

# CROWD MANAGEMENT Protecting Civil Rights



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## OCCUPY MOVEMENT

- Law Enforcement is on Notice
- What should Law Enforcement expect to encounter in the future:
  - Political Demonstrations
  - Union Protests
  - Sports Unrest of celebrations (Egypt)
  - Immigration rallies
  - Protests of Government actions.

# Lessoned Learned

- What did we learn from the race riots of the civil rights movements and the Vietnam protests.
- Issues with recent encounters:
  - Policy and Response Standards
  - LE Response Attitudes
  - Changes in Equipment / Technology
  - Mass arrest protocols
  - Use of force standards

# History Developing

- RIOT police officers tear-gassing protesters at the Occupy movement in Oakland.
- Nighttime invasion of Zuccotti Park in Lower Manhattan
- Campus police officers in helmets and face shields dousing demonstrators at the University of California, Davis with pepper spray.

# When Police Go Military

- American law and tradition have tried to draw a clear line between police and military forces.
  - Soldiers go to war to destroy, and kill the enemy.
  - The police maintain the peace
- Police officers can adopt military-style tactics and equipment, and come off more like soldiers as they face down citizens.

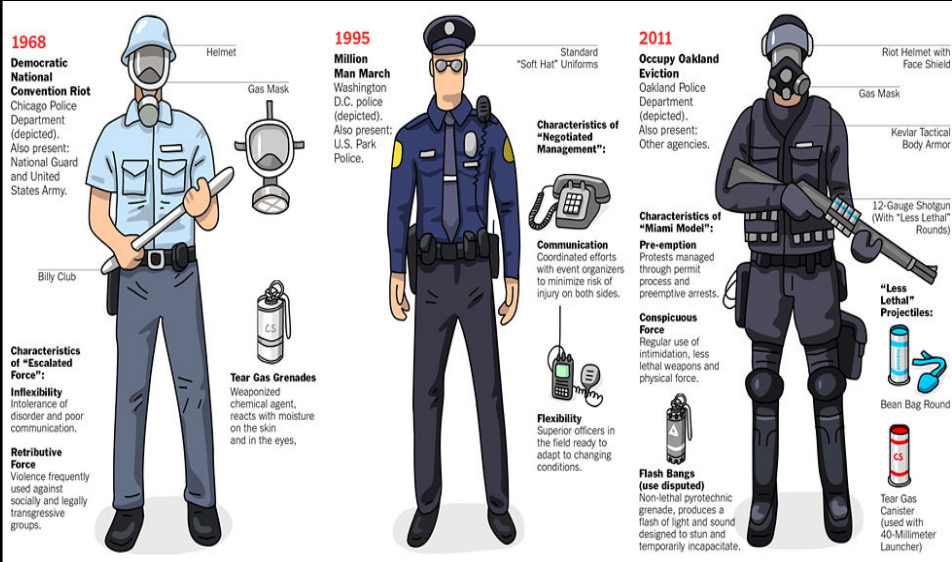
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## Police at War

- War on drugs, then terror — have lent police forces across the country justification to acquire the latest technology, equipment and tactical training for newly created specialized units.
- 1,500 percent increase in the use of SWAT (special weapons and tactics) teams in the United States in roughly the last two decades.

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# Riot Gear's Evolution



## TOPICS

- 1<sup>st</sup> Amendment Application
- Policy and Operation Plans
  - DOJ Standards, Operational Plans,
  - Mass Arrest Protical
- Training
  - Capture and contain, Formations, Arrest Teams, Skirmish lines
- Supervision
  - Bystander Liability
- Force Application

# Perception of All



( VIDEO )

## First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.



## LAW ENFORCEMENT GUIDELINES FOR FIRST AMENDMENT-PROTECTED EVENTS

OCTOBER 2011

### DOJ Guidelines

- **Pre-Event Stage**—Discusses how law enforcement will plan for an event or demonstration where First Amendment protections are involved, focusing on the activity that begins when law enforcement leadership learns of an event and must determine the level, if any, of involvement at the event, from both public safety and investigative standpoints.
- **Operational Stage**—Focuses on how law enforcement will respond to the event, based on the findings from the Pre-Event Stage, including the development and execution of the Operations Plan.
- **Post-Event Stage**—Addresses how and whether information obtained as a result of the event (both during the Pre-Event Stage and Operational Stage) will be evaluated, disseminated, retained, or discarded, as per agency policy.

# ***Snyder v. Phelps***

(2011)

- Picketing of Soldiers Funerals
- Church group that protested soldier funeral to protest military toleration of homosexuality.
- Father of soldier sued- Won several million dollars-
- SC -whether there could be tort recovery for the emotional distress of the soldiers family- found speech was protected.

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## ***Snyder***

- 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 by the type of speech but rather apply to all speech, good or bad, and are based on some reasonable time, place and manner restriction.

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# Snyder

- 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 consider what is going to be said or expressed, instead look to the existing laws on time, place and manner of speech.
- If there is no immediate public safety issue, immediate enforcement is not likely the best avenue for law enforcement to taken when dealing with 1<sup>st</sup> Amendment speech - expression issues.

## Expression





# Monell Violation

- Limit the liability of your agency you ensuring that *Monell* standards covered.
  - Failure of Policy
  - Failure to Train
  - Failure to Supervise
  - Failure to Investigate
  - Failure to Discipline

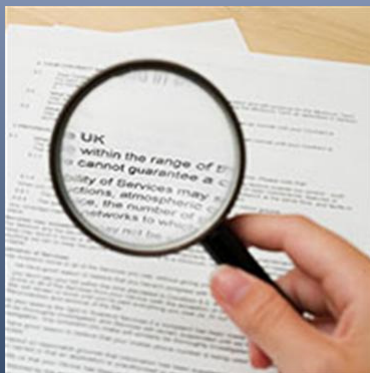
# Consent Decree

- PD shall develop crowd control and incident management policies that comply with applicable law and comport with generally accepted policing practices.
- The incident management policy shall provide that a ranking officer or other higher-level PD official at the scene of a mass demonstration, civil disturbance, or other crowd situation assume command and control and provide approval prior to deploying force as a crowd dispersal technique.

# Consent Decree

- The crowd control policy shall require the use of crowd control techniques and tactics that respect protected speech and the right to lawful assembly.
- PD policy shall require the assessment of law enforcement activities following each response to a mass demonstration, civil disturbance, or other crowd situation to ensure compliance with applicable laws and PD policies and procedures.

## Start with the Policy....



# Policy Structure

- Set Guidelines – DOJ recommendations
- Clear Definitions-
- Procedures
  - Officer and Agency Response
  - Planning for response (Incident Commander)
  - Authority for deployment of resources
  - Conducting Crowd Control and Management
  - Response to crowd situations.
  - Declaring an unlawful assembly
  - Approved tactics and weapons (Batons/ OC)

# Policy Con't

- Prohibited Weapons for Crowd Control
  - Canines, horses, fire hoses, Motorcycles
  - Skip fires Specialty Impact Munitions
  - Uses of Special Impact Munitions
  - ECW, Aerosol hand-held Chemical Agent
- Mass Arrest Procedure
  - Multiple Simultaneous Arrests
  - DA involvement
  - Arrest of Juveniles

# Policy Con't

- Video and Photographic Recording
  - Authorization required
  - Disseminated to other agencies
- Reporting
  - Mandated supplemental reports
- PIO involvement
  - Important part of crowd management
  - Facebook, Twitter
- Training – Policy and practical

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# Perception



**PHOTOGRAPHY**  
IT'S NOT A CRIME

# Crowd Management

Crowd management is defined as techniques used to manage lawful public assemblies before, during, and after an event for the purpose of maintaining the event's lawful status.

Crowd management can be accomplished in part through coordination with event planners and group leaders, permit monitoring, and past event critiques.

# Crowd Control

Crowd control is defined as those techniques used to address unlawful public assemblies, including a display of formidable numbers of police officers, crowd containment, dispersal tactics, and arrest procedures.

# Operations Plan

- Declaring an Unlawful Assembly
  1. Issue the declaration in a manner that you can record and document so that everyone affected could have heard the announcement.
  2. Specific amount of time to pack up their belongings and leave.
  3. Identify routes you want them to leave.
  4. Those left behind can be arrested – not forcibly driven off with chemical agents.

# Arrest Provisions

- Remember during mass demonstrations *Graham v. Conner* still guide use of force.
  - More to follow
- Applicable to seriousness of the crime
  - Civil disobedience v. Riot endangering the public or mass destructive vandalism occurs.
- How do you want to be depicted?
  - Slow down the arrest process and proceed methodically- Notice and compliance
  - Videotape all arrests.

# Mass Arrest Protocol

- Mass arrest is challenging- Impossible without a operation plan.
- Prohibit degrading conduct
  - Wait unreasonable hours for processing
  - Without restroom facilities
  - Booking numbers with markers on arrested
- Use digital age to make mass arrests easy
  - Video, ipad, digital camera

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## Training





# Training

- Policy Training - MOST IMPORTANT
  - Identify, provide, review and train on standards set forth in Department Policy
    - Including Use of Force, Weapons and Reporting
  - Clarify the purpose of crowd management and control and the importance of protecting First Amendment Rights
    - Capture and contain – Shadow Teams
    - Arrest Teams/ Skirmish lines

# Supervision



# Establish Supervisory Liability

- 1. The supervisor had actual or constructive knowledge that his subordinate was engaging in conduct that posed, “a pervasive and unreasonable risk” of constitutional injury
- 2. The supervisors response was so inadequate as to show a deliberate indifference or tacit authorization of the alleged offensive practices.
- 3. That there was an affirmative link between the supervisor’s inaction and the constitutional injury.

## Failure to Intervene

- Applies to any officer who fails to stop an unconstitutional act such as excessive force, unjustifiable arrest or other constitutional deprivations is liable under section 1983. Yang v. Hardin (1994)
- For obvious reasons is much easier to prove against a supervisor who has a greater opportunity to control officers’ misconduct.

# Use of Force



## *Graham v. Conner*

- Court determined that Fourth Amendment establishes the legal standard for use of force claims during an arrest, detention or other seizure.
- Fourth Amendment is the right of the people to be secure against unreasonable searches and seizures
- The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

## Conner- Holding

- Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers violates the Fourth Amendment.
- The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving about the amount of force that is necessary in a particular situation.

## Conner - Holding

- The reasonableness test in an excessive force case during an arrest, detention or other seizure is an objective one;
- The question is whether the officer's actions were "objectively reasonable" in the light of the existing facts and circumstances, without regard to their underlying intent or motivation.

# Use of Force must be objectively reasonable

## Courts Consider Three Specific Factors:

- 1. How Serious was the offense that the officer suspected at the time that the officer used force. The more serious the offense, the greater the need for apprehension, thus, the greater level of force that may be used.
- 2. Did the suspect pose a threat to the officer or any other person present,
- 3. Was the suspect actively resisting or attempting to evade arrest by flight.

## Objectively Reasonable



## **CIMINILLO v. STREICHER**

### **(USCA 6<sup>th</sup> Cir. 2006)**

- Suspect allegedly shot in face with beanbag propellant during riot brought § 1983 action against shooting officer and city alleging excessive force and failure to train. Cincinnati, Ohio - Street Party
- Crowd Ordered to disperse – Officers fired beanbags randomly at the crowd
- Walked towards the officers hands overhead was shot at point blank range

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## **CIMINILLO**

- Police report that subject was shot while in the act of throwing an unknown object.
- Graham factors find the seizure was not reasonable:
  - Subject was not engaged in a crime when shot with a beanbag.
  - Conduct did not pose an immediate threat of safety of the officers. Surrender Position
  - No evidence he was resisting or evading responsibility
- The use of less-than-deadly force in the context of a riot against an individual displaying no aggression is not reasonable.

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# Young v. County of Los Angeles

(9<sup>th</sup> Cir. 2011)

- The use of pepper spray and a baton on a non-combative, albeit uncooperative citizen is excessive force.
- Both pepper spray and baton blows are forms of force capable of inflicting significant pain and causing serious injury.

## Young

- As such, both are regarded as “intermediate force” that, while less severe than deadly force, nonetheless present a significant intrusion upon an individual’s liberty interests - - “the use of pepper spray can have very serious and debilitating consequences,” and that “[a]s such, it should only be generally used as a defensive weapon and must never be used to intimidate a person or retaliate against an individual.”



# Young

- In pepper spraying Young and striking at him multiple times with a baton while landing at least two blows, Wells used a significant amount of two forms of intermediate force known to cause serious pain and to lead in some cases to serious physiological consequences. Whatever such force is ultimately labeled, there is no question that its use against an individual is a sufficiently serious intrusion upon liberty that it must be justified by a commensurately serious state interest.

## Chemical Agent



( VIDEO )

# **HEADWATERS FOREST DEFENSE v. The COUNTY OF HUMBOLDT**

- Nonviolent protests against the logging of ancient redwood trees in the Headwaters Forest.
- Linked themselves together with self-releasing lock-down devices known as “black bears.”
- Three Protests- Q-Tips – Corner of Eye
- Minutes later – Officer Sprayed pepper spray directly in face of the protesters.

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## **HEADWATERS**

- Not the intended purpose of the weapon.
- Characterizing the protestors' activities as “active resistance” is contrary to the facts of the case, viewing them, as we must, in the light most favorable to the protestors: the protestors were sitting peacefully, were easily moved by the police, and did not threaten or harm the officers. In sum, it would be clear to a reasonable officer that it was excessive to use pepper spray against the nonviolent protestors under these circumstances.

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# Objectively Reasonable



## ***Crowell v. Kirkpatrick*** **(2<sup>nd</sup> Circuit 2010)**

- 2<sup>nd</sup> Circuit upheld a District Court's ruling that the use of a Taser on a protestor who refused to unchain themselves from a barrel was not unreasonable under the 4<sup>th</sup> Amendment.
- Brattleboro, VT- Group of protestors on a recently cleared lot owned by Cheshire Oil
- Next morning two protestors remained chained themselves to a barrel.

# Crowell

- Court held that while the plaintiffs were arrested for relatively minor crimes of trespass and resisting arrest, and were actively resisting at the time they were stunned by the officers.
- Court focused on the fact that the officers warned the plaintiff's before applying the Taser.

## ***Mattos v. Agarano and Brooks v. City of Seattle***

- 9<sup>th</sup> Cir. En Banc Review October 17, 2011
- The Ninth Circuit Court consolidated two separate cases – *Mattos v. Agarano* and *Brooks v. City of Seattle* – in which questions arose as to whether the use of a taser weapon involved an excessive use of force, and whether the officers were entitled to qualified immunity.

# ***Brooks v. City of Seattle***

- Drive stun application on a female who is seven months pregnant.
- Speeding in a school zone
- Refused to sign the infraction.
- Refused to get out of the car and told officers that she was pregnant.
- Officers discussed options and demonstrated Taser use.
- Three applications – left thigh, left arm and neck.

# ***Brooks v. City of Seattle***

- Speeding – was not a serious offense
- Did not pose a serious threat to the officers
- Did engage in some resistance but that her resistance did not pose a potential threat to the officers.
- What factors did the court consider in determining the force was unconstitutional?

# ***Brooks v. City of Seattle***

- two additional factors played a greater role in determining the totality of circumstances:
  - (1) Brooks notified the officers that she was pregnant, and the officers considered this information when deciding where to apply the taser; and
  - (2) the officers tased Brooks three times over the course of less than one minute.

# ***Brooks v. City of Seattle***

- The Court stated that tasing Brooks in such a rapid succession allowed no time for her to recover from the pain and reconsider her refusal to comply with the officers requests.

# ***Mattos v. Agarano***

- Each and every application of an ECD must be legally justified.
- When using an ECD in “drive-stun” mode to gain compliance from a suspect who is “actively resisting” arrest, the officer must give the suspect reasonable opportunity to comply with the officer’s commands prior to each ECD application.

# ***Mattos v. Agarano***

- Must perceive that the suspect is “actively resisting.”
- Must be certain that the suspect is capable of compliance with the officer’s commands.
- Must give a warning prior to each application of the ECD.
- Must give the suspect time to recover from the “extreme pain” experienced during the ECD application.



# ***Mattos v. Agarano***

- Must give the suspect a reasonable amount of time to “gather herself.”
- Must give the suspect a reasonable opportunity to consider the consequences of her refusal to comply with commands before each ECD application.
- The reporting requirements contained in the policy must provide that an officer is required to include in his report specific information indicating that all of these guidelines were followed prior to the application of an ECD.

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**The End....**



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