**Police Reform 101: Use of Force**

**Welcoming an evolved Graham standard**

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In 1989 the Supreme Court provided law enforcement with a holding in Graham v Connor (Graham), that changed the manner in which courts evaluated use of force claims, changing from a subjective due process standard to a new objective fourth amendment one. This new federal standard gave police agencies the opportunity to modify policy and training on use of force to comport with Graham. However, It is important to remember that Graham was generally intended to guide courts on their retrospective review of past incidents (avoiding subjective, 20/20 hindsight), rather than intended to be the basis of police policy or training on all prospective uses of force.

Post Graham, department policies evolved to establish a universal standard for police in mandating that force be “objectively reasonable” based on the multi factor test. Essentially, whatever force option that a similarly trained officer would use under the same or similar circumstances, was within the officer’s discretion to use. As a result, agencies often abandoned their continuum based policies and training, and policies became shorter and arguably, easier to understand.

However, over the decades since we have adopted Graham as our gold standard, several high profile incidents have occurred, followed by police leaders and courts finding that officers acted *reasonably* (in sometimes questionable circumstances). These incidents include such occurrences as:

* Shooting at moving vehicles
* In-custody deaths during restraint (bodily force or neck holds)
* Officer involved shootings of unarmed suspects (perceived weapon)
* Use of K9 in questionable circumstances or involving excessive duration

As a consequence, many communities and government leaders have started a national conversation about reform, with the view that police departments are not able to hold themselves accountable for excessive force under this objective standards, and the erosion of Graham began.

Over the years, several changes occurred and have evolved as individual movements to reform police use of force, including calls for:

* Prohibiting or restricting “choke/neck holds”
* Prohibition on shooting at moving vehicles
* Mandatory de-escalation efforts
* Adding *necessity* and proportionality standards to use of force criteria
* Restricting or eliminating K9 programs

While these are arguably separate issues, they collectively represent changes that impact the *objective reasonableness* standard. For example, no longer can an officer articulate why any reasonable officer with the same training and experience, facing the same facts and circumstances would shoot at a vehicle that was driving away. Similarly, when policy mandates and prohibitions are in play, agencies can no longer condone such actions based on the reasonable officer standard, as those actions are presumed to be against policy.

While this evolution of Graham may have been foreseeable, incremental changes to the current standard can have negative consequences, including confusion and conflict between various states laws and agency policies, as well as within police departments themselves. Consequently, it is important that law enforcement assume a proactive leadership role in stewarding in these (likely unavoidable) changes. When we as an industry simple react or resist change, we are seen as the opposition and risk being removed from the conversation and the decision making process.

The following are examples of changes to terminology that have begun to alter our national lexicon and will continue to do so over ensuing years. Also, below are recommended best practices based definitions that are most consistent with maintaining the current objective Graham standard, including a recommended policy that incorporates those changes.

Sample policy: *Officers may use force when it is necessary to carry out a lawful objective and may use only such force which is proportional and objectively reasonable.* This is a simple example of a policy change and is presented here in order to discuss terminology used.

The intention of the order of the elements (factors) is to guide the critical thinking of officers at the scene, versus on merely serving the adjudicator at some later time. The following is a discussion of each factor.

1. **Necessary.** This particular term imputes a potentially subjective standard which could conflict with the objective standard that is inherent in Graham. Whether a particular use of force is necessary may differ from person to person and officer to officer. When a civilian community members assesses the actions of police, their opinion may be that the force was “not necessary.” This can lead to a chaotic outcome for police leaders who must respond to community concerns, especially when they are adjudicating incidents based on an objective Graham standard. The query of whether the force was ‘necessary’ is not designed to be a subjective one, where the reviewer applies 20/20 hindsight into how the incident should have been handled (pre-Graham). It’s a simple threshold question which precedes the evaluation of the force itself.

* Example of a best practices based definition and application: *Force must be necessary to accomplish a lawful purpose.* This assessment is based on an objective assessment to include, what was the lawful purpose involved? Was the control, detention, or arrest (lawful purpose) likely to be successful without the use of some degree of force? When an objective assessment determines that the purpose was a lawful one and would not be accomplished *but for* the use of some degree of force, the necessary prong is satisfied (for example: a fleeing suspect, an armed encounter or resisting suspect). This prong does not address the force option or amount of force used. Those are related to proportionality and objective reasonableness.

Additionally, this prong is where the application of policies related to de-escalation come into play. Were de-escalation tactics (based on policy and training) fully exhausted prior to the use of force. This is also where a debriefing model can best be used to develop lessons learned from an incident. While it may have gone well, how, and what can be learn for the next encounter.

1. **Proportionality**: Here, we are unavoidably moving back towards a continuum assessment of force in both policy and training. This is an assessment of the amount (and type) of force used.

* Example of a best practices based definition and application. In assessing proportionality, leaders are required to assess: *1. whether the force used was minimally sufficient to overcome resistance or stop the threat posed, and 2. Was the force used objectively excessive in degree or quantity.*

For example, based on the officer training and available resources, that force which was sufficient to overcome resistance or stop the threat and no more. While this is an objective assessment, it has subjective measures, for example, how many punches or baton strikes, or Taser activations were reasonable to assume control.

1. **Objective reasonableness**. Although this is the current stand-alone test in many agencies, it has proven to need the support of additional criteria. However, it is a constitutional standard and should remain part of every agencies policies and guide the adjudication of each incident.

* Example of a best practices based definition and application: *Based on a totality of the circumstances (facts known to the officer at the time); could an officer with similar training and experience reasonably use the same force when facing the same or similar facts and circumstances.* This test simply assesses whether the officer’s actions were objectively consistent with law, policy, training, and the expectations of the agency. In the end the force must be adjudicated based on this objective standard, comparing an officer facing the same or similar facts and circumstances.

Although these three prongs may overlap, they should not conflict when assessing a force incident. Additionally, adding these components in training and policy should not present problems, but lead to clarity.

Officers are expected to be critical thinkers and problem solvers. Adopting these three components will allow directed training on what force is best to accomplish objectives and when. Also, when combined with training on tactics and de-escalation, these policy changes provide a sound basis for investigating supervisors and for leaders adjudicating force incidents, consistent with the best interest of officers and the communities we serve.