FBI LAW ENFORCEMENT BULLETIN

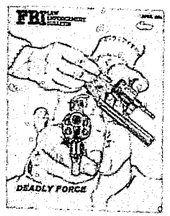
APRIL 1984

DEADLY FORCE

FBI LAW ENFORCEMENT BULLETIN

APRIL 1984, VOLUME 53, NUMBER 4

Contents



The Cover:
The use of deadly force is one of the most important issues facing the law enforcement profession today.

Federal Bureau of Investigation
United States Department of Justice
Washington, D.C. 20535

William H. Webster, Director

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget through June 6, 1988.

Published by the Office of Congressional and Public Affairs,
William M. Baker, *Assistant Director*

Editor—Thomas J. Deakin
Assistant Editor—Kathryn E. Sulewski
Art Director—Kevin J. Mulholland
Writer/Editor—Karen McCarron
Production Manager—Jeffrey L. Summers
Reprints—Marlethia S. Black

ISSN 0014-5688 USPS 383-310

Director's Message

Perhaps no subject in the world of law enforcement is more charged with emotion than is the use of deadly force. No police officer authorized to carry a side arm wants to use it against another human being. The hard reality is that under some circumstances the use of deadly force is necessary and is a part of a law enforcement officer's responsibility. Drawing that difficult line successfully is a combination of clearly defined policy, training, and discipline.

This issue of the FBI Law Enforcement Bulletin is devoted to this single subject, deadly force. It is, ultimately, the most important issue facing the profession, for no court can correct a deadly mistake once it has been made.

The current status of the law on deadly force and how it developed from the English common law are considered in the Legal Digest. This area of law is in a state of flux, as the courts consider various issues, including the adequacy of firearms training and the supervision of their use.

An article by Professor Shenkman of the University of Florida explains how one Florida department approached this issue and the author makes several cogent points. He notes that a "department's policy concerning the use of deadly force" must be clearly understood by all and personnel must be provided with the skill to carry out the department's policy.

Professor Shenkman, like the Federal Bureau of Investigation, argues for police firearms advanced training with service ammunition. Wadcutters should be restricted to beginning firearms training. In author Shenkman's words, "We should not allow officers with marginal firearms ability to have the power of life or death."

The Firearms Training Unit at the FBI Academy has outlined the current FBI firearms training program in an article in this issue. Adoption of the Weaver stance in 1981, additional judgmental/reactive shooting training, and adoption of the double tap (two quick shots) to increase the stopping power of the service round without the added recoil of the magnum are recent changes in FBI training. These could be, or have been, adopted by police departments with the assistance of the more than 900 FBI firearms instructors around the country.

An article from Alaska shows that a pistol competition by the State troopers with the Royal Canadian Mounted Police was inspired by the RCMP to foster informal liaison at the working level of both organizations, a side benefit of this increased firearms training. A Champaign, Ill., police sergeant suggests some guidelines for the selection of countersnipers within special weapons and tactics units.

Ideas for improving firearms training, for the protection of your citizens and officers, are readily available from a myriad of competent authorities—the police administrator needs to consider the department's policies and practices and then choose, but choose he must.

I think it is regrettable that as this issue goes to press, there is still no nonlethal alternative weapon available to police officers on the street which will permit them to stop a fleeing suspect without running the risk of causing his death in less than life-threatening situations. Surely a Nation that can put a man on the moon can provide this additional weaponry to police officers. Our citizens are entitled to this alternative choice and so are we.

William H. Webster
Director
April 1, 1984

94043

Deadly Force
The Common Law and the Constitution

"In the absence of a clearly defined constitutional standard, the rules governing the use of deadly force by police have been determined by the State themselves, either by statute or by State court decision."

By
JOHN C. HALL
Special Agent
FBI Academy
Legal Counsel Division
Federal Bureau of Investigation
Quantico, Va.

Law enforcement officers of other than Federal jurisdiction who are interested in any legal issue discussed in this article should consult their legal adviser. Some police procedures ruled permissible under Federal constitutional law are of questionable legality under State law or are not permitted at all.

The past 2 decades have witnessed a veritable revolution in State and local law enforcement in the United States, brought about largely by successful challenges to law enforcement activities in Federal courts alleging violations of the Federal Constitution. Undoubtedly, the two most significant factors in this revolution—indeed, the two factors without which it would not have occurred—have been the U.S. Supreme Court decisions in *Mapp* v. *Ohio* [1] and *Monroe* v. *Pape*,[2] both decided in 1961. Both cases fashioned remedies to violations of constitutional rights by State and local police: The first by requiring suppression of unconstitutionally seized evidence at State criminal trials; the second by easing the way for civil suits under a Federal statute, Title 42 U.S. § 1983, against State and local officials for violations of Federal rights.

The result has been the development of a large and sometimes complex body of case law governing virtually every aspect of law enforcement activity. Ironically, the one aspect of police power which has been the least affected by these developments is the use of deadly force to effect an arrest. But this is changing. This article will examine some recent developments in the law of deadly force.

The Prevailing Rule—The Common Law

In the absence of a clearly defined constitutional standard, the rules governing the use of deadly force by police have been determined by the States themselves, either by statute or by State court decision. Accordingly, most of the States have continued to follow the English common law [3] rule which existed at the time of this country's founding.

The famous 18th century English jurist, William Blackstone, whose Commentaries on the English Common Law had a profound impact on the early development of law in America, defined the authority for the use of deadly force to effect an arrest as follows:

"1. Where an officer, in the execution of his office, either in a civil or criminal case, kills a person that assaults and resists him.
2. If an officer, or any private person, attempts to take a man charged with felony, and is resisted; and, in the endeavor to take him, kills him." [4]

Under the common law rule, the officer must believe in the *necessity* for the use of deadly force. Blackstone emphasized:

". . . in all these cases, there must be an apparent necessity on the officer's side, viz, that the party could not be arrested . . . unless such homicide were committed:

Special Agent Hall

otherwise, without such absolute necessity, it is not justifiable." [5]

Thus an officer, under the common law rule, could use deadly force when he reasonably believed that he was justified in arresting an individual for a felony, any felony, so long as the officer also reasonably believed that such force was necessary to protect himself or prevent escape. Because of the absence of distinction as to the nature of the felony involved, this rule is generally referred to as the "fleeing felon" rule.

The rationale behind the fleeing felon rule was relatively simple: Inasmuch as felonies in 18th century England were capital crimes—i.e., punishable by death—and organized police forces necessary to locate and apprehend criminals did not exist, the killing of a fleeing felon—whose life was already forfeit under the law—was considered not only justified, but necessary.

Those who challenge the common law rule today are quick to point out that the rationale for the rule is gone; that while all felonies were capital crimes in the 18th century, relatively few are in the 20th. Moreover, a criminal who evades capture today may be sought and captured another day by modern, organized police forces.

Although these arguments have been stated often, and even though some States have adopted modifications of, or alternatives to, the fleeing felon rule, there has been little success in challenging the rule in the remaining jurisdictions. To understand why, it is necessary to review briefly the procedures by which such challenges ordinarily are made.

The Federal Constitutional Challenge—Suits Against the Officer

Prior to the Supreme Court's 1961 decision in *Monroe* v. *Pape*,[6] challenges to a police officer's use of deadly force were generally limited to criminal or civil actions in State court. Moreover, in such instances, the inquiry was limited to the reasonableness of the officer's actions under the circumstances of the case, as measured by State law. Two questions were appropriate: (1) Was the officer reasonable in believing that the individual to be apprehended was a felon? and (2) was the officer reasonable in concluding that deadly force was necessary to effect the apprehension? No effective means existed to challenge the validity of the State law itself. Although a Federal civil rights statute, Title 42 U.S.C. § 1983, provided since 1871 that suits could be filed against every person who, acting under color of law, deprived another person of federally protected rights,[7] this statute was construed to require that an injured party first exhaust State remedies prior to seeking Federal relief.

In *Monroe* v. *Pape*, the Supreme Court held that the Federal remedy was available totally independent of any State remedy,[8] thus broadening the scope for challenges in Federal court to State and local police practices. However, three factors diminished § 1983 as a vehicle by which a State's deadly force law could be challenged. First, the 11th amendment to the U.S. Constitution bars suit against a State without that State's consent.[9] Second, in its decision of *Monroe* v. *Pape*, the Supreme Court

"Whatever departmental policies are developed, reasonable care should be taken to provide adequate training and supervision to assure proper implementation."

held that the term "person" as used in § 1983 was not intended to encompass a municipal corporation,[10] thus limiting the scope of § 1983 to suits against individual government officials. And third, the Court held in a subsequent case, *Pierson* v. *Ray,*[11] that a police officer sued under § 1983 enjoys a qualified immunity from such suits if it can be established that the officer was acting in "good faith" with a reasonable belief in the lawfulness of his actions.

Taken together, these three factors meant that neither the State which enacted a fleeing felon statute nor the municipality which hired and trained the police officer who applied it could be sued under § 1983, and as long as the officer was acting within the parameters of the State law, he was effectively shielded by the good faith defense from liability. Efforts to reach the merits of the fleeing felon rule were thus thwarted.

A case in point is *Mattis* v. *Schnarr,*[12] in which a Missouri police officer shot and killed an 18-year-old fleeing burglary suspect pursuant to a State statute tracking the common law rule. The deceased's father filed a suit in Federal court under § 1983 alleging violations of the 4th amendment protection against unreasonable searches and seizures, the 8th amendment guarantee against cruel and unusual punishment, and the 14th amendment due process and equal protection clauses. The trial court initially dismissed the suit on the grounds that the plaintiff did not have standing to sue, and further, that the officers involved enjoyed the defenses of good faith and probable cause. The Federal appellate court reversed and remanded the case for further consideration, holding that the plaintiff had standing, but agreeing with the lower court that the officers had available to them the defenses of good faith and probable cause.[13]

On remand, the trial court again dismissed the case and upheld the constitutionality of the Missouri statute.[14] On the second appeal to the appellate court, it was held that the State statute violated the "fundamental right to life" as set forth in the 14th amendment due process clause of the Constitution.[15]

However, the U.S. Supreme Court set aside the appellate court's decision on the procedural ground that because the officers (defendants) were not liable due to the good faith defense, there was no "case or controversy" as required by the Constitution before a judgment can issue.[16] The effect of the decision was to suggest that as long as the only viable defendant (the officer) is shielded by the good faith defense, the chances of Federal courts reaching the merits, i.e., constitutionality, of the fleeing felon rule were remote. Two subsequent Supreme Court decisions, however, changed the picture dramatically.

The New Constitutional Challenge—Suits Against Municipalities

In 1978 the Supreme Court decided *Monell* v. *Department of Social Services,*[17] which reversed the holding of *Monroe* v. *Pape* and held that municipalities could be sued in appropriate circumstances under § 1983. The Court emphasized that municipal liability cannot rest on the doctrine of *respondent superior,* in other words, simply because the municipality employs a wrongdoer. The Court stated:

> ". . . a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983." [18]

In 1980, in *Owen* v. *City of Independence,*[19] the Court held that government entities sued under § 1983 could not assert a good faith defense. These two decisions paved the way for a constitutional challenge to the fleeing felon rule.

In *Garner* v. *Memphis Police Department,*[20] the U.S. Circuit Court of Appeals for the Sixth Circuit again considered the constitutionality of a fleeing felon statute. On the night of October 3, 1974, a 15-year-old was shot and killed by a Memphis, Tenn., police officer who was attempting to apprehend him for burglary. The officer acted in accordance with Tennessee's fleeing felon statute, as well as departmental training. In 1976, the decedent's father filed suit under 42 U.S.C. § 1983 against the city of Memphis, as well as the officer who fired the shot and his superiors, alleging violations of the 4th, 8th, and 14th amendments to the Constitution. In accordance with *Monroe* v. *Pape*—which at that time had not been overruled—the district court dismissed the action against the city on the grounds that a municipality is not a "person" under § 1983. The court further held that the officer and his superiors acted in good faith reliance on the Tennessee fleeing felon statute. Before the first appeal was taken to the Federal appellate court, the Supreme Court had decided *Monell,* holding that municipalities could be sued under § 1983. Accordingly, the appellate court reversed and remanded the case, instructing the district court to consider (1) whether a municipality was entitled to a good faith defense when sued under § 1983; (2) whether the municipality's use of the Tennessee fleeing felon law was constitutionally permissible under the 4th, 6th, 8th, and 14th amendments; (3) whether the municipality's use of hollow point bullets was constitutionally permissible; and (4) if the municipality's conduct in any of these respects was unconstitutional, did it flow from a "policy or custom" for which the city was liable under *Monell.*

On remand, the district court concluded that the State statute was not unconstitutional on its face, nor as applied in this case. Because the court concluded that the statute was not unconstitutional, it left open the question of whether the municipality could claim a good faith defense. With respect to that question, the court suggested that while the then recently decided case of *Owen* v. *City of Independence* prevented the city from claiming immunity based on the good faith of its agent, the city might yet claim immunity on the basis of good faith reliance on the Tennessee law as interpreted by the Federal and State courts.

As to the latter point, the district court was undoubtedly relying, in part, on the sixth circuit's 1977 decision in *Wiley* v. *Memphis Police Department,*[21] which had praised the same Tennessee statute. In the *Wiley* case, the appellate court criticized the original decision of the eighth circuit in *Mattis* v. *Schnarr,*[22] which had declared an identical Missouri statute unconstitutional. The court stated:

> "The Eighth Circuit is the only Court to our knowledge which has ever held that such a statute, which is so necessary even to elementary law enforcement, is unconstitutional. It extends to the felon unwarranted protection, at the expense of the unprotected public." [23]

Nonetheless, in the second appeal of the *Garner* case in June 1983, the sixth circuit held that the Tennessee fleeing felon rule violated the fourth amendment to the U.S. Constitution by authorizing the use of excessive force by police officers to effect the arrest of a nondangerous felony suspect fleeing from a nonviolent crime. After tracing the history and rationale of the common law rule, the court stated:

> "A state statute or rule that makes no distinction based on the type of offense or the risk of danger to the community is inherently suspect because it permits an unnecessarily severe and excessive police response that is out of proportion to the danger to the community." [24]

In addition to the 4th amendment violation, the court further concluded that the statute violated the due process clause of the 14th amendment which prohibits any State from depriving "any person of life, liberty, or property, without due process of law." In this context the court held:

> "The right to life, expressly protected by the Constitution, has been recognized repeatedly by the Supreme Court as fundamental in the due process and equal protection contexts. . . . When a fundamental right is involved, due process requires a state to justify any action affecting that right by demonstrating a compelling state interest. . . .
> Where, as here, human life is the right at stake, a statute that sweeps as broadly as this one violates due process of law and must be struck down." [25]

The court distinguished its earlier decisions which had sustained the constitutionality of the statute [26] by pointing out that earlier challenges to the statute had been brought under the "cruel and unusual punishment" clause of the 8th amendment or under the 14th amendment as a matter of substantive due process, and not—as in *Garner*—under the 4th amendment.

Having ruled the statute unconstitutional, the court went on to reject the district court's application of the good faith defense and held that pursuant to the Supreme Court's decision in *Owen,* there is no good faith immunity for municipalities when sued under § 1983.[27] The court explained:

> "A rule imposing liability despite good faith reliance insures that if governmental officials err, they will do so on the side of protecting constitutional rights. It also serves

". . . the use of deadly force by the police against fleeing suspects will continue to be a highly sensitive and closely scrutinized issue."

the desirable goal of spreading the cost of unconstitutional governmental conduct among the taxpayers who are ultimately responsible for it." [28]

The significance of the *Garner* decision is difficult to measure. It is of interest to note that as of the time of this writing, the *Garner* decision has been appealed to the U.S. Supreme Court, pursuant to Title 28 U.S.C. § 1254(2) which authorizes an appeal of any decision by a Federal court which declares a State statute unconstitutional.

Alternatives to the Common Law Rule

Without attempting to speculate as to what the Supreme Court will do, it may be useful to consider some of the alternatives to the common law fleeing felon rule.

There are basically two different statutory approaches taken by those States which have rejected the common law rule. One, which has been adopted by 12 States,[29] is best described as the "modified" common law rule. Essentially, this rule would abandon the "any felony" aspect of the common law and restrict the use of deadly force to those felonies defined within the respective State statutes as "dangerous" or "forcible" felonies or to situations where there is some threat to the officer or other if the apprehension is not made promptly.

Presumably these modified statutes would meet the constitutional test established by *Garner* only if the felonies defined as forcible or dangerous are "violent" or if the officers attempting to arrest a suspect "have probable cause to believe that he is armed or that he will endanger the physical safety of others if not captured." [30]

A second alternative, and the one favored by the court in *Garner*, is found in the Model Penal Code as formulated by the American Law Institute in 1962.[31] This rule would permit the use of deadly force against fleeing felons under the following conditions: (1) The arrest is for a felony; *and* (2) the person effecting the arrest is a peace officer or is assisting a peace officer; *and* (3) the actor believes such force creates no substantial risk of injury to innocent persons; *and* (4) the actor believes that the felony included the use or threatened use of deadly force or there is a substantial risk that the suspect will cause death or serious bodily harm if apprehension is delayed. To date, seven States have adopted the Model Penal Code standard.[32]

Apart from statutory modification of deadly force rules, consideration may also be given by police administrators to adoption of departmental policies which are more restrictive and provide more specific guidance to officers than the common law standard.

Although there is limited case law—specifically in California—which holds that a more restrictive departmental policy can be used in a lawsuit as a measure of an officer's conduct,[33] there are also decisions to the contrary.[34] Clearly, the better rule is to allow—indeed, to encourage—police administrators to manage their departments by developing and enforcing reasonable rules of conduct for their employees. To allow the use of such internal policies to heighten the risk of liability in a civil suit will have the effect of penalizing, and thus discouraging, such initiatives.

The dilemma for the police administrator is that on the one hand, reliance upon a State statute may not provide a shield for a municipality in a § 1983 suit.[35] On the other hand, crafting a policy which is more restrictive than the State statute may create the additional risk described above. Furthermore, there is, as yet, little guidance from the courts as to which standard—other than the common law rule—is most likely to withstand constitutional scrutiny. As one Federal appellate court noted, ". . . the area in which we are treading is one still characterized by shifting sands and obscured pathways." [36] Whatever departmental policies are developed, it is certain that reasonable care should be taken to provide adequate training and supervision to assure proper implementation.

Training and Supervision—A Word of Caution

One of the frequently recurring issues in recent § 1983 suits growing out of the use of deadly force is the allegation that the officer's improper use of deadly force was the result of inadequate training and/or supervision.[37] In order to establish a cause of action against a supervisor for injuries caused by a subordinate, the courts have held that there must be "a direct causal link between the acts of individual officers and the [supervisor] . . . . The courts look for some proof that a defendant has a culpable state of mind—that the action or failure to act was to some degree deliberate rather than inadvertent." [38] Thus, to establish the liability of a supervisor in a § 1983 lawsuit, the plaintiff must show more than mere negligence. Various terms used by the courts to describe the necessary level of culpability range from "gross negligence" to "recklessness" to an apparent requirement of intent.[39] A suit against the supervisor under § 1983 would, of course, have to overcome the good faith defense generally available to the individual defendant.

Similarly, to prevail against a municipality under § 1983, the plaintiff must show that the alleged failure to adequately train and/or supervise was so pervasive as to be a policy or custom of the municipality. As one court described the standard, "a mere failure by the county to supervise its employees would not be sufficient to hold it liable under § 1983. . . . However, the county could be held liable if the failure to supervise or the lack of a proper training program was so severe as to reach the level of 'gross negligence' or 'deliberate indifference' to the deprivation of plaintiff's constitutional rights." [40]

Conclusion

The high premium placed on human life by our society ensures that the use of deadly force by the police against fleeing suspects will continue to be a highly sensitive and closely scrutinized issue. The recent developments in the law discussed in this article clearly indicate two points: First, it is now a question of constitutional importance, subject to challenge in Federal courts; and second, the focus on the challenge has shifted from the officer on the street to the upper echelons of local government and police administration. These developments are most likely to compel change in an area of the law which has remained remarkably intact for a long time.

FBI

Footnotes

[1] 367 U.S. 643 (1961).
[2] 365 U.S. 167 (1961).
[3] According to Matulia, *A Balance of Forces*, International Association of Chiefs of Police (1981), the States with the statutory rule are: Alaska, Stat. § 11.15.090 (1970); Arizona, Rev. Stat. § 13.461 (1972); California, Penal Code § 196 (1970); Colorado, Rev. Stat. 18-1-707(2)(b) (1973); Connecticut, Gen. Stat. § 53a-22(c)(2) (1975); Florida, Stat. Ann. § 776.05 (1975); Idaho, Code § 19-610 (1979); Indiana, Code § 35-1-19-3 (1975); Iowa, Code § 755.8 (1971); Kansas, Stat. § 21-3215(1) (1974); Minnesota, Stat. § 609.065(3) (1974); Mississippi, Code Ann. § 97-3-15 (1972); Missouri, Ann. Stat. 563.046(3)(2) (1979); Montana, Rev. Code Ann. § 94-2512 (1973); Nevada, Rev. Stat. § 200.140(3)(b) (1973); New Hampshire, Rev. Stat. Ann. § 627:5(11)(B)(1) (1973); New Mexico, Stat. Ann. § 30-2-6(c) (1978); Oklahoma, Stat. Ann. Tit. 21 § 732 (1958); Rhode Island, Gen. Laws § 12-7-9 (1969); South Dakota, Codified Laws Ann. § 22-16-32 (1967); Tennessee, Code Ann. § 40-808 (1956); Washington, Rev. Code Ann. § 9.48.160 (1961), and § 9A.16.040(3) (1975); Wisconsin, Stat. § 939.45(4) (1973). Other jurisdictions have adopted the common law rule through court decisions. For example, *Berry* v. *Hamman*, 125 S.E. 2d 85 (Va. 1962); *Bumgarner* v. *Sims*, 79 S.E. 2d 277 (W. Va., 1953); *Union Indemnity Co.* v. *Webster*, 118 So. 794 (Ala., 1928); *Baltimore and Ohio R. Co.* v. *Strube*, 73 A. 697 (Md. 1909).
[4] 4 W. Blackstone, Commentaries 203 (Beacon Press, 1962).
[5] *Id.* at 203-204.
[6] *Supra* note 2.
[7] Title 42 U.S.C. § 1983 provides:
"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, 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 laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."
[8] 365 U.S. at 183.
[9] *See, e.g., Edelman* v. *Jordan*, 415 U.S. 651 (1974).
[10] 365 U.S. at 191.
[11] *Pierson* v. *Ray*, 386 U.S. 547 (1967).
[12] 547 F.2d 1007 (8th Cir. 1976).
[13] *Mattis* v. *Schnarr*, 502 F.2d 588 (8th Cir. 1974).
[14] *Mattis* v. *Schnarr*, 404 F.Supp. 643 (E.D. Mo. 1975).
[15] *Supra* note 12, at 1017.
[16] *Ashcroft* v. *Mattis*, 431 U.S. 171 (1977). It should be noted that the Supreme Court decision did not reach the merits of the appellate court's ruling on the fleeing felon rule. In a subsequent case, the appellate court took a second opportunity to express its view on the fleeing felon rule by suggesting that the 4th, 5th, 6th, 8th, and 14th amendments "could be plausibly construed to forbid the use of deadly force on a fleeing felon who has not used violence in the commission of a felony and who poses no threat to anyone." *Landrum* v. *Moats*, 576 F.2d 1320, at 1324 (6th Cir. 1978).
[17] 436 U.S. 658 (1978).
[18] *Id.* at 694.
[19] 445 U.S. 622 (1980).
[20] 710 F.2d 240 (6th Cir. 1983).
[21] *Wiley* v. *Memphis Police Department*, 548 F.2d 1241 (6th Cir. 1977), *cert. denied*, 434 U.S. 822 (1977).
[22] *Supra* note 12.
[23] *Supra* note 21, at 1252.
[24] *Supra* note 20, at 244.
[25] *Id.* at 246 and 247.
[26] *Wiley* v. *Memphis Police Department*, *supra* note 21; *Beech* v. *Melancon*, 465 F.2d 425 (6th Cir. 1972).
[27] *Supra* note 20, at 248.
[28] *Id.*
[29] Arkansas, Stat. Ann § 41-510(2)(a) (1977); Georgia, Code § 26-902 (1972); Illinois, Rev. Stat. Ch. 38 § 7-5(a)(2) (1973); New Jersey, Stat. Ann. § 2C:3-7(b)(2)(c)-(d) (1979); New York, Penal Law § 35.30(1)(a)(ii) (1975); North Dakota, Cent. Code § 12.1-05-07(2)(d) (1975); Oregon, Rev. Stat. § 161.239 (1973); Pennsylvania, Stat. Tit. 18 § 508(a)(1)(ii) (1973); Utah, Code Ann. § 76-2-404(2)(b) (1977); Louisiana, Rev. Stat. § 14.20 (1950); South Carolina, Code § 17-252 (1962); and Vermont, Stat. Ann. Tit. 13 § 2305 (1974).
[30] *Supra* note 20, at 246. *See also Haislah* v. *Walton*, 673 F.2d 208 (6th Cir. 1982) in which the court stated:
"Police employment of gunfire to effect the capture of a citizen who is fleeing from the law can, of course, be justified . . . to prevent escape of a person known to the officer to have committed or be in the process of committing a felony involving violence. It is justifiable, also, on self-defense grounds. . . ." (at 215)
[31] *See* Model Penal Code § 3.07(2)(b) (Proposed Official Draft, 1962).
[32] Delaware, Code Tit. 11 § 467(c) (1974); Hawaii, Rev. Stat. Tit. 37 § 703-307(3) (1967); Kentucky, Rev. Stat. § 503.090(2) (1975); Maine, Rev. Stat. Tit. 17A § 107-2(B) (1975); Nebraska, Rev. Stat. § 28839(3) (1975); North Carolina, Gen. Stat. § 15A-401(d)(2)(b) (1975); Texas, Penal Code Ann. Tit. 2 § 9.51(c) (1974).
[33] *See Guyton* v. *Phillips*, 532 F.Supp. 1154 (N.D. Cal. 1981); *Peterson* v. *City of Long Beach*, 594 P.2d 477 (Cal. 1977).
[34] *See City of St. Petersburg* v. *Reed*, 330 So.2d 256 (Fla. Dist. Ct. App. 1976).
[35] *See, e.g., Garner* v. *Memphis Police Department*, *supra* note 20 (in which the State statute was declared unconstitutional); *see also Jacobs* v. *City of Wichita*, 531 F.Supp. 129 (D. Kan. 1982) (in which the court did not declare the State statute unconstitutional, but effectively reached same result by declining to rely upon the State statute as a standard of conduct in a § 1983 action).
[36] *Jones* v. *Marshall*, 528 F.2d 132, 141 (2d Cir. 1975).
[37] *See, e.g., Hays* v. *Jefferson County, Ky.*, 668 F.2d 869 (6th Cir. 1982); *Owens* v. *Haas*, 601 F.2d 1242 (2d Cir. 1979); *Sager* v. *City of Woodland Park*, 543 F.Supp 282 (D. Col. 1982); *Leite* v. *City of Providence*, 463 F.Supp. 585 (D. R.I. 1978).
[38] *Hays* v. *Jefferson County, Ky.*, *supra* note 37, at 872-873.
[39] *Id.*
[40] *Owens* v. *Haas*, 601 F.2d 1242 (2d Cir. 1979); *see also Leite* v. *City of Providence*, 463 F.Supp. 585 (D. R.I. 1978); *Popow* v. *City of Margate*, 476 F.Supp. 1237 (D. N.J. 1978). For an illustration of the extent to which liability for training may be extended, *see Sager* v. *City of Woodland Park*, 543 F.Supp. 282 (D. Col. 1982).

END