

Constitutional Policing

The Rule of Law in Daily Police Practice

San Leandro Community Police Review Board



Core Concept

- Authority
- Limits
- Dignity
- Accountability



Why Constitutional Policing Matters

- Police officers exercise some of the most significant powers of government.
- Those powers include authority to stop, detain, search, arrest, use force, and intervene in crisis.
- Constitutional policing ensures these powers are exercised under law — not personal discretion alone.



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Constitutional Policing and the Rule of Law

- The law applies to the government as well as the public.
- Police authority must have a lawful basis.
- People retain constitutional rights during police encounters.
- Public safety must be pursued lawfully.
- Legitimacy depends on accountability.



The Constitution Sets the Floor

- The Constitution establishes minimum legal requirements.
- States, cities, and police departments may adopt higher standards through state law, local ordinance, policy, training, supervision, and best practices.
- The key question is not only whether conduct is lawful, but whether better policing practice is available.



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The IPA's Role

- The IPA is not a court, prosecutor, defense counsel, internal affairs unit, or disciplinary body.
- The IPA is a form of oversight that operates collaboratively with SLPD to identify Constitutional issues in the work that officers do every day.
- When issues are identified the goal is to remediate those issues with training, mentoring, and coaching. In some cases discipline may also be necessary.
- The goal is to build community trust and mutual respect and keep the community and officers safe.



Major Constitutional Provisions in Policing

- Fourth Amendment: stops, searches, seizures, arrests, and use of force.
- First Amendment: speech, protest, recording police, and retaliation concerns.
- Fifth Amendment: self-incrimination and custodial interrogation.
- Sixth Amendment: counsel and criminal process protections.
- Fourteenth Amendment: due process, equal protection, and bias-free policing.



Fourth Amendment

- Protects against unreasonable searches and seizures.
- Common applications: investigative stops, pat-downs, searches, arrests, and uses of force.
- Core question: Was the officer's action objectively reasonable under the facts known at the time?



Fourth Amendment in Practice

- Each level of intrusion requires its own justification.
- Reasonable suspicion: a specific, articulable basis to briefly detain someone.
- Probable cause: a fair probability that a person committed a crime or that evidence will be found.
- Force must be reasonable in light of the facts and circumstances.



First Amendment

- Protects speech, assembly, petitioning government, press activity, and religious exercise.
- In policing, it often arises in protests, criticism of officers, recording police activity, and retaliation claims.
- Officers may maintain safety and scene control, but enforcement should be based on conduct — not protected expression.



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Fifth and Sixth Amendments

- Fifth Amendment: protects against compelled self-incrimination.
- Miranda generally applies when a person is in custody and subject to interrogation.
- Sixth Amendment: protects counsel and criminal process rights after formal proceedings begin.
- Good policing protects the integrity of the criminal justice process.



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Fourteenth Amendment

- **Due Process:** government must act fairly, lawfully, and without arbitrary action.
- **Equal Protection:** similarly situated people should be treated consistently unless lawful justification exists.
- In policing, this connects directly to bias-free policing, fair procedures, data review, supervision, and accountability.



Beyond Minimum Compliance

- A constitutional policing culture asks more than whether a violation occurred.
- Was the action lawful, necessary, proportional, respectful, documented, and supervised?
- Could a better outcome have been achieved through policy, training, tactics, communication, or supervision?



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Continuous Improvement through Constitutional Policing

- The types of reviews that we employed are now what is expected of supervisory reviews by the department.
- Officers on the street have these reviews in mind when they are working on the street.
- Every aspect of an encounter is examined, starting with the legal basis for the officer's action.
- Supervisory review is examined and, if necessary, subject to remediation.
- Ultimate question: What could have been done differently to achieve a better outcome?



Closing Principle

- Public safety and constitutional rights are not opposing goals.
- The strongest policing model is effective, lawful, fair, respectful, supervised, and accountable.
- In a free society, how police power is used matters as much as whether it is used.

