
Law Enforcement Agency

Memorandum

To: Distribution Group
From: National Law Enforcement Use of Force Committee
RE: Use of Force Recommendations

Police Use of Force, particularly deadly force, has been the topic of national discussion in recent years. To further complicate the topic, national discussions on deadly force are often intertwined, and even occasionally synonymous with, race relations. Additionally, surveys, like one from the Pew Research Center, show perceptions from law enforcement and the public believe they understand the opposite point of view, but also claim the other entity does not understand their point of view. In a system which requires a mutual trust relationship between the police and public or public and police, perceived understanding of policework by the public or public concern by police is problematic especially when considering deadly use of force policy.

In 1989 the United States Supreme Court adjudicated “Graham v. Connor” which did several things, the largest of which was to set the “objective reasonableness standard.” The decision sources its language directly from the 4th Amendment, and as such defines the use of force as a type of seizure which must be constitutionally appropriate. Fritzvold, Marvel, and Fields (2019) simplified the decision by saying the standard requires judgement of an officer’s use of force based

on the actions of a reasonable officer with similar training and experience, and without 20/20 hindsight.

On one hand some law enforcement and labor union leadership feel *Graham v. Connor* is adequate in establishing use of force guidelines (Marvel, 2019). On the other hand, some public entities feel not only is *Graham v. Connor* not clearly defined, but it also does not protect the public enough from law enforcement. This is evident in recent California Legislation like Assembly Bill 931, which would authorize deadly force not when reasonable, but when necessary. The bill defines necessary as a threat of imminent death or serious bodily injury to the officer or public and would also require “reasonable alternatives” including de-escalation tactics and techniques. Although this bill ultimately died in August 2018, it does reflect public opinion and attempts by legislatures to fix a perceived problem.

In his speech to Georgetown University, former FBI Director Comey (2015) advocated for both civilians and police to understand and listen to the other side through a “constructive lens.” Before suggesting any major national change to Use of Force policy, it is important to collect and compile statistical data from all law enforcement entities across the country. Only through accurate data can law enforcement point to national incidents involving a combination of deadly use of force and race as isolated incidents or anomalies or the public point to these same incidents as trends requiring major change.

The definition of “objectively reasonable” when considering a Use of Force through the lens of the Supreme Court involves consideration of an action to what a reasonable officer with similar

training and experience would have done in a similar situation without the advantage of 20/20 hindsight. Given this definition, it is possible to raise expectations without legislation such as Assembly Bill 931 through national mandated training standards. Many agencies which employ specialized units, such as Homeless Outreach Teams or School Resource Officers, require additional training in Crisis Intervention, mental health, cultural awareness, and substance abuse. This training not only reduces Use of Force incidents, but also indirectly raises the “objectively reasonable” standard for the officer who received the training without additional legislation.

A national recommendation for Use of Force strategies should also include situational awareness training requiring individuals and small unit leaders to learn, adopt, and implement a strategy like the “Observe, Orient, Decide, Act” or OODA loop model. This model has been successfully used in peacekeeping operations and requires rapid and continuous decision making. Although traditional law enforcement teaches things such as the “21-foot rule” or “everybody goes home” this ultimately encourages static decision making and actions which force a result. Situational awareness training coupled with specialized training in Crisis Intervention would always allow for de-escalation as a viable option.

Given recommendations from the federal government to local law enforcement can only be voluntary, additional training requirements should be supported through grant funding. Additionally, law enforcement agencies which utilize these grants and can serve as examples for others to follow should be showcased and highlighted through annual individual and agency awards. While the public has made public requests for the transformation of law enforcement

officers from “warriors” to “guardians,” reality is this has always been the case. Law enforcement has traditionally viewed themselves as “sheepdogs,” and the best examples should be used as a model for others to follow.

Although the *Graham v. Connor* standard remains relevant and adequate when considering Uses of Force, it is unquestionable improvements can be made in several areas. First, statistics on uses of force, and deadly force, should be collected from all law enforcement agencies across the nation. Additionally, by recommending core training to include Crisis Intervention, mental health, cultural awareness, and substance abuse the “objectively reasonable” standard will automatically be raised without additional legislation. Furthermore, these changes can be supported by the federal government through the implementation of grant funded programs and award schemes to showcase successful individuals and agencies.

Resources:

Clark, M. (2014, October 27). Understanding Graham v. Connor. Retrieved from <https://www.policemag.com/341717/understanding-graham-v-connor>

Comey, J. (2015, February 12). James Comey Georgetown University Speech. Retrieved from <https://www.c-span.org/video/?c4528067/james-comey-full-speech>

Fritzvold, E., Marvel B., & Fields, B. (2019). Spotlight Experts – Use of Force. Retrieved from sandiego.edu