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Know Your Rights When Interacting with Police

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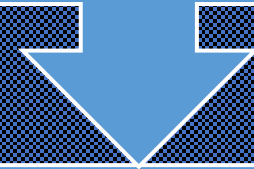
Leonard Torrealba: Dep. District Attorney, Consumer Protection Division

Moderator: Maria Hall, Civil Rights Lawyer

3 SECTIONS:

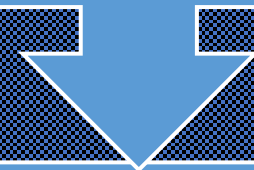
1. THE LAWS

that govern police power and protect individual liberties



2. TYPES OF INTERACTIONS

Individual Stopped/Questioned/Suspect; Crime Witness/Victim; Officer



3. APPLY WHAT YOU'VE LEARNED

Role Play Scenarios / Audience Participation

Part 1:

THE LAWS

2 QUESTIONS:

- (a) What laws give police their powers and authority?
- (b) What laws limit police powers to protect individual rights and liberties?

earth, the separation
to impel them to the separation.
rights, that among these are Life, Liberty and the pursuit of Happiness,
governed, - That whenever any Form of Government becomes destructive
to long established Principles and organizing its powers in order to
right themselves by abolishing the forms to which they are accustomed,
them under absolute Despotism; it is their right to alter or to abolish it,
of these Colonies; and for the support of these Colonies; and for the
created injuries and

THE PEOPLE OF THE UNITED STATES

in order to insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and bind ourselves to our Posterity, do ordain and establish this Constitution for the United States of America.

Section 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within each subsequent Term of seven Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand Persons, including Indians, not taxed. The Electors in each State shall have at least one Representative, and until such Enumeration, Provision shall be made for the State of New York, North Carolina, and South Carolina, five, and Georgia, three.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress, and within each subsequent Term of seven Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand Persons, including Indians, not taxed. The Electors in each State shall have at least one Representative, and until such Enumeration, Provision shall be made for the State of New York, North Carolina, and South Carolina, five, and Georgia, three.

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The Bill of Rights

Ratified December 15, 1791

Article I

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.

Article II

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article III

No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner, nor in time of war, but in a manner to be prescribed by law.

Article IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any Criminal Case to be a witness against himself, nor be

deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Article VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining Witnesses in his favor, and to have the Assistance of Counsel for his defence.

Article VII

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Article VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Article IX

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

Article X

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

THE BILL OF RIGHTS

The CONSTITUTION of the United States and its Amendments, especially the First Ten Amendments

**BOTH GRANTS AND LIMITS POLICE
POWERS**

The Bill of Rights

- * GRANTS police power to the states to establish and enforce laws protecting the welfare, safety and health of the public [Tenth Amendment]
- * LIMITS police powers to protect individual freedoms and liberties [Fourth, Fifth, Sixth Amendments]

Why do we, as a society, grant
police special powers and
authority?

▷ **to provide first response
in EMERGENCIAS and other
threats to public safety**

▷ to investigate
SUSPECTED criminal activity

▶ to refer criminal investigations to the **COURTS** so a judge or jury can decide if guilty

▷ **to TEMPORARILY detain**
(i.e., jail) suspects until they
can see a judge

▷ to provide first response in **EMERGENCIES** and other threats to public safety

▷ to investigate **SUSPECTED** criminal activity

▷ to refer criminal investigations to the **COURTS** so a judge or jury can decide if guilty

▷ to **TEMPORARILY** detain (i.e., jail) suspects until they can see a judge

To carry out
those duties, we
give officers
limited special
“police powers:”

“police powers”

- to arrest a suspect

“police powers”

● to arrest

● to detain

“police powers”

- to arrest

- to detain

- to use force

“police powers”

- to arrest
- to detain
- to use force
- to search

- In the **UNITED STATES** (UNLIKE many other countries), we BELIEVE people are:

INNOCENT

UNTIL

PROVEN

GUILTY !

The Bill of Rights limits these special “police powers” so they aren’t abused – and so that our liberties (freedoms and rights) are best protected:

- NOTICE OF CHARGES
- OPPORTUNITY TO TELL YOUR SIDE
- A FAIR TRIAL
- RIGHT TO A LAWYER (CRIMINAL TRIAL)

The Bill of Rights includes the first TEN Amendments such as:

The FOURTH Amendment requires PROBABLE CAUSE for searches & seizures and protects from use of excessive force

The FIFTH Amendment gives you the right to “DUE PROCESS” (notice & hearing) and “the right to remain SILENT”

The SIXTH Amendment gives you the right to a LAWYER, a JURY and WITNESSES in a criminal trial

The Fourth Amendment:

(a) protects “**against unreasonable searches and seizures. . .**”

The Fourth Amendment:

and (b) requires law enforcement to show *probable cause* to obtain an arrest warrant or search warrant

In other words:

- Police must have “PROBABLE CAUSE” before they arrest a person for a crime
- Police must also have “PROBABLE CAUSE” to get an arrest warrant or search warrant (and they must describe the property to be searched)

- The Fourth Amendment also protects against the use of excessive force:
 - “An unreasonable seizure occurs when an officer uses excessive force in making a lawful arrest.”
 - NOTE: Police are entitled to use force, even deadly force as a last resort, when they believe a person poses an “immediate danger” to people around them or when a person poses a significant threat to an officer.

“PROBABLE CAUSE” is...

- More than just a “hunch” or a suspicion!
- FACTS or EVIDENCE that would lead a “reasonable person” to believe the suspect committed a crime.

• EXAMPLES of “Probable Cause”

- a driver is pulled over for speeding & there’s an illegal assault rifle in the back seat, in plain view
- a driver admits he is high on cocaine

- BUT: What if an officer has a pretty good hunch that someone has engaged in criminal activity but doesn't have *evidence* to show *probable cause*?

REASONABLE SUSPICION =

a “strong suspicion” that a person is involved in criminal activity or may be armed and dangerous – but not as concrete as PROBABLE CAUSE

- With **REASONABLE SUSPICION**, police CAN briefly detain a person for questioning even if they don't have probable cause
- AND CAN enter a house without knocking IF announcing their presence would be dangerous or allow a suspect to destroy evidence

Surveillance
Stop-and-frisk
Warrants Right Probable
Search Cause
Seizures Fourth Persons Government
Arrests Protection Seized
Houses Secure Wiretaps
Papers
Unreasonable

The image is a word cloud with a white background and a dark blue border. The central and largest text is "Fourth Amendment" in a bold, blue, sans-serif font. Surrounding this central text are various other words in different sizes, colors (including shades of blue, brown, and red), and orientations. The words include "Surveillance", "Stop-and-frisk", "Warrants", "Right", "Probable", "Cause", "Search", "Seizures", "Fourth", "Persons", "Government", "Arrests", "Protection", "Seized", "Houses", "Secure", "Wiretaps", "Papers", and "Unreasonable". The words are arranged in a somewhat circular pattern around the central text, with some overlapping.

The Fifth Amendment:

“ . . . nor shall [any person] be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law . . . ”

The Fifth Amendment means. . .

- *You have the right to remain silent!*

The Fifth Amendment also means. . .

- You get “due process” meaning: (1) notice and (2) an opportunity to be heard before the government can take away your life, liberty (e.g, jail) or property.

The Sixth Amendment:

“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . to be confronted with the witnesses against him and have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”

The Sixth Amendment means. . .

- You have the right to a speedy, public criminal trial in front of a jury, where you can examine witnesses, and you are entitled to have a lawyer represent you.
- *So, if you are arrested, ask for a lawyer immediately!*

The 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 to peaceably to assemble, and to petition the government for a redress of grievances.”

The First Amendment means. . .

- You have the right to freely exercise speech, and to peacefully gather and protest
- Courts have held that videotaping what you observe in public is important to the exercise of free speech;

BUT Courts do not agree about whether videotaping all police activity is protected by the First Amendment. But most agree if you're criticizing the police at the time, it is protected.

Part 2: Panelists' perspectives

TAREK SHAWKY

Civil Rights and Criminal Defense Lawyer

- Stopped and/or Questioned
- Detained
- Arrested
- Consent
- Bystander / Witness Questioned

JULIE NONY

Senior Lead Officer, LAPD

- Person of interest
- Suspect
- Hot pursuit
- Investigation
- Bystander / Witness

LEONARD TORREALBA

**Deputy District Attorney, Consumer
Protection Division**

- Victim of Crime
- Witness to a Crime

ROLE PLAY SCENARIOS

Scenario #1

Pedestrian Stopped on Street

“matches description” of wanted violent suspect

ID requested and refused (undocumented)

Search of coat pockets yields nothing

Scenario #2

Driver pulled over for expired tags

Officer asks if driver was drinking; she denies

Officer says he smells alcohol

Driver consents to search of car

No alcohol, but illegal firearm found in trunk

Scenario #3

Police come to door and say they have a search warrant. They want to search the car in the driveway.

IN THE SUPERIOR COURT OF THE COUNTY OF SAN MATEO
STATE OF CALIFORNIA
SEARCH WARRANT

THE PEOPLE OF THE STATE OF CALIFORNIA TO ANY PEACE OFFICER IN THE COUNTY OF SAN MATEO: proof by affidavit having been made before me by Detective Matthew Broad, San Mateo County Sheriff's Office demonstrates that there is probable cause to believe that the property described herein may be found at the locations set forth herein and that it is lawfully sizeable pursuant to Penal Code Section 1524 as indicated below by "x"(s) in that it:

- it was stolen or embezzled;
- it was used as the means of committing a felony;
- it is possessed by a person with the intent to use it as means of committing a public offense or is possessed by another to whom he or she may have delivered it for the purpose of concealing it or preventing its discovery;
- it tends to show that a felony has been committed or that a particular person has committed a felony;
- it tends to show that sexual exploitation of a child, in violation of Penal Code Section 311.3, or possession of matter depicting sexual conduct of a person under the age of 18 years, in violation of Section 311.11, has occurred or is occurring;
- there is a warrant to arrest the person;
- a provider of electronic communication service or remote computing service has records of evidence, as specified in Penal Code Section 1524.3, showing that property was stolen or embezzled constituting a felony/public offense, or that property or things are in possession of any person with intent to use them as a means of committing a felony/public offense, or in the possession of another to whom he or she may have delivered them for the purpose of concealing them or preventing their discovery;

YOU ARE THEREFORE COMMANDED TO SEARCH:

Premise(s): The premises, structure, rooms, receptacles, outbuildings, storage areas, and safes situated at the residence located at:

[REDACTED]

See Appendix A for description – attached hereto and incorporated herein

Person(s): The persons described as: Jason Shao Chen, [REDACTED]

Vehicles(s): In the vehicles described as: Any vehicle that is at the location of the search warrant and under the dominion and control of Jason Chen.

FOR THE FOLLOWING PROPERTY:

See Appendix B – attached hereto and incorporated herein

AND TO SEIZE IT IF FOUND and to retain the same in your custody pending disposition according to law. Return of this search warrant shall be to the above entitled court.

QUESTIONS?