



A Student's Perspective: *Graham v. Connor*, 490 U.S. 386 (1989).

By: Benjiman Blakely, Chief Executive Editor

It is, perhaps, timely to resurface the United States Supreme Court decision in *Graham v. Connor* because of all the talk around the use of excessive force by police officers. Most often, the only source of recovery for the violation of rights by police is a 1983 action as criminal trials do not happen for the dead. Therefore, evidence gained from the abuse of the person's rights cannot be excluded. 1983 actions fill in a gap in the law and create a monetary remedy for the violation of a right secured by the Constitution and laws of the United States. 42 USC § 1983 Civil Action for Deprivation of Rights reads very simply:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, 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 proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Now for the facts of the case itself. The Petitioner Graham, who had diabetes, asked a friend to drive him to a convenience store to buy a drink to deal with an insulin reaction. Upon entering the store, Graham noted the large number of people ahead of him and hurried out and asked his friend to drive to another location. The Respondent Connor, a city police officer, became suspicious after

seeing Graham come and go from the store so quickly, followed Graham's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store. Respondent's back-up police officers arrived on the scene, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. Graham sustained a broken foot, cuts on his wrists, a bruised forehead, and an injured shoulder; he also claims to have developed a loud ringing in his right ear that continues to this day. Graham was released when Connor learned that nothing had happened in the store.

The High Court's ruling has several parts to build its syllogism. The most important of which is that "all claims that law enforcement officials have used excessive force—deadly or not—in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are appropriately analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard." By the Court's own statement, all excessive force claims § 1983 are not governed by a single generic standard. Each case must first be categorized by the particular constitutional right infringed upon by the officer with the excessive use of force. In this case, given that the violation happened during a stop, which is ruled by the 4th Amendment protection against unreasonable search and seizure, the standard was one of objective reasonableness. The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.

Ultimately, this case did not settle the matter for the parties; the Court of Appeals reviewed the District Court's ruling on the motion for a directed verdict under an erroneous view of the governing substantive law, the 8th Amendment. Therefore, its judgment was vacated, the case remanded to that Court for reconsideration of that issue under the proper Fourth Amendment standard. This case has gone on to become the running standard for § 1983 actions over the use of excessive force during stops and arrests, deciding many cases on this seemingly objective standard. Several police killings of African Americans have caused a public outcry and civil unrest. This unrest has spurred Congress into responding with legislation to address police accountability. On June 17, 2020, the Senate unveiled the Justice Act, which contains new accountability procedures, including proposed no-knock warrant reporting requirements, body cameras requirements during arrests and detentions, and law enforcement records retention. There are other acts such as the Amash-Pressley bill in the House or the Democrats' Justice in Policing Act, which also addresses the doctrine of qualified immunity. Qualified immunity is another Constitutional bar which often ensures that the officers are not personally liable for their harmful acts done within the scope of their employment. Congress created these bills in an attempt to address the structural roadblocks which keep the citizenry at the mercy of bad actors within the police force, but perhaps given the consequences, the High Court wrongly created the standards.