


USE OF FORCE
 Foundational Principles


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Rob DeGroot
Marshal
City of Rowlett



USE OF FORCE

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USE OF FORCE

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What I'm **NOT** here to do today;

- To try to impress you with my resume.
- Bolster my fragile male ego by speaking to you as some kind of expert.
- Tell you how to do your job or live your personal or professional life.
- To sell you anything...so **RELAX!**

Violence in the Courtroom

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DISCLAIMER

The instructor is **not an attorney**, and does not offer or provide legal advice. Legal advice, when necessary, should be sought from a competent and licensed Attorney at Law. This instruction is meant to provide background and guidelines as a training aid. Personnel in attendance should be familiar with their agency policies and procedures, laws pertaining to their jurisdiction, and applicable Local, State, and Federal / Appeals Court rulings.

I do not feel obliged to believe that the same God who has endowed us with sense, reason, and intellect has intended us to forgo their use.

--Galileo

Use of Force



The very nature of the policing profession requires that personnel address difficult, dangerous and often complex incidents that have a nexus to principles and values that as Americans we hold dear....

Use of Force

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- Freedom
- Liberty
- Due Process
- Pursuit of Happiness
- **LIFE**

Use of Force

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Often, law enforcement decisions,
their acts of omission or
commission, carry a sometimes
significant burden of liability for
the Officers...

Use of Force

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- **PERSONALLY**
- **PROFESSIONALLY**
- **ORGANIZATIONALLY**

How do we address the concerns today?



- By recognizing that the society in which we live is frequently highly litigious.
- By understanding the nature and quality of the modern media and its impact upon us
- By seeking out and embracing modern technology in force alternatives, and training diligently and consistently.

UNDERSTAND THE ENVIRONMENT IN WHICH YOU WORK AND LIVE

Use of Force



Use of Force and the Fourth Amendment

“ Our Fourth Amendment jurisprudence has long recognized that the right to make an arrest or investigatory stop necessarily carries with it the right to use some degree of physical coercion or threat thereof to effect it”.

Graham v. Connor, 490 U.S. 386 (1986)

PROJECTION OF AUTHORITY - USE OF FORCE



Use of Force in Law Enforcement

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Understand that the
PROJECTION OF AUTHORITY
 carries with it an expectation of
 accountability.

With the ability to
PROJECT AUTHORITY
 must necessarily come the expectation of
 review...and either confirmation or
 declination of Police actions.

Use of Force in Law Enforcement

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Confirmation or declination of law
 enforcement decisions, actions & efforts in
Projecting Authority
 may come from several sources...and they
 may not always be in agreement, and may
 often impact each other directly, indirectly,
 consciously, or even be in direct conflict.

Use of Force in Law Enforcement

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Who would we expect to
 provide confirmation or
 declination of our actions in
 addressing
USE OF FORCE ISSUES?

Use of Force in Law Enforcement

Organizationally
Supervisors
Command Staff
Our Peers and Co-workers

Community
Citizens and/Businesses
Special Interest Groups

Government or Elected Officials
Mayor / City Admin. / City Manager
City Council Members




Use of Force in Law Enforcement

• The Media
Local Media
Regional Media
National Media

• The Legal System
Criminal or Civil
Local Prosecutor
Federal Review / Investigation

OFFICERS MAY BE TRIED BY BOTH





Legal Considerations in applying FORCE

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What is 'Force'?

- The ability to apply Force is both expected and controlled by our State and Federal Law
- The application of Force may constitute a 'Seizure' in the eyes of the Court
- Force is the projection of law enforcement authority through physical coercion, restraint, and/or the application of non-lethal, sub lethal or lethal measures.

Legal Definitions of FORCE

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From 'Black's Law Dictionary

Force: Power dynamically considered, in motion or action, constraining power, compulsion strength directed to an end

Unlawful Force: "Force, including confinement, which is employed without the consent of the person whom it is directed and the employment constitutes an offense or actionable tort, except for a defense, not amounting to a privilege to use force."

Reasonable Force: That degree of force, which is not excessive and is appropriate in protecting oneself or one's property. When such force is used, a person is justified and is not criminally liable, nor liable to tort.

4th Amendment

Applies to persons pre-adjudication, or not 'In Custody', provides for protection from unreasonable

Searches & Seizures.

*A "seizure" occurs when there is
"...governmental termination of freedom of
movement through means
intentionally applied."*

Brower v. County of Inyo, 486 U.S. 593 (1986)

The Fifth Amendment



RIGHTS OF ACCUSED IN CRIMINAL PROCEEDINGS

No person...shall be deprived of life, liberty, or their property without Due Process of Law....

(repeated in the Fourteenth Amendment)

What is 'Due Process'? – The idea of fairness in our Judicial Process.



Seven horizontal lines for writing notes.

8th Amendment



...Nor Cruel or unusual punishment...

The 8th guides the Use of Force in Correctional environments, much as the 4th does the Police.

However, the standard is one of 'Shocking the Conscience' of the Court.

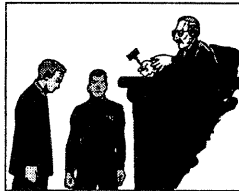


Seven horizontal lines for writing notes.

14th Amendment



...nor shall any state deprive any person of life without the due process of law.....



Seven horizontal lines for writing notes.

Use of Force Case Law

"It is recognized that officers have no duty to retreat from resistance or threatened resistance, and are not considered the aggressors when lawfully attempting to overcome resistance in effecting an arrest or engaging in another lawful objective".

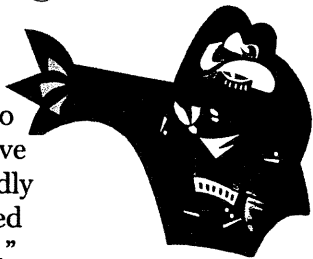


(Reed v. Hoy 909 f.2d 324, 9th Cir. 1989)

Application of Force

Plakas v. Drinski (811 f. Supp. 1356-N.D. Ind. 1993)

"There is no requirement to use less intrusive force when deadly force is required for protection."



Avoidance of Force

Quezada v. Bernalillo (944 F2d. 710 – 10th Circuit Court of Appeals, 1991)

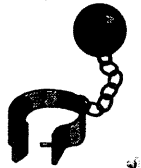
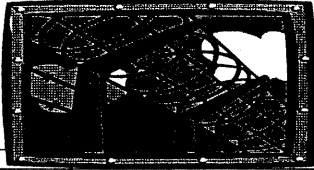
Officers must properly evaluate a situation, assess the suspects and the threat that they manifest to the officers and others.

Unless justified, officers cannot put themselves in a situation which requires the use of deadly force.

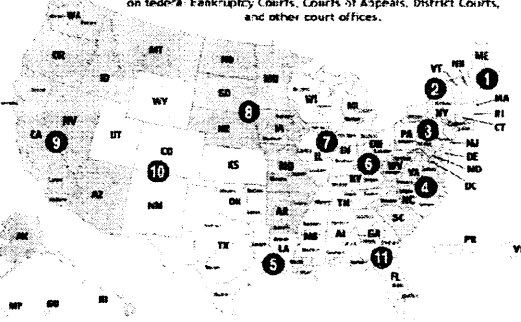
8th Amendment

Considered the Use of Force yardstick for Correctional Applications of Force, and Force used against those persons already In Custody

Predicated on the concept of no 'Cruel or Unusual Punishment'.



Click on the map to find state specific information on federal Bankruptcy Courts, Courts of Appeals, District Courts, and other court offices.



CORRECTIONS



CASE LAW

Brothers v. Klevenhagen – Correctional officers used deadly force to prevent the escape of a suspect who was being transported from one jail facility to another. The U.S. Court of Appeals for the Fifth Circuit applied the due process standard, holding that “. . . after the incidents of arrest are completed, after the [suspect] has been released from the arresting officer’s custody, and after the [suspect] has been in detention awaiting trial for a significant period of time . . .” the Fourth Amendment no longer applies. Applying the due process standard, the court concluded that the use of deadly force to prevent the escape of a pretrial detainee was not unconstitutional.

OBJECTIVELY REASONABLE



National Use of Force Standard

Graham v. Connor

“Whether an Officers actions are **OBJECTIVELY REASONABLE** in light of the facts and circumstances confronting them must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight”.

Graham v. Connor, cont.



The test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application. Allowance must be made for the fact that officers are often forced to make split second judgments in circumstances that are **tense, uncertain, and rapidly evolving.**

Sub Lethal Munitions Case Law



Deorle v. Rutherford (No. 99, 17188, Ninth Circuit)

Suicidal subject struck in the eye by Flexible Baton Round. Court felt that the term ‘beanbag round’ under-rated the dangerousness of the munitions.

Court Stated that the use of the Flexible Baton Round “constitutes force which carries a significant risk of serious injury...it is not to be deployed lightly” Court felt that the force utilized was excessive.

Court stated that where and when practical, that officer must first give warning prior to deploying sub-lethal munitions.

ADDITIONAL CASE LAW

- Tennessee v. Garner*
- Ended the use of deadly force against most fleeing felons
- Davis v. Mason County*
- Not just the 'how', but the why & when, constitutional limitations on the use of force.
- Co. of Sacramento v. Lewis*
- Only a purpose to cause harm becomes unreasonable
- Hudson v. McMillan*
- held that all excessive force claims under the Eight Amendment must show malice, sadism, and intent to cause harm.
- Whitley v. Albers*
- Good faith effort in applying force
- Brousseau v. Hogen*
- Deadly Force in lieu of lesser force authorized

Sometimes, they really do get it right.....

**Jackson v. City of Baton Rouge,
286 So.2d 743 (La.Ct.App. 1973)**

A plaintiff who was resisting arrest, had to be removed from his position on a car trunk and was maced to facilitate handcuffing. The plaintiff was maced again when he resisted entry into a police car.

The Court said "if anything, it was fortunate for plaintiff [that] the officers used mace, rather than more severe physical methods."

Training Issues in Law Enforcement

- **Canton v. Harris**
- **Zuchel v. City and County of Denver**
- **Lewis v. City of Chicago**

How does law enforcement address the force concerns of today?

- By recognizing that the society in which we live is highly litigious.
- By understanding the nature and quality of the modern media and its impact upon society / Govt.
- By seeking out and embracing modern technology in force alternatives, by training diligently and consistently, by adopting 'best practice' and 'Industry Standard Policies and Procedures.

Federal Civil Rights Complaints

CIVIL RIGHTS ACT, USC 1983

Every person, who under the color of any statute, ordinance, custom or usage ...subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and the Laws, shall be liable to the party injured in any action at Law...

Federal Civil Rights Complaints

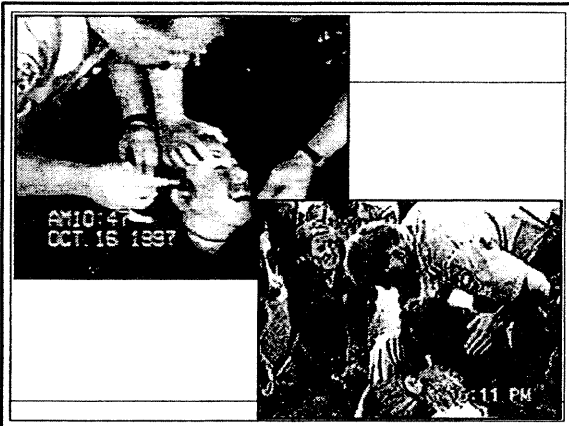
CIVIL RIGHTS ACT, USC 1983

Important for you to understand, as it provides for compensation of Attorney's Fees upon a finding for the Plaintiff, regardless of the award. This provides ample motivation for Attorneys to find new clients and pursue complaints.

HUMBOLDT COUNTY, CA CASE



In 1997, Humboldt County Deputies utilized Q-Tips, dipped in OC from an IPD, to swipe the eyes of eight Environmental Protesters who had occupied an Executive Office of a Logging company, utilizing metal tubes chained to their interlocked arms. After a Federal Jury Trial in San Francisco, the Jury awarded the eight defendants **one dollar each.**



Yea! We each won a WHOLE DOLLAR!



HUMBOLDT COUNTY CASE



Plaintiffs' Attorney Fees Amount Motion Filed Plaintiffs' motion for a specific amount of attorneys fees and expenses was filed September 16, 2005, with the U.S. District Court in San Francisco. The motion concludes: "Plaintiffs believe that an award of \$1,995,490.69 in attorneys' fees, plus \$84,029.55 for expenses, is reasonable under the circumstances of this case."

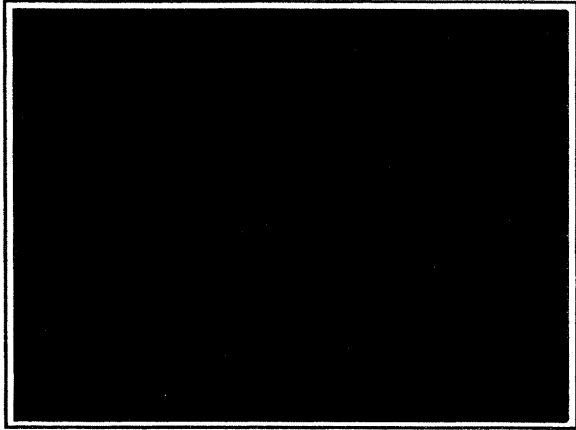
Yay! We just won 2.1 Million Dollars!



Liability becomes mitigated if;



- You always act professionally; with courtesy, compassion, respect, honesty and diligence.
- You always act with common sense, learned from your training and experience.
- You treat everyone with respect, even if they don't treat you with respect.
- You act or provide assistance when you can, when it is appropriate.
- You act according to ALL applicable standards, laws, guidelines and policies.



Use of Force

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***Of all the manifestations of Power,
Restraint impresses men most***

-Thucydides, Greek Historian and Philosopher

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**THANK YOU FOR YOUR
TIME, ATTENTION AND
CONSIDERATION.**

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