

## Introduction

We hereby release the results of the investigation of the incident involving the fight at Hickman High School on October 15, 2008.

One of the significant challenges involving the release of information that deals with police internal investigations is that they're statutorily closed.

This information is closed by state law and city ordinance, and is not a willful choice of the management of the Columbia, Missouri Police Department.

In other words, while we have in the past indicated that investigations of police officers are not open to the public, it is simply a legal acknowledgement of the rights of due process in disciplinary matters that are afforded to police officers, the same as members of the general public.

Our significant challenge is that the public gets a satisfactory, comprehensive investigation of what happened that day, with particular focus on the police department's role in those events, while the rights of all involved are protected.

Officer Brotemarkle's name is used because of the surrounding publicity. This is also the case with Diamond Thrower. Other juveniles involved are not identified by name, in accordance with Juvenile statutes.

It is with these considerations in mind that this report is released.

## Summary of Incident

On October 15, 2008 at about noon, a fight broke out between two juvenile females in the old north lobby at David H. Hickman High School.

School Resource Officer Mark Brotemarkle responded to an urgent portable radio call for help from assistant principal Denise Herndon. Herndon, Richard Henderson and Hall Monitor Greg Gruppe were already attempting to break up the fight, and were unsuccessful prior to Brotemarkle's arrival.

Officer Brotemarkle arrived to find well more than 100 students closely surrounding an active physical fight. Officer Brotemarkle pushed through several students to get to the altercation.

He noticed that faculty members were actively engaged in the fight, and attempting to subdue and separate active fight participants. Diamond Thrower was holding onto one of the active fighters, hereinafter known as Juvenile Female 2 or JF2.) The first physical action that Officer Brotemarkle takes is to spin and throw Diamond Thrower to the floor.

Assistant principal Denise Herndon nearly concurrently with Brotemarkle's arrival, fell to the ground attempting to restrain one of the other combatants, (Juvenile Female 1 or JF1).

One of the surrounding students recorded part of the altercation on a cell phone and later posted the video to YouTube.com.

After Thrower goes down, Brotemarkle moves to JF1, who is still actively attacking JF2 the first time Brotemarkle places her on the ground. It is believed that at this point that JF1 tears open the blouse of JF2. JF2 was then covered by Henderson and was covered with a garment prior to being taken into custody.

Brotemarkle then slides JF1 across the floor to location of Thrower. He does this to be able to better control both females while still believing he is alone. It is then he is able to see that Officer Alan Mitchell has arrived and he directs Mitchell to handcuff Thrower. JF1 and JF2 are subsequently

arrested, Thrower is not arrested after investigation determines that she is not actively fighting, and is trying to assist in breaking up the fight.

**Complaints:**

1. Excessive force used by Officer Mark Brotemarkle when he spins Diamond Thrower to the floor. Complaint made by Ray Macgruder and Sheila Johnson, Thrower's mother.
2. Demeanor Complaint against Officer Mark Brotemarkle for unnecessarily pushing a female student, and "dragging her to the office." Denise Herndon directs Brotemarkle to bring her to the office, believing that because of her loud disturbing behavior that she is part of the fight. Complaint made by Deonna Ramey on behalf of her daughter, Juvenile Female 3 or "JF3", who is later determined uninvolved in the actual fight.
3. Demeanor Complaint for rudeness and intimidation by Officer Mark Brotemarkle by Demetria Stephens, for Officer Brotemarkle's rudeness and intimidating actions, "getting within three inches" of her face at the north office.

### **Findings complaint 1 from Professional Standards Unit (Lt. John White):**

The first complaint from Ray Magruder and Sheila Johnson dealt with the amount of force used in subduing Diamond Thrower. The posted "YouTube" video reveals Officer Brotemarkle approaching an in-progress, physical fight. In her own written statement to school officials, Thrower states she "got in the middle and started pushing them apart." Officer Brotemarkle can not see her hands as her back is turned toward him and at this point he has no way to determine what her involvement is. Officer Brotemarkle stated that nothing Diamond Thrower was saying or doing at this point led him to believe she was anything other than a combatant.

Believing that Diamond is involved in the fight, Officer Brotemarkle grabs her and spins her and throws her to the ground. Officer Brotemarkle said his feeling was that if he did not do something quickly to stop the fight; it could have escalated out of control. Due to the number of students that were surrounding Officer Brotemarkle and the other school administrators, this was a reasonable assumption.

The school security video shows, at the time of the disturbance, the entire "Old Main Lobby" was full of students trying to get closer to where the fight was ongoing. I measured this area to be approximately 1300 square feet. It was estimated by school administrators and Officer Brotemarkle that it was occupied by over 100 students. Some of these students, as reported by school administrators, Officer Mitchell and Officer Brotemarkle, were hampering efforts of officials to gain access to the scene. In doing so it made it necessary for Officer Brotemarkle to act swiftly as further assistance was delayed by the crowd.

Officer Brotemarkle used the lowest physical level of our force continuum to separate Diamond Thrower from the physical disturbance. Officer Brotemarkle could have used several other options, to include, ASP, Pepper Spray, strikes, etc., but chose instead to spin Ms. Thrower to disorient her and remove her from the altercation. Officer Brotemarkle was proper and used the appropriate amount of force necessary in this situation.

Despite repeated attempts at contact through Thrower's attorney, she was never officially interviewed as part of this investigation. All attempts at reaching her through her attorney by phone messages, registered mail and email as well as her mother were not replied to. We received notice late in the investigation that this lawyer was no longer representing Thrower.

## Findings, Complaint 1 (Dresner):

After a thorough investigation of the incident and reviewing Columbia Police Department General Order 88 (Use of Force), departmental safety prioritization matrix, all interviews and review of video evidence in this case, Officer Brotemarkle is found to be proper in his actions regarding complaint 1 at Hickman High School on October 15, 2008.

General Order 088 Policy for Use of Force states in part:

- A. It is the policy of the Columbia Police Department that only the amount of force that is reasonably necessary to perform the various duties of officers will be deemed appropriate.
- B. Each instance of the use of force will require that restraint be exercised so as not to purposely exceed that force which is necessary as dictated by the particular circumstance faced by the officer.

The relevant Supreme Court precedent for this determination is *Graham v. Connor*, 490 U.S. 386 (1989). The case ruling is included in full at the end of this document.

Alleged in complaint 1 in this case is that Officer Brotemarkle used excessive force in throwing Diamond Thrower to the ground.

In order to determine reasonableness, we must rely on policy and court precedent.

The Supreme Court holds that an objective reasonableness standard is applicable to the determination of whether a particular use of force is appropriate. That is of particular importance, because *Graham v. Connor* requires the use of force in every particular case be judged in light of those facts available to the officer at that time. *"Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of `the nature and quality of the intrusion on the individual's Fourth Amendment interests' against the countervailing governmental interests at stake."*

At that particular moment, the governmental interests were the protection of and the minimization for potential injury to all involved. Breaking up a fight that has potential for rapid escalation and spread is a significant governmental interest. Officer Brotemarkle did not know and could not know at the moment he encountered Diamond Thrower with her back to him and holding onto another student that she was not an active participant in the disturbance. That he later learned of her intentions bears no relevance on what he knew at that moment, and the U.S. Supreme Court holds that officers cannot be judged in light of facts they did not have at that time.

Officer Brotemarkle in his interview said that he was trying to break up the fight, and that his intent with Thrower was to have her disengage and to disorient her. As soon as he believed that he accomplished that, he turned to the next active participant that he could find, JF1.

*Graham v. Connor further holds: "With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers, violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation."*

When reviewing all of the circumstances faced by Officer Brotemarkle at that incident, and taking into consideration what information he had available to him at the time, he was justified in taking Diamond Thrower to the ground in the manner he did.

## **Findings, Complaint 2, Professional Standards Unit:**

The second complaint from Ms. Deonna Ramey and her daughter “JF3” was in reference to Officer Brotemarkle pushing JF3 after the fight was over and then physically dragging her to the office.

Officer Brotemarkle was attempting to escort one of the arrestees involved in the original disturbance to the school office. JF3 was in the hallway, refusing to move after being told at least two times to clear the area by Officer Brotemarkle. Officer Brotemarkle said that due to the large amount of students who had encroached on them during the disturbance, he felt it was necessary to take the combatants to the north principal's office, even though the main office was within eyesight of them. It was imperative for the safety of all involved to isolate the combatants in an area removed from the crowd as quickly as possible. When JF3 refused to clear the way for the officers, Officer Brotemarkle used a sweeping arm motion, pushing against JF3 to clear her from their path. This was not a shove or a push to knock her off balance, merely a motion to direct her out of the path of the officers and their arrestees. Interviews with witnesses to this interaction saw no inappropriate force used against JF3.

Assistant Principal Denise Herndon requested that JF3 be brought to the office because of her loud and disruptive behavior. Regarding the second interaction of JF3 with Officer Brotemarkle, acting at Herndon’s direction, the school security video clearly shows Officer Brotemarkle is simply escorting her by the back of the elbow. Once at the north principal’s office, he removes his hand from her arm, opens and holds the door for her while she enters. There is no indication of struggle between Officer Brotemarkle and JF3. As far as Deonna Ramey's claim that Officer Brotemarkle pushed her daughter in the chest, JF3’s statement is in direct contradiction. JF3 stated that Officer Brotemarkle pushed her on her back.

This complaint has been determined to be Unfounded.

## **Findings Complaint 2 (Dresner):**

I concur with findings of Professional Standards Unit, and find that the Ramey complaint is unfounded. The allegations of mother and daughter are in direct contradiction with respect to location of push, and video shows Officer Brotemarkle calmly leading JF3 to the office by the elbow. Once there he opens and holds the door for her, a show of courtesy, not force, and certainly not “dragging her to the office.”

After being commanded twice to move out of the way, JF3 did not, and Officer Brotemarkle physically moved her out of the way, as she was physically obstructing Brotemarkle from moving with arrestees to the North Hall Office. She had two chances to comply with a lawful police directive before being touched, yet she chose not to obey. A push would have been appropriate escalation.

### **Findings Complaint 3, Professional Standards Unit:**

The third complaint from Mrs. Demetria Stephens was that Officer Brotemarkle's demeanor while speaking to her was disrespectful, rude, intimidating, and that he was "three inches from her face." This was allegedly shortly after the fight.

Ms. Stephens stated that she heard Officer Brotemarkle confront her daughter in the hallway outside of the north principal's office. She said she went to tell Officer Brotemarkle her daughter was not involved. She said Officer Brotemarkle asked her to step inside the office and then approached her in an intimidating manner, getting within three inches of her face. She said he was very rude and disrespectful. She said Officer Brotemarkle asked her what he could do for her to which she responded, "You can't do anything for me."

The north entrance security video shows that at 12:15:48 Ms. Stephens arrives in the office with her daughter. At 12:17:20, her daughter leaves the office.

At 12:17:57, Ms. Stephens stands in the hallway and watches the direction her daughter had gone, then moves in that same direction. At 12:17:59, Officer Brotemarkle exits the principal's office, behind Ms. Stephens, making it impossible for her to have heard him confronting her daughter in the hallway.

There is a two-second time gap from the time Officer Brotemarkle leaves the camera's field of vision until he is seen escorting JF3 into the office. Again, this makes it impossible for Officer Brotemarkle to have had any interaction with Ms. Stephens' daughter.

With respect to the exchange between Ms. Stephens and Officer Brotemarkle in the office, numerous school personnel have given statements that Officer Brotemarkle was never any closer than two feet from Ms. Stephens. The school security video shows Officer Brotemarkle entering in the office. Ms. Stephens moves to the west end of the counter and Officer Brotemarkle stands by the doorway. At no time did Officer Brotemarkle move closer to Ms. Stephens while they were in the office.

In fact, Sergeant Jones was at times between Officer Brotemarkle and Ms. Stephens and that can be seen on the video. I (Lt. White) went back and re-created scene, with the help of Preston Bass. I used a tape measure to determine how far Officer Brotemarkle was from where Mrs. Stephens was standing and it was approximately four feet. I photographed this re-creation and they are included in the case file.

This complaint is determined Unfounded.

### **Findings Complaint 3 (Dresner):**

In reviewing the video obtained from CPS surveillance cameras, I followed the timeline created by PSU as to the video evidence of the interactions between Mrs. Stephens and Officer Brotemarkle. She alleges that she heard Brotemarkle interacting with her daughter in the hallway and she went out there to intervene. However, this is untrue. Brotemarkle is seen *following* her out of the office. Later, when they both return, though there is no sound recording, cameras clearly show Mrs. Stephens' location once in the office, and that Officer Brotemarkle never comes in close proximity to her. One of the elements alleged is that it is highly offensive to have someone be that close to her, regardless of what was said.

Investigation reveals by witness statements that Officer Brotemarkle's only statement to Stephens is that if she does not have any business there, she needs to leave. Witnesses say it was delivered calmly and matter of factly. Denise Herndon informs Brotemarkle that she is a parent. Therefore, Brotemarkle not knowing which parent, allows her to remain, and does not interact with her further. She then leaves the office on her own.

I concur with PSU and find that this complaint is unfounded, and further that the nature and locations of the interactions alleged in this complaint appear to have been fabricated.

## Executive Summary

This public document concludes the investigation into the Hickman High School fight of October 15, 2008.

The conclusions are available to the public to an extent not before possible.

This level of commitment to transparency is part of a larger good-faith effort to build public trust.

I fully expect some community disagreement with some or all of the findings made in this report.

I want to state that we are mindful of that, and that we appreciate the vast diversity of perspectives that are represented in our community, especially when a video is produced that in some, brings about visceral yet non-contextual reactions to events displayed.

Those perspectives are not disregarded for the purposes of this report.

We are guided by the law and policy regarding our actions. Because of the wide diversity of opinion, both trained and untrained as to the appropriateness of a particular police action, we must rely on the courts for guidelines as to reasonableness.

While the actions of Officer Brotemarkle appear appropriate to some, and the height of excess to others, *Graham v. Connor* is our primary reference for an objective assessment of appropriateness.

An additional consideration is that the technique used by Officer Brotemarkle on Diamond Thrower is a nationally taught technique from the PPCT (Pressure Point Control Tactics) curriculum used by police widely for non-compliant suspect control.

This spinning technique is taught to school faculty and staff across the nation. It is a recognized technique for separating combatants in fights particularly in schools. It is known as "Torso Rotation." ([Disruptive Student Management Instructor Manual](#) by Bruce Siddle, Copyright 2005 PPCT Management Systems, Belleville, IL 62223.) The PPCT instructors at CPD

have taught this and other techniques to Hickman faculty members in the past.

Excerpt from Chapter 5, PPCT Separating Techniques Page 5-1:

### **Principles of Separation**

*Breaking up a fight can be one of the most dangerous acts a teacher or security personnel can perform during their daily activities. From the teacher's perspective, fights are spontaneous, highly charged and with combatants who may lash out at anyone who attempts to intervene. Subsequently there is a significant chance for the teacher (or security personnel) to be injured in their attempt to protect students from each other.*

*The techniques of this chapter are designed to stop and control children and teen combatants. The techniques are designed to be executed dynamically and without hesitation. All are designed to control the combatants through Balance Displacement principles.*

### **Torso Rotation**

*The Torso Rotation is a versatile technique that can be used for separating children or teenagers. The basic premise of the technique is to approach from level 2 and ½ and rotate or spin the student on their axis out of the fighting zone. How the rotation is conducted is dependent on the size of the student.*

*For smaller students, the technique is executed with the teacher putting one hand on the student's closest bicep and then reaching around with the other hand and placing it on the student's opposite shoulder. The student is separated from his combatant through a combination of pulling the student's bicep back and down, while pushing the opposite shoulder forward. This push/pull action is combined with the student rotating on his axis which results in moving the teacher between the opposing students.*

*For larger students, this method is set up in the same manner, but instead of pulling the student's bicep back, the teacher pushes the bicep/elbow across and down the student's chest while pulling back on the student's opposite shoulder. The teacher can enhance the speed of the rotation by*

*walking forward into the pushing action, which once again, places the teacher between the two combatants.*

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In conclusion, there is the notion sometimes intimated in local public discourse that somehow, in nearly every police/citizen confrontation there is an unrealized peaceful option that is always available to us, if only just the right combinations of knowledge, experience, maturity, training, temperament and patience could be instantly formulated and precisely applied in a perfect “mix” for each and every encounter.

And that the failure of the police to actualize this is somehow a lamentable shortcoming on our part. Conversely, almost no consideration is given to the choices of the combative citizen in that same confrontation.

In this context, it perhaps could be argued that a 16 year-old girl can’t quite adequately arrive at those adult level observations and choices. However, that’s precisely why the school rules for fights and fight intervention are so concrete and unambiguous. You will not fight. You do not get involved in other fights. Period.

Plainly stated, force is not pretty. Justified force can be as shocking to the senses as unjustified force.

We also know that there are larger issues at hand, within the context of the tremendously beneficial mutual relationship between the Columbia Police Department and Columbia Public Schools. To that end we are committed to partnership, and with the community at large, to maintain a positive, safe and stable educational environment for all of our children.

This report ends here, but our commitment to these larger principles continues. We are already meeting, and fostering productive discussions for the long-term.

**Capt. Tom Dresner**  
**Interim Chief of Police**

**December 4, 2008**

# U.S. Supreme Court

**GRAHAM v. CONNOR, 490 U.S. 386 (1989)**

**490 U.S. 386**

**GRAHAM v. CONNOR ET AL.  
CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE  
FOURTH CIRCUIT**

**No. 87-6571.**

**Argued February 21, 1989**

**Decided May 15, 1989**

Petitioner Graham, a diabetic, asked his friend, Berry, to drive him to a convenience store to purchase orange juice to counteract the onset of an insulin reaction. Upon entering the store and seeing the number of people ahead of him, Graham hurried out and asked Berry to drive him to a friend's house instead. Respondent Connor, a city police officer, became suspicious after seeing Graham hastily enter and leave the store, followed Berry's car, and made an investigative stop, ordering the pair to wait while he found out what had happened in the store. Respondent backup police officers arrived on the scene, handcuffed Graham, and ignored or rebuffed attempts to explain and treat Graham's condition. During the encounter, Graham sustained multiple injuries. He was released when Connor learned that nothing had happened in the store. Graham filed suit in the District Court under 42 U.S.C. 1983 against respondents, alleging that they had used excessive force in making the stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983." The District Court granted respondents' motion for a directed verdict at the close of Graham's evidence, applying a four-factor test for determining when excessive use of force gives rise to a 1983 cause of action, which inquires, inter alia, whether the force was applied in a good-faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm. *Johnson v. Glick*, 481 F.2d 1028. The Court of Appeals affirmed, endorsing this test as generally applicable to all claims of constitutionally excessive force brought against government officials, rejecting Graham's argument that it was error to require him to prove that the allegedly excessive force was applied maliciously and sadistically to cause harm, and holding that a reasonable jury applying the *Johnson v. Glick* test to his evidence could not find that the force applied was constitutionally excessive.

*Held:*

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 properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard. Pp. 392-399. [490 U.S. 386, 387]

(a) The notion that all excessive force claims brought under 1983 are governed by a single generic standard is rejected. Instead, courts must identify the specific constitutional right allegedly infringed by the challenged application of force and then judge the claim by reference to the specific constitutional standard which governs that right. Pp. 393-394.

(b) Claims that law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are most properly characterized as invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable seizures," and must be judged by reference to the Fourth Amendment's "reasonableness" standard. Pp. 394-395.

(c) 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. Pp. 396-397.

(d) The *Johnson v. Glick* test applied by the courts below is incompatible with a proper Fourth Amendment analysis. The suggestion that the test's "malicious and sadistic" inquiry is merely another way of describing conduct that is objectively unreasonable under the circumstances is rejected. Also rejected is the conclusion that because individual officers' subjective motivations are of central importance in deciding whether force used against a convicted prisoner violates the Eighth Amendment, it cannot be reversible error to inquire into them in deciding whether force used against a suspect or arrestee violates the Fourth Amendment. The Eighth Amendment terms "cruel" and "punishments" clearly suggest some inquiry into subjective state of mind, whereas the Fourth Amendment term "unreasonable" does not. Moreover, the less protective Eighth Amendment standard applies only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions. Pp. 397-399.

827 F.2d 945, vacated and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which WHITE, STEVENS, O'CONNOR, SCALIA, and KENNEDY, JJ., joined. BLACKMUN, J., filed an opinion concurring in part and concurring in the judgment, in which BRENNAN and MARSHALL, JJ., joined, post, p. 399. [490 U.S. 386, 388]

H. Gerald Beaver argued the cause for petitioner. On the briefs was Richard B. Glazier.

Mark I. Levy argued the cause for respondents. On the brief was Frank B. Aycock III. \*

[ [Footnote \\*](#) ] Briefs of amici curiae urging reversal were filed for the United States by Solicitor General Fried, Assistant Attorney General Reynolds, Deputy Assistant Attorney General Clegg, David L. Shapiro, Brian J. Martin, and David K. Flynn; and for the American Civil Liberties Union et al. by Steven R. Shapiro. Lacy H. Thornburg, Attorney General of North Carolina, Isaac T. Avery III, Special Deputy Attorney General, and

Linda Anne Morris, Assistant Attorney General, filed a brief for the State of North Carolina as amicus curiae urging affirmance.

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case requires us to decide what constitutional standard governs a free citizen's claim that law enforcement officials used excessive force in the course of making an arrest, investigatory stop, or other "seizure" of his person. We hold that such claims are properly analyzed under the Fourth Amendment's "objective reasonableness" standard, rather than under a substantive due process standard.

In this action under 42 U.S.C. 1983, petitioner Dethorne Graham seeks to recover damages for injuries allegedly sustained when law enforcement officers used physical force against him during the course of an investigatory stop. Because the case comes to us from a decision of the Court of Appeals affirming the entry of a directed verdict for respondents, we take the evidence hereafter noted in the light most favorable to petitioner. On November 12, 1984, Graham, a diabetic, felt the onset of an insulin reaction. He asked a friend, William Berry, to drive him to a nearby convenience store so he could purchase some orange juice to counteract the reaction. Berry agreed, but when Graham entered the store, he saw a number of people ahead of him in the checkout [490 U.S. 386, 389] line. Concerned about the delay, he hurried out of the store and asked Berry to drive him to a friend's house instead.

Respondent Connor, an officer of the Charlotte, North Carolina, Police Department, saw Graham hastily enter and leave the store. The officer became suspicious that something was amiss and followed Berry's car. About one-half mile from the store, he made an investigative stop. Although Berry told Connor that Graham was simply suffering from a "sugar reaction," the officer ordered Berry and Graham to wait while he found out what, if anything, had happened at the convenience store. When Officer Connor returned to his patrol car to call for backup assistance, Graham got out of the car, ran around it twice, and finally sat down on the curb, where he passed out briefly.

In the ensuing confusion, a number of other Charlotte police officers arrived on the scene in response to Officer Connor's request for backup. One of the officers rolled Graham over on the sidewalk and cuffed his hands tightly behind his back, ignoring Berry's pleas to get him some sugar. Another officer said: "I've seen a lot of people with sugar diabetes that never acted like this. Ain't nothing wrong with the M. F. but drunk. Lock the S. B. up." App. 42. Several officers then lifted Graham up from behind, carried him over to Berry's car, and placed him face down on its hood. Regaining consciousness, Graham asked the officers to check in his wallet for a diabetic decal that he carried. In response, one of the officers told him to "shut up" and shoved his face down against the hood of the car. Four officers grabbed Graham and threw him headfirst into the police car. A friend of Graham's brought some orange juice to the car, but the officers refused to let him have it. Finally, Officer Connor received a report that Graham had done nothing wrong at the convenience store, and the officers drove him home and released him. [490 U.S. 386, 390]

At some point during his encounter with the police, 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. He commenced this action under 42 U.S.C. 1983 against the individual officers involved in the incident, all of whom are respondents here, [1](#) alleging that they had used excessive force in making the investigatory stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. 1983." Complaint ¶ 10, App. 5. [2](#) The case was tried before a jury. At the close of petitioner's evidence, respondents moved for a directed verdict. In ruling on that motion, the District Court considered the following four factors, which it identified as "[t]he factors to be considered in determining when the excessive use of force gives rise to a cause of action under 1983": (1) the need for the application of force; (2) the relationship between that need and the amount of force that was used; (3) the extent of the injury inflicted; and (4) "[w]hether the force was applied in a good faith effort to maintain and restore discipline or maliciously and sadistically for the very purpose of causing harm." 644 F. Supp. 246, 248 (WDNC 1986). Finding that the amount of force used by the officers was "appropriate under the circumstances," that "[t]here was no discernable injury inflicted," and that the force used "was not applied maliciously or sadistically for the very purpose of causing harm," but in "a good faith effort to maintain or restore order in the face of a potentially explosive [\[490 U.S. 386, 391\]](#) situation." *id.*, at 248-249, the District Court granted respondents' motion for a directed verdict.

A divided panel of the Court of Appeals for the Fourth Circuit affirmed. 827 F.2d 945 (1987). The majority ruled first that the District Court had applied the correct legal standard in assessing petitioner's excessive force claim. *Id.*, at 948-949. Without attempting to identify the specific constitutional provision under which that claim arose, [3](#) the majority endorsed the four-factor test applied by the District Court as generally applicable to all claims of "constitutionally excessive force" brought against governmental officials. *Id.*, at 948. The majority rejected petitioner's argument, based on Circuit precedent, [4](#) that it was error to require him to prove that the allegedly excessive force used against him was applied "maliciously and sadistically for the very purpose of causing harm." [5](#) *Ibid.* Finally, the majority held that a reasonable jury applying the four-part test it had just endorsed [\[490 U.S. 386, 392\]](#) to petitioner's evidence "could not find that the force applied was constitutionally excessive." *Id.*, at 949-950. The dissenting judge argued that this Court's decisions in *Terry v. Ohio*, [392 U.S. 1](#) (1968), and *Tennessee v. Garner*, [471 U.S. 1](#) (1985), required that excessive force claims arising out of investigatory stops be analyzed under the Fourth Amendment's "objective reasonableness" standard. 827 F.2d, at 950-952. We granted certiorari, [488 U.S. 816](#) (1988), and now reverse.

Fifteen years ago, in *Johnson v. Glick*, 481 F.2d 1028, cert. denied, [414 U.S. 1033](#) (1973), the Court of Appeals for the Second Circuit addressed a 1983 damages claim filed by a pretrial detainee who claimed that a guard had assaulted him without justification. In evaluating the detainee's claim, Judge Friendly applied neither the Fourth Amendment nor the Eighth, the two most textually obvious sources of constitutional protection against physically abusive governmental conduct. [6](#) Instead, he looked to "substantive due process," holding that "quite apart from any `specific' of the Bill of Rights, application of undue force by [\[490 U.S. 386, 393\]](#) law enforcement officers deprives a suspect of liberty without due process of law." 481 F.2d, at 1032. As support for this proposition, he relied upon our decision in *Rochin v. California*, [342 U.S. 165](#)

(1952), which used the Due Process Clause to void a state criminal conviction based on evidence obtained by pumping the defendant's stomach. 481 F.2d, at 1032-1033. If a police officer's use of force which "shocks the conscience" could justify setting aside a criminal conviction, Judge Friendly reasoned, a correctional officer's use of similarly excessive force must give rise to a due process violation actionable under 1983. *Ibid.* Judge Friendly went on to set forth four factors to guide courts in determining "whether the constitutional line has been crossed" by a particular use of force - the same four factors relied upon by the courts below in this case. *Id.*, at 1033.

In the years following *Johnson v. Glick*, the vast majority of lower federal courts have applied its four-part "substantive due process" test indiscriminately to all excessive force claims lodged against law enforcement and prison officials under 1983, without considering whether the particular application of force might implicate a more specific constitutional right governed by a different standard. <sup>7</sup> Indeed, many courts have seemed to assume, as did the courts below in this case, that there is a generic "right" to be free from excessive force, grounded not in any particular constitutional provision but rather in "basic principles of 1983 jurisprudence." <sup>8</sup>

We reject this notion that all excessive force claims brought under 1983 are governed by a single generic standard. As we have said many times, 1983 "is not itself a [490 U.S. 386, 394] source of substantive rights," but merely provides "a method for vindicating federal rights elsewhere conferred." *Baker v. McCollan*, 443 U.S. 137, 144, n. 3 (1979). In addressing an excessive force claim brought under 1983, analysis begins by identifying the specific constitutional right allegedly infringed by the challenged application of force. See *id.*, at 140 ("The first inquiry in any 1983 suit" is "to isolate the precise constitutional violation with which [the defendant] is charged"). <sup>9</sup> In most instances, that will be either the Fourth Amendment's prohibition against unreasonable seizures of the person, or the Eighth Amendment's ban on cruel and unusual punishments, which are the two primary sources of constitutional protection against physically abusive governmental conduct. The validity of the claim must then be judged by reference to the specific constitutional standard which governs that right, rather than to some generalized "excessive force" standard. See *Tennessee v. Garner*, *supra*, at 7-22 (claim of excessive force to effect arrest analyzed under a Fourth Amendment standard); *Whitley v. Albers*, 475 U.S. 312, 318-326 (1986) (claim of excessive force to subdue convicted prisoner analyzed under an Eighth Amendment standard).

Where, as here, the excessive force claim arises in the context of an arrest or investigatory stop of a free citizen, it is most properly characterized as one invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable . . . seizures" of the person. This much is clear from our decision in *Tennessee v. Garner*, *supra*. In *Garner*, we addressed a claim that the use of deadly force to apprehend a fleeing suspect who did not appear to be armed or otherwise dangerous violated the suspect's constitutional rights, notwithstanding the existence of probable cause to arrest. [490 U.S. 386, 395] Though the complaint alleged violations of both the Fourth Amendment and the Due Process Clause, see 471 U.S., at 5, we analyzed the constitutionality of the challenged application of force solely by reference to the Fourth Amendment's prohibition against unreasonable seizures of the person, holding that the "reasonableness" of a particular seizure depends not only on

when it is made, but also on how it is carried out. *Id.*, at 7-8. Today we make explicit what was implicit in *Garner's* analysis, and hold that all claims that law enforcement officers have used excessive force - deadly or not - 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, rather than under a "substantive due process" approach. Because the Fourth Amendment provides an explicit textual source of constitutional protection against this sort of physically intrusive governmental conduct, that Amendment, not the more generalized notion of "substantive due process," must be the guide for analyzing these claims. [10](#) [490 U.S. 386, 396]

Determining whether the force used to effect a particular seizure is "reasonable" under the Fourth Amendment requires a careful balancing of "the nature and quality of the intrusion on the individual's Fourth Amendment interests" against the countervailing governmental interests at stake. *Id.*, at 8, quoting *United States v. Place*, [462 U.S. 696, 703](#) (1983). Our Fourth Amendment jurisprudence has long recognized 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. See *Terry v. Ohio*, [392 U.S., at 22-27](#). Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," *Bell v. Wolfish*, [441 U.S. 520, 559](#) (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See *Tennessee v. Garner*, [471 U.S., at 8-9](#) (the question is "whether the totality of the circumstances justify[es] a particular sort of . . . seizure").

The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. See *Terry v. Ohio*, *supra*, at 20-22. The Fourth Amendment is not violated by an arrest based on probable cause, even though the wrong person is arrested, *Hill v. California*, [401 U.S. 797](#) (1971), nor by the mistaken execution of a valid search warrant on the wrong premises, *Maryland v. Garrison*, [480 U.S. 79](#) (1987). With respect to a claim of excessive force, the same standard of reasonableness at the moment applies: "Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers," *Johnson v. Glick*, 481 F.2d, at 1033, violates the Fourth Amendment. The calculus of reasonableness must embody [490 U.S. 386, 397] allowance for the fact that police officers are often forced to make split-second judgments - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.

As in other Fourth Amendment contexts, however, the "reasonableness" inquiry in an excessive force case is an objective one: the question 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. See *Scott v. United States*, [436 U.S. 128, 137-139](#) (1978); see also *Terry v. Ohio*, *supra*, at 21 (in analyzing the reasonableness of a particular search or seizure, "it is imperative that the facts be judged against an objective standard"). An officer's evil intentions will not make a Fourth Amendment violation out of an objectively reasonable use of force; nor will an officer's good

intentions make an objectively unreasonable use of force constitutional. See *Scott v. United States*, supra, at 138, citing *United States v. Robinson*, [414 U.S. 218](#) (1973).

Because petitioner's excessive force claim is one arising under the Fourth Amendment, the Court of Appeals erred in analyzing it under the four-part *Johnson v. Glick* test. That test, which requires consideration of whether the individual officers acted in "good faith" or "maliciously and sadistically for the very purpose of causing harm," is incompatible with a proper Fourth Amendment analysis. We do not agree with the Court of Appeals' suggestion, see 827 F.2d, at 948, that the "malicious and sadistic" inquiry is merely another way of describing conduct that is objectively unreasonable under the circumstances. Whatever the empirical correlations between "malicious and sadistic" behavior and objective unreasonableness may be, the fact remains that the "malicious and sadistic" factor puts in issue the subjective motivations of the individual officers, which our prior cases make clear has no bearing on whether a particular seizure is "unreasonable" under the Fourth Amendment. Nor do we agree with the [490 U.S. 386, 398]

Court of Appeals' conclusion, see *id.*, at 948, n. 3, that because the subjective motivations of the individual officers are of central importance in deciding whether force used against a convicted prisoner violates the Eighth Amendment, see *Whitley v. Albers*, [475 U.S.](#), at 320-321, [11](#) it cannot be reversible error to inquire into them in deciding whether force used against a suspect or arrestee violates the Fourth Amendment. Differing standards under the Fourth and Eighth Amendments are hardly surprising: the terms "cruel" and "punishments" clearly suggest some inquiry into subjective state of mind, whereas the term "unreasonable" does not. Moreover, the less protective Eighth Amendment standard applies "only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions." *Ingraham v. Wright*, [430 U.S. 651, 671](#), [490 U.S. 386, 399] n. 40 (1977). The Fourth Amendment inquiry is one of "objective reasonableness" under the circumstances, and subjective concepts like "malice" and "sadism" have no proper place in that inquiry. [12](#)

Because the Court of Appeals reviewed the District Court's ruling on the motion for directed verdict under an erroneous view of the governing substantive law, its judgment must be vacated and the case remanded to that court for reconsideration of that issue under the proper Fourth Amendment standard.

It is so ordered.

## Footnotes

[ [Footnote 1](#) ] Also named as a defendant was the city of Charlotte, which employed the individual respondents. The District Court granted a directed verdict for the city, and petitioner did not challenge that ruling before the Court of Appeals. Accordingly, the city is not a party to the proceedings before this Court.

[ [Footnote 2](#) ] Petitioner also asserted pendent state-law claims of assault, false imprisonment, and intentional infliction of emotional distress. Those claims have been dismissed from the case and are not before this Court.

[ [Footnote 3](#) ] The majority did note that because Graham was not an incarcerated prisoner, "his complaint of excessive force did not, therefore, arise under the eighth amendment." 827 F.2d, at 948, n. 3. However, it made no further effort to identify the constitutional basis for his claim.

[ [Footnote 4](#) ] Petitioner's argument was based primarily on *Kidd v. O'Neil*, 774 F.2d 1252 (CA4 1985), which read this Court's decision in *Tennessee v. Garner*, [471 U.S. 1](#) (1985), as mandating application of a Fourth Amendment "objective reasonableness" standard to claims of excessive force during arrest. See 774 F.2d, at 1254-1257. The reasoning of *Kidd* was subsequently rejected by the en banc Fourth Circuit in *Justice v. Dennis*, 834 F.2d 380, 383 (1987), cert. pending, No. 87-1422.

[ [Footnote 5](#) ] The majority noted that in *Whitley v. Albers*, [475 U.S. 312](#) (1986), we held that the question whether physical force used against convicted prisoners in the course of quelling a prison riot violates the Eighth Amendment "ultimately turns on `whether force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'" 827 F.2d, at 948, n. 3, quoting *Whitley v. Albers*, supra, at 320-321. Though the Court of Appeals acknowledged that petitioner was not a convicted prisoner, it thought it "unreasonable . . . to suggest that a conceptual factor could be central to one type of excessive force claim but reversible error when merely considered by the court in another context." 827 F.2d, at 948, n. 3.

[ [Footnote 6](#) ] Judge Friendly did not apply the Eighth Amendment's Cruel and Unusual Punishments Clause to the detainee's claim for two reasons. First, he thought that the Eighth Amendment's protections did not attach until after conviction and sentence. 481 F.2d, at 1032. This view was confirmed by *Ingraham v. Wright*, [430 U.S. 651, 671](#), n. 40 (1977) ("Eighth Amendment scrutiny is appropriate only after the State has complied with the constitutional guarantees traditionally associated with criminal prosecutions"). Second, he expressed doubt whether a "spontaneous attack" by a prison guard, done without the authorization of prison officials, fell within the traditional Eighth Amendment definition of "punishments." 481 F.2d, at 1032. Although Judge Friendly gave no reason for not analyzing the detainee's claim under the Fourth Amendment's prohibition against "unreasonable . . . seizures" of the person, his refusal to do so was apparently based on a belief that the protections of the Fourth Amendment did not extend to pretrial detainees. See *id.*, at 1033 (noting that "most of the courts faced with challenges to the conditions of

pretrial detention have primarily based their analysis directly on the due process clause"). See n. 10, *infra*.

[ [Footnote 7](#) ] See Freyermuth, Rethinking Excessive Force, 1987 Duke L. J. 692, 694-696, and nn. 16-23 (1987) (collecting cases).

[ [Footnote 8](#) ] See *Justice v. Dennis*, *supra*, at 382 ("There are . . . certain basic principles in section 1983 jurisprudence as it relates to claims of excessive force that are beyond question [,] [w]hether the factual circumstances involve an arrestee, a pretrial detainee or a prisoner").

[ [Footnote 9](#) ] The same analysis applies to excessive force claims brought against federal law enforcement and correctional officials under *Bivens v. Six Unknown Fed. Narcotics Agents*, [403 U.S. 388](#) (1971).

[ [Footnote 10](#) ] A "seizure" triggering the Fourth Amendment's protections occurs only when government actors have, "by means of physical force or show of authority, . . . in some way restrained the liberty of a citizen," *Terry v. Ohio*, [392 U.S. 1, 19](#), n. 16 (1968); see *Brower v. County of Inyo*, [489 U.S. 593, 596](#) (1989). Our cases have not resolved the question whether the Fourth Amendment continues to provide individuals with protection against the deliberate use of excessive physical force beyond the point at which arrest ends and pretrial detention begins, and we do not attempt to answer that question today. It is clear, however, that the Due Process Clause protects a pretrial detainee from the use of excessive force that amounts to punishment. See *Bell v. Wolfish*, [441 U.S. 520, 535](#) -539 (1979). After conviction, the Eighth Amendment "serves as the primary source of substantive protection . . . in cases . . . where the deliberate use of force is challenged as excessive and unjustified." *Whitley v. Albers*, [475 U.S., at 327](#) . Any protection that "substantive due process" affords convicted prisoners against excessive force is, we have held, at best redundant of that provided by the Eighth Amendment. *Ibid*.

[ [Footnote 11](#) ] In *Whitley*, we addressed a 1983 claim brought by a convicted prisoner, who claimed that prison officials had violated his Eighth Amendment rights by shooting him in the knee during a prison riot. We began our Eighth Amendment analysis by reiterating the long-established maxim that an Eighth Amendment violation requires proof of the "'unnecessary and wanton infliction of pain.'" [475 U.S., at 319](#) , quoting *Ingraham v. Wright*, [430 U.S., at 670](#) , in turn quoting *Estelle v. Gamble*, [429 U.S. 97, 103](#) (1976). We went on to say that when prison officials use physical force against an inmate "to restore order in the face of a prison disturbance, . . . the question whether the measure taken inflicted unnecessary and wanton pain . . . ultimately turns on `whether the force was applied in a good faith effort to maintain or restore discipline or maliciously and sadistically for the very purpose of causing harm.'" [475 U.S., at 320](#) -321 (emphasis added), quoting *Johnson v. Glick*, 481 F.2d, at 1033. We also suggested that the other prongs of the *Johnson v. Glick* test might be useful in analyzing excessive force claims brought under the Eighth Amendment. [475 U.S., at 321](#) . But we made clear that this was so not because Judge Friendly's four-part test is some talismanic formula generally applicable to all excessive force claims, but because its four factors help to focus the central inquiry in the Eighth Amendment context, which is whether the particular use of force amounts to the "unnecessary and wanton infliction of pain." See *id.*, at 320-321.

Our endorsement of the *Johnson v. Glick* test in *Whitley* thus had no implications beyond the Eighth Amendment context.

[ [Footnote 12](#) ] Of course, in assessing the credibility of an officer's account of the circumstances that prompted the use of force, a factfinder may consider, along with other factors, evidence that the officer may have harbored ill-will toward the citizen. See *Scott v. United States*, [436 U.S. 128, 139](#), n. 13 (1978). Similarly, the officer's objective "good faith" - that is, whether he could reasonably have believed that the force used did not violate the Fourth Amendment - may be relevant to the availability of the qualified immunity defense to monetary liability under 1983. See *Anderson v. Creighton*, [483 U.S. 635](#) (1987). Since no claim of qualified immunity has been raised in this case, however, we express no view on its proper application in excessive force cases that arise under the Fourth Amendment.

JUSTICE BLACKMUN, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, concurring in part and concurring in the judgment.

I join the Court's opinion insofar as it rules that the Fourth Amendment is the primary tool for analyzing claims of excessive force in the prearrest context, and I concur in the judgment remanding the case to the Court of Appeals for reconsideration of the evidence under a reasonableness standard. In light of respondents' concession, however, that the pleadings in this case properly may be construed as raising a Fourth Amendment claim, see Brief for Respondents 3, I see no reason for the Court to find it necessary further to reach out to decide that prearrest excessive force claims are to be analyzed under the Fourth Amendment rather than under a [\[490 U.S. 386, 400\]](#) substantive due process standard. I also see no basis for the Court's suggestion, ante, at 395, that our decision in *Tennessee v. Garner*, [471 U.S. 1](#) (1985), implicitly so held. Nowhere in *Garner* is a substantive due process standard for evaluating the use of excessive force in a particular case discussed; there is no suggestion that such a standard was offered as an alternative and rejected.

In this case, petitioner apparently decided that it was in his best interest to disavow the continued applicability of substantive due process analysis as an alternative basis for recovery in prearrest excessive force cases. See Brief for Petitioner 20. His choice was certainly wise as a matter of litigation strategy in his own case, but does not (indeed, cannot be expected to) serve other potential plaintiffs equally well. It is for that reason that the Court would have done better to leave that question for another day. I expect that the use of force that is not demonstrably unreasonable under the Fourth Amendment only rarely will raise substantive due process concerns. But until I am faced with a case in which that question is squarely raised, and its merits are subjected to adversary presentation, I do not join in foreclosing the use of substantive due process analysis in prearrest cases. [\[490 U.S. 386, 401\]](#)