Department of Homeland Security
Federal Law Enforcement Training Centers
Office of Chief Counsel
Legal Training Division

March 2015

The Federal Law Enforcement -Informer-

A MONTHLY LEGAL RESOURCE AND COMMENTARY FOR LAW ENFORCEMENT OFFICERS AND AGENTS

Welcome to this installment of *The Federal Law Enforcement Informer (The Informer).* The Legal Training Division of the Federal Law Enforcement Training Centers' Office of Chief Counsel is dedicated to providing law enforcement officers with quality, useful and timely United States Supreme Court and federal Circuit Courts of Appeals reviews, interesting developments in the law, and legal articles written to clarify or highlight various issues. The views expressed in these articles are the opinions of the author and do not necessarily reflect the views of the Federal Law Enforcement Training Centers. *The Informer* is researched and written by members of the Legal Division. All comments, suggestions, or questions regarding *The Informer* can be directed to the Editor at (912) 267-3429 or FLETC-LegalTrainingDivision@dhs.gov. You can join *The Informer* Mailing List, have *The Informer* delivered directly to you via e-mail, and view copies of the current and past editions and articles in *The Quarterly Review* and *The Informer* by visiting https://www.fletc.gov/legal-resources.

This edition of *The Informer* may be cited as 3 INFORMER 15.

Join The Informer E-mail Subscription List

It's easy! Click HERE to subscribe, change your e-mail address, or unsubscribe.

THIS IS A SECURE SERVICE. No one but the FLETC Legal Division will have access to your address, and you will receive mailings from no one except the FLETC Legal Division.

The Informer – March 2015

Article

♦

Case Summaries

United States Supreme Court

♦

Circuit Courts of Appeals

♦

2014 Case Digests: https://www.fletc.gov/supreme-court-cases

The case digests are compilations of The Informer case summaries from 2014. Arranged by subject matter, and U.S. Supreme Court – Circuit, the digests make great research tools. So, if you remember a case from 2014, but cannot find it, instead of looking through each back issue of The Informer, turn to the case digests. Case Digests from previous years are located on the website as well.

♦

FLETC Informer Webinar Series

1. Leadership Book Club Series – Seven Habits of Highly Effective People

1.5-hour webinar presented by John Besselman and Ken Anderson-FLETC Legal Division

This ninety-minute webinar will discuss the seven habits identified by renowned leadership author Stephen Covey. Covey's 1989 publication stands the test of time, and serves as a foundation describing how we can become better at what we do and who we are. Covey's principles are relevant to law enforcement officers of all experience levels.

Dates and Times: Friday March 27, 2015: 12:30 p.m. EDT
Monday March 30, 2015: 11:30 a.m. EDT

To join this webinar on either date: https://share.dhs.gov/ogc_sevenhabits/

♦

2. Law Enforcement Legal Refresher Training

2-hour webinar presented by Bruce-Alan Barnard, FLETC Legal Division

This two-hour block of instruction focuses on *Fourth* and *Fifth Amendment* law and is designed to meet the training requirements for state and federal law enforcement officers who have mandated two-hour legal refresher training requirements.

Dates and Times: Monday April 6, 2015: 2:30 p.m. EDT
Monday April 27, 2015: 2:30 p.m. EDT

To join this webinar on either date: https://share.dhs.gov/lgd0312

♦

To participate in a FLETC Informer Webinar:

1. Click on the appropriate link above to access the Homeland Security Information Network (HSIN).
2. If you have a HSIN account, enter with your login and password information.
3. If you do not have a HSIN account click on the button next to "Enter as a Guest."
4. Enter your name and click the "Enter" button.
5. You will now be in the meeting room and will be able to participate in the webinar.
6. Even though meeting rooms may be accessed before a webinar, there may be times when a meeting room is closed while an instructor is setting up the room.
7. Meeting rooms will be open and fully accessible at least one-hour before a scheduled webinar.
8. Training certificates will be provided at the conclusion of each webinar.

****

Qualified Immunity – The Contract between Law Enforcement and the Courts

Tim Miller
Attorney Advisor and Senior Instructor
Office of Chief Counsel / Legal Division
Federal Law Enforcement Training Centers
Glynco, Georgia

There is an implied contract between law enforcement and the federal courts that goes like this:

> We, the officers, promise to use constitutional force. And we, the courts, promise to put officers on notice about what is not. Absent a use of force that was clearly established as unconstitutional at the time the officer used it, the court will dismiss the case against the officer.[1]

Whether that contract was broken, and by whom, is one of the issues the Supreme Court will answer this year in *San Francisco v. Sheehan*.[2]

Teresa Sheehan lived in a group home for people suffering from mental illness. Sheehan was not taking her medications and her mental health had deteriorated to the point where she was a threat. "Get out of here!" Sheehan shouted after a social worker entered her room, "You don't have a warrant! I have a knife and I'll kill you if I have to." The social worker relayed the threat to the police, and two officers were dispatched to the home to take Sheehan into custody for 72-hours of observation and treatment. When the officers arrived, they knocked on the door to Sheehan's room, announced themselves as police, and entered, but received the same *greeting* as the social worker: "Get out!" Sheehan was not kidding, either. Sheehan indeed had a knife. Sheehan grabbed the knife, raised it over her head, and came forward repeating: "I'll kill you!" The officers backed out and closed the door behind them. With Sheehan inside her room, alone, and the officers outside in the relative safety of the hallway, they had options. One was to wait. Maybe back-up could safely talk her out of the room. The other was to go back inside and take Sheehan into custody themselves. The officers chose the second option. When the officers opened the door to Sheehan's room, she predictably charged at the officers with the knife. When pepper spray did not stop the threat, the officers shot Sheehan. Sheehan survived, miraculously, and this lawsuit ensued.

Sheehan sued the officers for violating her *Fourth Amendment* right to be free from an unreasonable search and seizure. Sheehan claimed the entry into her room, or *search* was unreasonable because the officers did not have a warrant, but even if the officers' entry was

---

[1] This is qualified immunity, the officer's defense to standing trial. An officer can get qualified immunity two ways. First, considering the facts in a light most favorable to the party suing the officer, do the facts alleged show the officer's conduct violated a constitutional right? If there is no constitutional violation, the case is dismissed. Assuming there was a violation of a constitutional right, the court must proceed to the second element. Was the right clearly established by law? If not, the case is dismissed. The court is not required to decide the elements in any particular order. The court may simply find the law was not clearly established, and save the potentially more difficult constitutional question for another day. For an officer to be denied qualified immunity, the court must find the force was not constitutional and the law was clearly established; in short, that the officer violated a clearly established constitutional right.

[2] The Supreme Court will answer two questions in *San Francisco v. Sheehan*, 743 F.3d 1211, cert. *granted*, 135 S.Ct. 702 (2014). However, only one is discussed here: Whether the officers were properly denied qualified immunity. The other is whether Ms. Sheehan can sue the City of San Francisco under the Americans with Disabilities Act.

reasonable, the force used to *seize* her was not. The officers requested qualified immunity - - the implied contract that the court will dismiss the case, absent a violation of a clearly established constitutional right.

As far as the search was concerned, the Ninth Circuit Court of Appeals held the officers lived up to their end of the bargain. Specifically, the court concluded exigent circumstances excused the requirement to first obtain a warrant before entering Sheehan's room. In addition, the court held the use of deadly force to seize Ms. Sheehan - - *viewed [at least] from the standpoint of the moment of the shooting* - - was also reasonable. However, the Court still refused to grant the officers qualified immunity and dismiss the case because of the "provocation" doctrine. In the Ninth Circuit, officers may be liable for an otherwise reasonable use of deadly force *if the officers intentionally or recklessly provoked the deadly confrontation*. Finding that the officers may have done exactly that, the Ninth Circuit would have sent the case to trial[3] - - *had the officers not appealed, and the Supreme Court granted certiorari.*

The Supreme Court will decide whether it was clearly established law that even where an exception to the warrant requirement applied, an entry into a residence could still be unreasonable under the *Fourth Amendment* by reason of the anticipated resistance of an armed and violent suspect within.[4] *Clearly established law* - - what does that mean? Sheehan's right not to be seized by gunfire must be sufficiently definite so that any reasonable officer would know, *that shooting Sheehan under the circumstances violates the Constitution!* Existing precedent must have placed the question beyond debate. Qualified immunity is designed to protect all but the plainly incompetent or those who knowingly violate the law, which is not exactly a noble standard to live up to, but has a purpose in situations where police officers are likely to face public ridicule for not acting, and personal liability when they do - - especially where the suspect is predictably, unpredictable.

Obviously, the Ninth Circuit believed the law was clear. The court stated, "If there is no pressing need to rush in, and every reason to expect that doing so would result in Sheehan's death or serious injury, then any reasonable officer would have known [*that violates the Constitution*]." As existing precedent, the court cited its 1994 decision *Alexander v. City and County of San Francisco*.[5] In *Alexander*, officers encountered a mentally disabled man who had barricaded himself inside his house after local health officials obtained a forcible-entry warrant to inspect his home for a sewage leak. After negotiations failed, officers ended a one-hour standoff by storming the house. When the man fired a gun at the officers, the officers

---

[3]There is a caveat that goes along with qualified immunity, a defense, which if granted, would deny Sheehan her day in court. The court must accept Sheehan's version of what happened. Considering the facts in the light most favorable to Sheehan, the Ninth Circuit believed the officers may have provoked the deadly encounter. Sheehan was in her room, alone; she did not pose an *immediate* threat to herself; the officers were outside in the safety of the hallway; and, the home had been evacuated so that Sheehan could not harm anyone else. The officers disagreed with some of those facts; however, the Ninth Circuit was required to accept them. A trial would require Sheehan to prove her allegations; however, by a preponderance of the evidence.

[4]To be clear, the issue is not whether the officers could enter Sheehan's room, or whether Sheehan posed an immediate threat of serious bodily harm when they did. It was how the officers carried out the search and seizure that caused the Ninth Circuit to deny the officers qualified immunity. *"What did you think was going to happen after you forced entry into her room?"* This would be the argument by Sheehan's lawyer at trial. Regardless of whether an emergency existed, officers are still required to carry out the search and seizure in a reasonable manner, without the use of excessive force. *Even still, is the law clear that an otherwise lawful entry is unlawful, if the person inside promises to attack?*

[5] 29 F.3d 1355 (9th Cir. 1994).

returned fire, killing him. In the subsequent lawsuit, the officers were denied qualified immunity. After comparing the facts in *Alexander* to the facts in *Sheehan*, the court believed the facts in *Sheehan* were more troubling. In *Alexander*, the court noted that before attempting entry, the officers waited for back-up and attempted negotiations with the man inside the house.

But *when* … can the officers go in*?* After two-hours, three hours? *Is the law really clear?* Making it less so is a circuit-split of opinion about when deadly force is not constitutionally excessive. Some circuits conduct the same two-part inquiry as the Ninth Circuit does.[6] Other circuits simply ask whether the force was reasonable at the moment the officer used it - - making attempts to negotiate, irrelevant.[7] Had *Sheehan* and *Alexander* occurred in a *reasonable-at-the-moment circuit*, their cases likely would have been dismissed.

The Supreme Court will hear oral arguments on March 23, 2015. *Predictions?* Two are certain to come true. First, cases like *Sheehan* will happen again. Research on mental health epidemiology shows that mental disorders are common throughout the United States, affecting tens of millions of people each year, and that, overall, only about half of those affected receive treatment.[8] Second, there will be *no winners* in *Sheehan*. There never are in a case where a concerned citizen calls the police for help, and the police are forced to shoot the person needing it. The Supreme Court will simply decide whether to dismiss the case. Winning will be left for training - - training that develops the file in the brain that recognizes when to act, and when to wait.

[6] See *Young v. City of Providence*, 404 F.3d 4, 22 (1st Cir. 2005) and *Sevier v. City of Lawrence*, 60 F.3d 695, 696 (10th Cir. 1995).

[7] See *Nimely v. City of New York*, 414 F.3d 381, 390 (2nd Cir. 2005)(an officer's decision to use deadly force depends on the officer's knowledge of the circumstances immediately prior to and at the moment) and *Elizondo v. Green*, 671 F.3d 506 (5th Cir. 2012).

[8] That National Institute of Mental Health: www.nimh.nih,gov

CASE SUMMARIES

United States Supreme Court

Yates v. United States, 2015 U.S. LEXIS 1503 (U.S. 2015)

While conducting an offshore inspection of a commercial fishing vessel in the Gulf of Mexico, a conservation officer found the ship's catch contained undersized red grouper, a violation of federal regulations. The officer directed Yates, the ship's captain, to keep the undersized fish separated from the rest of the catch until the ship returned to port. However, when the ship returned, four days later, the officer suspected the fish presented to him were not the same fish he had discovered during his initial inspection. The officer questioned a crew member who admitted that Yates had instructed him to throw the undersized fish overboard and replace them with fish from the rest of the catch.

The government charged Yates with destroying, concealing, and covering up undersized fish to impede a federal investigation in violation of *18 U.S.C. 1519*. *Section 1519* provides that a person may be fined or imprisoned for up to 20 years if he "knowingly alters, destroys, mutilates, conceals, covers up, falsifies or makes a false entry in any record, document, or *tangible object* with the intent to impede, obstruct, or influence" a federal investigation. *Section 1519* is part of the Sarbanes-Oxley Act, passed in 2002 after the Enron Corporation accounting scandal in which the government alleged that corporate files were destroyed when corporate officials began to fear criminal prosecution. Yates argued he could not be prosecuted under *§1519* because the phrase "tangible object" only applied to objects "used to record or preserve information, such as papers, computer hard drives, or electronic files, and not fish.

The Court agreed, holding that a "tangible object" within the meaning of *§1519* is one used to record or preserve information, and not the fish that were at issue in this case. The court noted that *§1519*'s caption, "Destruction, alteration, or falsification of records in Federal investigations and bankruptcy," conveys no suggestion that *§1519* prohibits the destruction of all physical evidence. In addition, the section of the Sarbanes-Oxley Act in which *§1519* was placed is entitled "Criminal penalties for altering documents." The court found the titles of these sections indicated that Congress did not intend the term "tangible objects" in *§1519* to include physical objects that could not be described as records, documents or devices closely associated to them.

Click **HERE** for the court's opinion.

*****

Circuit Courts of Appeal

Third Circuit

United States v. Wright, 2015 U.S. App. LEXIS 1939 (3d Cir. Pa. Feb. 6, 2015)

Officers suspected Wright was involved in a conspiracy to distribute marijuana and drafted a warrant application to search his apartment. In the portion of the search warrant that listed the items to be seized, the warrant incorporated by reference an attached affidavit that had been prepared by one of the officers. The affidavit summarized the officer's knowledge of the conspiracy and stated that the officers expected to find further evidence in Wright's apartment, including drugs, money and documents such as ledgers and phone lists. A magistrate judge approved the application, signing both the warrant and the attached affidavit. However, before officers executed the warrant, the affidavit listing the items to be seized was removed at the request of the government, and sealed in order to protect the ongoing investigation. When the officers received the final warrant, they did not realize that it no longer included the officer's affidavit listing the items to be seized. Officers executed the warrant on Wright's apartment without having the affidavit present, and seized evidence that was admitted against Wright.

Wright argued the search of his apartment violated the *Fourth Amendment* because the warrant did not describe with particularity the items to be seized, as it did not include the officer's affidavit.

Although the government conceded the seizure of evidence from Wright's apartment violated the *Fourth Amendment*, the court held the exclusionary rule did not apply. First, the court concluded the violation in this case did not undermine the purpose of the *Fourth Amendment's* particularity requirement because the officers confined their search to what was authorized in the warrant. Second, the magistrate judge found that probable cause existed to search for and seize every item listed in the officer's affidavit. When the magistrate approved the warrant, the affidavit was attached and expressly incorporated by reference in the space for identifying the items to be seized. In addition, the magistrate signed both the warrant and the affidavit. Finally, the court held the government did not gain anything from the *Fourth Amendment* violation. Even if the list of items to be seized had been present during the execution of the warrant, the officers would have collected the same evidence, and Wright would have been unable to stop them. Consequently, the *Fourth Amendment* violation in this case had no impact on the evidence that was used against Wright at trial.

Click **HERE** for the court's opinion.

*****

Fifth Circuit

United States v. Wright, 2015 U.S. App. LEXIS 1685 (5th Cir. Tex. Feb. 3, 2015)

Officers executed a search warrant at Wright's home in connection with a child pornography investigation. When the officers located Wright, they allowed him to get dressed and then escorted him to an officer's unmarked police car, which was located in the parking lot of a church approximately thirty feet from Wright's home. While walking to the car, an officer

told Wright that he was not under arrest, and that he was free to leave at any time. Wright sat in the front passenger seat of the car, and was not handcuffed or otherwise restrained. At the beginning of the interview, an officer advised Wright of his *Miranda* warnings and again told Wright that he was not under arrest, and that he was free to leave. During the interview, Wright made numerous incriminating statements to the officers.

Wright moved to suppress his incriminating statements, arguing that on three occasions during interview, he had unambiguously requested his right to counsel.

First, for an individual to have a *Fifth Amendment* right to counsel under *Miranda*, that individual must be subject to a custodial interrogation. Second, a suspect is "in custody" for *Miranda* purposes when he is placed under formal arrest or when a reasonable person in the suspect's position would have understood the situation to constitute a "restraint on freedom of movement of the degree" associated with a formal arrest.

Here, the court never decided whether Wright ever unambiguously requested counsel under *Miranda* because the court held Wright was not in-custody for *Miranda* purposes when he made the incriminating statements to the officers. First, the interviewing officer on at least two occasions told Wright that he was not under arrest, and that he was free to leave. Second, there was no evidence that Wright was physically restrained during the interrogation, which took place near Wright's home, in a car subject to public scrutiny. Finally, the transcript of the interview, and the cooperative tone throughout it, indicated the conversation was as much an opportunity taken by Wright to tell his story to the officer as it was an opportunity for the officer to obtain information from Wright. Consequently, as he was not in custody for *Miranda* purposes, the court held Wright's statements to the interviewing officer were admissible against him.

Click **HERE** for the court's opinion.

*****

Sixth Circuit

Brown v. Lewis, 2015 U.S. App. LEXIS 2917 (6th Cir. Mich. Feb. 26, 2015)

A 911 operator dispatched officers to a house after receiving a call that a man inside was involved in criminal activity. As officers arrived, they saw a car drive away from the house. The officers followed the car and conducted a traffic stop. One of the officers opened the driver-side door and directed Kishna Brown, the female driver and sole occupant, to raise her hands and step out of the car. Brown raised her hands and began to step out of the car. However, before Brown's foot touched the ground, two officers, with guns drawn, grabbed Brown by her hooded sweatshirt, threw her to the ground and handcuffed her. The officers released Brown ten-minutes later after they learned that Brown had just dropped off a female friend at the house, and was not involved in any of the events that led to the 911 call.

Brown sued three officers, claiming the officers used excessive force against her in violation of the *Fourth Amendment*, along with state-law claims for false arrest and assault and battery.

The court held the officers were not entitled to qualified immunity. First, the court held the officers had reasonable suspicion to conduct the traffic stop on Brown. Based on what the officers knew at the time, the court concluded the officers could have reasonably believed the

man, who was the subject of the 911 call, was driving the car. Second, however, the court held it was unconstitutional for the officers to continue to detain Brown once they determined the man referenced in the 911 call was not in her car. Here, the officers should have been aware of Brown's gender, and that she was alone in the car as soon as they opened her car door. In addition, the officers' use of guns and handcuffs on Brown was not supported by any facts that would have caused the officers to believe Brown was a risk to the officers. As a result, the court found when the officers threw Brown to the ground and handcuffed her that the stop was transformed into an arrest without probable cause. Finally, at the time of the incident, the court held it was clearly established that pulling a compliant detainee out of a car and throwing her to the ground constituted excessive force.

Click **HERE** for the court's opinion.

*****

Eighth Circuit

United States v. Williams, 2015 U.S. App. LEXIS 1804 (8th Cir. Mo. Feb. 5, 2015)

An officer conducted a traffic stop and arrested Williams for theft. During the arrest, Williams refused verbal commands and resisted attempts to handcuff him. Officers then used physical force to eventually handcuff and control Williams. Pursuant to department policy, the arresting officer conducted an inventory search of Williams' car. In the trunk of the car, an officer found a duffel bag that contained a loaded AK-47 rifle. Williams later admitted to the officers that he had stolen the firearm. The government indicted Williams for a variety of federal firearms offenses.

Williams moved to suppress the rifle, arguing the officer's decision to impound his vehicle which led to the search and seizure of the rifle violated the *Fourth Amendment*.

The court disagreed. It is well-settled law that an officer, after lawfully taking custody of an automobile, may conduct a warrantless inventory search to secure and protect the vehicle and its contents. Here, the department's tow policy left it up to an officer's discretion whether to tow a vehicle after an arrest. The court commented that the *Fourth Amendment* allows the exercise of such discretion as long as that discretion is exercised according to standard criteria, and not based on the desire to search a vehicle for evidence of criminal activity.

Here, the court concluded the inventory search was lawful because it was conducted pursuant to department policy, and not as punitive action toward Williams, or as a search for additional criminal evidence. First, the officer decided to tow Williams' vehicle because the officer did not want to leave it in a high-crime neighborhood when he knew Williams might not be able to bond out of jail to retrieve it for some time. Second, if the officer had decided to leave the vehicle, per agency policy, he would have needed to get written permission from Williams. As Williams had just resisted arrest, the officer did not want to release Williams from handcuffs so Williams could sign the "Authorization Not to Tow" form. Finally, Williams was alone, and he was the only registered owner of the car, so there was no other licensed driver at the scene to whom the vehicle could be released.

The court further held the officer's failure to inventory all of the loose items of minimal value located in William's car did not render the entire search invalid.

Click **HERE** for the court's opinion.

*****

Eleventh Circuit

United States v. Barber, 2015 U.S. App. LEXIS 1659 (11th Cir. Fla. Feb. 3, 2015)

Officers stopped a car in which Barber was a passenger. After the driver, Robinson, consented to a search of the car, officers directed Barber to exit the car. During the search, an officer saw a bag on the passenger-side floorboard. The officer looked inside the bag and saw a handgun, Barber's business cards and a photograph of Barber. After Barber admitted the handgun belonged to him, the officers arrested him for being a felon in possession of a firearm.

Barber argued the firearm should have been suppressed because Robinson lacked the authority to consent to a search of his bag.

First, the court held Barber had standing to challenge the search because he had a reasonable expectation of privacy in the bag.

Second, the court held Robinson had apparent authority to consent to a search of the bag, even though the officers later learned the bag belonged to Barber. A third party has apparent authority to consent to a search if the officer could have reasonably believed the third party has authority over the area to be searched. Here, the court concluded the bag's placement on the passenger-side floorboard, within easy reach of Robinson, coupled with Barber's silence during the search, made it reasonable for the officer to believe Robinson had common authority over the bag. In addition, the court recognized that drivers do not usually place their bags on the driver-side floorboard, but drivers sometimes use the passenger-side floorboard to store their belongings. As a result, the officers could have reasonably believed Robinson had common authority over the bag; therefore, he could consent to its search.

Click **HERE** for the court's opinion.

*****

District of Columbia Circuit

Fenwick v. Pudimott, 2015 U.S. App. LEXIS 2264 (D.C. Cir. Feb. 13, 2015)

In January 2007, three law enforcement officers suspected Fenwick was about to get into a stolen car and drive away. When the officers, who were standing across the parking lot, called to Fenwick and ask to speak to him, Fenwick ignored them, got into the car, and began to back up. The officers surrounded Fenwick's car with guns drawn, and ordered Fenwick to stop. Fenwick ignored the officers and drove forward toward the parking lot exit, striking Pudimott with the car's driver-side mirror. Fearing for their safety and the safety of pedestrians and vehicles the officers had seen in the area, Pudimott and one of the other officers opened fire, striking Fenwick.

After Fenwick recovered from his wounds, he was convicted in the District of Columbia Superior Court of armed assault on a police officer. The Superior Court found Fenwick endangered Pudimott by accelerating forward while Pudimott was near the front of the car.

Several months later, Fenwick sued the three officers, claiming that shooting him constituted excessive use of force in violation of the *Fourth Amendment*.

The court held the officers were entitled to qualified immunity because at the time of the shooting, the officers did not violate clearly established law.

In 2004, the United States Supreme Court decided *Brosseau v. Haugen*. In *Brosseau*, an officer fired through the rear driver-side window of the suspect's car as he accelerated forward, away from the officer. The officer testified that she shot the suspect out of fear for the safety of "other officers on foot" who, she believed were close by, and for "occupied vehicles" in the suspect's path, and for anyone else who "might be in the area." The suspect survived and was later convicted of a felony in which he admitted he drove his vehicle in a manner indicating "a wanton or willful disregard for the lives of others." In the lawsuit that followed, the Supreme Court held the officer was entitled to qualified immunity.

In this case the court held Fenwick failed to show the officers' conduct was materially different from the officer's conduct in *Brosseau*. Specifically, at Fenwick's criminal trial, the District of Columbia Superior Court determined that moments before the shooting, Fenwick's driving posed a "grave risk of causing significant bodily injury" to an officer. Because Fenwick operated his car in a way that endangered an officer, in an area recently occupied by pedestrians and other vehicles, the D.C. Circuit Court of Appeals held it was not clearly established that the officers violated the *Fourth Amendment* by using deadly force to stop Fenwick.

In addition, Fenwick was not able to establish that between the *Brosseau* decision in 2004 and the shooting in this case, which occurred in 2007, that the law in this area had changed.

Click **HERE** for the court's opinion.

*****