***CASE LAWS THAT EFFECT TRAINING & DEADLY FORCE***

**42 USC #1983, Civil Rights**

**Monell v. Department of Social Services 1987, U.S. 658, 98 S Ct. 2018**

-- Deliberate Indifference Standard / Supervisors must support and buy into Policy

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**Tennessee v. Garner, 471 U.S. 1, 11, 105 S.Ct. 1694, 1701, 85 L.Ed.2d 1 (1985)**

Fleeing Felon - Suspect threat or future threat to citizens or officers

A Memphis police officer shot and killed appellee-respondent Garner's son as, after being told to halt, the son fled over a fence at night in the backyard of a house he was suspected of burglarizing. The officer used deadly force despite being "reasonably sure" the suspect was unarmed and thinking that he was 17 or 18 years old and of slight build.

The Tennessee statute is unconstitutional insofar as it authorizes the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others

Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so." Tennessee v. Garner

The use of deadly force will be deemed objectively reasonable "where the officer has probable cause to believe the suspect poses a threat of serious physical harm, either to the officer or to others.

Policy on Lethal Force - Officers not required to give verbal warnings before using lethal force, recommended if it does not endanger officers or bystanders

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**Fronk v. Meager, 417 N.W.2d 807 (N.D. 1987)**

Officer used PR 24 on suspect for DUI

If you provide the tool -- You must provide the training

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**Beluw v. Rupport 1987**
**PLAKAS v. DRINSKI | 811 F.Supp. 1356 (1993)**

There are, however, cases which support the assertion that, where deadly force is otherwise justified under the Constitution, there is no constitutional duty to use non-deadly alternatives first.

If Shooting is justified -- No need to resort to lower lever of force

There may be state law rules which require retreat, but these do not impose constitutional duties. **See Reed v. Hoy, 909 F.2d 324, 330-31 (9th Cir.1989).**

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**Ford v. Childers, 855 F.2d 1271, 1275 (7th Cir. 1988)**

Fleeing Felon shot rule

- suspect robbed bank ran off officer shot him in back
NO problem complies with Tenn V Gardner - some questions about if the officer warned and if the suspect herd it.

The existence of probable cause is a question for the jury only "if there is room for a difference of opinion."

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**Forrester v. City of San Diego, 25 F.3d 804, 807-08 (9th Cir. 1994)**

Protested were arrested and Chief did not want officers to carry or drag arrestees, so they used pain and were sued as excessive. Officers not required to carry and drag.

Use of Pain compliance
Officer not required

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**Graham v. Connor, 490 U.S. at 397, 109 S.Ct. at 1872,**

Cops stop suspect for leaving store too fast, looked suspicious, handcuffed and investigated, then let them go after they found out second suspect was diabetic, they sued.

Officer decision based on facts and circumstances know to him/her
-- Scope of intrusion, type of force

Fourth Amendment's "objective reasonableness" standard

Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable seizures,
The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, **without regard to their underlying intent or motivation**

Additionally, it is imperative that in determining the reasonableness of the officer's conduct, the focus is on the very moment when the officer makes the "split second judgments" which led to the use of deadly force.
The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split second judgments — in circumstances that are tense, uncertain, and rapidly evolving — about the amount of force that is necessary in a particular situation.

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**Reed v. Hoy, 909 F.2d 324, 330-31 (9th Cir.1989)**

On August 18, 1984, Deputy Daniel Hoy was dispatched to the residence of plaintiff Robert Reed to investigate a reported domestic disturbance. When Hoy arrived at Reed's house, Reed was crouched outside the house, with his back to Hoy. Hoy greeted Reed, and informed Reed that he was investigating a possible crime. Hoy asked if he could speak to Mrs. Reed. Reed angrily replied that his wife did not want to speak to Hoy and told Hoy "to get the hell off [his] property." Hoy then stated that he was investigating a possible family disturbance and indicated that he would leave as soon as he spoke to Mrs. Reed.

After a further brief, verbal exchange, Reed picked up a 36-inch bamboo stick used to stake flowers, and again demanded that Hoy leave the premises. In response, Hoy drew his nightstick. Hoy again requested to see Mrs. Reed. Reed walked to the porch, put down the bamboo stick, and picked up a splitting maul. He advanced toward Hoy, again demanding that Hoy leave his property. Reed testified that he was very angry and that his purpose was to scare Hoy. Hoy retreated, walking backwards. He told Reed to put down the maul, but Reed refused.

Hoy continued walking backwards, and Reed continued to advance, closing the distance between the two. Hoy again asked Reed to put down the maul. When Reed refused and continued to advance toward him, Hoy drew his service revolver and pointed it at Reed, again requesting that Reed put down the maul. Hoy testified that Reed continued to advance, grabbing the maul with both hands, and raising it in a threatening manner. Hoy then shot Reed in the chest

**Officer has no duty to retreat...**

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**Sager v. City of Woodland Park , 543 F. Supp. 282 ( 1982 )**

Put liability from Officer to Instructor and from Instructor to Administrator
-- Provided Officer did technique within the guidelines he was taught

Three kinds of liability = Personal, Vicarious, and Respondent/Superior
(you) (partial you) (supervisor/department)

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**U.S. Supreme Court. Whiteley v. Warden, 401 U.S. 560 (1971).**

If training is not documented, It didn't happen.

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**City of Canton, Ohio v. Harris 489 U.S. 378 (1989)**

Lack of training = "Deliberate Indifference"

1. Injury 2. Violation of Civil Rights 3. Caused by lack of training

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**Bordanaro v. McLeod, 871 F. 2d 1151 - 1989 - Court of Appeals**

Expanded Deliberate Indifference to Recruitment, Training, Retention, Supervision, and Discipline

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**Doe v. Borough of Barrington, 729 F. Supp. 376 (DNJ 1990)**

Must plan for Projected training needs -- Don't provide tools w/o training.

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**Elliott v. Leavitt, 99 F.3d 640, 642-43 (4th Cir. 1996)**

Officer shot a handcuffed suspect arrested for DUI missed gun S1 pulled gun while handcuffed in back of car and pointed at officer
-- Ruling -- Constitution does not require Officer to gamble with their lives in the face of a serious threat.

- 4th Amendment does not require Officers to wait for the Suspect to shoot before they decide to act.

- The fact that 22 round were shot, shows that the Officers believed they faced a serious threat.

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**Frazier v. City of Philadelphia, 927 F. Supp. 881 (E.D. Pa. 1996)**

Suspect hand-cuffed after he was shot -- as long as policy supports it

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**Kinneer v. Gall US Dist. Ohio 1996 / May 1997**

Hog tie Suspect face down -- No No

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**Soller v. Moore, 84 F. 3d 964 - 1996 - Court of Appeals**

Off duty officer shot and killed DUI passenger. Does not matter what policy is for off duty involvement, only if officer used reasonable force. Officer won.

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**Martinez v. County of Los Angeles (1986) - 186 Cal. App.**

PCP subject with knife came at officers, they retreated all the way to supermarket then shot suspect when he was within 15 feet.

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**Cox v. Treadway 75f 30 230 (6th Cir 1996)**

"Heat of Battle Instruction"

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**Fuller v. Vines 9th Cir, 36F 2D (95)**

Pointing gun is not seizure under 4th Amendment if no arrest is made. Seizure only takes place if you physically take custody or the Suspect submits to you. If no arrest and only detention then no seizure.

## PHYSICAL SKILLS INSTRUCTOR POINTS

Effects of Stress - Decrease cognitive function --
Don't teach fine motor skills for stress situations
Fine Skills require 3-5000 repetitions to become automatic

Highest areas of litigation for law enforcement -- Use of Force & Driving

Policy language: Get rid of Necessary and replace with Reasonable.

Report Documentation: How call received, how many units, how far away, single or double units, are you uniformed or plain clothes, marked unit or unmarked, what did you see on arrival, verbal commands, S say or do, S body language, S actions, S resist, duration of resistance, did you attempt to de-escalate, S hand-cuffed, (double lock), S transported (where), drugs or alcohol, area or environment conditions, size of S, prior injuries to Officer, verbiage like "Tense, uncertain, and rapidly evolving"

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**McDonald v. Haskins, 966 F.2d 292, 293 (7th Cir.1992)**

The Court looks to "whether the officers' actions are `objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.

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**Sherrod v. Berry, 856 F.2d 802, 805 (7th Cir.1988)**

The court stressed that under the Fourth Amendment, the constitutionality of the officer's action was not judged with hindsight, but only by "an examination and weighing of the information [he] possessed immediately prior to and at the very moment he fired the fatal shot."

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**Carter v. Buscher, 763 F.Supp. 392, 394 (C.D.Ill. 1991)**

The court held that "pre-seizure conduct is not subject to Fourth Amendment scrutiny."

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**Greenidge v. Ruffin, 927 F.2d 789, 791-92 (4th Cir.1991)**

The court's focus should be on the circumstances at the moment force was used and on the fact that officers on the beat are not often afforded the luxury of armchair reflection.

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