**Police Snipers and the Use of Force Standard**

By Tim J. Cain

Because I have a small amount of training in police sniping (urban sniping, to be exact), I have been asked on occasion to research and talk about legal issues surrounding the police sniper. The single most troubling issue facing police snipers is the use of force standard that may be applied to them in court for civil liability purposes. I do not indict the Supreme Court standard from *Graham v. Connor*: objective reasonableness. On the contrary, my analysis for snipers follows that very standard.

Any LEO (not the sniper) who finds her/himself in a shooting situation must make three decisions. The first decision is *tactical*. Do I have a clear shot? Is anyone or anything in the direct line between me and my target? What is my backstop? Is any innocent person in the area of danger behind my target? What is my best option for bullet placement? What is the distance to my target and can I place an accurate shot from this distance? And many other issues.

The second decision is *legal*. Do I reasonably believe that deadly force is appropriate in these circumstances? Do I reasonably believe that my life or the life of another person is in jeopardy? Would another fully trained police officer in these same circumstances believe that deadly force is appropriate?

Unfortunately, in this post-Ferguson world of law enforcement, many LEOs feel compelled to make a third decision in a deadly force situation. Please note that I don’t believe the law requires this decision in any way, yet social pressures force many LEOs to add this to the decision-making paradigm. The third decision is *political*. Have I exhausted all other force options? Is there another tool/technique that might possibly, however unlikely, work? Should I simply surrender and face possible death? And the most telling factor driving the LEO’s decision on this third point is, how will my actions be viewed/judged by the media, society, and my friends and family?

My sympathies lie with every LEO forced by criminals to make these three decisions in three-quarters of a second. But it is grossly unfair to apply these three decisions to the sniper. In a typical situation calling for a sniper’s skills, perhaps a barricaded subject or a hostage situation, an extended period of time has passed. Multiple LEOs are on scene, a command center has been established, and several gold badges (command personnel) have arrived to take control of the case.

The second and third decisions are made by the gold badges. Upon arrival they immediately implement all other measures short of deadly force, including negotiation and less-lethal options. In fact, their protocol is precisely to exhaust all other possibilities for resolution of the situation. Moreover, they begin press briefings and information releases, all designed to impress upon the media and the public the criminality of the subject and the danger he presents to innocent people. They’re working to make decision number three palatable to the public. When the gold badges ‘green light’ the sniper, it is only after decisions two and three have been made by them.

Oftentimes the sniper is vilified by untrained pundits for delivering a shot when the recipient is not, at that very moment, presenting a threat to the life of a victim. The pundits complain that the use of deadly force is justified only to protect life and, if the recipient is not at that moment threatening the life of someone, then deadly force is not objectively reasonable. This position ignores the time/event line for a barricaded subject/hostage situation and the responsibility for making the three decisions.

Unlike the patrol officer who is thrust into a deadly force situation in a split second and must make all three decisions, the sniper is, and should only be, responsible for the first decision. The skills and training for snipers make them well suited to make the tactical decision when to take the shot and the physical circumstances surrounding that timing. Unless the sniper is ‘red lighted’ before the shot is delivered, he/she should not be responsible for decisions two and three.

Translated into the civil court liability scenario, a sniper should be held civilly liable only for those issues related to the tactical decision in the shooting situation, and the officer in charge of the operation must answer for the legal and political decisions. To decide otherwise would be fundamentally unfair.