

Defending Section 1983 Excessive Force Claims

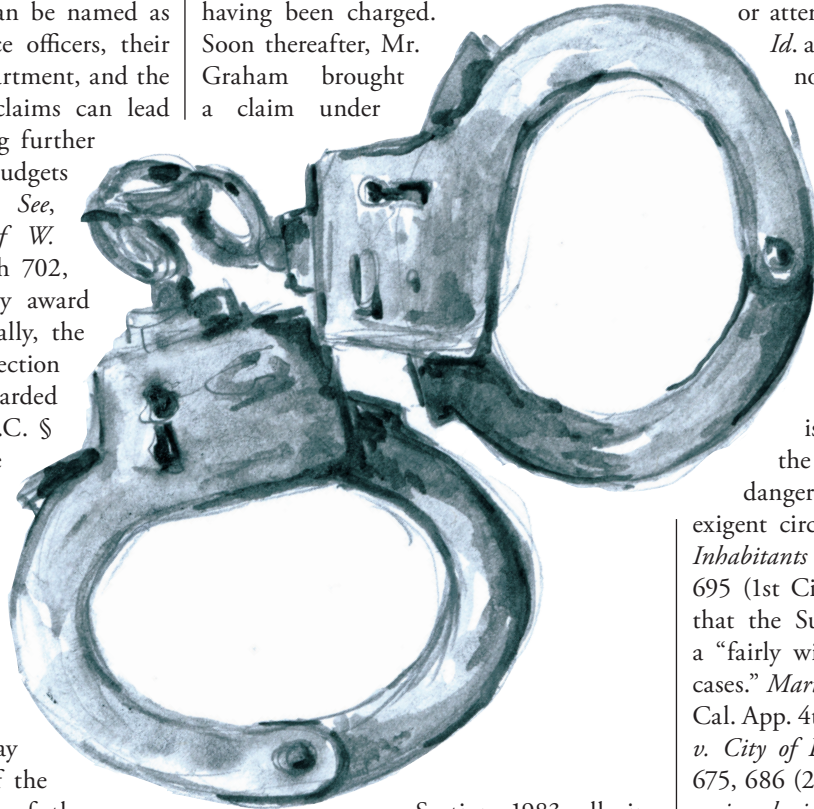
by DAVID L. MARTIN

When claims of excessive force are alleged against peace officers and their employers, they are typically brought under Section 1983 of the United States Code. This section provides that any officer who deprives a citizen of “any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law.” 42 U.S.C. § 1983 (1996). These claims are often costly to litigate because multiple parties can be named as defendants including police officers, their supervisors, the police department, and the local municipality. Such claims can lead to large judgments, placing further pressure on municipal budgets that are already strained. See, e.g., *Mendoza v. City of W. Covina*, 206 Cal. App. 4th 702, 710 (2012) (affirming jury award of \$1.5 million). Additionally, the prevailing party in a Section 1983 lawsuit can be awarded attorneys’ fees. See 42 U.S.C. § 1988 (2000). This can be one of the driving forces in such cases. Moreover, interlocutory appeals are permitted when an officer is denied qualified immunity after filing a summary judgment motion. Such appeals can lead to significant delay and increase the length of the overall litigation. Because of the substantial costs involved in litigating claims of excessive force, defendants in such cases should consider filing demurrers, motions to strike, and motions for summary judgment at an early stage of the litigation. A successful motion can put an end to costly excessive force claims.

The Fourth Amendment and Reasonable Force

The Fourth Amendment protects citizens

against unreasonable searches and seizures by federal and state governments. See U.S. Const. amends. IV & XIV. The seminal Supreme Court case that examined the Fourth Amendment in the context of excessive force is *Graham v. Connor*, 490 U.S. 386 (1989). This case involved the use of force against Dethorne Graham during an investigatory stop. Mr. Graham sustained a broken foot, cuts on his wrist, and a bruised forehead during the encounter. He was later released without having been charged. Soon thereafter, Mr. Graham brought a claim under



Section 1983 alleging that excessive force had been used against him. The Supreme Court held that “all claims that law enforcement officers have used excessive force in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analyzed under the Fourth Amendment and its ‘reasonableness’ standard.” *Id.* at 395.

To determine the reasonableness of a seizure, the court is required to balance the nature and quality of the intrusion on the

individual’s Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion. *Id.* at 396. The reasonableness of a seizure depends not just on when the seizure is made, but also on how it is carried out. *Id.* at 395. The reasonableness standard requires careful attention to the facts of the particular case, including the severity of the crime at issue, whether the suspect posed an immediate threat to the safety of the officers or others, and whether he or she actively resisted arrest or attempted to evade arrest by flight.

Id. at 396. The standard of analysis is not subjective. Rather, the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Id.* at 396–97.

Later courts have commented that the definition of reasonableness is “comparatively generous to the police in cases where potential danger, emergency conditions, or other exigent circumstances are present.” *Roy v. Inhabitants of City of Lewiston*, 42 F.3d 691, 695 (1st Cir. 1994). They have also noted that the Supreme Court afforded officers a “fairly wide zone of protection in close cases.” *Martinez v. County of Los Angeles*, 47 Cal. App. 4th 334, 344 (1996); see also *Lopez v. City of Los Angeles*, 196 Cal. App. 4th 675, 686 (2011), *reh’g denied* (July 1, 2011), *review denied* (Sept. 28, 2011).

California Follows the Federal Standard

California Penal Code Section 835a allows an arresting officer to use reasonable force to restrain a suspect: “[a]ny peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance.” *Id.* In the case of *Edson v.*

City of Anaheim, the California Court of Appeal held that, to prevail on a claim for battery, a plaintiff must establish that unreasonable force was used. 63 Cal. App. 4th 1269, 1273 (1998). The court discussed the federal “reasonableness” approach and adopted similar standards. The court noted the special nature of the police officer’s duty to protect the public from aggressive individuals. *Id.* The court also acknowledged 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. *Id.* Additionally, the court noted that plaintiffs sometimes assert both state and federal claims when complaining of excessive force. As a result, it is important to understand both the state and federal standards that are applicable.

Access to Police Officer Personnel Files

When allegations of excessive force are made, the plaintiffs will often request access to personnel files. These records sometimes contain complaints of misconduct and the improper use of force. Many of these complaints are meritless, but others are less so. In excessive force cases, the plaintiffs routinely ask to review the officer’s records in hopes of discovering such information. However, the officer’s personal information is afforded protection under the California Penal Code. Section 832.7 states that officer personnel records and the information contained therein are confidential and shall not be disclosed in any criminal or civil proceeding except pursuant to Evidence Code § 1043, *et seq.* Cal. Pen. Code § 832.7 (West 2004). Section 1043 requires the plaintiffs to submit a written motion accompanied with affidavits demonstrating good cause. The plaintiffs bear the burden of demonstrating that the information sought is materially related to the subject matter of the litigation. Cal. Evid. Code § 1043 (West 2003).

The California Supreme Court case of *Copley Press v. Superior Court* expanded the protections afforded to peace officers. 39 Cal. 4th 1272 (2006). In *Copley*, the Supreme Court held that the records of the San Diego County Civil Service Commission relating to a deputy sheriff’s administrative appeal of a disciplinary matter were protected from disclosure under California Penal Code Section 832.7. *Id.* at 1297. As a result of this decision, police officers who are being investigated for allegations of excessive force

need not fear that internal information will be made available to the plaintiffs.

Lethal Force: A Last Resort

Claims of excessive force are sometimes brought by relatives of individuals who died as a result of police conduct. The Supreme Court decision of *Tennessee v. Garner* is the seminal case regarding the use of deadly force in the context of the Fourth Amendment. 471 U.S. 1 (1985). *Garner* involved the shooting death of an unarmed man while he fled a home he was believed to have robbed. The police officer testified that the unarmed victim would have escaped if the officer had not fired the fatal shot. The Court applied the Fourth Amendment reasonableness test, balancing the nature of the invasion of the victim’s rights against the importance of the government’s interest.

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The Court observed that, “[t]he intrusiveness of a seizure by means of deadly force is unmatched.” *Id.* at 9. The deprivation of an individual’s life is the most extreme measure that the state can take against a citizen. The defense argued that if the police were unable to readily use deadly force and make convincing threats thereof, suspects would be more likely to flee. The Court did not find this argument persuasive, noting that it would not be better for all felony suspects to die rather than to escape. *Id.* at 11. The Court then stated what would become the cornerstone of jurisprudence in this area, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force.” *Id.* The Court elaborated that if the suspect threatens the officer with a weapon, or has committed a violent crime, “deadly force can be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.* at 11–12.

The *Garner* case was examined by the 2007 Supreme Court decision of *Scott v. Harris*, 550 U.S. 372 (2007). In that case, officers responded to a high-speed car chase by forcing the fleeing suspect off the road in a manner that put his life in danger. The Court clarified that “*Garner* did not establish a magical on/off switch that triggers rigid preconditions whenever an officer’s actions constitute deadly force.” *Id.* at 382. Rather, the *Garner* analysis was “simply an application of the Fourth Amendment’s ‘reasonableness’ test to the use of a particular type of force in a particular situation.” *Id.* The Court also stated that *Garner* did not create a bright line rule, but was rather an instructive application of the balancing test necessary to determine reasonableness under the Fourth Amendment. *Id.* at 382–83. Additionally, the Court explained that “in the end we must still sash our way through the fact-bound morass of ‘reasonableness.’” *Id.* at 383.

Conclusion

In sum, excessive force claims are typically analyzed under the Fourth Amendment reasonableness test. On a practical level, excessive force claims are fact-intensive and frequently involve significant discovery in an effort to establish whether conduct was reasonable. The potential for an award of attorney’s fees increases the risk involved in such cases. Moreover, the possibility of interlocutory appeals increases the potential length of the litigation. Demurrers, motion to strike, and motions for summary judgment filed at an early stage of the litigation can put an end to costly excessive force claims.



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