

## I USE OF 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. 720 Ill. Comp. Stat. 5/7-5. *Peace Officer's Use of Force in Making Arrest*: A police officer is justified in using that amount of force which he reasonably believes to be necessary to defend himself or another from bodily harm while making an arrest.

(Notes)

## II. USE OF DEADLY FORCE

- A. 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)

B. *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.

- *Garner* decision rendered Illinois Fleeing Felon Statute unconstitutional; statute has thus been amended to conform with Supreme Court's decision in *Garner*. See 720 Ill. Comp. Stat. 5/7-5(a)(2).

(Notes)

### III. LAWSUITS AGAINST POLICE OFFICERS

A. Suits against police officers typically in federal court.

(Notes)

B. Fact Disputes = Classic Jury Cases

(Notes)

## C . R i g o r s o f J u r y T r i a l

(Notes)

## IV . P r e - S u i t C o n s i d e r a t i o n s

A . I d e n t i f y - E x e r c i s i n g P r o p e r J u d g m e n t a n d  
T r a i n i n g i n U s e o f F o r c e .

(Notes)

B . T r e a t - A l w a y s O f f e r M e d i c a l T r e a t m e n t a n d  
C o n s i d e r O t h e r P o s s i b l e I n j u r i e s f r o m F o r c e  
U s e d .

(Notes)

C . D o c u m e n t

1 . L e g i b l e a n d T i m e l y R e p o r t i n g

(Notes)

2 . N e v e r I g n o r e I n j u r i e s - N e w a n d O l d .

(Notes)

3. No Explanations - Only the Facts.

(Notes)

4. Document Alcohol.

(Notes)

5. Document Officer Injuries

- Possible counterclaim.

(Notes)

6. Booking Photos.

(Notes)

7. Criminal Charges and Criminal Testimony.

(Notes)

## V. TRIAL STRATEGY

### A. Importance of Deposition Testimony.

(Notes)

### B. Teamwork With Legal Counsel.

(Notes)

### C. Truth in the Courtroom.

(Notes)

### D. Economic Effect of § 1988 Attorney Fees on Litigation.

(Notes)

#### 1. Insurance/Risk Pool Considerations.

(Notes)

## 2. Settlement/Judgments.

(Notes)

### VI. OFFICER ON THE HOOK FOR PUNITIVE DAMAGES.

- A. Illinois Tort Immunity Act prohibits governmental entity from indemnifying police officer for punitive damages award.

(Notes)

- B. Issue of Separate Counsel.

(Notes)

- C. *IMLRMA v. Siebert*, 223 Ill. App. 3d 864 (4th Dist. 1992); "Presence of Claim for Punitive Damages Entitles Officer to Separate Counsel paid for by the City's Insurance Carrier due to Potential Conflict Between City and Officer."

(Notes)

### VII OFFICER INVOLVED IN SHOOTING - THE AFTERMATH.

- A. Internal Investigation by Police Department.

The Uniform Peace Officers' Disciplinary Act (50 Ill. Comp. Stat. 725/1)

- "Formal Investigation" defined: Investigation ordered by department during which the questioning of an officer is intended to gather evidence of misconduct which may be the basis for filing charges seeking his removal, discharge or suspension in excess of 3 days.
- "Interrogation" defined: The questioning of an officer pursuant to a formal investigation seeking the officer's suspension, removal or discharge. Interrogation does not include questioning (1) as part of an informal inquiry, or (2) relating to minor infractions of the department's rules which may not in themselves result in suspension, removal or discharge in excess of 3 days.

(Notes)

B. If officer is ordered to give statement pursuant to formal investigation, what are the officer's rights under the act?

1. Officer subject to interrogation must first be informed in writing of the nature of the investigation.

(Notes)

2. All interrogations must be conducted at a reasonable time of day.

(Notes)

3. The interrogation session shall be of reasonable duration.

(Notes)

4. No officer shall be interrogated without first being advised in writing that he has the right to counsel.

(Notes)

5. Officer has right to complete transcript of interrogation without charge and without undue delay.

(Notes)

6. *Garrity v. New Jersey*, 87 S.Ct. 616 (1967):  
Statements given by officer in connection with internal investigation by department may not be used against officer in subsequent criminal proceeding.

(Notes)