Distance, Cover, and Tactical Positioning

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What It Is

After a police shooting, common questions are: Why did the officer not back away? Why did they approach? Why did they leave cover? Why not wait for a negotiator or a shield? Federal constitutional law provides neither a categorical command to retreat nor a categorical command to advance. The governing rule is objective reasonableness under the totality of circumstances – but the absence of a duty to retreat does not remove tactical positioning from the analysis.

No Federal Constitutional Duty to Retreat

Police officers generally are not required by the Fourth Amendment to retreat before defending against an imminent threat. An officer facing immediate danger need not turn and run, abandon cover, leave a civilian, or wait until an attacker physically makes contact before using otherwise reasonable defensive force. That principle has an important qualification: no duty to retreat does not automatically authorize deadly force. The force must still be objectively reasonable under the totality.

Stewart v. City of Euclid (6th Cir. 2020) states this distinction clearly: having no duty to retreat does not mean the officer could use deadly force, because the force still had to be reasonable under the circumstances, and the existence of a safer available position can remain relevant to that totality without becoming a mandatory prerequisite to force.

No Duty to Rush Forward Either

The converse is equally important. No federal rule requires officers confronting a contained person to immediately close distance, enter a room, force physical contact, or rapidly resolve a static crisis. Where no civilian is presently endangered, the subject is contained, officers have cover, and time is available, waiting may be a realistic option – though the Fourth Amendment ordinarily does not constitutionalize the tactically best response.

Time, Distance, and Cover as Tactical Resources

Maintaining distance can allow: additional officers to respond, a supervisor to coordinate, shields or less-lethal tools to arrive, crisis personnel or negotiators to respond, communication to continue, civilians to be evacuated, and the subject's intentions to become clearer. These are operational concepts, not automatic constitutional commands. Conversely, time is not always available: where a subject is actively attacking, rapidly

advancing, pursuing a civilian, or about to reach an unsecured person, waiting can mean allowing harm to occur.

The 21-Foot Rule Is Not Law

The Tueller Drill is a law-enforcement training exercise demonstrating how quickly an edged-weapon-armed person can close approximately 21 feet under particular conditions – roughly 1.5 seconds in the original training scenario. In case law and popular discussion, this has been compressed into a supposed "21-foot rule" authorizing deadly force at that distance. That formulation is inaccurate as a matter of federal law.

No federal constitutional rule holds that deadly force is automatically justified inside 21 feet or unjustified outside it. In *Estate of Larsen v. Murr* (10th Cir. 2008), the court noted the training concept but applied a multi-factor test – commands and compliance, hostile weapon movement, distance, and manifest intentions – rather than a distance threshold. The number itself is not dispositive; the question is what the subject could do from the existing position, how quickly, toward whom, and what realistic options the officer had.

Cover Is Threat-Specific

In edged-weapon encounters, cover functions differently than in firearm encounters. A solid barrier can prevent direct access, force the subject to navigate around it, slow movement, create time, and extend the available response window – without being bullet-resistant. Relevant distinctions include: ballistic cover, physical barrier, concealment, locked door, vehicle, fence, counter, or shield. The Constitution generally does not require officers to use available cover as a categorical prerequisite, but whether cover was available and was not used can be relevant to the totality of circumstances, expert testimony, agency policy review, and officer-created-jeopardy analysis.

Closing Distance

Closing distance can be tactically necessary – to accomplish a rescue, effect an arrest, prevent escape, protect a civilian, or provide medical aid. But unnecessary closing can reduce reaction time, eliminate cover, increase weapon access, force rapid decisions, and convert a static crisis into a close-range confrontation. This is the core of the officer-created-jeopardy question: whether officers reasonably needed to close distance when they did, or whether they compressed time and tactical options without necessity.

Closing distance does not by itself establish a Fourth Amendment violation. Depending on the circuit, a plaintiff typically needs to show that the officer's pre-force conduct was reckless or deliberately contributed to the need for force and was constitutionally significant under controlling precedent. But in some circuits, the fact that an officer unnecessarily closed from 30 feet to 10 feet before a stationary knife-holder can be relevant to the broader totality, even if not independently unconstitutional.

Officer-Created Jeopardy

Officer-created jeopardy asks whether police conduct before the final threat materially contributed to creating the need to use force. Examples include: rushing a suicidal armed person, closing distance unnecessarily, leaving cover, entering a confined space, or forcing immediate physical confrontation. After *Barnes v. Felix* (2025), courts may not artificially restrict the analysis to the final moment, but *Barnes* did not create a nationwide constitutional duty to retreat, maintain cover, contain, or wait.

Estate of Ceballos v. Husk (10th Cir. 2019) illustrates the interplay: officers approached rather than maintaining separation from a crisis subject with a baseball bat; the Tenth Circuit considered whether officers recklessly contributed to the situation while also noting that officers are not required to wait until an advancing person literally reaches striking distance.

Distance to Whom

Distance should not be coded as a bare officer-to-subject number. After *Ventura v. Rutledge*, the relevant geometry may be subject-to-civilian rather than subject-to-officer. A person may be 30 feet from the officer but 10 feet from a third party. Relevant reference points include: subject to officer, subject to civilian, subject to prior victim, subject to dropped weapon, officer to cover, and subject to doorway.

Retreat May Create New Risk

Backing away is not always safer. Retreat can: expose civilians, abandon another officer, open an escape route, allow entry into an occupied structure, reduce visibility, or place officers in worse terrain. Courts avoid categorical retreat rules precisely because tactical feasibility is context-specific.

Tactical Error vs. Constitutional Violation

An officer can make a poor tactical decision without violating the Constitution. Standing in the open instead of using cover, approaching too closely, leaving a superior position, or failing to request backup may support criticism, policy review, or training correction – but negligence, imperfect tactics, or violation of best practice does not automatically establish excessive force. The constitutional threshold is higher.

Four distinct standards should not be collapsed: 1. Constitutional minimum – what federal law requires 2. Department policy – what the agency requires 3. Training guidance – what officers are taught 4. Expert best practice – what professional witnesses say should have been done

Policy violation and expert criticism can be relevant evidence at trial, but they do not substitute for the constitutional analysis.

The Contained-Suicidal-Knife-Holder Scenario

The question of why officers did not wait is most pointed where: the subject is suicidal, holding a knife, stationary, threatening only themselves, separated from civilians, contained, and not moving toward officers. In that scenario, time, distance, cover, negotiation, shields, and specialist resources may be practically available. The Fourth Amendment does not automatically require every one of those tactics, but the absence of urgency weakens claims that immediate close contact was unavoidable. This is also where ADA accommodation, officer-created jeopardy, and emergency-aid doctrine may overlap.

What This Body of Law Does Not Establish

- A categorical constitutional duty to retreat
- A duty always to seek cover before using force
- A duty always to wait for backup
- That containment is always constitutionally required
- That closing distance automatically violates the Fourth Amendment
- That leaving cover is automatically officer-created jeopardy
- That poor tactics automatically equal excessive force
- That department policy defines the constitutional standard
- That the Tueller Drill is a legal rule
- That 21 feet is a constitutional threshold
- That officers must wait until an edged weapon reaches touching distance
- That officers may always advance simply because they have no duty to retreat

Policy Implications

1. Avoid using 21 feet as a decision threshold in policy or training. A distance-based trigger misrepresents both the constitutional standard and the tactical complexity of edged-weapon encounters. Train officers to assess available time, containment, barriers, cover, subject movement, and third-party exposure – not to apply a distance cutoff.
2. Distinguish in review between constitutional violation, policy violation, and tactical suboptimality. Use-of-force review systems should code these separately. A tactical decision can be criticized without being constitutionally excessive; a constitutional violation may occur without a policy violation. Collapsing them produces muddled accountability.
3. Document whether cover was available and why it was or was not used. Available cover that was not used can be relevant in litigation, policy review, and training analysis. Reports should capture whether

cover was present, what it was, and – where officers moved away from it – what the tactical rationale was.

4. Code distance as relational and directional, not absolute. Reports and research records should capture: officer-to-subject distance, subject-to-civilian distance, who was moving, direction, speed, and whether the trend was closing or opening at the moment of force.
5. Identify whether containment was available before force was used. For non-emergency, non-advancing subjects, whether officers had a realistic option to contain outside the structure or at a greater distance – and whether that option was considered – should be documented. This matters for officer-created-jeopardy analysis, policy review, and training.

HOW TO CITE

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