S.C. § 1988
 - Prevailing party may recover reasonable attorney's fees
 - “Private Attorney General” theory: Congress wanted to incentivize attorneys to bring suits to enforce fundamental constitutional rights via civil system
 - Not a two-way street: prevailing defendants don't recover defense fees

- City of Riverside v. Rivera, 447 U.S. 562 (1986) (\$245,000 fee award for \$33,000 recovery)



10 Tips For Reducing Your Risk of Liability

1. Take Training Seriously

- Follow your training, i.e., defensive tactics
- Maintain updated training file



Tips (continued)

2. Pay Attention to Injuries

- Always offer medical treatment
- Document refusal
- Don't turn a "no case" into a claim for failure to provide adequate medical attention
- Failure to pay attention to injuries may fuel punitive damages claim



Tips (continued)

3. Report Writing

- An incomplete or inaccurate report will be used to impeach your testimony and can cause you to lose a civil rights trial
- Prepare a timely, legible and accurate report
- Articulate the facts that support the action that you took
- Supervisory approval



Tips (continued)

4. Document Arrestee's Injuries

- Document injuries accurately
- Even if arrestee did not receive or refused medical treatment



Tips (continued)

5. Document Alcohol or Drug Use

- Include facts in report where alcohol/drugs used or suspected of use
- Even if it is not an alcohol or drug related offense
- Juries do not like drunk or intoxicated plaintiffs!



Tips (continued)

6. Document Officer Injuries

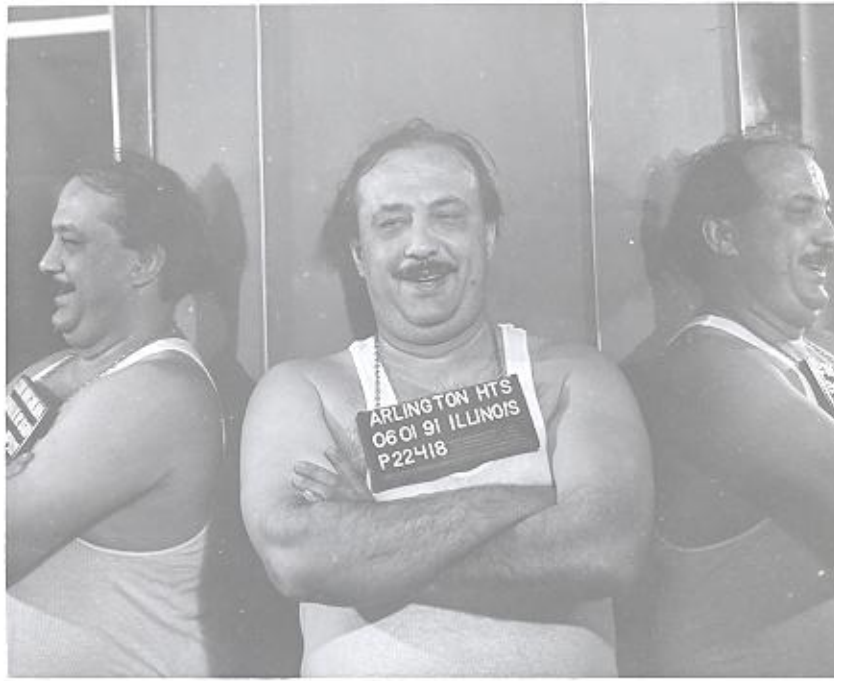
- Always document officer injuries
- Seek medical treatment
- Even if injuries are minor and even if officer did not receive medical treatment
- Potential counterclaim



Tips (continued)

7. Booking Photos

- Plaintiffs often exaggerate injuries and how they were obtained.
- Booking photo does not lie!





Tips (continued)

8. Preserve Squad Car Video, Security Camera Video, Communications Audio Tapes

- Preserve video and audio
- Pictures don't lie!
- Communications audio helps fill in gaps in evidence.



Tips (continued)

9. Importance of Criminal Trial Testimony

- Officer testimony from criminal trial can and will be used in civil case
- Be careful to prepare for the criminal trial
- Follow your cases!



Tips (continued)

10. Internal Investigations

- OPS investigations are discoverable in civil case
- Don't go it alone – seek advice/representation from attorney and/or union
- Prepare for OPS interview or interrogation – don't be casual.
- Be truthful!



Biography

- **Michael D. Bersani** received an undergraduate degree from the University of Illinois in 1985 and a law degree from The John Marshall Law School in 1988. Upon completing law school, Mike served as a judicial clerk to a Florida state appellate court judge. He entered private practice in 1990 and has concentrated in representing local governments and public officials in civil rights litigation. His practice areas include police misconduct, jail litigation, wrongful termination and employment discrimination.