



Civil Rights Liability, Excessive Force And the Black Lives Matter Movement

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42 U.S.C. Section 1983

42 U.S.C. § 1983 reads as follows:

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. 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.



Monell v. Dept. of Soc. Services

436 U.S. 658 (1978)

Local governing bodies (and local officials sued in their official capacities) can be sued under section 1983 where the action arose from an unconstitutional:

1. Custom
2. Practice
3. Policy
4. Habit



Federal Court Jurisdiction

28 U.S.C. § 1343(a)(3) reads in relevant part as follows:

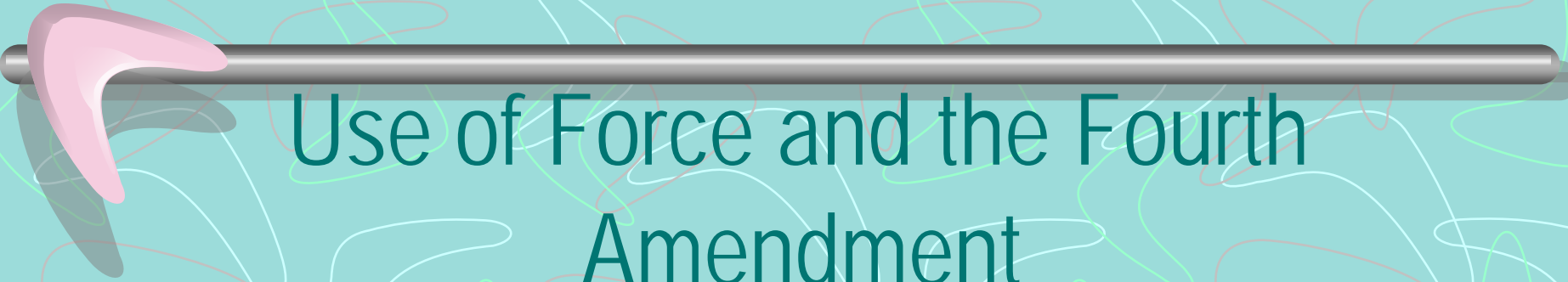
(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: . . .

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; . . .



THE FOURTH AMENDMENT AS A BASIS OF CIVIL RIGHTS LIABILITY

- Violations of the Fourth Amendment create civil rights liability under 42 U.S.C. section 1983.
- The Fourth Amendment prohibits illegal searches of persons, residences and buildings, as well as illegal arrests or “unreasonable seizures” (excessive force).



Use of Force and the Fourth Amendment

Civil or criminal liability may be predicated on:

1. 42 U.S.C. section 1983
2. California Penal Code section 835a
3. California Penal Code section 149



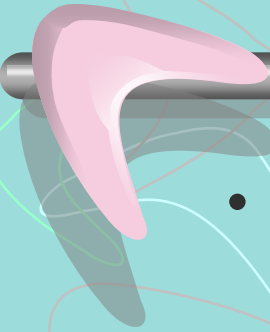
Use of Force and Excessive Force As A Basis of Civil Liability

The use of force during an arrest, an investigatory stop, or any other “seizure” of a person’s liberty is analyzed under the Fourth Amendment and may be actionable under 42 U.S.C. section 1983. The Supreme Court held in *Graham v. Connor* 490 U.S. 386 (1989), that uses of force should be evaluated from the standpoint of “objective reasonableness.” In *Graham*, the court held that as to evaluating uses of force there is no one generic standard for all violation of civil rights claims.



Objectively Reasonable Force

- Courts continue to define use of force liability in the context of *Graham v. Connor* 490 U.S. 386, 397 (1989)
 - According to Graham, “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.”

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- Force to be constitutional must be reasonable in light of the Fourth Amendment
 - Courts analyze several factors in analyzing use of force cases:
 - Degree of threat or harm to officers
 - Resistance by the suspect
 - Flight of the suspect
 - Necessity of officers to make split second decisions
 - Threat of harm to the public or others





Tennessee v. Garner

471 U.S.1 (1984)

1. Apprehension by use of deadly force is a seizure under the Fourth Amendment
2. Deadly force may not be used unless necessary to prevent escape and officer has probable cause to believe that the suspect poses a significant threat of death or serious injury to the officer or others



YANG v. HARDIN

37 F.3d 282 (7th Cir. 1994)

DUTY TO INTERVENE

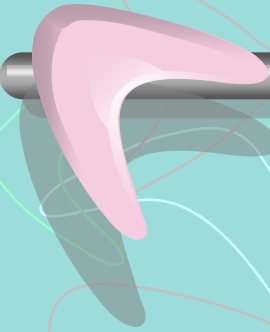
Officers are liable under Section 1983 if present at a scene, and if they have reason to know:

1. That excessive force is being used;
2. That a citizen has been unjustifiably arrested; or
3. That any constitutional violation has been committed by a law enforcement official, and the officer had a realistic opportunity to intervene to prevent the harm from occurring.



FAILURE BY OFFICERS TO INTERCEDE AND PREVENT VIOLATIONS OF CIVIL RIGHTS

In the case of *Rodney King v. City of Los Angeles*, much was made of the failure of law enforcement officers to intervene in preventing the use of excessive force. Courts have determined that a civil rights cause of action under 42 U.S.C. section 1983 may exist where officers present on a scene fail to prevent a known civil rights violation. In such a scenario witnessing officers may be deemed to be “integral participants” for purposes of civil liability.



Origin of Black Lives Matter Movement?



Rodney King v. City of Los Angeles

- 1) Plaintiff's Case
- 2) Defendants' Case
- 3) State prosecution and filing of Federal civil rights charges
- 4) Theories of civil liability and recovery – 42 USC sections 1983, 1988
- 5) President George Bush Sr. and Department of Justice involvement
- 6) The DOJ's response and actions to cure



Official Misconduct and Criminal Civil Rights Violations

18 U.S.C. § § 241, 242

Intentional acts by law enforcement officials who misuse their positions to unlawfully deprive individuals of constitutional rights, such as the right to be free from unwarranted assaults, illegal arrests and searches, and theft of property.



Rodney King State and Federal Criminal Civil Rights Prosecutions

- Police prosecutions in state court – acquittals
- L.A. riots and mass destruction
- Police prosecutions in federal court – convictions of two officers



Contrast Arrest of Dylann Roof

- Young white male attends a church service in a historically black church in South Carolina
- Welcomed into a Bible study by parishioners
- Massacred and murdered the nine parishioners
- He was calmly arrested and police bought him food from Burger King according to the Police Chief



Michael Brown and City of Ferguson

1. Controversy over what happened
2. Was Mr. Brown resisting or fighting officer?
3. Was Michael Brown a “demon” as described by Officer
4. The DOJ had to sue the city for failure to act
5. Did the officer’s fear have a color?



What is the Color of Fear?

How is "reasonable fear" defined?

How do we define "objective fear"?

How does an officer's personal biases factor into "objective" beliefs of fear or harm?

Is reasonable fear associated with, or defined by, a suspect's ethnicity?



New York Times

2/10/2016

WASHINGTON — The Department of Justice filed a civil rights lawsuit against Ferguson, Mo., on Wednesday, less than a day after the city rejected an agreement to overhaul its beleaguered criminal justice system and address allegations of widespread abuses by its police department.

“Their decision leaves us no further choice,” Attorney General Loretta E. Lynch said at a news conference announcing the lawsuit against the city of Ferguson.



LaQuan McDonald and Chicago PD

1. Questions over government cover up - *Police microphone intentionally destroyed per reports*
2. Questions over government insensitivity - *Black victim shot 16 times in 13 seconds*
3. Do Black Lives Matter? - *Investigation extended since October 2014?*



Tamir Rice and Cleveland PD

- Twelve year-old black child killed at a park in a matter of seconds
- Questions over police tactics and how black males are viewed
- No indictments



Jeremy Mardis Murder Indictments

- Minority officers indicted for murder after shooting and killing a six year-old white child in a car chase on November 3, 2015
- The grand jury in Louisiana indicted the officers in December 15, 2015

"Today's indictments will allow the state to move forward in the process of seeking justice for Jeremy Mardis and to hold accountable those who are responsible for his death," Louisiana Attorney General James Caldwell said after the grand jury hearing."



Value Placed on Life

In essence, the Black Lives movement is about protesting the value, or perceived lack of value, placed on black lives.

1. What is the value placed on life by governmental or law enforcement officials?
1. Does the value placed on an individual's life affect law enforcement's response in a use of force situation?



Eric Garner and City of New York

1. "I can't breathe"
2. Was excessive force used?
3. Is it enough to utter the words, "I can't breathe"?
4. What legal standard applies?
5. What about the grand jury's response?
6. How should the Department of Justice respond?



Kelly Thomas and City of Fullerton

- White schizophrenic homeless man has encounter with police in 2011
- He was tased and beaten in a confrontation and died as a result
- He told officers, "I can't breathe"
- Had broken bones in his face and choked on his own blood because of a crushed thorax
- His face was beyond recognition after the encounter with police



Monique Hernandez and City of Beaumont

Woman arrested for DUI

Accused of resisting arrest

Instantly blinded by GPX device aimed at her eyes and fired at point blank range

Ms. Hernandez was instantly blinded as her eye balls were severely damaged



Grand Jury Indictment

1. The grand jury issued an indictment

1. The first case ended in a mistrial

Was the civil rights statute violated even if the officer is ultimately acquitted?



Sureshbhai Patel Paralyzed by Officers in Alabama

- Indian grandfather paralyzed in a rough takedown
- He did not speak English and had some difficulty in understanding
- Officer was indicted, but federal charges were dismissed after mistrials were declared



Sheriff Blames Beyonce'

A Tennessee sheriff blamed Beyoncé's "anti-cop" Superbowl halftime show for rash of police murders nationwide

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ALL LIVES MATTER!