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AN ILLUSORY “CONSENSUS” (Part I)

America’s police leaders agree on the use of force. Or do they?

By Julius (Jay) Wachtel. You might have missed it, but [about two weeks ago, on January 17](#), eleven of the nation’s major law enforcement organizations, including the IACP, FOP and NOBLE, issued a “[National Consensus Policy on Use of Force](#).” Intended for adoption by all law enforcement agencies, the model policy provides a comprehensive set of guidelines for the use of force, and in an economical three pages, to boot.

We’ll get to its contents momentarily. But while skimming the policy’s impressive list of sponsors, we noticed the absence of two key organizations, the Police Foundation and the Police Executive Research Forum (PERF). Interestingly, right about the time that the National Consensus team got started, PERF released its own “[Guiding Principles on Use of Force](#).” Drawing from police practices and experiences in the U.S. and the U.K., the comprehensive (100-page plus) report offered thirty principles to “guide” virtually everything related to the use of force, from agency policy to the actual tactics that officers employ in the field.

As regular readers know, we commented on that document in some detail (see “[More Rules, Less Force?](#)”). Its lukewarm reception by the more practically-minded members of the law enforcement community was seconded by none other than the mighty IACP, which was particularly distraught with the Principles’ criticism of the Supreme Court’s cornerstone decision on use of force, [Graham v. Connor](#), for supposedly giving officers too much leeway in deciding when to use force, and how much.

Indeed, it’s precisely that perceived need for “wiggle room” that lies at the core of the shiny, new “National Consensus” report. Here is about two-thirds of its introductory section on police policy:

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” In addition, “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 question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”

Incidentally, everything in quotes is from *Graham*.

In essence, PERF and the Police Foundation are pressing for more stringent and precisely articulated controls on officer use of force, while the IACP and its partners (including NOBLE, the National Organization of Black Law Enforcement Executives) insist the Supremes had it right all along. So how have these competing views affected police rulemaking? Part I compares recommendations from PERF and the National Consensus to rules in Los Angeles, Chicago and New York City in two key areas: proportionality and de-escalation.

Proportionality

PERF: Principle number 3, the “test of proportionality,” requires that officers use the least amount of force required, taking into account “less injurious options,” the “severity of the threat and totality of the circumstances” and whether their actions “will be viewed as appropriate by their department and the public.

National Consensus: Use of force must meet the requirements of *Graham*, interpreted as “only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others.” Proportionality and what others might consider appropriate aren’t discussed.

LAPD: Essentially the same as National Consensus. According to vol. 1, sec. 240.10 of the LAPD Manual, when “reasonable alternatives” are absent, officers may employ “whatever force that is reasonable and necessary to protect others or themselves from bodily harm.” There is no mention of proportionality or of any concerns about what citizens may think.

Chicago (draft policy): Adopts *Graham* and takes it a step further, requiring that deadly force be “objectively reasonable, necessary, *and proportional*” (draft manual, section G03-02 IIE – emphasis ours). But the practical effect of “proportional” is somewhat muted, as officers need not deploy “the same type or amount of force” as their antagonist, and “a greater level of force” is acceptable when a threat “is immediate and likely to result in death or serious physical injury.”

NYPD: Does not mention “proportionality.” However, its policy manual incorporates actions such as slowing things down and giving time for help to arrive within the rubric of de-escalation (see discussion below). NYPD’s explicit force policy, however, seems like a succinct version of *Graham*: “Apply no more than the reasonable force necessary to gain control.” (Procedure 221-02, #11.)

De-escalation

For a recent Police Issues post on point see “[More Rules, Less Force?](#)”

PERF: Principles #4 and #17 identify de-escalation as a central, indispensable component of police policy and practice. As a comprehensive approach to defuse encounters, it incorporates a variety of concepts and strategies including proportionality, “slowing things down,” distance and cover, and proper communications.

National Consensus: Defines de-escalation as a collection of techniques (command presence, advisements, warnings, verbal persuasion and tactical repositioning) that can reduce or minimize the use of force. While de-escalation (or at least, considering it) is required, officers have wide latitude in deciding whether to use de-escalation techniques. For example, section IV B-1 directs that de-escalation “shall” be used “when consistent with training whenever possible and appropriate.” Section B-2 instructs that persons be given time to obey directions if the delay “will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime.”

LAPD: De-escalation is not mentioned in its manual. However, officers [receive instruction on de-escalation techniques](#) during in-service training. Still, [a move last year](#) by the Police Commission to incorporate de-escalation into official policy met stiff resistance. Chief Charlie Beck conveyed his reservations diplomatically: “We absolutely believe in de-escalation. But we also recognize the difficulties of police work.” A police union official expressed his views more brusquely: “Every second counts, and hesitation will kill you. Your proposed revamping of the use-of-force policy will get officers killed, plain and simple.”

Chicago (draft policy): Chicago’s comprehensive draft rules on use of force identify a variety of de-escalation techniques (e.g., making time, keeping one’s distance) and mandate their use when doing so is possible. Again, there is abundant wiggle room. Rule II-G, for example, requires de-escalation “as soon as practicable.” Surprisingly, that apparently means *after* things settle down:

2. [Officers must] de-escalate as soon as practicable. *Once control of the subject has been obtained and the threat or resistance no longer exists (emphasis ours),*
Department members will:
 - a. de-escalate immediately.
 - b. avoid the continued use of force.

c. maintain control and be alert to any conditions that may compromise the security or safety of the subject.

NYPD: Its use of force rules (click [here](#) and [here](#)) offer detailed guidance. For example, Procedure 221-02 defines and distinguishes between “active” resistance, “passive” resistance and “active aggression.” Officers are repeatedly urged to seek help from supervisors and specialized units (NYPD is well-known for its Emergency Response Teams) when encountering difficult persons. That is where de-escalation fits in:

DE-ESCALATION – Taking action to stabilize the situation and reduce the immediacy of the threat so that more time, options, and/or resources become available (e.g., tactical communication, requesting a supervisor, additional MOS and/or resources such as Emergency Service Unit or Hostage Negotiation Team, etc.) (221-02, pg. 1)

Officers nonetheless retain abundant leeway, with de-escalation required only “when appropriate and consistent with personal safety” (221-01 and 221-02, #2).

In Part II we’ll compare rules governing the use of lethal force, including shooting at vehicles and fleeing suspects, as well as guidelines for dealing with the mentally ill. We will also have something hopefully useful to say about information practices (a seldom-mentioned issue addressed by PERF) and the difficulty of translating good intentions into good policy. Stay tuned!