

**THE MATRIX: AN ALTERNATIVE
STANDARD FOR ANALYZING EXCESSIVE
FORCE CLAIMS**

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INTRODUCTION

Police officers do not always act as friends, and when they use excessive force against an individual, the courts do not always offer

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justice as the current standard for analyzing excessive force claims allows the police to escape accountability. Therefore, the Supreme Court should consider adopting a use-of-force matrix as the test for analyzing these claims under the Fourth Amendment instead of the current standard. When courts analyze an excessive force claim, they rely on the objective reasonableness test as set out by *Graham v. Connor*. This test oftentimes allows police officers to escape justice for their actions because “objective reasonableness” is an ambiguous concept that offers no guidance to judges, juries, or police officers. A use-of-force matrix would provide for concrete situations in which an officer can use a certain amount a force against a suspect, giving the test for excessive force some teeth and providing guideposts for courts. Moreover, police officers do not and cannot receive adequate training on the *Graham* test in a manner that allows them to rely on that training in the field. Officers already train with a use-of-force matrix, so holding them to their own standards would align police training with criminal procedure. Therefore, instead of using the *Graham* test to evaluate excessive force claims, a use-of-force matrix test would guide everyone involved and lead to greater accountability for officers who use excessive force.

Because this article addresses the current standard for evaluating claims of excessive force against the police, Part I first focuses on the current use of force standard as developed in *Tennessee v. Garner* and formally adopted by the Supreme Court in *Graham v. Connor*. Part I also describes the conceptions of force that come into play when discussing use of force, addressing the police officer’s unique position as both a state actor and a citizen in the context of the decision to use force. Part I, however, does not discuss qualified immunity as that topic proves beyond the scope of this article. This paper assumes that a case has already passed the qualified immunity stage and is at the excessive force analysis stage.

Part II then sets out the problems with the *Graham* test. This Part will first address the three factors presented by *Graham*, the problems present in the notion of “objective reasonableness,” and a concept known as split-second fallacy. Lastly, this Part discusses

how police training does not line up with criminal procedure when considering excessive force.

Part III serves as the main focus of the paper. This Part first describes use of force matrices and how they typically operate. Part IV then argues for the use-of-force matrix in the place of the *Graham* test by explaining the advantages of the use-of-force matrix – greater accountability, a better guide for courts, and benefits for police training.

Part IV applies the use-of-force matrix to several cases with differing factual scenarios to show how the use-of-force matrix could practically work.

Part V addresses several critiques of the use-of-force matrix. Part V addresses the inherent lack of flexibility presented by the use-of-force matrix by providing two exceptions that could give the matrix the needed flexibility to overcome this weakness and illustrating how these exceptions would work with specific cases. Part V then addresses the legal endogeneity critique as well as the fact that the use-of-force matrix only focuses on suspect action and officer reaction. This article then ends with a short conclusion.

I. BACKGROUND

A. *The Current Standard*

When analyzing a claim of excessive force, a Plaintiff must first bring suit under 42 U.S.C. § 1983¹ before reaching qualified immunity and the Fourth Amendment standard of “objective reasonableness.”² Essentially, when law enforcement officers allegedly use excessive force “in the course of making an arrest, investigatory stop, or other ‘seizure’” of a person, a court must use this “reasonableness” standard as the method of analysis after getting past qualified immunity.³

The development of the current standard began with the decision of *Tennessee v. Garner* in 1985.⁴ In that case, Memphis police responded to a burglary call at night, and once they arrived at the scene, they saw Garner run across the backyard and stop at

¹ See generally 42 U.S.C. § 1983.

² *Graham v. Connor*, 490 U.S. 386, 388 (1989).

³ *Id.* at 388.

⁴ See generally *Tennessee v. Garner*, 471 U.S. 1 (1985).

the fence.⁵ The responding officers saw no sign of a weapon; however, as Garner climbed the fence, one officer discharged his firearm and killed the suspect.⁶ The Supreme Court held that although the officer's actions constituted excessive force in this case, deadly force can prove justified:

Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given. As applied in such circumstances, the . . . statute would pass constitutional muster.⁷

Therefore, the Supreme Court in *Garner* asserted that police officers can properly use deadly force to prevent the escape of a suspect under certain circumstances.⁸ The Court would later determine whether a particular use of force proved "reasonable."⁹

A few years later, in *Graham v. Connor*, the Supreme Court set out the current test for use of force.¹⁰ *Graham* involved a suspect, Graham, who suffered from an insulin reaction after the police subjected him to an investigative stop.¹¹ After he passed out, the police officers rolled Graham over, cuffed his hands tightly behind his back, shoved his face against the hood of the police cruiser, and threw him headfirst into the car.¹² Graham ultimately suffered "a broken foot, cuts on his wrists, a bruised forehead, ... an injured shoulder[, and] . . . a loud ringing in his right ear."¹³ In holding that the police used excessive force against Graham, the Court adopted a totality of the circumstances test under the Fourth

⁵ *Id.* at 3.

⁶ *Id.* at 3-4.

⁷ *Id.* at 11-12.

⁸ *Id.*

⁹ *Id.* at 13.

¹⁰ See generally *Graham v. Connor*, 490 U.S. 386 (1989).

¹¹ *Id.* at 389.

¹² *Id.*

¹³ *Id.* at 390.

Amendment for analyzing excessive force claims.¹⁴ However, the Court deemed “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” the main three factors.¹⁵ Furthermore, the Court held that “the ‘reasonableness’ inquiry in an excessive force case is an objective rather than subjective 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.”¹⁶ Lastly, *Graham* provided that the reasonableness test must consider the fact that “police officers are often forced to make split-second” decisions in uncertain, stressful circumstances when deciding to use force.¹⁷ This reasonableness test for *Graham* constitutes the current framework courts use when analyzing excessive force claims.¹⁸

The Supreme Court also implied an expansion of the *Graham* factors in *Saucier v. Katz*.¹⁹ In that case, the police officer in question arrested a demonstrator at a protest as he walked toward a barrier with a banner.²⁰ The officer grabbed the respondent from behind and forced him into a police van.²¹ Although this case dealt with qualified immunity, the Supreme Court offered a statement concerning an excessive force analysis: “If an officer reasonably, but mistakenly, believed that a suspect was likely to fight back, for instance, the officer would be justified in using more force than in fact was needed.”²² This dicta strongly suggests that an officer has more discretion to escalate the situation if the officer believes a suspect will fight back, which could provide the police with more

¹⁴ *Id.* at 396.

¹⁵ *Id.*

¹⁶ *Id.* at 397.

¹⁷ *Id.* at 396-97.

¹⁸ See generally, e.g., *Zwarg v. City of San Luis Obispo*, No. 2:21-cv-03525-WLH-AJR, 2024 WL 5298599 (C.D. Cal.); see also *Dockery v. City of Greeley*, No. 23-cv-00047-RM-KAS, 2024 WL 3936655 (D. Col.).

¹⁹ See John P. Gross, *Judge, Jury, and Executioner: The Excessive Use of Deadly Force by Police Officers*, 21 TEX. J. C.L. & C.R. 155, 159 (2016).

²⁰ *Saucier v. Katz*, 533 U.S. 194, 198 (2001).

²¹ *Id.* However, a dispute exists as to the nature of the suspect action and officer reaction dynamic. *Id.*

²² *Id.* at 205.

leeway and cement the idea as discussed earlier in *Garner* and *Graham*.²³

B. Conceptions of Force

Different conceptions of force come into play regarding the police officer's use of force, leading to the need for a definition of force. One early definition of force was simply that "any resistance by a suspect to the verbal command of an officer" constitutes force.²⁴ However, this basic definition cannot encompass the variety of situations police officers encounter, and police literature struggles to generally define force even today.²⁵ The definition of "violence," however, does a better job of defining force because this term incorporates "behaviors by individuals that intentionally threaten, attempt, or inflict physical harm on others."²⁶ However, this definition also proves too broad as many actions can fall under this umbrella.²⁷ Instead, one can conceive of force as a multi-dimensional concept; force can consist of five dimensions either separately or together: "voice, motion, restraints, tactics, and weapons."²⁸ The position of the officer as opposed to the suspect can also involve weapon use as force, giving officers a wider range of options regarding how and when to use force.²⁹ Suspects and officers utilize one or more of these aspects, combining them in a manner recognizable as force against an officer, against a suspect, or against a victim.³⁰

Although one may see force as applying equally to both police officers and civilians, a distinct difference exists between the way officers and civilians use force. Officers occupy a unique position as both an agent of the state and a citizen; because officers act for the government with the coercive power of the state behind them, officers are "often not permitted to retreat, and they are trained and

²³ Gross, *supra* note 19, at 159.

²⁴ Joel H. Garner et al., *Measuring the Continuum of Force Used by and Against the Police*, 20 CRIM. JUST. REV. 146, 150 (1995).

²⁵ *Id.* at 151-52.

²⁶ *Id.* at 152 (quoting A.J. Reiss, Jr. & J. Roth, *Understanding and Preventing Violence*, NAT'L ACAD. PRESS (1993)).

²⁷ *Id.*

²⁸ *Id.* at 153.

²⁹ *See id.* at 154-55.

³⁰ *Id.* at 155.

expected to use force” when carrying out their duties.³¹ Furthermore, in this capacity, officers use force offensively much more often than defensively even when couched in terms of general noncompliance by the officer in question.³² Therefore, unlike a victim defending himself or herself from an attack, police officers use force in a specific dynamic:

Police officers use force as an authorized form of state coercion, but they do so in tense and often emotionally charged interpersonal encounters. An officer using force to arrest a subject is neither entirely a neutral actor . . . nor entirely an individual acting in the heat of the moment, vulnerable and in harm’s way, perhaps vengeful and afraid. Strangely but inevitably, he is both.³³

This dynamic further presents itself when considered from the officer’s point of view. Police officers (and perhaps the general populace regarding the nature of police use of force) often think in terms of individual self-defense when defending themselves from an attacker,³⁴ and in the event of an attack upon themselves, they use force in self-defense in the same way that ordinary citizens would use force to prevent harm to themselves.³⁵ Law enforcement policies and training also allow a greater use of force in individual self-defense than permitted for civilians.³⁶

However, in this dynamic, the police officer’s individual self-defense interest serves as “derivative of the state’s interests in law and order.”³⁷ As a result, officers can defend themselves in situations where ordinary citizens cannot, and the state’s interests in keeping officers safe on the job further serves as evidence of the state’s interest in this dynamic.³⁸ The state’s justification of use of force as self-defense allows the officer to use force both to serve state interests and to avoid the coercive pressure that would result from

³¹ Rachel A. Harmon, *When is Police Violence Justified?*, 102 NW. U. L. REV. 1119, 1120 (2008).

³² Gross, *supra* note 19, at 161-62.

³³ Harmon, *supra* note 31, at 1121 (footnotes omitted).

³⁴ *Id.* at 1156.

³⁵ Brandon Garrett & Seth Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211, 277 (2017).

³⁶ *Id.*

³⁷ Harmon, *supra* note 31, at 1156.

³⁸ *Id.* at 1120-21.

an officer giving up his or her right to self-defense as a part of the job, which allows this dynamic to occur and proves necessary for the presence of citizen police officers rather than military police officers as protectors of the general populace.³⁹ However, one cannot neglect the police officer's own conception of use of force; the police officer views use of force primarily as self-defense,⁴⁰ which affects how an officer will act in the moment. If an officer believes his or her life or safety is threatened, that officer will view the use of force as necessary to preserve his or her own health and safety. While an officer may view pre-emptive use of force as getting a bad guy off the street (a viewpoint that reflects the state's interest in effective law enforcement), an officer may view a resisting suspect as a threat to his or her person (a viewpoint that shows the thoughts on use of force from the officer's perspective), which highlights the dual nature of the police officer's position and the importance of well-defined standards for excessive force.⁴¹

The police officer's actions and department policies reflect the officer's decision to use force. For instance, many police officers view simple noncompliance as "a provocation that justifies the use of force," and the warrior culture of police training tends to reinforce the notion that police must achieve compliance with their orders by any means in order to win the "war on crime."⁴² If officers become soldiers in the "war on crime" when they put on their uniforms before each shift, the dual nature of government actor and citizen comes to life; to both come home safely and protect people, the officer must achieve compliance by any means necessary.⁴³ Because the Supreme Court has indicated that an officer can reasonably use force if presented with what he or she thinks is a threat of force, a court can easily justify the police officer's use of force in either the officer or citizen capacity. These conceptions of force can greatly affect both an officer's decision to use force against a suspect as well as a court's analysis of an excessive force claim against that officer.

³⁹ *See id.* at 1121.

⁴⁰ *See id.* at 1156; *see also* Garrett & Stoughton, *supra* note 35, at 277.

⁴¹ Harmon, *supra* note 31, at 1156.

⁴² Gross, *supra* note 19, at 161-62.

⁴³ *Id.*

II. PROBLEM

The current reasonableness test courts use to analyze excessive force proves extremely deferential to the police because of the overbroad and vague nature of the objective reasonableness test. This deference offers no guidance to anyone and leads to a lack of accountability for officers who use excessive force.

A. *The Graham Factors*

The main three factors of *Graham* – “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” – prove inherently deferential.⁴⁴ In analyzing a situation under *Graham*, the factors leave a judge or jury with no guidance as to where an officer’s actions should fall under a reasonableness test.⁴⁵ Essentially, a situation where an officer must use force oftentimes proves itself as “a series of choices made by an officer, sometimes in quick succession, over the course of an interaction” rather than “a singular event.”⁴⁶ Applying this line of thought to *Graham*, the *Graham* factors serve as a poor list:

In simply listing circumstances under which force may be justified, the *Graham* factors fail to specify how to evaluate whether an officer’s actions were justified in a particular situation, including whether they were reasonable given the spectrum of possible responses. They do not tell us how much force is justified or what kind of force is reasonable.⁴⁷

Essentially, the three *Graham* factors provide a list of considerations to a jury or judge without the analysis needed to apply these considerations. Because the *Graham* analysis does not specify whether a situation warrants a particular response, a judge or jury cannot reason analogously in the way one might in a legal writing course. Even the Supreme Court recognizes this overbroad and vague nature of the *Graham* (and by extension, *Garner*) analysis:

⁴⁴ *Graham v. Connor*, 490 U.S. 386, at 396. (1989).

⁴⁵ Gross, *supra* note 19, at 161-62.

⁴⁶ Harmon, *supra* note 31, at 1130.

⁴⁷ *Id.* at 1131 (footnote omitted).

According to the Court, *Graham* and *Garner* work at too high a level of generality to provide sufficient predictive power, except in the most obvious cases. By the Court's own admission, they provide "some tests to guide us in determining the law in many different kinds of circumstances[,] but we do not see the kind of clear law (clear answers)" that would satisfy fair notice.⁴⁸

Thus, in addition to providing no guidance for courts, the current reasonableness standard also fails to provide guidance to law enforcement. Because no one truly has any guidance in analyzing a claim for excessive force, *Graham* ultimately leaves judges and juries to their own opinions, which allows bias to significantly affect any judgment.⁴⁹ As such, the current reasonableness standard proves vague and overbroad due to the lack of guidance in the test, and this issue allows courts and juries to defer to the police more easily.

B. "Objective Reasonableness"

The notion of "objective reasonableness" also provides more deference to the police in an excessive force claim. Firstly, no one truly knows what an objectively reasonable use of force would look like in most situations due to *Graham's* lack of a proper measurement for use of force. Officers have a variety of options for employing force since they can choose to use their bodies, hands, feet, chemical spray, tasers, batons, or firearms, which naturally gives officers a "spectrum of options" and warrants "a sliding scale, where more force is justified to counter an increasing threat, taking into account the conditions of the interaction" as the way to "properly measure[]" force.⁵⁰ *Graham* provides no guide for when an officer should use one of these levels of force.⁵¹

In conjunction with this issue, the *Graham* analysis also states that "[t]he 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

⁴⁸ *Id.* at 1142 (alteration in original) (quoting *Brosseau v. Haugen*, 543 U.S. 194, 198-99, 203 (2004)).

⁴⁹ *Id.* at 1130.

⁵⁰ *Id.* at 1130-31.

⁵¹ *Id.* at 1130.

particular situation.”⁵² However, the Court invoked the “‘split-second syndrome’ or fallacy” in making this assumption, which refers to the belief that police officers have to make life or death decisions in the heat of the moment.⁵³ Essentially, the Court “did not say that police officers should be shown some amount of deference in their decision making when the situation they are in *actually* is ‘tense, uncertain, and rapidly evolving,’ but simply because they are *often* placed in such situations.”⁵⁴ This distinction essentially allows a court to push deference to the police on a jury even if the situation did not actually prove “tense, uncertain, and rapidly evolving.”⁵⁵ When combined with jurors’ “preconceived notion[s] that law enforcement is extremely dangerous work and that police officers are under constant threat of attack,” the lack of guidance results in a test where “judges and juries have to slosh through the ‘morass of reasonableness.’”⁵⁶ Then, “expert testimony [which] overemphasizes the potential threat to officer safety. . . . from fellow officers” serves often as the only guiding information for jurors to use in making their judgments,⁵⁷ causing deference to become embedded into the reasonableness standard.⁵⁸ Therefore, when combined with a lack of guidance for juries and the reliance on the “split-second fallacy,” deference to the police proves inherent in the *Graham* standard.

C. Police Training

Police training on “objective reasonableness” serves as the last issue with the *Graham* standard. Police officers do not and cannot receive training on “objective reasonableness” because the test is vague and because the analysis required to arrive at that conclusion proves lengthy.⁵⁹ Since a “reasonable police officer” serves as the point of view for the reasonableness test, the “legality of the officer’s

⁵² *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

⁵³ Garrett & Stoughton, *supra* note 35, at 229 (quoting James J. Fyfe, *The Split-Second Syndrome and Other Determinants of Police Violence*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS 466, 475-77 (Roger G. Dunham & Geoffrey P. Alpert eds., 2010)).

⁵⁴ Gross, *supra* note 19, at 158-59 (quoting *Graham*, 490 U.S. at 397).

⁵⁵ *Graham*, 490 U.S. at 397.

⁵⁶ Gross, *supra* note 19, at 170 (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)).

⁵⁷ *Id.*

⁵⁸ *See id.*

⁵⁹ Garrett & Stoughton, *supra* note 35, at 217.

actions is based on the information possessed by the officer at the moment force is employed, what some criminologists have titled 'subjective objectivity.'⁶⁰ This notion defeats the purpose of objective reasonableness because officers must analyze extraneous factors in deciding what level of force to use rather than simply suspect actions, and this rationalization can lead to reasonable justifications for excessive force.

Essentially, the abstract nature of a reasonableness concept does not lend itself to the sort of quick thinking that the Supreme Court has said that officers should be allowed to do without fear of prosecution. Officers do not have time to think through what is reasonable in a given situation because of the complex nature of this endeavor, which can result in a use of force that a court evaluates in a lengthy process after the fact. Furthermore, the notion of "objective reasonableness" implies the existence of a reasonable police officer. "Reasonable professionals" use their training to avoid making quick-fire, life or death decisions,⁶¹ and "a reasonable officer is a well-trained officer, who has received instruction on sound police tactics."⁶² However, this definition of a reasonable officer does not factor into the *Graham* test.⁶³ The lack of an adequate definition reflects the divide between police training and criminal procedure as this test does not provide guidance to anyone involved.⁶⁴ Ultimately, police officers do not know how much force they can use or when they can use that amount of force because an officer cannot receive training on "reasonableness," leading to excessive uses of force that an officer can justify as reasonable under the circumstances.

The overbroad and vague nature of the *Graham* test allows the police to receive extreme deference in the courts. The main three factors of the *Graham* analysis as well as the auxiliary issue of "objective reasonableness" under the circumstances inherently provide the conditions that allow officers to escape accountability. The "objective reasonableness" test also results in bad police

⁶⁰ *Id.* at 223-24 (quoting Geoffrey P. Alpert & William C. Smith, *How Reasonable is the Reasonable Man?: Police and Excessive Force*, 85 J. CRIM. L. & CRIMINOLOGY 481, 486 (1994)).

⁶¹ *Id.* at 224.

⁶² *Id.* at 222.

⁶³ *Id.*

⁶⁴ *Id.*

training, which society should want to avoid as a matter of good public policy. Therefore, an alternative test would better provide guidance to everyone involved, provide accountability for officers who use excessive force, and allow for better police training.

III. ARGUMENT

A. *The Use-of-Force Matrix*

In contrast to a reasonableness test, police departments frequently use use-of-force matrices to inform officers on proper, reasonable uses of force. Use-of-force matrices typically arrange suspect resistance and officer force into two categories while offering definitions of particular types of force.⁶⁵ The force continuum becomes correlated with the resistance continuum to dictate what level of force the officer can use and under what circumstances the officer can use that level of force in response to suspect resistance.⁶⁶ A use-of-force matrix then shows levels of force and resistance in an escalating fashion as opposed to a use-of-force continuum, which only dictates levels of force.⁶⁷ Although use of force policies vary among police departments, use-of-force matrices all display “multiple categories of progressively increasing suspect resistance matched to progressively increasing categorization of officer response.”⁶⁸ Essentially, a use-of-force matrix provides an officer response for the specific actions of a suspect in an escalating fashion; preferably, a use-of-force matrix also provides for de-escalation as well.

The National Institute of Justice provides an example use of force continuum.⁶⁹ This continuum situates officer presence at the bottom and then in escalating order, verbalization, empty-hand control, less-lethal methods, and lethal force.⁷⁰ Although easy to understand, this use of force continuum does not offer the typical

⁶⁵ *Id.* at 270.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ Garner et al., *supra* note 24, at 151.

⁶⁹ *The Use-of-Force Continuum*, NAT'L INST. OF JUST. (Aug. 3, 2009), <https://nij.ojp.gov/topics/articles/use-force-continuum> [<https://perma.cc/2YKT-MYQW>].

⁷⁰ *Id.*

suspect action and officer reaction dynamic present in a use-of-force matrix.

The Dallas Police Department's use-of-force matrix provides a better example of a proper use-of-force matrix. This framework places each party's actions together.⁷¹ When the suspect uses psychological intimidation and resistive dialogue, the officers can use officer presence and verbal direction to respond.⁷² The next step in escalation is when the suspect uses passive resistance; the officer can then use soft empty-hand control.⁷³ Defensive resistance by the suspect then allows the officer to use hard empty-hand control tactics, pepper spray, and electronic control weapons.⁷⁴ Active aggression by the suspect allows intermediate weapon use by the police.⁷⁵ Finally, aggravated aggression by the suspect allows the police to use deadly force.⁷⁶ This use-of-force matrix properly displays the suspect action and officer reaction dynamic.

However, the Dallas Police Department's model is still flawed because the matrix does not provide for de-escalation.⁷⁷ The Michigan Commission on Law Enforcement Standards offers a subject control framework that offers an even better approach.⁷⁸ While using mostly equivalent categories to the one used by the Dallas Police Department, this subject control matrix also indicates how the injury potential for both the suspect and the officer increase as force escalates; this use-of-force matrix also explicitly includes de-escalation on the model.⁷⁹ Allowing chemical spray and the use of a taser as compliance controls in response to passive resistance constitutes the main difference between this matrix and

⁷¹ Dae-Young Kim et al., *Exploring the Police Use of Force Continuum with a Partial Proportional Odds Model*, 45 POLICING: AN INT'L J. 252, 257 (2022).

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See generally MICH. COMM'N ON L. ENF'T STANDARDS, SUBJECT CONTROL CONTINUUM: A TRAINING GUIDE FOR ESCALATION AND DE-ESCALATION OF SUBJECT CONTROL 1 (2011), https://www.michigan.gov/-/media/Project/Websites/msp/images/use_of_force_continuum.pdf?rev=7ff12ad0a7f64d4bbc01a52499b80c19 [<https://perma.cc/SSN4-EE5X>].

⁷⁹ *Id.*

the one used by the Dallas Police Department, however.⁸⁰ Despite this discrepancy, the Commission's matrix serves as an example of an ideal use-of-force matrix because this matrix features different levels of force as well as a consideration for de-escalation.

B. Proposal

A use-of-force matrix would provide a detailed system of ranking force that allows for more precision than the current reasonableness test. Typically, a use-of-force matrix has two components – the continuum of suspect action and the corresponding continuum of suspect reaction.⁸¹ These two continuums escalate in corresponding fashion,⁸² and a proper use-of-force matrix offers de-escalation. These matrices currently provide guides for officers on how much force they can use and when they can use a particular level of force. For example, under the Michigan use-of-force matrix, if the suspect commits passive resistance, which consists of only a failure to obey commands without attempting to stop the officer from acting, an officer can use compliance controls, which consist of soft-hand control techniques (grappling or wrestling) and compliance control devices, at most.⁸³ The officer cannot respond to passive resistance with intermediate controls like batons, an officer response that corresponds with active aggression and sits just below deadly force.⁸⁴ Immediately escalating to a high use of force in this scenario would constitute excessive force.⁸⁵ The scoring of force in a use-of-force matrix provides a test for excessive force claims with concrete guideposts:

⁸⁰ *Id.* at 2. The key in this situation is that the primary purpose of the devices – chemical spray and tasers – is to gain compliance of the suspect rather than to cause pain. *Id.* Contrasted with the use of a baton, non-lethal projectiles, or tear gas, these devices primarily cause pain rather than exist as a way to gain compliance in the manner that chemical spray and tasers serve. *Id.*

⁸¹ Garrett & Stoughton, *supra* note 35, at 270.

⁸² *Id.*

⁸³ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

⁸⁴ *Id.* While deadly force typically involves discharging a firearm, other types of force can also constitute deadly force. *Id.*

⁸⁵ *Id.* at 1.

The strength of these two continuum measures is that they rank police and suspect actions in a way that closely approximates current . . . arrest tactics training and policy concerning the use of force. They distinguish between different types of force and rank them according to the current official standards of relative severity.⁸⁶

These use of force matrices better helps guide judges and juries in these claims because a use-of-force matrix shows how much and under what circumstances force proves permissible.⁸⁷ A use-of-force matrix, then, provides a concrete guide as to when officers can use a particular level of force, allowing juries to analyze the situation within a metric independent of both officer testimony and their own preconceptions.⁸⁸ Juries will be better able to apply the rules to the facts under a use-of-force matrix test as opposed to “slosh[ing] through the ‘morass of reasonableness’” under *Graham*.⁸⁹ In this way, the use-of-force matrix could provide more accountability than *Graham*.

In contrast, the *Graham* test analyzes three factors – “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.”⁹⁰ This test also analyzes the totality of the circumstances and allows for the officer to make split-second decisions in the heat of the moment while ultimately resting on “objective reasonableness,” meaning that the analysis hinges on the facts known to the officer at the time of the arrest.⁹¹ Under the *Graham* test, the use of a baton or firearm could still prove reasonable in a passive resistance situation due to the flexible allowances of the reasonableness test. For instance, if the suspect had his hands in his pockets, a police officer could easily claim that the possibility of the suspect having a weapon proved reasonable and justified an

⁸⁶ Garner, *supra* note 24, at 160.

⁸⁷ See *id.*; see also Harmon, *supra* note 31, at 1172.

⁸⁸ Gross, *supra* note 19, at 170.

⁸⁹ *Id.* (quoting Scott v. Harris, 550 U.S. 372, 383 (2007)); see also Garrett & Stoughton, *supra* note 31, at 237 (quoting Jones ‘El v. Berge, No. 00-C-421-C, 2001 WL 34379611, at *14 (W.D. Wis. Aug. 14, 2001)).

⁹⁰ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁹¹ *Id.* at 387.

escalation in force.⁹² Furthermore, due to the current case law that allows the police to use deadly force if they fear deadly force is imminent,⁹³ this scenario could even deem the use of deadly force as reasonable because the fluid nature of the reasonableness test does not involve the same level of detail as a matrix to score force.⁹⁴ The jury would have no real guidepost for what proves a non-excessive use of force other than what other officers could say and their own biases.⁹⁵ In this way, the *Graham* test offers a great deal of deference to the police because the allowance for “split-second decision making” justifies escalation when the suspect “might” have had a gun, and pre-emptive use of force becomes the norm.

When comparing the application of the two tests, a use-of-force matrix aligns better with police training as many departments use a version of the matrix as a guide, which would allow police officers to internalize this matrix if properly trained. Currently, all officer training programs include a crash course on the *Graham* test: “the legal training they receive about when to use force mirrors current law: it often constitutes little more than an exhortation to act reasonably.”⁹⁶ While officers may learn the holdings of some cases, they do not gain the reasoning abilities necessary for analogizing from those cases to new situations.⁹⁷ However, internalizing a use-of-force matrix would allow officers to fall back on that framework when making split-second decisions. The use-of-force matrix tells officers when they can use a specific amount of force; officers would fall back on this matrix in the moment, and then a jury would use the same standard to evaluate the timing and amount of force, aligning police training with criminal procedure.⁹⁸ Many other professionals have training to fall back on in the heat of the moment. Surgeons must make split-second decisions when operating on patients, emergency-medical-technicians must make split-second decisions when saving lives, and military members must make split-second decisions in combat. All of these

⁹² See *infra* Part IV.B.

⁹³ *Saucier v. Katz*, 533 U.S. 194, 198 (2001).

⁹⁴ See *infra* Part IV.B.

⁹⁵ Gross, *supra* note 19, at 170.

⁹⁶ Harmon, *supra* note 31, at 1144; see also Garrett & Stoughton, *supra* note 35, at 217-19.

⁹⁷ Harmon, *supra* note 31, at 1144; see also Garrett & Stoughton, *supra* note 35, at 219.

⁹⁸ See Harmon, *supra* note 31, at 1169-71.

professionals must fall back on their internalized training when making split-second decisions in tense, uncertain situations, and police officers should prove no different.

In addition to providing a concrete guide for officers, holding the use-of-force matrix as the standard incorporates both an express proportionality requirement and a necessity requirement into criminal procedure. The use-of-force matrix acts as a proportionality chart, providing for a certain use of force based on the threat and better reflecting the range of options available to the officer. Since officers already use these matrices as a training guides, the Fourth Amendment would simply hold them to their own standards.⁹⁹ Moreover, the necessity requirement in a use-of-force matrix exists in the sense that “[a] self-defender capable of stopping a threat without injuring his attacker, because of special skills or training, is not justified in using more force than is required.”¹⁰⁰ Police officers receive special training on how to use force in excess of what most civilians know how to use, highlighting the dual nature of the police officer in society.¹⁰¹ The use-of-force matrix as the test would tell officers, judges, and juries when a particular use of force proves necessary; a use of force higher than that proscribed by the matrix would prove unnecessary and excessive.¹⁰² The necessity requirement, then, adds clarity to the test for excessive force claims for all involved.¹⁰³ The express proportionality and necessity requirements would also bring ordinary self-defense law into the analysis by fusing ordinary self-defense law with the officer’s mandate to use force, better addressing the dual nature of the officer’s position than *Graham*.¹⁰⁴ By aligning a use-of-force matrix in police training with criminal procedure, police departments would have incentives to train officers more strictly on a use-of-force matrix, forcing officers to internalize this matrix as a part of their training. Therefore, when a suspect uses force against an officer, the use-of-force matrix would allow for a concrete reaction in a given situation, and when analyzed later by a court, the court would simply hold the police

⁹⁹ *Id.* at 1179-80; *see also id.* at 1130.

¹⁰⁰ *Id.* at 1174.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 1167-68.

officer accountable to his or her training rather than a theoretical standard divorced from law enforcement practice.

IV. APPLICATION

A. Introduction

Seeing the use-of-force matrix in action as applied to different situations further strengthens the case for the matrix as the test for excessive force. While the use-of-force matrix by itself does not work in every case,¹⁰⁵ the matrix can apply across a wide range of factual scenarios in order to provide more accountability for police actions and act as a guide for everyone involved. Essentially, this section explores the practical results in lower courts of the Supreme Court implementing a use-of-force matrix instead of the current test. This section will continue to rely on the use-of-force matrix used by the Michigan Commission on Law Enforcement Standards.

B. *Hale v. City of Biloxi, Mississippi*

Hale v. City of Biloxi, Mississippi serves as a clear-cut illustration of the use-of-force matrix that would hold an officer accountable for his use of excessive force. In that case, the Biloxi Police Department went with an arrest warrant to arrest Hale for credit card fraud.¹⁰⁶ Hale was sitting inside his residence when the officers arrived at night; however, despite having no evidence that Hale proved armed or dangerous, the officers drew their firearms.¹⁰⁷ The officers ordered Hale to keep his hands up and exit his residence, but Hale did not comply; instead, he put a cigarette in his mouth and turned away from the officers with his back to them.¹⁰⁸ Hale then put his hand in his pocket, and an officer discharged his gun, shooting and seriously injuring Hale.¹⁰⁹ Relying on the ambiguity present in *Graham* as well as the “split-second” fallacy, the Fifth Circuit held that the officers used a reasonable amount of force in shooting Hale, allowing them to escape

¹⁰⁵ See *infra* Part V.A.

¹⁰⁶ *Hale v. City of Biloxi, Mississippi*, 731 Fed. App'x. 259, 261 (5th Cir. 2018).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

accountability for shooting an unarmed suspect who merely disobeyed orders.¹¹⁰

Under the use-of-force matrix, however, the officers would be held accountable for this excessive use of force. Hale's actions constituted passive resistance on the use-of-force matrix because he merely failed to "obey verbal commands"¹¹¹ by staying in the residence and reaching into his pocket.¹¹² Passive resistance warrants compliance controls in response at most, meaning that the officers should have either grappled with Hale or used their tasers.¹¹³ By escalating all the way to deadly force in shooting Hale, the officers used excessive force.¹¹⁴ Therefore, because the officers used deadly force when the situation warranted compliance controls, the officers used excessive force as illustrated by the use-of-force matrix.¹¹⁵

C. *Darden v. City of Fort Worth*

Although this case does not involve the use of a firearm, *Darden v. City of Fort Worth* provides another illustration of how the use-of-force matrix would apply to a different situation. In *Darden*, a team of officers executed a warrant at a private residence that had been under investigation for selling cocaine.¹¹⁶ The entry team broke down the front door of the house, and the officers yelled at everyone to get down.¹¹⁷ Darden, the suspect, immediately put his hands up before an officer ripped Darden shirt's off and threw him to the ground.¹¹⁸ Darden fell on his back, the officer ordered him to roll over, and Darden complied; however, two officers struck Darden and put him in a chokehold.¹¹⁹ One officer then tased Darden, and another pushed him back down on the ground.¹²⁰ A camera on one of the officer's helmets showed Darden "on his knees, with his hands in the air, before [the officer] tased [Darden] a

¹¹⁰ *Id.* at 262-65.

¹¹¹ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

¹¹² *Hale*, 731 Fed. App'x at 261.

¹¹³ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

¹¹⁴ *Hale*, 731 Fed. App'x at 261.

¹¹⁵ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

¹¹⁶ *Darden v. City of Fort Worth, Texas*, 880 F.3d 722, 725 (5th Cir. 2018).

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.* at 726.

¹²⁰ *Id.*

second time.”¹²¹ Darden fell over again, and an officer pushed Darden onto his stomach while pressing his face into the ground repeatedly before placing him in another chokehold.¹²² The officers continued these actions for a while longer until they had handcuffed Darden, and at this point, Darden appeared to have passed out.¹²³ However, Darden had actually died from a heart attack.¹²⁴ The Fifth Circuit ultimately ruled that because the evidence did not clearly show that Darden did not resist arrest, a jury should decide whether the officers used excessive force against Darden, noting that the officers’ use of force could prove objectively reasonable to a jury under the circumstances.¹²⁵ While they may not have escaped accountability in the same manner as the officers in *Hale*, the use-of-force matrix would better hold them accountable than *Graham* did.

The use-of-force matrix would immediately highlight how the officers used excessive force in this case. According to both the video evidence and witness testimony, Darden complied with the officers at every turn.¹²⁶ In the absence of any resistance, the officers were not justified in using any amount of force on the use-of-force matrix.¹²⁷ Even if Darden resisted when he possibly attempted to pull his arm away while the officers tried to handcuff him,¹²⁸ and even though this would have constituted active resistance that warranted physical controls like strikes,¹²⁹ the officers still would have used excessive force in this encounter because they had no justification for using higher levels of force at other points in the arrest. The use-of-force matrix allows everyone involved to analyze where the officers’ actions fall at various points over the course of the arrest.

D. Plakas v. Drinski

The situation in *Plakas v. Drinski*, on the other hand, demonstrates circumstances where an officer’s use of force would

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 731-33.

¹²⁶ *Id.* at 725-26.

¹²⁷ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

¹²⁸ *Darden*, 880 F.3d at 726.

¹²⁹ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

prove reasonable on the use-of-force matrix. Plakas refused a test for intoxication by an ambulance driver but agreed to go to the police station.¹³⁰ However, on the way to the station, Plakas jumped out of the police car, and several officers chased him to his friend's house.¹³¹ Although still handcuffed, Plakas got his hands in front of his body, grabbed a fire poker, and injured one officer with the poker.¹³² Plakas then fled into the woods with both the police and Plakas' friend giving chase while trying to negotiate with him.¹³³ Plakas then lunged at the officers with the poker as he threatened to kill them, and as one officer attempted to retreat, he fell down.¹³⁴ Plakas raised the poker over his head to strike the officer, and the officer shot Plakas in the chest twice.¹³⁵ Plakas later died of his wounds at the hospital.¹³⁶ The Seventh Circuit ruled the officer's use of force was reasonable.¹³⁷

The use-of-force matrix would show that the officer used reasonable force in this situation. Plakas committed a deadly force assault by attempting to strike the officer with the poker¹³⁸ because potentially inflicting a significant head wound on the officer had "a reasonable probability to cause death."¹³⁹ A deadly force assault authorizes deadly force in response,¹⁴⁰ which the officer used when he fired his weapon.¹⁴¹ Therefore, the officer did not use excessive force in this case, and the matrix offers a more precise standard for evaluating excessive force in this situation since one can compare suspect action and officer reaction.

E. Renfroe v. Parker

Like *Plakas*, *Renfroe v. Parker* illustrates how the use-of-force matrix can also function as a test in situations where the

¹³⁰ *Plakas v. Drinski*, 19 F.3d 1143, 1144 (7th Cir. 1994).

¹³¹ *Id.* at 1145.

¹³² *Id.*

¹³³ *Id.* at 1145-46.

¹³⁴ *Id.* at 1146.

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ *Id.* at 1150.

¹³⁸ *Id.* at 1146.

¹³⁹ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

¹⁴⁰ *Plakas*, 19 F.3d at 1146.

¹⁴¹ *Id.*

circumstances do not prove quite so clear cut. In *Renfro*,¹⁴² a police officer attempted to arrest Renfro for burglary, but as the officer began to make the arrest, Renfro charged at the officer.¹⁴³ The officer then tased Renfro to no effect, and a struggle between the officer and Renfro ensued with the suspect choking the officer and wounding the officer's head.¹⁴⁴ The officer's strikes against Renfro also had no effect since Renfro was much larger than the officer.¹⁴⁵ After the officer escaped Renfro's grasp, the suspect renewed his attack, charging toward the officer and prompting the officer to discharge his firearm, killing Renfro.¹⁴⁶ Although the Fifth Circuit granted qualified immunity and never reached the issue of excessive force,¹⁴⁷ the facts provide a useful example for when force would prove reasonable on the use-of-force matrix in an unclear situation.

A reasonable use of force is proportional on the use-of-force matrix when the suspect's action and officer's reaction generally line up with each other.¹⁴⁸ In this case, the suspect escalated the situation from active aggression to a deadly force assault as he charged at the officer and physically attacked the officer before attempting to choke him.¹⁴⁹ Active aggression warrants intermediate controls in response at most, and deadly force assault authorizes deadly force in return.¹⁵⁰ When the officer fired his gun and killed Renfro,¹⁵¹ he acted in response to a deadly force assault, meaning he did not use excessive force against the suspect according to the use-of-force matrix.¹⁵² Although Renfro was engaged in the active aggression of charging at the officer when the officer fired his gun, which could make one think deadly force did not prove warranted, the officer barely defended himself against

¹⁴² The description of the facts in this case comes from the lawsuit in state court as they provided a more detailed depiction of the situation; however, the facts as applied to the use-of-force matrix involve the excessive force claim brought in federal court.

¹⁴³ *Renfro v. Parker*, 374 So. 3d 1234, 1237-38 (Miss. Ct. App. 2023); *see also Renfro v. Parker*, 974 F.3d 594, 597 (5th Cir. 2020).

¹⁴⁴ *Renfro*, 372 So. 3d at 1237-38; *see also Renfro*, 974 F.3d at 597.

¹⁴⁵ *Renfro*, 374 So. 3d at 1238; *see also Renfro*, 974 F.3d at 597.

¹⁴⁶ *Renfro*, 374 So. 3d at 1238; *see also Renfro*, 974 F.3d at 597.

¹⁴⁷ *See generally Renfro*, 974 F.3d 594.

¹⁴⁸ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 1.

¹⁴⁹ *Renfro*, 374 So. 3d at 1238; *see also Renfro*, 974 F.3d at 597.

¹⁵⁰ MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

¹⁵¹ *Renfro*, 374 So. 3d at 1238; *see also Renfro*, 974 F.3d at 597.

¹⁵² MICH. COMM'N ON L. ENF'T STANDARDS, *supra* note 78, at 2.

Renfroe in the first struggle,¹⁵³ and another struggle would have “a reasonable probability to cause death.”¹⁵⁴ Therefore, Renfroe was still engaged in a deadly force assault, and the officer properly used deadly force in response according to the use-of-force matrix.

V. CRITIQUES

A. *Lack of Flexibility*

A lack of flexibility serves as the primary critique for a use-of-force matrix test. Use of force matrices become “limited in [their] abilit[ies] to govern excessive force because of [their] reliance on a single standard for understanding the appropriate level of force – resistance.”¹⁵⁵ Essentially, this critique claims that the use-of-force matrix ignores context and the “totality of the circumstances.”¹⁵⁶ More specifically, this critique aims at the physical characteristics of the particular suspect.¹⁵⁷ For example, while both an elderly, physically-disabled suspect and a professional mixed-martial artist could both engage in active resistance against an officer, these two situations would warrant the same response on the use-of-force matrix, which would prove problematic because the threat to the officer depends on the individual characteristics of each respective suspect in those scenarios.¹⁵⁸ Similarly, a suspect who wrestles with an officer but then finds himself handcuffed and face down on the ground necessitates a level of flexibility as the circumstances change once the officer placed the suspect in a state where he or she no longer proves a threat at all.¹⁵⁹ The last part of this critique asserts that a use of force a matrix does not actually regulate the use of force because it does not require officers to use the least severe use of force.¹⁶⁰

Regarding the first aspect of the lack of context in the use-of-force matrix, the use-of-force matrix’s concrete guideposts for when to use a level of force still allows the matrix to prove a better test

¹⁵³ *Renfroe*, 374 So. 3d at 1238; see also *Renfroe*, 974 F.3d at 597.

¹⁵⁴ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

¹⁵⁵ Kyle McLean et al., *Re-Examining the Use of Force Continuum: Why Resistance is Not the Only Driver of Use of Force Decisions*, 26 POLICE Q. 85, 87 (2022).

¹⁵⁶ *Id.*; see Garrett & Stoughton, *supra* note 35, at 274-75.

¹⁵⁷ Garrett & Stoughton, *supra* note 35, at 274-75.

¹⁵⁸ *Id.* at 274.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* at 273-74.

than *Graham*. While the use-of-force matrix is not a perfect test, *Graham* would still fail to provide guidance in context-dependent situations because each case would prove different, and juries would still have to “slosh’ through ‘the factbound morass of “reasonableness” in every case.¹⁶¹ The use-of-force matrix at least still provides concrete guides for juries.

However, context should still factor into the use-of-force matrix analysis. Regarding the physical characteristics of different suspects, perhaps a “shocks the conscience” claim could alleviate the problem by providing officers and juries with specific examples as guides.¹⁶² For example, in *Estate of Armstrong v. Village of Pinehurst*, three police officers tasked with returning a mentally-ill man to the hospital surrounded the man, who had latched on to the base of a post.¹⁶³ The officers could neither convince nor force the man off the post, so they tased him several times.¹⁶⁴ Once they got him off the post, they potentially restricted his airflow by struggling with him on the ground, placing their knees on his back, and shackling his legs.¹⁶⁵ He died soon after.¹⁶⁶ While the officers would ordinarily have not used excessive force by using a taser, a compliance control device, in response to the man’s passive resistance (as he did not comply but also did not attempt to defeat the officer’s attempts), they knew the man was mentally disabled and not a threat to anyone.¹⁶⁷ Under these circumstances, the officers’ conduct of tasing a man they knew to be mentally ill clearly

¹⁶¹ *Id.* at 223.

¹⁶² See generally *Rochin v. California*, 342 U.S. 165 (1952). In stating the “shocks the conscience” standard, the Court offered the following language as a guide:

we are compelled to conclude that the proceedings by which this conviction was obtained do more than offend some fastidious squeamishness or private sentimentalism about combatting crime too energetically. This is conduct that shocks the conscience. Illegally breaking into the privacy of the petitioner, the struggle to open his mouth and remove what was there, the forcible extraction of his stomach's contents—this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit of constitutional differentiation.

Id. at 172.

¹⁶³ *Estate of Armstrong v. Village of Pinehurst*, 810 F.3d 892, 897 (4th Cir. 2016).

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ *Id.* at 898.

¹⁶⁷ *Id.* at 896-98.

“shocks the conscience” as they had no justifications for their actions. While the use-of-force matrix would justify their actions, a “shocks the conscience” claim would provide accountability as past similar cases would provide the needed examples for juries to know how to decide. Therefore, tempering the use-of-force matrix with a consideration of context and a “shocks the conscience claim” qualifies the matrix in a way that overcomes the matrix’s rigidity.

On the other end of the spectrum, an extraordinary circumstances exception could provide the flexibility for officers who need to use a greater force than the matrix allows. An extraordinary circumstances exception would account for a rapidly-changing situation, such as where an officer must use force preemptively or a situation in which a higher use of force than normally proscribed by the use-of-force matrix proves necessary. An extraordinary circumstances exception would require that the officer first have encountered a suspect reaction to warrant using force, and then the exception would require a showing of circumstances that justify a need for a higher use of force than permitted by the matrix. Law enforcement would carry the burden of proof. However, one must exercise care with this exception; the exception must not swallow the use-of-force matrix test, or the current issues with *Graham* will replicate themselves.

As an example of the extraordinary circumstances exception on an individual level, *Arnold v. City of Olathe, Kansas* provides a useful illustration.¹⁶⁸ In that case, a group of police officers went to execute an arrest warrant for Ciara Howard while she was at her boyfriend’s house.¹⁶⁹ Her boyfriend gave consent to search his house, telling officers that he kept a pistol in his house; later that afternoon, officers saw Howard searching for the gun.¹⁷⁰ A few hours later, police attempted to negotiate with Howard over the course of the next hour and a half; however, she indicated that she had a gun by this point and refused to come out of the house.¹⁷¹ Officers eventually entered the house, causing Howard to lock herself in the laundry room.¹⁷² Although the officers seemed to have made some headway, Howard began acting aggressively, so without

¹⁶⁸ See generally *Arnold v. City of Olathe, Kansas*, 35 F.4th 778 (10th Cir. 2022).

¹⁶⁹ *Id.* at 785.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 786.

¹⁷² *Id.*

an option of retreating due to their formation, the officers decided to enter the laundry room to prevent Howard from shooting through the wall.¹⁷³ Once inside, Howard pointed the gun directly at the officers with her finger on the trigger, saying that the officers were not cops and that she would “take every single one of” them.¹⁷⁴ The officers then discharged their firearms and killed Howard.¹⁷⁵

On the use-of-force matrix, Howard’s resistance to the officers counted as active resistance because she continually attempted to keep the officers from gaining control of her through her use of the house and the gun, and her active resistance warranted physical controls as the appropriate response.¹⁷⁶ The escalation to deadly force would normally prove excessive on the use-of-force matrix.¹⁷⁷ As such, the use-of-force matrix does not provide the needed flexibility to work in this situation. However, an extraordinary circumstances exception would apply to this case because she resisted the officers in a dangerous manner.¹⁷⁸

The police would then argue that the circumstances justified using deadly force in this instance even though the matrix does not warrant it because they had negotiated with her for hours, they could not retreat without suffering an injury if she had fired her weapon, and she threatened to shoot them at close range with her finger on the trigger.¹⁷⁹ If the officers had not escalated their use of force, they would have likely gotten killed or seriously injured. Therefore, the extraordinary circumstances exception can apply on an individual level, adding needed flexibility to the use-of-force matrix.

Furthermore, the context of a violent protest would also necessitate an extraordinary circumstances exception. In *White v. Jackson*, a protest turned violent, so to disperse the protest, the police used force against several protestors.¹⁸⁰ Several protestors sued for excessive use of force,¹⁸¹ but one plaintiff’s claim in particular serves as an illustration of this exception in the context

¹⁷³ *Id.* at 787.

¹⁷⁴ *Id.*

¹⁷⁵ *Id.*

¹⁷⁶ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

¹⁷⁷ *Id.*

¹⁷⁸ *Arnold*, 35 F.4th at 786.

¹⁷⁹ *Id.* at 786-87.

¹⁸⁰ *White v. Jackson*, 865 F.3d 1064 (8th Cir. 2017).

¹⁸¹ *Id.* at 1069-73.

of a violent protest. DeWayne Matthews was a part of a crowd that had thrown “objects at the police including bottles, rocks, and a Molotov cocktail.”¹⁸² The police then issued orders to disperse, but Matthews walked directly toward the police skirmish line before officers ordered him to turn around.¹⁸³ Matthews did not comply, and one of the officers fired nonlethal projectiles at Matthews.¹⁸⁴ Rather than stop, Matthews continued advancing toward the police line, so the officer fired again.¹⁸⁵ The officers then pushed Matthews to the ground, placed a knee on his back, and arrested him.¹⁸⁶ In this situation, Matthews only committed passive resistance on the use-of-force matrix¹⁸⁷ by failing to obey the officer’s spoken commands when he continued to walk forward toward the skirmish line.¹⁸⁸ This action would only warrant compliance controls in response,¹⁸⁹ but the police used a gun that shot rubber bullets,¹⁹⁰ which is an intermediate control on the use-of-force matrix since these guns constitute impact weapons.¹⁹¹ As a result, on the use-of-force matrix, these actions would prove excessive; however, due to the unique nature of violent protests, the use-of-force matrix does not provide the needed flexibility to deal with this situation. The officers had a reason to use force when Matthews did not comply with their commands, and they could argue that they needed to use a greater amount of force than warranted due to the uncertain and tense nature of the violent protest, allowing the police to use this amount of force in this situation. This case illustrates the use-of-force matrix and extraordinary circumstances exception in the context of violent protests, the analysis of which requires the flexibility of the extraordinary circumstances exception. Furthermore, this case as well as *Arnold* both show specific situations in which the extraordinary circumstances exception would apply, which would also allow the exception to guide judges, juries, and officers.

¹⁸² *Id.* at 1079.

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* at 1080.

¹⁸⁷ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

¹⁸⁸ *White*, 865 F.3d at 1079-80.

¹⁸⁹ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

¹⁹⁰ *White*, 865 F.3d at 1079.

¹⁹¹ MICH. COMM’N ON L. ENF’T STANDARDS, *supra* note 78, at 2.

B. Legal Endogeneity Theory

Some have argued that police departments have created use of force policies that have effectively become constitutional law,¹⁹² allowing police departments to continue to use excessive force on suspects in the absence of accountability.¹⁹³ This critique relies heavily on a concept known as “[l]egal endogeneity theory,” which purports that “we currently exist in ‘a symbolic civil rights society’” where the perspectives of the organization in question become constitutional law rather than some external standard created by either the legislature or the Supreme Court.¹⁹⁴ Three parts comprise this theory:

(1) an ambiguous law, (2) an organization ostensibly following that law by generating ‘symboli[c]’ policies that it believes show compliance, and (3) the legal system, which, instead of establishing its own standards for what it means to adhere to law, acknowledges organizations’ own symbolic policies as evidence of compliance.¹⁹⁵

Under this critique, police departments vaguely meet the *Graham* test by creating use of force continuums that ultimately cause a lack of accountability for excessive force as police viewpoints on force seep into the minds up juries and courts.¹⁹⁶ In this context, legal endogeneity acts “as a recursive process through which the status quo can be maintained, and [police departments] give[] life to the practices that become the legal standards that ultimately regulates [sic] [them].”¹⁹⁷ However, while police departments may have created use of force matrices in order to

¹⁹² Osagie K. Obasogie & Zachary Newman, *Constitutional Interpretation Without Judges: Police Violence, Excessive Force, and Remaking the Fourth Amendment*, 105 VA. L. REV. 425, 432 (2019) [hereinafter *Constitutional Interpretation Without Judges*]; see also Osagie K. Obasogie & Zachary Newman, *The Endogenous Fourth Amendment: An Empirical Assessment of How Police Understandings of Excessive Force Become Constitutional Law*, 104 CORNELL L. REV. 1281, 1288-89, 1317-18 (2019) [hereinafter *The Endogenous Fourth Amendment*].

¹⁹³ *Constitutional Interpretation Without Judges*, supra note 192, at 431-32; see also *The Endogenous Fourth Amendment*, supra note 192, at 1287.

¹⁹⁴ *Constitutional Interpretation Without Judges*, supra note 192, at 430-32.

¹⁹⁵ *Id.* at 431 (alterations in original).

¹⁹⁶ *Id.*

¹⁹⁷ *The Endogenous Fourth Amendment*, supra note 192, at 1315.

comply with *Graham*, adopting a use-of-force matrix as the test for excessive force would overcome the concerns raised by this critique.

Legal endogeneity theory as applied in the context of excessive force would not result in merely maintaining the status quo.¹⁹⁸ Although *Graham* is ambiguous and police departments created use of force matrices to comply with *Graham*, actually using a use-of-force matrix to evaluate excessive force provides some teeth to this standard. Use of force matrices are not “empty and insubstantial” as they are highly detailed.¹⁹⁹ Using one in lieu of *Graham* would “elucidate” what constitutes reasonable force, overcoming the limitations of the objective reasonableness standard.²⁰⁰ The scoring of force would hold officers accountable by providing a jury with guidance on when and how much force an officer could use in a given situation.²⁰¹ Holding officers accountable can occur by holding them to their own policies and better reflecting police training. Therefore, the legal endogeneity critique does not defeat using a use-of-force matrix as the test for excessive force claims in the place of the current standard.

C. Lack of Consideration for Other Variables

Lastly, some scholarship has also critiqued use of force models for only considering suspect action and officer reaction.²⁰² In fact, empirical research has found that other factors do influence an officer’s decision to use force.²⁰³ For example, the use-of-force matrix does not take into account situational factors that do not have any bearing on the nature of the crime the suspect committed but that still influence an officer’s decision to use force;²⁰⁴ neighborhood, race, and sex serve as factors not addressed by the use-of-force matrix even though officers consider them when deciding whether and how much force to use in a given situation.²⁰⁵

¹⁹⁸ *Id.* at 1315-16.

¹⁹⁹ *See supra* Part III.

²⁰⁰ *Constitutional Interpretation Without Judges*, *supra* note 192, at 432.

²⁰¹ *See supra* Part III.

²⁰² *See* Kyle McLean et al., *supra* note 155, at 87.

²⁰³ *Id.* at 104; *see generally* *Constitutional Interpretation Without Judges*, *supra* note 192; *see also* *The Endogenous Fourth Amendment*, *supra* note 192.

²⁰⁴ Kim et al., *supra* note 71, at 254.

²⁰⁵ *Id.*; *see also* Garrett & Stoughton, *supra* note 35, at 220-21, 288-90; *see also* McLean et al., *supra* note 155, at 104.

While this critique has some merit, the use-of-force matrix still serves as a better test than *Graham*. A use-of-force matrix test is not perfect by any means, but this standard would provide more guidance than the current test because of the specific guidelines embedded in the matrix.²⁰⁶ Context-dependent situations under *Graham* would similarly provide no guidance as this test involves “slosh[ing] through the ‘morass of reasonableness’” on the facts of each case.²⁰⁷ Furthermore, the studies addressing this issue recognize that several limitations in conducting them have presented themselves, implying that these other variables can prove difficult to measure.²⁰⁸ The concern for other variables could perhaps be addressed by changing police department policies and training;²⁰⁹ however, delving into how police department polices can address other variables is beyond the scope of this article as this article addresses the *Graham* standard for excessive force in criminal procedure. As such, the use-of-force matrix as a test still proves preferable to *Graham* despite the matrix’s limitations.

CONCLUSION

A use-of-force matrix test would provide a more concrete test that holds more officers accountable than the current reasonableness test as set out by *Graham*. Rather than providing an abstract concept that proves overly deferential to police, like *Graham*, a use-of-force matrix test would score the force used by suspects against force used by the police, providing a corresponding level of police response to a certain level of suspect action. This approach would guide judges and juries on how much force officers could use and when they can use that amount of force. Furthermore, although a use-of-force matrix has some limitations, a “shocks the conscience claim” as well as an extraordinary circumstances exception would provide the use-of-force matrix with the necessary flexibility to account for exceptional situations; the use-of-force matrix is also not a perfect standard, but despite the matrix’s flaws, it still proves more precise than *Graham*. This

²⁰⁶ See *supra* Part III.

²⁰⁷ Gross, *supra* note 19, at 170 (quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007)).

²⁰⁸ Kim et al., *supra* note 71, at 261-63; see also McLean et al., *supra* note 155, at 105.

²⁰⁹ See generally *Constitutional Interpretation Without Judges*, *supra* note 192; see also *The Endogenous Fourth Amendment*, *supra* note 192.

framework would also better align police training with criminal procedure, and holding police to this standard better reflects their own training. Ultimately, a use-of-force matrix test for evaluating excessive force claims would lead to greater accountability for police officers than *Graham* and serve as a useful guide for judges, juries, and police officers.