

The 2019 National Law Enforcement Use of Force Committee Executive Summary

The United States Supreme Court's decision in the landmark case of *Graham vs. Connor* has been the standard by which our justice system has evaluated use-of-force incidents for the past thirty years. This standard of "objective reasonableness" allows officers to apply force based upon what he or she *reasonably* believes to be necessary, as per the unique circumstances of the incident. With that, each case must be examined with the premise that "reasonableness is not capable of precise definition or mechanical application," as stated by Chief Justice Rehnquist.¹

In as much as the objective reasonableness standard is extremely broad, the executive law enforcement organization, PERF (Police Executive Research Forum), advocates that all use-of-force reviews include an examination of what led up to the encounter.² Furthermore, PERF insists upon an attempt towards de-escalation, along with an ensuing formal review of each incident in its totality. This restrictive model therefore supersedes the *Graham* ruling.³

In accordance with the first pillar of 21st Century Policing, all agencies must work towards building trust and legitimacy so that their respective communities perceive them as procedurally just and not as an occupying force.⁴ In an era in which there is a need for prudence in the application and review of force, we must adapt methodologies which will build this trust while still allowing for the appropriate use of force when required. Superseding the objective reasonableness standard of *Graham* is not practical due to the unpredictability and fluidity with

which force incidents unfold. However, there is also a duty upon the profession to ensure that sound decisions are made whenever force is applied. Therefore, to satisfy both ends, a fusion is required between the Graham standard and the core concepts which PERF advocates.

To start, there must be a national standard in which all use-of-force policies stipulate that the sanctity of human life is the foundation by which all actions follow, and that all people will be treated humanely. This preamble, as utilized in Scotland and the UK, has been an invaluable way to reinforce what matters most.⁵ Additionally, as detailed by D. Rutledge, Special Counsel to the Los Angeles County DA, the vital variables to consider in force application is the severity of the crime, the immediacy of the threat, and whether the suspect is actively resisting arrest.⁶

To account for the above, officer training at both the academy and in-service levels must shift from the current concentrated focus of strict defensive tactics and firearms training, to that of de-escalation and crisis intervention. In a 2015 study of over 280 agencies, PERF found that the practical training components vastly exceeded the force-limiting trainings of crisis intervention and de-escalation. PERF also found that only 65% of surveyed agencies provided in-service training in de-escalation, and those that did, spent considerably less time on it compared to firearms training.⁷ If legislation such as California's proposed AB 931 were enacted, officers would be required to attempt every possible reasonable alternative before deadly force could be utilized. A bill as restrictive as this emphasizes the need to accentuate training rooted in de-escalation and less-lethal options now, before actual legislation is passed.⁸

To promote this new philosophy, training at the academy level will reflect the Los Angeles Training Academy triangle in which tactics, critical thinking, and agency missions & values are each represented by an equal side of the triangle, and subsequently applied in an integrated manner.⁹ In accordance with NYPD's training approach, officers will receive training from the

“Blue Courage” curriculum to become compassionate officers with a guardian mindset. Officers will receive further training in scenario-based exercises, and will be taught the value of tactical retreats.¹⁰ At both the academy and in-service level, officers will receive “Implicit Bias” training so that their actions are based upon true indicators of threats and not on variables such as “demographics or clothing.”¹¹ Also, under the new policy, officers will receive forty hours of Crisis Intervention Team training in the basic academy so that they can respond with compassion and de-escalation techniques as opposed to immediate force. Whenever force is used, it will be immediately evaluated, with protocols for correction and remediation if required.¹²

Furthermore, all 18,000 police agencies in the United States will be required to provide appropriate training modules for tactical skills, as recommended within pillar five, *Training and Education*, of the 21st Century Policing Report.¹³ With that, Brazilian Jiu Jitsu-based defensive tactics will become the mandatory training model for arrest and control techniques, mirroring the revised New York State curriculum.¹⁴ This system has been proven effective in that it utilizes verified principles of control via distance management, leverage (as opposed to striking), tactical withdrawal or disengagement, superior arresting techniques, and the use of positional advantage.

Experts recognize that we in law enforcement have lost our positive narrative, so collectively, we must regain it through training, transparency, and open dialogue.¹⁵ Importantly, this dialogue must include discussions with community and faith-based leaders on topics such as policy design, resource deployment, and even use-of-force. When we create a mindset towards de-escalation and compassion, and combine that with comprehensive training, core values, and critical thinking, devoid of bias, we will reshape the way the police in America apply force. When this happens, the Graham standard will have renewed legitimacy and we will positively change the way in which we are perceived by those who we serve and protect.

References

- ¹ Understanding Graham v. Connor; POLICE Magazine; October 27, 2014; Clark, Mark
- ² CRITICAL ISSUES IN POLICING SERIES Re-Engineering Training on Police Use of Force; Police Executive Research Forum; August 2015 ISBN: 978-1-934485-30-9 P.15
- ³ USD LEPSL Presentation 5.1: Spotlight Experts - Use of Force Panel
Moderated by Fritsvold, Erik Dr., with panelists, Marvel, Brian (SDPD) and Attorney Fields, Brad 9m45s, 12m26s
- ⁴ President's Task Force on 21st Century Policing. 2015. Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services. Published 2015
- ⁵ CRITICAL ISSUES IN POLICING SERIES Re-Engineering Training on Police Use of Force; Police Executive Research Forum; August 2015 ISBN: 978-1-934485-30-9 p. 23, 49
- ⁶ Understanding Graham v. Connor; POLICE Magazine; October 27, 2014; Clark, Mark
- ⁷ CRITICAL ISSUES IN POLICING SERIES Re-Engineering Training on Police Use of Force; Police Executive Research Forum; August 2015 ISBN: 978-1-934485-30-9 p.17
- ⁸ AB-931 Criminal procedure: Use of Force by Peace Officers (2017-2018)
https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201720180AB931
- ⁹ CRITICAL ISSUES IN POLICING SERIES Re-Engineering Training on Police Use of Force; Police Executive Research Forum; August 2015 ISBN: 978-1-934485-30-9 p.65
- ¹⁰ Ibid p.56
- ¹¹ Ibid p. 44
- ¹² Ibid p. 58
- ¹³ President's Task Force on 21st Century Policing. 2015. Final Report of the President's Task Force on 21st Century Policing. Washington, DC: Office of Community Oriented Policing Services. Published 2015
- ¹⁴ In 2017, the New York State Division of Criminal Justice Services revised the police defensive tactics curriculum, to base it largely upon the foundations of the grappling-based martial art of Brazilian Jiu-Jitsu which is renowned for its practical application which allows a smaller person to effectively control a much larger person
- ¹⁵ USD LEPSL Presentation 5.2: Spotlight Experts – Recruitment and Retention
Moderated by Fritsvold, Erik Dr. with panelists, Marvel, Brian (SDPD) and Attorney Fields, Brad 24m27s