

# LITIGATING OFFICER INVOLVED SHOOTINGS

## USE OF DEADLY FORCE



PRESENTED BY:  
MICHAEL W. CONDON  
HERVAS, SOTOS, CONDON & BERSANI, P.C.  
333 PIERCE ROAD, SUITE 195  
ITASCA, IL 60143-3156  
630-773-4774  
E-mail: [mcondon@hscblaw.com](mailto:mcondon@hscblaw.com)

## I USE OF DEADLY FORCE - GOVERNED BY FOURTH AMENDMENT STANDARDS

- A. *Graham v. Connor*, 109 S.Ct. 1865 (1989). In determining whether force used to affect particular seizure is “reasonable” under Fourth Amendment, question is whether officer’s actions are “objectively reasonable” in light of facts and circumstances confronting officer, without regard to his underlying intent or motive.

(Notes)

- B. Use of deadly force is a “seizure” that is subject to the reasonableness requirement of the Fourth Amendment.
- Was it objectively reasonable based on all facts known to the officer to use deadly force?

(Notes)

- *Tennessee v. Garner*, 471 U.S. 1 (1985). Deadly force may not be used to prevent an unarmed felony suspect from escaping unless the officer has probable cause to believe that the subject poses a threat of death or serious bodily injury to the officer or others.

(Notes)

## II. COURTS RECOGNIZE THAT POLICE OFFICERS ARE OFTEN FORCED TO MAKE SPLIT-SECOND JUDGMENTS IN DETERMINING WHETHER TO USE DEADLY FORCE

- Scott v. Edinburg, 2003 WL 22309242 (7th Cir., Decided Oct 9, 2003). Court held police officer was justified in shooting fleeing car thief where suspect's driving posed serious risk to several bystanders in parking lot of gas station. The Court found that deadly force may be exercised if the felon's actions place the officer or those in the immediate vicinity in imminent danger of death or serious bodily injury.

(Notes)

- Pena v. Leombruni, 200 F.3d 1031 (7th Cir. 1999). Court held that officer had the right to defend himself against shoplifting subject who was advancing toward officer with a chunk of concrete in his hand. Officer shot and killed subject after he ignored officer's command to put the concrete down and after subject was within five to ten feet of him.

(Notes)

- Deering v. Reich, 183 F.3d 645 (7th Cir. 1999). Court held that it was reasonable for officer to shoot subject whom officer believed was pointing a shotgun at him and after the officer had told the subject to drop the gun. The court stated that "The Fourth Amendment prohibition against unreasonable seizure does not require an officer to use all feasible alternatives to avoid situations where deadly force can be justifiably used."

(Notes)

- Frayne v. Kijowski, 992 F. Supp. 985 (N.D.Ill. 1998). Court found that officer did not use excessive force by shooting husband who was pointing gun at his wife in couple's kitchen, even though gun turned out to be a B-B gun; it appeared to officers that husband posed a serious threat to wife's safety, and officers had to act quickly.

(Notes)

- Plakas v. Drinski, 19 F.3d 1143 (7th Cir. 1994). Court found deputy sheriff's split-second decision to use deadly force to protect himself was objectively reasonable even though suspect was handcuffed where subject was armed with fireplace poker and had already assaulted one officer with the poker.

(Notes)

- Sherrod v. Berry, 856 F.2d 802 (7th Cir. 1988). Federal court overturned \$1.6 million verdict in favor of decedent's estate. Court found jury should not have been told that the decedent (subject) was unarmed. Rather, jury only should have received evidence bearing on the reasonableness of the officer's belief that the subject was armed.

(Notes)

### III. LAWSUITS AGAINST POLICE OFFICERS

A. Suits against police officers typically in federal court.

(Notes)

B. Fact Disputes = Classic Jury Cases.

(Notes)

C. Indemnification for off-duty conduct.

(Notes)

D. Rigors of Jury Trial.

(Notes)

#### IV. Pre-Suit Considerations

##### A. Identify - Exercising Proper Judgment and Training in Use of Force.

(Notes)

##### B. Treat - Always Offer Medical Treatment.

(Notes)

##### C. Document.

###### 1. Legible and Timely Reporting.

(Notes)

###### 2. Never Ignore Injuries - New and Old.

(Notes)

###### 3. Document Alcohol.

(Notes)

4. Document Officer Injuries.

- Possible counterclaim.

(Notes)

5. Booking Photos and Videotapes.

(Notes)

6. Criminal Charges and Criminal Testimony.

(Notes)

V. TRIAL STRATEGY

A. Importance of Deposition Testimony.

(Notes)

B. Teamwork With Legal Counsel.

(Notes)

- C. Honesty is the Best Policy: The importance of truthful testimony during internal investigation, deposition and courtroom.

(Notes)