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Excessive Force

COUNTY LAW UPDATE

by Mike Rainwater on 01/29/2001

A law enforcement officer's use of "excessive" force is unconstitutional. Force must be used to protect, not punish! *Monroe v. Pape*, 365 U.S. 167 (1961).

Objectively Reasonable? All claims that law enforcement officials have used excessive force -- deadly or not -- in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under the 14th Amendment's "rational basis" (substantive due process) standard. *Graham v. Connor*, 490 U.S. 386 (1989).

The test is *objective*, not *subjective*. The 4th 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. *Graham v. Connor*, 490 U.S. 386 (1989).

A Reasonable Officer ... on the Scene. The "reasonableness" of a particular use of force must be judged from the perspective of a *reasonable* officer on the scene, and its calculus embodies an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. In other words, the question of reasonableness will be viewed prospectively, "standing in the officer's shoes." *Graham v. Connor*, 490 U.S. 386 (1989).

Emergency Situation. If the officer is in an emergency situation requiring a split-second decision, the test of reasonableness will be whether the decision to use the force actually applied was a reasonable decision in that emergency situation requiring a split-second decision. *Graham v. Connor*, 490 U.S. 386 (1989).

Training and Protocol Followed? The issue of whether the force was "objectively" reasonable provides an opportunity to present expert witness opinion for the jury to consider. The Supreme Court said in *Graham v. Connor* that the "reasonableness" of a particular use of force "*must be judged from the perspective of a reasonable officer on the scene*," and its calculus embodies an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation." A reasonable officer acts in accord with applicable training and protocol.

A question for the jury! Whether the force used by the law enforcement official was unnecessary or unreasonable will be a question of fact for the jury to decide unless there are no material facts in dispute regarding whether the force used was *objectively* reasonable. The question for the jurors is whether or not the law enforcement officer used more force than necessary for a *reasonable officer* in the same circumstances in order to accomplish the lawful purpose intended. *Feemster v. Dehntjer*, 661 F.2d 87, 89 (8th Cir. 1981).