

Effective Communication with your Police Department

.....OF.....

- How to feed the bear without getting bitten.....



- As a City attorney, dealing with your police department sometimes presents unique challenges for which law school and legal practice in other areas does not provide adequate preparation. Police officers and chiefs have their own perspective of lawyers, even those who are trying to help them.....



• Sometimes the mutual..... Respect..... between your office and the police department can lead to extreme measures.....



• Of course, if you go to their shop or office and visit them, they might even greet you on the way.....



• But then, you can always demand the police management staff come to your office for meetings..... They like that!!

• They like to visit and might even bring some toys.



Challenges.....

- Regardless, dealing with police departments, their management and their officers presents challenges rarely seen in other attorney-client relationships.
- Officers and Chiefs rarely “like” lawyers, even their own.
- They are legally sophisticated in some ways, naïve in others.
- They are often idealistic yet cynical at the same time.

The gentle side.....

- Idealistic
- Want to help
- Desire to right the wrongs

.....and the other side.....

- Cynical of lawyers and anything that smells like a lawyer
- Know enough law to be a problem, at times.
- Some would say inflexible in some ways
- Some might even say stubborn.

When they call.....

- Identify the problem:
 - Legal
 - Political
 - P. R.
 - Combination
- Identify the type of problem and address it from that perspective.

What your PD does know

- And they know it well...
- Criminal law (the penal code)
- Code of criminal procedure (the parts with which they normally deal)
- Employment law and civil service rules.

What they often don't know

- Sometimes, they don't know they don't know...
- Civil law
- Federal law (other than 4th Amendment and employment due process)
- Anything dealing with contracts, business law.
- Zoning, with some exceptions
- Annexation and extra-territorial jurisdiction
- Politics (possibly understood, but always disdained)

The essential first step.....

- Gaining **TRUST**, even if a limited trust.
- Your realistic goal:
 - Gain their trust of you to
 - 1. do your job
 - 2. do it well
 - 3. to the best of your ability.

Areas where the PD needs help

- Case law updates which affect written directives (policy)
- Civil matters
- Releasing (or not releasing) seized property
- Other property room issues
- Employment matters such as procedural aspects of terminations.

More areas where they need help

- Creating and maintaining records to comply with State law records requirements and with discovery requirements in civil cases.
- They often either put too much in their files or dispose of records too quickly.
- Re-cycling recordings is a common issue
- Need for 1) proper retention policies and 2) compliance with those policies.

"don'ts" to avoid

- Don't try to be "one of the guys" unless you really are.
- Don't try to advise on "their" areas (criminal matters, procedure, some management, tactics, etc.)
- Don't ignore their problems (scheduling)
- Don't ignore calls for help or "heads up" calls.
- Give "straight" answers and simplify the legal aspects.

Helpful hints

- Summarize legal principles to an index card
- Focus on areas where the PD is less knowledgeable
- Be accessible.
- Suggest, don't require, demand, order or dictate.
 - Or better, put the raw data out there and ask what your PD thinks.
 - 2 + 2 = (what?)

A little law.....

- Use of Force cases:
- Graham v. Conner, 490 U.S. 386, 109 S.Ct. 1865 (1989)
 - Reasonable and necessary
- Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694 (1985)
 - Deadly force
- Scott v. Harris, 550 U.S. 372, 127 S.Ct. 1769 (2007)
 - Ramming to end pursuit
- Hathaway v. Bazany, 507 F.3d 312 (5th Cir. 2007)
 - Officer on foot shooting vehicle to defend self.

Employment

- Garrity case: Garrity v. N.J., 385 U.S. 493, 87 S.Ct. 616 (1967)
 - Officer can be compelled to speak in admin. Investigation; but statements cannot be used in criminal case against him.
- First Amendment: Garcetti v. Ceballos, 547 U.S. 410, 126 S.Ct. 1951 (2006)
 - Speech "pursuant to official duties" not protected.

Liability outline...Federal

- Constitutional deprivation
- Individual liability: qualified immunity
 - Reasonable officer standard, "could have believed..."

Official capacity, claim against the city:
 Policy, practice or custom
 Deliberate indifference
 Of a FINAL policymaking official

Supervisor liability


- Same as individual
- Supervisory individual liability, same as imposing liability on the City: policy, practice or custom involving deliberate indifference.

Things to do now.....

- Review written directives for currency, consistency
- Monitor case law developments – especially in force, search and seizure, arrest, property handling.
- Stay involved in employment decisions!!!
- Learn the requirements your chief has to meet – especially in training and employment.
- Understand their scheduling issues.
- **Review property room and jail procedures/conditions.**

More.....

- Review PD written directives. Are they lawful? Are they being followed? If not, why?
- Jail and property room policies and actual practices.
 - Not under Jail Standards Commission, but Constitution does still apply to city holding facilities.
- Summarize legal guidelines on an index card.
- **Make sure your chief and his management personnel know WHEN to call your office.**
 - Written guidelines???



Training

- Often the first thing cut in budget, but in the long run, this is the most costly place to cut.
- Law enforcement is difficult, training is needed.
- Technical and legal updates are needed constantly.
- Good management and employment practices.
- Good evidence.
- Reduced legal, political and P.R. problems.



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