



Police Use of Force: Foresight Over Hindsight

by Michael Hughes
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Key Points

- Adopt and inculcate the Integrating Communications, Assessment, and Tactics training model proposed by the Police Executive Research Forum.
- Invest in training that builds confidence and competency, such as the Arlington Police Department model. Ground skills (grappling, for example) build both.
- Require officer candidates and incumbents to demonstrate a level of physical fitness commensurate with the job.
- Provide officers with scenario-based training. This training should reflect both “aggressive” scenarios and common duties and conflicts likely seen on the street.
- Recruit officers with traits toward service, critical thinking ability, problem-solving ability, and interpersonal skills.

Executive Summary

The use of force is a forefront issue for police officers. Modern media outlets offer citizens an insider’s view to situations once only accessible to those at the scene. Seeing a police officer strike someone with a baton, punch them in the face, or use deadly force can leave an indelible mark on one’s memory. Most force incidents are justified. However, perceptions can be difficult to change. News coverage often exacerbates tense situations, and little is done to educate the public. Facts are often ignored, even when simple statistics make the truth obvious. These barriers interfere with a police organization’s ability to maintain legitimacy. As a result, trust erodes. Trust and legitimacy are both critical to effectively police a community.

Although most force incidents are lawful, many could be handled better. *Graham v. Connor* has provided guidance for nearly three decades in judging police use of force. Reasonable force is what the court expects of officers. Justices in this case warned against judging officers using 20/20 hindsight. Arguably, this was not a license to maintain a minimum standard. Policy and training approaches must always evolve. The following recommendations are offered to remedy some of these limitations and to help organizations find or maintain a path toward legitimacy:

- Adopt and inculcate the Integrating Communications, Assessment, and Tactics training model proposed by the Police Executive Research Forum at the academy level and in-service as well.
- Invest in training that builds confidence and competency, such as the Arlington Police Department model. Ground skills (grappling, for example) build both.
- Require officer candidates and incumbents to demonstrate a level of physical fitness commensurate with the job.
- Recruit officers with traits toward service, critical thinking ability, problem-solving ability, and interpersonal skills.
- Provide officers with scenario-based training. This training should reflect both “aggressive” scenarios and common duties and conflicts likely seen on the street.
- Debrief both mundane and critical incidents. Use findings to create training models, scenarios, and policy that are easy to understand and apply.

Public Perception and Police Legitimacy

The use of force by police creates some of the widest chasms between officers and citizens. High-resolution cameras are now prolific, and, when combined with social media platforms, police actions are decidedly visible. Force incidents once lived only in the memories of those on scene. Today police use of force is recorded, instant, viral, and in your face. Millions can review and comment. While the Supreme Court cautioned against judging an officer’s actions using

20/20 hindsight, this was long before police work was available for view by the masses.

The legitimacy of a police organization comes into question when public trust is lost. An ugly force incident can send trust toppling. Baton strikes, punches, or the use of a firearm is easily seen negatively. While there are many positive interactions with citizens, these receive little attention, certainly far less than the use of force tends to generate. It is entirely possible for a citizen to form a viewpoint that came from a few seconds of cell phone video. Individuals, even those who were supportive of police, might find a tarnish on the bright badges they once trusted. Many have never interacted officially with law enforcement but form negative opinions nonetheless. Jake Horowitz found:

People base their impressions of the police on their own personal experiences and on secondhand reports of police encounters. However, because most Americans do not directly interact with the police in any given year, they are forming their opinions on the basis of word-of-mouth accounts from others (Horowitz, 2).

To maintain legitimacy and improve police operations, agencies must better address employee selection, force policy, and training.

The Current Standard for Police Force

In 1989, the Supreme Court set a Fourth Amendment reasonableness standard for judging police use of force. *Graham v. Connor* has held as a steady benchmark ever since. The basis for this ruling deserves explanation.

Dethorne Graham was diabetic. On November 12, 1984, Graham sensed a problem. He needed sugar to offset his insulin levels. Graham asked a friend, Berry, to drive him to buy orange juice. Graham went inside a store but found a long line. He hurried back to the car, got in, and the men drove away. Officer Connor of the Charlotte Police Department had been sitting across the street. He noticed Graham and Berry. He felt that Graham's quick entry and exit were suspicious as these were commonly the actions of a thief or robber. Connor followed the men a short distance and stopped them. Graham's friend explained Graham's condition but to no avail. Connor ordered them to stay in the car, but as Connor called for backup Graham got out and ran around the car twice, sat down on the curb, and briefly passed out. To Connor this behavior was even more suspicious, indicative of intoxication.

Several officers arrived to assist. One rolled Graham over and handcuffed him. Graham's friend tried to convince officers Graham needed sugar, but they ignored the appeals. Officers picked Graham up and put his face on the hood of

Berry's car. As Graham regained some consciousness, he told officers he had a diabetic decal in his wallet. One officer told Graham to "shut up," and shoved his face into the car. Another of Graham's friends brought juice to the scene, but officers refused to allow the friend to help (*Graham v. Connor*).

Graham and his friend had been telling the truth. Officer Connor was mistaken in his suspicions. An officer checked the store and found that everything was in order. Graham was released, but not without harm. At some point during the stop, Graham sustained cuts on his wrists, an injured shoulder, bruising to his head, and a broken foot.

Graham filed suit in district court under 42 U.S.C. § 1983, alleging that officers had used excessive force in making the stop, in violation of "rights secured to him under the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983" (*Graham v. Connor*). The case later came before the United States Supreme Court.

Several key holdings came from the high court's review:

- A single generic standard cannot govern excessive force claims.
- Excessive force claims in the course of arrest, detention, or other seizure invoke Fourth Amendment protections, which guarantee "the right of the people to be secure in their persons ... against unreasonable seizures ..."
- The Fourth Amendment "reasonableness" standard applies when reviewing seizures.
- A "reasonableness" inquiry focuses on whether the officers' actions were "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.
- Reviewing a particular use of force incident is to be done from the perspective of a reasonable officer on the scene. This inquiry must consider that officers often must make split-second decisions about how much force is necessary for the given situation.
- A "malicious and sadistic" inquiry (the prior standard) is not merely another way of describing conduct that is objectively unreasonable.
- Any use of force by law enforcement officers needs to take into account "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" (*Graham v. Connor*)

The court ultimately rejected and remanded Graham's case.

Connor's initial actions were lawful. He conducted a reasonable suspicion stop; under the parameters outlined in *Terry v. Ohio*, Graham's short dash into the store looked suspicious enough. A brief stop to investigate the situation was reasonable; Connor believed criminal activity was afoot. In *Terry*, the courts were clear that investigative stops are not a Fourth Amendment intrusion, and police officers need latitude to investigate suspicious situations:

It is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest ([Terry v. Ohio](#)).

The problems occurred when officers ignored and injured Graham. Connor did not take into consideration the information that Graham was sick. It would have been reasonable, not overly time-consuming, and likely safe enough to take a few seconds to listen before taking physical action, especially since neither Graham nor his friend were acting aggressively or trying to escape. However, the Supreme Court did not find the actions Officer Connor *did* take to be unreasonable, and the standard was set.

The Reasonable Officer

Generally defined, "reasonable" means possessing sound judgment, having the faculty of reason, and not extreme or excessive. *Graham v. Connor* has held as the steady benchmark for reviewing police use of force since 1989. Police officers often benefit from having their actions judged in this light. However, this standard also protects inadequacies such as poor tactics, poor training, or unfit officers. When a police officer with a paucity of skill is placed in a high-stress situation, a potentially deadly recipe unfolds.

Attempts to bolster the standard have met resistance. The previous standard for review before *Graham* required a showing that officers acted maliciously or sadistically.

In *Graham*, Chief Justice William Rehnquist opined several key and often-referenced points:

- "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight";
- "The 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 particular situation";

- Citing *Bell v. Wolfish*, 441 U.S. 520, 559 (1979), "The test of reasonableness is not capable of precise definition or mechanical application" ([Graham v. Connor](#)).

Many of these words hold true 30 years later. Judging in hindsight is problematic. Video can fail to show the entirety of a situation. Nevertheless, evidence suggests that police—administrators and trainers specifically—should be working in a foresight perspective. Better hiring practices, improved training, superior tactics, and stricter accountability should be a constant endeavor, using *Graham* as a floor and not a ceiling when considering their use of force policies. A big challenge, though, is the culture of policing itself, which can be guarded, resistant to change, and protective of its own. Changing hearts and minds within policing is an uphill battle.

Exploring Current Efforts to Address Use of Force Police Accountability and Protection Act (Assembly Bill 931)

In 2017, Assembly Bill 931 (AB 931) was introduced before the California Assembly and aimed to amend use of force standards for peace officers. The bill, in part, would "require peace officers to attempt to control an incident by using time, distance, communications, and available resources in an effort to deescalate a situation whenever it is safe and feasible to do so" ([Assembly Bill 931](#)). Law enforcement officers found the use of the word "necessary" in the proposed bill problematic. The bill defined "necessary" and two other related terms:

"Necessary" means that given the totality of the circumstances known to the officer at the time, an objectively reasonable peace officer in the same situation would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury to the peace officer or to another person.

"Reasonable alternatives" mean tactics and methods, other than the use of deadly force, of apprehending a subject or addressing a situation that do not unreasonably increase the threat posed to the peace officer or another person. Reasonable alternatives may include, but are not limited to, verbal communications, warnings, de-escalation, and tactical repositioning, along with other tactics and techniques intended to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of deadly force.

"Totality of the circumstances" means all facts known to the peace officer at the time, including the actions of the

subject and the officer leading up to the use of deadly force ([Assembly Bill 931](#)).

Shaun Rundle, deputy director of the California Peace Officers' Association, wrote that AB 931 "seeks to raise the legal force standard from 'objectively reasonable' to 'necessary.' That bill would put peace officers in even more risk as they would be second-guessing themselves in every contact made, as civilian behavior can escalate very quickly into situations that lead to lethal force applications." The bill, however, "fails to define 'time, distance or communication,' adding to further confusion at the local level. With peace officers being assaulted with firearms over 25% more than in previous years, AB 931 is just plain dangerous" ([Rundle](#)).

Time, distance, and communication are vague terms. It is up to police administrators and trainers to operationalize them. For example, officers gain time when they slow down situations with dialogue and good tactics. Maintaining distance allows a broader field of view, greater reaction time, and the ability to work from a position of cover and concealment. Distance also creates time and allows for safer dialogue. Communication is important between officers and subjects, as well as with other police. Tense situations often benefit from time, distance, and communication. However, the resolution chosen in these situations is more often intense and unrestrained.

Blake notes that experts on both sides of the proposed legislation have opined about what the law might mean in practice. Some suggest changes will lead to officer hesitation, increased injuries, and more deaths. Others believe the standards are overly subjective. These questions go unanswered for now, and because the bill went unsigned, are likely to remain so ([Blake](#)).

Police Executive Research Forum

In October 2016, the Police Executive Research Forum (PERF) published *ICAT – Integrating Communications, Assessment, and Tactics – A Training Guide for Defusing Critical Incidents*. The guide helps trainers explain and operationalize improved methods for handling non-firearm force situations. Several jurisdictions have started requiring the training at both the academy and in-service levels. PERF noted that "crisis recognition and response, tactical communications, and operational safety tactics must be integrated in both training and field operations" ([PERF 10](#)).

PERF researchers found that "in many of the officer-involved shootings that PERF reviewed, we found that officers on the scene had been trained in CIT. However, CIT is mainly about communications. So when a situation turns dynamic, officers may forget or downplay their CIT

communications skills and instead resort to the basic defensive tactics they had been trained in" ([PERF 10](#)).

ICAT training goals are clear:

- Reinforce with patrol officers the core ideal of sanctity of human life—the need to protect themselves, members of the public, and, whenever possible, criminal suspects and subjects in crisis from danger and harm.
- Promote public safety and officer safety by learning and integrating skills and strategies related to decision-making, crisis recognition, tactical communications, and safety tactics.
- Provide patrol officers with the skills, knowledge, and confidence they need to assess and manage threats, influence behavioral change, and gain voluntary compliance whenever possible in dynamic and dangerous situations.
- Provide patrol officers with a decision-making model that is intuitive, practical, and effective for safely resolving non-firearms critical incidents and for documenting and explaining actions after the fact.
- Provide patrol officers with basic skills needed to recognize individuals in crisis and to approach and attempt to engage them in a safe and effective manner.
- Provide patrol officers with key communications skills needed to safely engage with, de-escalate, and gain compliance from subjects who are in crisis and/or non-compliant.
- Reinforce with patrol officers effective tactical approaches and teamwork skills needed to safely resolve incidents.
- Provide patrol officers with realistic and challenging scenario-based training, which focuses on recognition of persons in crisis, tactical communication, and safe tactics as part of an overall, integrated de-escalation strategy ([PERF 13](#)).

When PERF first published their guiding principles, along with a Critical Decision Making Model (CDMM), there was aggressive pushback. A 2016 National Association of Police Organizations paper says this about the model: "Here's a beauty. In this one, PERF combines the imposition of another time-consuming, unrealistic and paralyzing thought process for officers under threat, with another plea to disregard the Constitutional legal standard, and tops it off with 'that's how they do it in Europe' as an attempt at justification" ([NAPO 3](#)).

The CDMM is not a mental checklist for officers. It is a training tool, a graphic providing context to support PERF's

principles. With proper training, the model can become automatic. This model would become the new baseline if integrated in police academy training. This assumes the CDMM is reinforced in field training and does not fall victim to the oft heard “forget everything you learned in the police academy” speech.

Proportionality is another PERF term that sees criticism: “Proportionality considers whether a particular police use of force is proportional to the threat faced by the officers and is appropriate given the totality of the circumstances. ... Proportionality also requires officers to consider how their actions will be viewed by their own agencies and by the general public, given the circumstances” (PERF, 21).

The report’s additional narrative, boldfaced in the actual publication, explains the concept in depth: “This does not mean that officers, at the exact moment they have determined that a use of force is necessary to mitigate a threat, should suddenly stop and consider how the public might react. Rather, it is meant to be one factor that officers should consider long before that moment, and throughout their decision-making on what an appropriate and proportional response would be” (PERF, 21).

Realistic and relevant scenario training can help officers choose the appropriate response to many situations. Most jurisdictions have seen and experienced many situations repeatedly, from the mundane to the critical. If these calls are properly debriefed, they become excellent sources for scripting scenarios. Practice is important. However, practice often ends on graduation day from the police academy. This is a training flaw. Roll-call and in-service training can and should fill the gap.

Upending a Culture of Fear—Building Confidence and Competency

Police officers are human. They experience fear like others. Dave Grossman describes human aggression as a universal phobia. Grossman spells out that training can address

some of the natural instincts to which humans resort. Harnessing one’s natural “fight or flight” response to fear can better equip police officers for dangerous situations (Grossman, 2-3).

“The public expects of its professional police officers accurate memory, communication, proportional responses, appropriate social behavior, and suppressing impulse behavior” (Siddle, 6, 143-144). The problem with these expectations is that in stressful situations these attributes become a casualty of the brain’s amygdala. The prefrontal cortex of the brain takes a backseat. However, research shows the prefrontal cortex is responsible for cognitive

processing, decision-making, proportional responses, inhibition of inappropriate responses, accuracy of perception, error correction, moral and ethical behavior, precise memory and the ability for task switching (Fernandez, 4).

A Department of Justice publication on procedural justice quoted Arlington Texas Police Corporal Charles Fernandez: “It’s often said that an officer’s greatest weapon or tool is their brain, which enables them to process all the information from a rapidly evolving situation and be able to adapt accordingly”

(Kunard and Moe, 15). Maintaining a functioning prefrontal cortex is critical to this tool working efficiently.

Fernandez cites research that one factor responsible for keeping the prefrontal cortex working is to maintain a perception of control. However, the officer must also have the ability to establish actual control. Fernandez suggests real control begins with an understanding of the mechanics of a confrontation. This includes positional hierarchy, distance management, energy conservation, leverage-based techniques, physical fitness, and familiarity of pre-attack cues (Fernandez, 5-7).

Arlington, Texas, Police Department Training Model
The Arlington Police Department has an integrated training model for their recruits that addresses Fernandez’s suggestions. Through five phases, officers learn first about worst-case scenario survival. This is followed by positional control

CRITICAL DECISION-MAKING MODEL



training, where recruits learn how to maintain control by countering an opponent's attacks and escape attempts. Phase three is contingency training: officers learn how to maintain control by transitioning to alternate holds if the opponent escapes a positional control hold. Scenarios make up the remainder of the training. Micro-scenario training offers small components of likely situations that involve physical confrontation. Full-scenario training completes the process. These scenarios simulate an entire call and include decision-making, arrest, search, policy issues, and physical confrontations (Fernandez, 8).

Hiring and Training – Problems and Solutions

Hiring the Modern Police Officer

In our politically correct society, it is dangerous to say that not everyone should be able to be a police officer. Nevertheless, it is a true statement. Most lack the attributes and temperament. Morrison, in a report for the Office of Community Oriented Policing Services, included several areas that are important when hiring police officers. He summarized some observations:

Several forum participants noted that while the traditional approach to police hiring has skewed heavily toward the “warrior” aspects of the profession, agencies today need to focus attention on recruiting and hiring for the “guardian” role that police officers must be prepared to play. In fact, some forum participants argued that agencies should concentrate most of their attention on ensuring that applicants coming into the system have the necessary qualities of the guardian, because the warrior elements of the job can be taught (Morrison, 6).

Teachable “warrior elements” include shooting skills, use of less lethal equipment, and empty-hand control tactics. Traits that lead to service mindset, critical thinking, valuing the community, communication, and problem-solving are far more challenging (Morrison, 7).

Morrison also discusses fitness: “Being a police officer is a physically demanding job, and officers need to be prepared to engage in strenuous and potentially dangerous physical activity. That basic requirement has not changed for the 21st century police officer” (Morrison, 10).

Training the Modern Police Officer

Petersen notes that the goal of training should be not only to prepare officers for real world encounters, but to identify those who cannot fit the role and remove them. He suggests realistic, scenario-based training can accomplish both (Petersen, 15).

Aveni observed the following in his research on police shootings:

The agency with the lowest frequency of unarmed suspects shot (24%), judging from all informal participant debriefs, had the most rigorous scenario-based training regimen. Virtually every participant interviewed from that agency stated that he/she had had one or more force-on-force training sessions in the last 12 months. In itself, this might not seem evidence adequate to suggest that training was the most influential factor, but it is the only factor that clearly stood out from all others (Aveni, 24).

Scenario training must be purposeful, planned, and properly moderated. Aveni offers caution:

One final perspective should be made regarding the value of scenario-based training – it can be part of the problem or part of the solution. Scenario-based training should truly be geared toward “conflict resolution,” not merely gun-fighting skills. In addition, a disproportionate number of “aggressive” scenarios may begin influencing reactions akin to “fear-biting” in canines. A recent buzzword in the police training lexicon has been that of “stress inoculation.” Approach this concept with caution. Your officers/deputies may never be “warriors,” nor may you want them to be, but they must be rational decision-makers. If your agency’s scenario-based training proportionately reflects what duties and conflicts your officers/deputies are most likely to encounter on the street, your training is likely where it needs to be (Aveni, 25).

Recommendations

- Adopt and inculcate the ICAT training model proposed by PERF at the academy level and in-service as well.
- Invest in training that builds confidence and competency such as the Arlington Police Department model. Ground skills (grappling, for example) build both.
- Require officer candidates and incumbents to demonstrate a level of physical fitness commensurate with the job.
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Hughes' professional career began with the United States Air Force in 1984, where he served with security forces safeguarding military assets. He began his civilian police career in 1988, working in both patrol and criminal investigations divisions over the years. In 2010, he retired as a captain with the Saginaw (Texas) Police Department, then served briefly as police chief in Wasilla, Alaska.

As a police officer, Hughes earned a Master Peace Officer certificate through the Texas Commission on Law Enforcement. He graduated from the Leadership Command College and the Command Staff Leadership Series through the Law Enforcement Management Institute of Texas. Hughes also has the distinction of graduating with the 220th Session of the FBI National Academy in Quantico, Virginia. He has broad experience in police topics and has attended hundreds of hours of professional training. In 2015, he earned a certification as an analyst through the prestigious Force Science Institute.

In 2003, Hughes earned a master of science degree in criminal justice management from Sam Houston State University. He has since taught criminal justice classes as an adjunct faculty member at Texas Christian University, Tarrant County College, and Columbia College, all located in Fort Worth, Texas.

As a police trainer Hughes also teaches in the areas of search and seizure, crime scene investigation, use of force, defensive tactics, and management and supervision, among others.

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