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USE OF FORCE REPORTING

ACCOUNTING FOR ONE'S ACTIONS

The core operating principle of the new police accountability is that police officers are required to account for their behavior. In practice, this means that police departments have a *written policy* clearly specifying when use of force is appropriate, require officers to complete a *written report* after each use of force incident, and have each report *reviewed* by supervisors. The report and review process is now a recognized best practice in policing. The Department of Justice report *Principles for Promoting Police Integrity* recommends that “Agencies should develop use of force policies that address use of firearms and other weapons and particular use of force issues such as: firing at moving vehicles, verbal warnings, positional asphyxia, bar arm restraints, and the use of chemical agents.”¹³⁰ This chapter describes how the new police accountability extends the report and review requirement to a broader range of critical incidents involving the use of police powers.

The idea that officers should be subject to detailed rules and have to account for their actions in writing is actually relatively new in American policing. The absence of meaningful controls over the use of police powers in the past is, by today’s standards, truly astonishing. As recently as the early 1970s in many departments police officers were sent out onto crime-ridden streets, armed with deadly weapons and trained in *how* to fire those weapons, but with absolutely no guidance on *when* to fire those weapons. A 1961 survey found that about half of the departments surveyed relied on an “oral policy.”¹³¹ The 1963 edition of O.W. Wilson’s influential textbook *Police Administration*

said nothing about the use of deadly force.¹³² A recent report by the Philadelphia Police Department's Integrity and Accountability Office quoted officers who recalled the 1970s as the "wild west," where it was "open season" and a "free for all." Warning shots and shots at fleeing suspects (two actions now prohibited by all departments) "occurred with alarming frequency."¹³³

In addition to the lack of written policies, prior to the 1970s most police officers did not have to complete detailed reports about use of force incidents. Even in those departments in which some kind of formal reports was required, supervisors generally did not conduct rigorous reviews of those reports with an eye toward disciplining officers who violated policy. The presumption was that officers used good judgment and should not be second-guessed in dangerous encounters. In this sense, they were literally unaccountable for their behavior.¹³⁴

Holding police officers accountable by requiring them to explain their use of force has important collateral benefits. The principal source of police-community relations tensions has been the deeply held belief in the African American community that police officers can shoot to kill and use excessive force with impunity. As the court-appointed monitor in Los Angeles points out, fair and impartial investigations of use of force incidents not only ensure accountability for individual officers but are crucial to maintaining "the community's faith in the system."¹³⁵

THE ORIGINS OF USE OF FORCE POLICY

Meaningful controls over police use of force began with an effort to control police shootings. It is hardly surprising that they began with the use of deadly force. Taking a person's life is the ultimate use of police authority—and the police are unique among social institutions in possessing this power. Additionally, fatal shootings by police have long been the most volatile civil rights issue. The killing of an African American man by white authorities has enormously powerful symbolic resonance, evoking images of lynchings and the still volatile issue of capital punishment. Several of the riots of the 1960s were sparked by the fatal shooting of an African American by a white police officer.¹³⁶ Data from the 1960s and early 1970s indicated a shocking disparity of eight African Americans shot and killed for every one white person.¹³⁷ In Memphis, Tennessee, between 1969 and 1974 officers shot and killed 13 African

Americans and only one white person in the “unarmed and not assaultive” category.¹³⁸ Shooting related crises have continued to the present day. In April 2001, the 15th fatal shooting of an African American in 5 years by the Cincinnati police precipitated a 1960s-style riot marked by property destruction, a curfew, and mobilization of the Ohio National Guard.

The New Deadly Force Policy in New York City, 1972

The historic turning point on use of force reporting occurred in 1972 with a new deadly force policy developed by New York City Police Commissioner Patrick V. Murphy. There may well have been precursors to Murphy’s policy, but they have been lost to history and, in any event, had no meaningful influence on national police practices.¹³⁹ In part because the NYPD is the largest department in the country, its new deadly force policy had an enormous national influence. Additionally, it was subject to a rigorous evaluation by Professor James Fyfe, and his finding that the policy reduced shootings lent important academic support to the new approach.¹⁴⁰

The 1972 NYPD policy included the two elements that have formed the basis of all use of force policies over the past 30 years. Substantively, the policy confined discretion by clearly specifying when force can be used and when it is not appropriate, replacing the very permissive *fleeing felon rule* with the restrictive *defense of life* rule. Officers are permitted to use deadly force for the protection of their own lives or the lives of other people. In addition, the policy prohibited firing a weapon for a number of specific purposes, including warning shots, shots intended to wound a suspect, and shots at or from moving vehicles.¹⁴¹

Procedurally, the NYPD policy required officers to complete a written report after each firearms discharge and mandated an automatic review of each report by supervisors. The review was conducted by a Firearms Discharge Review Board composed of several high-ranking commanders. Other departments have developed different procedures for these reviews, but the basic principle of an automatic review of each incident has become standard practice.

The basic elements of the NYPD policy soon won favor among police experts. A 1977 report on deadly force by the Police Foundation endorsed the mandatory reporting and automatic review requirements.¹⁴² In 1981 the U.S. Civil Rights Commission’s influential report, *Who is Guarding the Guardians*, recommended that “Unnecessary police use of excessive or deadly force could

be curtailed by . . . strict procedures for reporting firearms discharges.”¹⁴³ By the time of the 1985 Supreme Court decision in *Tennessee v. Garner* limiting police shootings under the Fourth Amendment, most big city police departments had already adopted deadly force policies that were far more detailed and restrictive than the Court’s decision, reflecting a national consensus on the basic elements of the original 1972 NYPD policy.¹⁴⁴

The Impact of Administrative Controls

Empirical research indicated that the new controls over police shootings had a positive effect. James Fyfe’s analysis found that the 1972 NYPD rules reduced total firearms discharges by 30% over the next 3 years. National data, meanwhile, indicate a significant reduction in the number of citizens shot and killed by the police each year from its peak in the early 1970s to the 1980s (at which point the number has fluctuated). Even more important, the racial disparity in persons shot and killed has narrowed from a ratio of 6 or 8 African Americans for every white person shot in the mid-1970s to a ratio of 3 to 1 by the late 1990s.¹⁴⁵ In Memphis, where the old fleeing felon rule had resulted in 13 African Americans and only 1 white person shot and killed in the “unarmed and non-assaultive” category, the new restrictive policy resulted in no fatal shootings of any people, white or African American, in this category by the late 1980s. In short, the defense of life rule not only achieved its intended goal of eliminating fleeing felon shootings but in the process reduced the worst racial disparities.¹⁴⁶

The Development of Critical Incident Policies

Since the initial breakthrough in the early 1970s, use of force policies have developed in four important directions. First, the use of written policies has been extended to cover a steadily increasing range of police actions, including use of physical force, high-speed vehicle pursuits, the use of canine units, and other actions. The emerging standard is that all critical incidents should be covered by a written policy requiring a report by the officer and an automatic review by supervisors. Critical incidents are defined here as any police action that has a potentially adverse effect on the life, liberty, or dignity of a citizen.

Second, the content of use of force policies has become increasingly detailed, covering more potential situations within a general category. With respect to the use of physical force, for example, can an officer kick a suspect?

If so, where? If so, with the foot, or knee, or both? Under what circumstances? This is not a hypothetical issue, because some departments do authorize “distraction” techniques that can involve kicking. It is increasingly recognized that to effectively control the use of force and to avoid any ambiguity, use of force policies need to address all possible applications.

Third, increased attention has been given to the nature of the review of use of force reports. Experts increasingly recognize that it is not sufficient merely to have a written policy requiring “a review.” As is explained in detail later in this chapter, the emerging standard is to have specific policies requiring commanders to respond immediately (e.g., “roll out”) to serious force incidents, to require investigators to canvass the scene for potential witnesses, not giving an automatic preference for the statements of the officer being investigated, and so on. And as Chapter Four explains, similarly detailed requirements have developed for the investigation of citizen complaints. In this regard, it is noteworthy that the consent decrees negotiated by the U.S. Department of Justice have become longer and more detailed, a trend that reflects a growing sophistication about what is required for an effective use of force policy.¹⁴⁷

Also, it is no longer acceptable that the review of an incident be limited to the question of whether an officer violated department policy or committed a criminal offense. The emerging standard is that the review should inquire into whether an incident raises policy or training issues that the department needs to address.¹⁴⁸ In short, individual incidents should not be treated as isolated events but should become an occasion for organizational self-scrutiny and change.

Fourth, reports on critical incidents are increasingly subject to aggregate analysis for the purpose of identifying patterns of officer behavior that merit closer attention by the department. The new tool for such analyses, early intervention systems, is discussed in detail in Chapter Five.

Uneven Progress

Despite the emergence of a general consensus on use of force policy through the 1980s and 1990s, it would be a mistake to assume that all departments have been in step with this trend. On the contrary, as investigations by the U.S. Department of Justice have revealed, many police departments failed to adopt the new standards. The 1997 suit against the Pittsburgh Police Bureau found that the department’s use of force policy did not meet national standards. The 2003 Department of Justice investigation of the Schenectady Police

Department found that its policy did “not limit the use of deadly force to situations involving an imminent threat to the life of the officer or another person. In fact, the policy appears to state that the use of deadly force may be justified even when there is no imminent threat to the life of the officer or another person.” In addition, the Schenectady policy did not “adequately identify types of force that constitute deadly force.”¹⁴⁹

THE ADMINISTRATIVE RULEMAKING MODEL

The general model for police use of force policy is derived from the field of administrative law, and in particular the work of Kenneth C. Davis. His short 1975 book on *Police Discretion* was the first full discussion of discretion in policing, and it provided a brief description of how the administrative rule-making process, which was then well developed in other areas of government, could and should be applied to policing.¹⁵⁰

The Framework: Confine, Structure, and Check Discretion

Davis’s administrative rulemaking approach to the control of discretion, which he had earlier set forth in his book *Discretionary Justice*, involves a three-stage framework of confining, structuring, and checking discretion.¹⁵¹

Confining Discretion

Confining discretion involves having a written policy that clearly defines what an officer can and cannot do in a particular situation. Confining discretion does not attempt to abolish the use of discretion but only to limit its use to a narrow range of situations by specifying those situations in which they may not use force or conduct a high-speed chase. This approach is consistent with the general view that it is futile and unwise to attempt to abolish discretion completely in any area of criminal justice decision making (e.g., plea bargaining, sentencing) but that rules can effectively control its use.¹⁵² Davis states bluntly that discretion “cannot be eliminated. Any attempt to eliminate it would be ridiculous.”¹⁵³ Thus, for example, the prevailing standard on the

use of deadly force authorizes it only in the defense of life; similarly, high-speed vehicle pursuits of nondangerous offenders are typically prohibited.¹⁵⁴

Structuring Discretion

Discretion is structured in the Davis model by specifying the factors that an officer should consider in making a decision. As Davis explains, policy should advise officers to “let your discretion be guided by these goals, policies, and principles.”¹⁵⁵ High-speed pursuit policies, for example, typically instruct officers to consider road conditions and the potential risk to pedestrians or other vehicles before initiating a pursuit.¹⁵⁶ The Iowa law on domestic violence directs police officers to arrest the person they believe to be the “primary aggressor.”¹⁵⁷ These specific guidelines are consistent with the larger goal of striking a balance between the unacceptable alternatives of ignoring discretion altogether or attempting to abolish it. The goal is to limit its exercise as much as possible and to guide it into acceptable application.

Checking Discretion

Discretion is checked in the Davis model by having decisions reviewed by supervisors or even some external authority. Each use of force report is automatically reviewed by higher-ranking supervisors. The knowledge that a review will occur is designed to affect the officer’s decision making. Two other mechanisms that are part of the new police accountability further enhance the checking process. Early intervention systems (discussed in Chapter Five) represent a systematic analysis of use of force data to identify patterns that are problematic. Finally, the police auditor form of citizen oversight (discussed in Chapter Six) provides a review by experts who are not themselves sworn officers in the department.

Collateral Contributions

(1) *Rules as Statements of Values.* Rules have important collateral contributions to good policing. One of the most important is that they embody statements of

values.¹⁵⁸ Use of force policies today typically begin with the statement that the guiding principle is the protection of life. The Kansas City, Missouri, police department policy, for example, declares that “This department recognizes and respects the value and special integrity of human life. In permitting members, with the lawful authority, to use force to protect the public welfare, and for the apprehension and control of suspects, a careful balancing of all human interests is required.”¹⁵⁹ Along the same lines, the model policy recommended by the California Peace Officers Association declares, “This department recognizes and respects the value of human life and dignity. Vesting officers with authority to use force to protect the public welfare requires a careful balancing of all human interests.”¹⁶⁰

These statements clarify a department’s priorities. The old fleeing felon rule said, in effect, that arrest was the highest priority and that if someone who did not deserve to die is fatally shot, well, that is simply a mistake we have to live with. The defense of life standard reverses the order of priority, saying that the protection of life is paramount and, to that end, we are willing to tolerate the occasional escape of a genuine felon, and in particular we are not going to risk death to an innocent person in the case of a relatively minor offense. Similarly, restrictive pursuit policies communicate the message that the safety of bystanders and other drivers is more important in certain circumstances than the arrest of a fleeing suspect.

The failure of some departments to conform to the new standards is illustrated by the absence of such statements about the priority of preserving life over other police goals. The Philadelphia Police Department, an agency with well-documented accountability problems, did not add a statement about the value of human life to its use of force policy until 1998.¹⁶¹ The Louisville, Kentucky, police department did not have a clear statement on the value of protecting life as late as 2002.¹⁶²

(2) *Rules as Training Tools.* Finally, policies serve as important training tools. The standard classroom lecture on human rights, offered in the police academy, suffers from being too far removed from the day-to-day reality of police work on the streets. Preservice lectures, moreover, are easily forgotten once an officer hits the streets. In fact, policing has been notorious for having veteran officers tell the new recruit, “forget all that academy crap, this is how we really do it.” The statement of values, by contrast, is embodied in an operational policy that guides an officer in critical incidents and for which the officer knows he or

she will be held accountable. Written policies and their day-to-day enforcement, in short, serve as a very meaningful on-going training for officers.

CONTROLLING POLICE CONDUCT IN CRITICAL INCIDENTS

Since meaningful controls over the use of deadly force first appeared in the 1970s, the basic administrative rulemaking principle has been extended to other critical incidents involving the use of police powers. The following section discusses some of the most important applications.

The Challenge of Controlling Police Use of Physical Force

Allegations of “police brutality”—meaning the use of excessive physical force—has been as much a volatile civil rights issue as deadly force. The development of meaningful controls over officer use of nonlethal force lagged behind the controls over deadly force and began to reach a comprehensive approach only in the 1990s.¹⁶³ In several important respects, physical or nonlethal force is more difficult to control than deadly force. Nonlethal force includes a wide range of behavior and there is considerable ambiguity as to what actions constitute use of “force.” With respect to use of deadly force, there is no ambiguity about the fact that an officer fired his or her weapon. Among law enforcement agencies, for example, there is no consensus of opinion on whether a routine handcuffing represents a use of force that should be the subject of an official report. Additionally, the number of nonlethal force incidents in any given year is far higher than the number of shooting incidents, a fact that greatly complicates the task of reporting, reviewing, and controlling such incidents.¹⁶⁴

Defining Force

A comprehensive use of force policy must first define what actions constitute use of *force*. The Department of Justice report, *Principles for Promoting Police Integrity*, recommends that “agencies should define ‘force’ broadly, including any and all ‘physical efforts to seize, control, or repel a civilian. . . .’”¹⁶⁵ As

already mentioned, the use of nonlethal force includes many different actions, each of which has different levels of potential harm to a citizen. For example, is kicking a citizen permissible? Is it permissible to strike a citizen with the knee? Many departments today prohibit strikes to the head because of the potential for serious injury or death, but some others do not explicitly forbid it.¹⁶⁶ Vagueness creates a host of potential problems. One department, for example, approves the use of “leg strikes,” but the policy is not clear as to whether this refers to striking the citizen in the leg or using an officer’s leg to strike the citizen.¹⁶⁷

Currently, the most comprehensive use of force policies include any “control of person” action by an officer. The San Diego Police Department policy, for example, requires an officer to file a report after using “Any force option, [or] control hold,” in addition to any “weaponless defense technique applied to a person, or any force that causes injury or complaint of injury to either the officer or the subject being restrained.”¹⁶⁸ The Miami-Dade Police Department has a similar “control of person” policy, and all reports are entered into the department’s early intervention system.¹⁶⁹

There is no consensus on whether the routine handcuffing of a nonresisting suspect should be defined as force. As a matter of policy, most departments handcuff all persons arrested for a felony. Defining this as force adds a substantial administrative burden because of the number of reports that would result (along with burden of entering these reports into the department’s early intervention system).¹⁷⁰ Thus, an effective approach to the control of use of force faces the competing claims of comprehensiveness and efficiency.

As is the case with deadly force policy, many departments have not kept pace with the developing national standards. Investigations by the U.S. Department of Justice under the 1994 “pattern or practice” law have identified specific deficiencies in use of force policies in a number of police departments. Department of Justice (DOJ) investigators found in 2002, for example, that the Detroit Police Department policy “does not define ‘use of force’ nor adequately address when and in what manner the use of less-than-lethal force is permitted.”¹⁷¹ Similarly, the DOJ found that the Schenectady, New York, use of force policy “contains vague language and undefined terms,” it “fails to identify specific uses of physical force that may be prohibited or restricted to limited circumstances,” and it does not specify whether officers may use carotid holds, or hog-tying, two types of force that have caused serious injury and death.¹⁷²

Consistency Among All Policies

Developing a coherent use of force policy is complicated by the fact that use of force is typically covered by several different policies, often resulting in a lack of consistency among them. In the Miami Police Department, for example, the DOJ found that whereas one policy embodied a state-of-the-art definition of when force could be used, the policy on arrests contained a vague and far more permissive definition. Additionally, and even more seriously, an Internal Affairs Unit policy called for a review of incidents only in the case of “flagrant use of excessive force.” The DOJ concluded that “The MPD . . . fails to provide officers with clear guidance on what constitutes a reasonable use of force.”¹⁷³

The inconsistencies in the various Miami use of force policies are, in one sense, a “housekeeping” problem: a failure to review all relevant policies and ensure consistency. In the larger context of achieving accountability, however, housekeeping is not a minor issue. Maintaining a complete and consistent set of policies on all important aspects of police operations is a fundamental management issue. Most departments have yet to abandon the traditional crisis management approach, in which policies are developed in reaction to controversial incidents, and instead take a proactive and comprehensive approach to policy development.¹⁷⁴ The role of police auditors on this critical issue is discussed in detail in Chapter Six, and the larger issue of ongoing proactive housekeeping is discussed in the concluding chapter.

Confining the Use of Force

The second key element in a use of force policy is confining the use of force by specifying the circumstances when it may and may not be used. The prevailing standard is that an officer may use the *minimum amount of force necessary for achieving a lawful purpose*. There is no clear consensus on exactly what these purposes are, however. The Kansas City Police Department reflects the prevailing national standard by specifying that force may be used for four basic purposes: “Members may use department approved non-lethal force techniques and issued equipment to: a. Effect an arrest. b. Protect themselves and others from physical injury. c. Restrain or subdue a resistant individual. d. Bring an unlawful situation safely and effectively under control.”¹⁷⁵ Unstated but clearly implicit in this policy is the prohibition on the use of force

in response to disrespect to an officer and his or her authority, or what is often called “contempt of cop.”¹⁷⁶

Less-Than-Lethal Weapons

In an effort to reduce the use of deadly force, police departments have adopted various forms of nonlethal force. These include chemical sprays, tasers, and so on. The goal of providing alternatives to deadly force is laudable, but adding nonlethal weapons also creates new policy requirements, as a department must specify the proper use of each nonlethal weapon and provide the necessary training in its use.

The Department of Justice faulted the Detroit police for having only “a limited array of [nonlethal] force options available”: a firearm and chemical spray.¹⁷⁷ The Department of Justice found the Buffalo, New York, Police Department deficient with regard to the use of chemical sprays, and directed it to provide eight hours of training on its use, including a “discussion and role plays of situations in which use of CAP [Oleoresin Capsicum] spray is and is not permissible and how to assess relevant factors before using CAP spray.”¹⁷⁸

The Impact of Less-Than-Lethal Force Policies

In contrast to deadly force policies, there is little research investigating the impact of restrictive nonlethal force policies on the use of force. A 1999 Bureau of Justice Statistics report concluded that “The impact of differences in police organizations, including administrative policies . . . on excessive and illegal force is unknown.”¹⁷⁹ That is to say, we have no studies that convincingly demonstrate the impact of a restrictive use of force policy in reducing the use of force and the use of excessive force in particular.¹⁸⁰ The reasons for this lack of empirical evidence are understandable. Deadly force is relatively easy to study because incidents are so few and there is no ambiguity about whether a weapon was discharged and whether someone was shot and killed. Nonlethal force incidents, on the other hand, are numerous and often ambiguous. Also, because low-level uses of force are such a routine aspect of police work, changes in the use of force in a department are likely to be influenced by a variety of factors other than the department’s formal policy: the quality of on-the-street supervision, changes in disciplinary practices (with a resulting deterrent effect), and so on.

The lack of solid research on the impact of restrictive use of nonlethal force policies is a serious problem that needs to be addressed by social scientists. It is vitally important to confirm the belief that restrictive policies do reduce excessive force, and, if so, whether certain policies and procedures are more effective than others.

Reporting and Review Requirements

The current national standard is that officers are required to complete a report after any use of force and that these reports be subject to an automatic review by supervisors. As is the case with defining the use of force itself, this requirement is far more complex than appears at first glance.

One major failing is that some departments require only certain incidents to be reported. The Department of Justice found that in Detroit “officers are not required to report uses of force other than uses of firearms and chemical spray, unless the use of force results in a visible injury or complaint of injury.”¹⁸¹ The 2004 use of force policy in the Las Vegas Police Department requires reports only in cases that involve “death, injury, or complaint of injury,” “intentional traffic collision,” or discharge of a firearm.¹⁸² In short, the vast majority of force incidents are not required to be reported under these policies.

Additional shortcomings exist with respect to the review of use of force reports. In Schenectady, the DOJ found that although the department’s policy required a use of force report for each incident, it did not require supervisors to review or investigate force incidents. Additionally, interviews with both command-level and rank-and-file officers found that, contrary to policy, “officers rarely document uses of force and that supervisors do not enforce the reporting policy.”¹⁸³

CULMINATION: THE USE OF FORCE CONTINUUM

The development of use of force policy has reached its culmination in the *use of force continuum*. The continuum is a list of the full range of coercive actions an office can take, from the least to the most serious, with the proper level of force correlated to the action of the citizen.¹⁸⁴ The California Peace Officers Association (CPOA) explains that

A Use of Force Continuum is a visual representation of force options designed to facilitate an understanding of appropriate levels of force by officers. This is accomplished by establishing parameters which exhibit the actions of both the subject and the officer on a comparative scale.¹⁸⁵

A use of force continuum translates the abstract concept of the minimum amount of force necessary into practical terms that a police officer can readily understand. The CPOA emphasizes that a continuum “should be easily understood and readily recalled by officers under the stress of a confrontation.” The Department of Justice recommends a force continuum as a best practice, explaining that “The levels of force that generally should be included in the agency’s continuum of force include: verbal commands, use of hands, chemical agents, baton or other impact weapon, canine, less-than-lethal projectiles, and deadly force.”¹⁸⁶

The use of force continuum has been adapted by researchers as a research tool. Professor Geoffrey Alpert developed the analytic framework of the Force Factor, which examines the relationship between the level of force used by an officer and the behavior of the citizen in an encounter.¹⁸⁷ This permits a meaningful analysis of the frequency of the use of excessive force together with a parallel analysis of how often officers use less force than they could have.

Deescalating the Use of Force

An important contribution of the use of force continuum is that it directs officers’ attention to the possibility of using lower levels of force. Most continua list “officer presence” as the least coercive form of force. This advises officers that their physical presence is a form of force that can be used effectively to assert and maintain control over situations in which there is a potential for conflict. As the Kansas City policy explains, “mere police presence often avoids the need for any force.”¹⁸⁸

The Department of Justice agreement with the Buffalo, New York, Police Department directs it to “train all officers in the use of verbal de-escalation techniques as an alternative to the use of CAP spray and other uses of force.” The memorandum of understanding with the Washington, DC, police department requires the department to “emphasize the goal of de-escalation and . . . encourage officers to use advisements, warnings, and verbal persuasion when appropriate.”¹⁸⁹ Directing officers to deescalate is not only a relatively new idea in

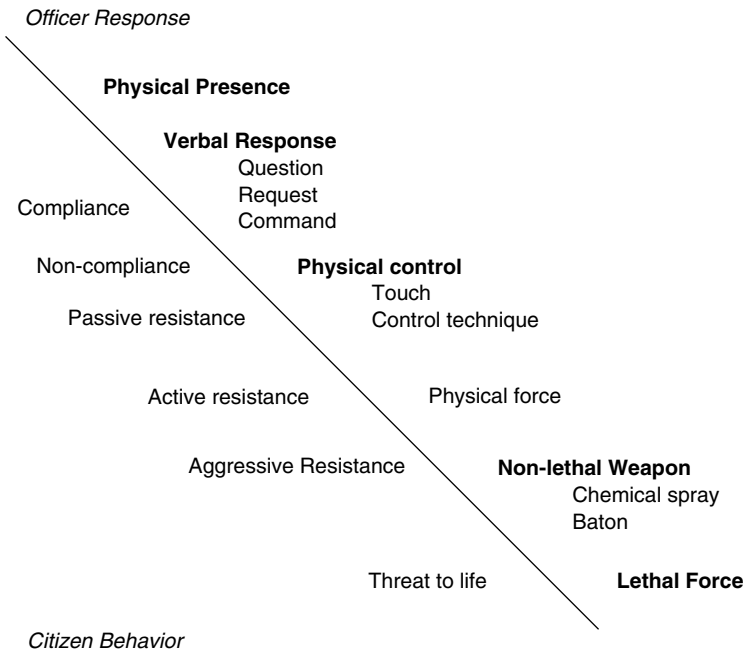


Figure 3.1 Use of force continuum.

Source: Adapted from existing department policies.

policing but it addresses a problem that lies at the core of the traditional police subculture. Officers have long regarded challenges to an officer's authority as justification for use of force. This phenomenon is referred to colloquially as "contempt of cop."¹⁹⁰

A popular technique for deescalating encounters is known as verbal judo, which involves talking to citizen in ways that lead away from a confrontation and possible use of force. One report explains that "Verbal Judo is the principle of Judo itself: using the energy of others to master situations." The goal is to obtain voluntary compliance from people who are hostile or in some way not completely in control of their behavior.¹⁹¹ Much of verbal judo is simply common sense and a strategy that ordinary people use every day in encounters on the job, among friends, or in the family. Unfortunately, not all people have this kind of common sense, and police officers are no exception. Consequently, both the principle of deescalation and basic tactics have to be taught.

Controlling the Dynamics of Police–Citizen Encounters

Verbal judo and other deescalation tactics rest on the recognition that police–citizen encounters are fluid events that involve a number of different stages and whose outcome is contingent on actions by the parties involved. Thus, it is within the power of the officer to shape the outcome of many (but not necessarily all) encounters. One of the earliest and best discussions of the stages of an encounter is in Peter Scharf and Arnold Binder’s book on deadly force, *The Badge and the Bullet*. The four stages are *Anticipation*, *Entry and Initial Contact*, *Dialogue and Information Exchange*, and *Final Decision*. Each stage includes actions by the citizen, the perception of those actions by the officer, and the officer’s response.¹⁹² There is growing recognition of the potential for training officers to control the development of an encounter and direct it toward a less violent outcome.

The scenario described by Scharf and Binder can be applied to virtually all types of police–citizen encounters. The following section describes the application to encounters with people suffering from mental disorders.

Responding to People With Mental Disorders

Encounters with people with mental disorders are situations policy and training can often assist in avoiding the use of force. In a certain number of encounters, the person displaying erratic or bizarre behavior has a weapon or object that could cause harm; and, in some of these cases, the citizen makes a move that can legitimately be interpreted as a threat to the life of the officer (e.g., swinging a knife) and the officer shoots and kills the person. The postincident review often justifies the officer’s action by focusing on the final gesture by the citizen without examining whether the officer could have taken some action earlier in the encounter that would have led it in a different direction.

Currently, the most popular program for improving police response to people with mental disorders is the Crisis Intervention Team (CIT) program developed by the Memphis, Tennessee, Police Department. It involves a collaborative arrangement with mental health professionals and special training for officers in dealing with mentally disturbed persons. CIT has gained national recognition and has been copied by a number of other police departments.¹⁹³ A report on Portland, Oregon, explained that “CIT officers receive specialized training in dealing with individuals with mental illness or suicidal ideation, and learn to slow down and deescalate incidents, negotiate with

subjects, and respond more flexibly.”¹⁹⁴ A number of other departments, including Albuquerque and Seattle, have adopted the CIT program.¹⁹⁵

CONTROLLING OTHER CRITICAL INCIDENTS

High-Speed Vehicle Pursuits

The first and most important application of the report and review process beyond the basic officer use of force situation involved high-speed vehicle pursuits. As with the use of deadly force, pursuits were essentially uncontrolled until the 1970s. Officers were free to pursue a fleeing vehicle regardless of the circumstances if they simply chose to do so. High-speed pursuits became a part of the culture of policing, with flight defined as a direct challenge to an officer’s authority (another version of “contempt of cop”). With the development of media technology (helicopters, more mobile cameras) high-speed pursuits became a part of the popular culture of policing. It is ironic and unfortunate that television has popularized high-speed pursuits just as police departments have begun to limit them.

By the 1970s, an increasing number of experts recognized that vehicle pursuits were extremely dangerous events. The first study to gain national attention, by the Physicians for Automotive Safety, reported the alarming estimates that 20% of all pursuits ended in someone being killed, 50% ended in at least one serious injury, and 70% ended in an accident. Subsequent studies found these estimates to be exaggerated but confirmed the basic point that pursuits are highly dangerous. Alpert and Dunham’s study of 952 pursuits in Dade County, Florida, in the mid-1980s found that 33% of all pursuits ended in an accident, and 17% ended with someone being injured (11% ended with an injury to the driver or passenger in the fleeing vehicle, and 2% ended with an injury to the police officer); seven of the 952 ended in a fatality.¹⁹⁶ Although the Alpert and Dunham estimate of accidents, injuries, and deaths was far lower than the original Physicians for Automotive Safety report, it nonetheless confirmed that pursuits are extremely dangerous. Additionally, their study was conducted *after* the Miami-Dade Police Department had instituted a restrictive pursuit policy. Thus, even under these circumstances there was approximately one high-speed pursuit per day.

Unlike deadly force, which has always been a civil rights issue, interest in controlling vehicle pursuits developed as a municipal liability issue. Cities and

counties sought to control the costs associated with lawsuits arising from pursuit-related deaths and injuries.

The new controls over high-speed pursuits followed the basic administrative rulemaking model. First, a written policy confines and structures discretion by specifying when and under what circumstances high-speed pursuits are permitted. Current policies typically discourage or explicitly forbid pursuits in situations in which road conditions are dangerous because of rain or snow, or where there is a risk to citizens, such as in school zones or residential neighborhoods. Even more important, many policies forbid pursuits in which the underlying offense is relatively minor, such as a traffic violation. Other high-risk tactics such as ramming the fleeing vehicle or “caravanning” (i.e., pursuits by a long line of police cars) are also prohibited in most policies today.¹⁹⁷

Officer discretion to pursue is checked by giving supervisors, and in many departments dispatchers as well, explicit authority to order a pursuit terminated. This is an option not available for the control of uses of force for the simple reason that they typically involve split-second decisions, whereas pursuits are events that allow time for the consideration of the circumstances.

Finally, the new pursuit policies require officers to complete detailed reports on each pursuit. These reports are then reviewed by supervisors and in some departments higher command officers.

There is persuasive evidence that controls over pursuit policies effectively reduce the number of pursuits and the number of resulting accidents, injuries, and deaths. Geoffrey P. Alpert found that a new restrictive policy in the Miami-Dade Police Department in 1992 reduced pursuits by 82%; the return to a more permissive pursuit policy in the Omaha, Nebraska, Police Department, meanwhile, resulted in a 600% increase in pursuits. Training also had a dramatic effect on officer attitudes. Prior to training, St. Petersburg, Florida, 58% of officers would pursue in the case of a “low risk” traffic violation; following training, only 24% would pursue in such cases.¹⁹⁸

Foot Pursuits

Whereas vehicle pursuits have received considerable attention, foot pursuits by officers have been relatively neglected. They typically occur when a police officer stops a motor vehicle and the driver flees on foot. Because they do not involve the use of a vehicle, these incidents are generally not covered by departmental vehicle pursuit policies. The Special Counsel to the Los Angeles

Sheriff's Department found that "In contrast to vehicle pursuits, which are reliably tracked, the LASD does not keep tabs on foot pursuits and currently cannot state how many foot pursuits occur each year, or result in a use of force, or lead to an injury to a deputy."¹⁹⁹

The Special Counsel's analysis found that foot pursuits are extremely dangerous. About 22% of all LASD shooting cases between 1997 and 2002 (52 of 239 incidents) involved "shots fired by deputies during or at the conclusion of a foot pursuit."²⁰⁰ Citing several recent cases, the report noted that it was common for officers to charge after a suspect in the dark, losing contact with fellow officers or supervisors, and with no coherent plan of action. Additionally, the LASD was extremely "reluctant" to discipline officers for "tactically reckless foot pursuit that puts the deputy himself in real danger." One lieutenant explained that it was punishment enough for a deputy to later realize that "his ass could have been dead out there," and therefore he would "not act like an idiot again."²⁰¹

For many officers, a suspect fleeing on foot is another form of "contempt of cop," a direct challenge to his or her authority. The LASD Special Counsel's report touched a raw nerve and provoked an extremely hostile reaction from the sheriff's department, suggesting that he had exposed an important aspect of the police subculture.

The Police Assessment Resource Center report on use of force by Portland, Oregon, police officers reached a similar conclusion. It found that the police department's "own training documents" considered foot pursuits to be "one of the most dangerous police actions." The dangers include the minimal reaction time when a suspect stops suddenly and produces a weapon, the danger of being disarmed, the difficulty in communicating with other officers, the risk of fatigue and a physical encounter with the suspect, the problem of a pursuit over difficult terrain, and the risk of an officer not knowing his or her location at the end of a pursuit. Portland's official policy was explicit: "DO NOT ENGAGE IN A FOOT PURSUIT OF AN ARMED SUSPECT. DO NOT PURSUE AN INDIVIDUAL WITH YOUR GUN OUT." In spite of this directive, however, the report found that most of the foot pursuits reviewed involved clear violations of the department's "absolute don'ts."²⁰²

To control foot pursuits and enhance the safety of both officers and citizens, the LASD Special Counsel recommended the policy of the Collinswood, NJ Police Department, which explicitly prohibits, among other things, pursuits by lone officers into buildings, confined spaces (e.g., fenced-in areas), or

wooded areas; pursuits in which the officer loses sight of the suspect and consequently is not sure of his or her whereabouts; pursuits in which the risk to other citizens or other police personnel outweighs the need for immediate apprehension.²⁰³ The Cincinnati Police Department also adopted the Collinwood foot pursuit policy.²⁰⁴

The International Association of Chiefs of Police (IACP) acknowledged the growing awareness of the dangers of foot pursuits in early 2003, issuing a policy paper strongly discouraging them. The IACP advised that “The decision to pursue a fleeing suspect should not be regarded as a required or even a prudent action in all instances.” Specifically, it advised that “Unless exigent circumstances, such as an immediate threat to the safety of other officers or civilians, officers should not normally engage in or continue foot pursuits” in which they are “acting alone,” going into buildings or other isolated spaces “without sufficient backup,” losing communication with other officers or central dispatch, and also in cases in which “the suspect’s identity is established where the suspect may be apprehended at a later time with a warrant and there is no immediate threat to the officers or the public.”²⁰⁵

Use of Police Canines

In the 1990s, police canines emerged as an explosive police–community relations issue. The use of dogs evoked memories of the 1960s civil rights movement, including the famous image of dogs attacking civil rights demonstrators in Birmingham, Alabama, in 1963. Police accountability experts noticed that in many departments there were no formal policies governing deployment of the canine units. The Department of Justice report *Principles for Promoting Police Integrity* unequivocally states that “the use of a canine to attempt to apprehend or seize a civilian is a use of force”²⁰⁶ and should be incorporated into a department’s general use of force policy. Common sense suggests that a dog bite inflicts the same kind of harm as a blow with a police baton.

Efforts to reduce unnecessary harm to citizens from canines have followed the general use of force paradigm: restrictive policies and reporting requirements. In Cincinnati, a new policy mandated by the Department of Justice prohibits canine bites except “where the suspect poses a risk of imminent danger” (e.g., injury), and to call off the dog “at the first possible moment.”²⁰⁷ Additionally, written reports are required of all canine deployments and these reports are to be entered into the risk management system (e.g., early intervention

system). The Memorandum of Agreement with the Washington, DC, police department requires similar reforms of canine unit policy.²⁰⁸ The Los Angeles consent decree requires that all bite incidents, but not mobilizations, be classified as a use of force and entered into the department's early intervention database.²⁰⁹

One of the key issues in the deployment of canines is whether the dogs are trained to "find and bark" or "find and bite." In Philadelphia in the 1970s, "Several hundred police canines were trained to bite first and bark second. . . ." ²¹⁰ The Department of Justice found that the Miami Police Department did not "specify whether it uses a 'find and bite' policy (which allows dogs to bite upon locating a subject) or a 'find and bark' policy (requiring a dog to bark, rather than bite)." Interviews with canine unit officers indicated that in practice the department used a "find and bite" policy. Dogs were trained to bite subjects "regardless of whether the subject is actively resisting or attempting to flee."²¹¹

A second deployment issue involves when canines can be unleashed. The Memorandum of Agreement between the Department of Justice and the Cincinnati Police Department requires a new policy whereby officers must gain approval from an immediate supervisor before releasing a dog and also must announce "loud and clear" to a suspect that a canine deployment is imminent.²¹²

A new restrictive canine unit policy resulted in a sharp decline in deployments and bites in the Los Angeles Sheriff's Department. One key change was a limit on deployment of canines on auto theft suspects. Data indicated that many of these cases involve teenage joy rides that do not pose serious dangers to either officers or the public. The ban eliminated about 25% of all canine deployments.²¹³ Data on the impact of the new LASD canine policy is in Chapter Six (pp. 150-151), in the context of a discussion of the role of the Special Counsel as a police auditor.

The Display of Weapons

The display of an officer's firearm, while not technically a use of deadly force, is both a risky action because of a possible accidental discharge and an expression of police powers that is highly offensive to citizens, especially African Americans. It is a blatant reminder that the officer possesses the ultimate power of life and death. In Cincinnati, this practice was apparently fairly common and was a major grievance in the African American community prior to the April 2001 riots.²¹⁴

The first expression of concern that the display of weapons by police officers should be limited appeared in the 1977 Police Foundation report on deadly force.²¹⁵ The Memorandum of Agreement between the Department of Justice and the Washington, DC, police prohibits officers from “unholstering, drawing, or exhibiting a firearm unless the officer reasonably believes that a situation may escalate to the point where deadly force would be authorized.” Additionally, officers must “complete a Use of Force Incident Report immediately following the drawing of and pointing of a firearm at, or in the direction of, another person.”²¹⁶ Similar policies have been developed in Cincinnati and the Miami Police Department as a result of Department of Justice intervention.

INVESTIGATING USE OF FORCE AND OTHER CRITICAL INCIDENTS

The review of use of force reports is the second part of the modern use of force policy paradigm. Although it might seem that investigating a use of force incident is a fairly simple and straightforward process, in fact it is extremely complex and problematic. The following section examines some of the most important issues related to the review of reports and the investigation of use of force incidents.

Centralized Versus Decentralized Investigations

The first issue regarding the review of force reports is where primary responsibility for the review should lie. There is a general consensus of opinion that, while an officer’s immediate supervisor has important responsibilities on this issue, he or she should not be the sole reviewer. To avoid possible favoritism because of friendship, other higher-ranking officials should review incident reports. The most important question is whether primary responsibility should be centralized in the Internal Affairs or equivalent unit or decentralized and handled at the precinct level. There is no consensus on this question at present. Centralization has its obvious merits. It ensures a consistent enforcement of department policy by commanders who are not likely to be influenced by personal relations with the officers in question. It also means that the chief and other top commanders have a complete picture of critical incidents throughout the agency. At the same time, however, decentralization has important advantages.

Captains, lieutenants, or even sergeants at the precinct level can respond more quickly to particular cases. The amount of paperwork and resulting delays can be greatly reduced. Giving lower-level supervisors responsibility for reviewing force reports, moreover, reinforces the idea that they have a major role in the larger accountability program in the department.

Some departments have resolved the issue by dividing responsibility. Serious use of force incidents are automatically handled by a centralized unit, whereas precinct-level commanders retain responsibility for less serious cases, including even imposing discipline on officers guilty of misconduct. The consent decrees negotiated by the Department of Justice in recent years require centralization. In large part this is because the departments being sued have had such dismal records with regard to accountability. In Los Angeles, for example, force investigations are now centralized in the Operations Headquarters Bureau.²¹⁷

Immediate “Roll Outs”

To ensure the integrity of force incident reports, immediate “roll outs” to serious use of force incidents are increasingly used, involving either an immediate supervisor, an internal affairs unit officer, or even someone from an external agency. This practice is designed to ensure that officers at the scene do not alter the physical evidence or conspire to create a cover story.

The Cincinnati Memorandum of Agreement requires officers to notify their supervisors after any use of force, and that supervisors promptly respond to the scene. Additionally, the Internal Investigations Section is required to respond to the scene of “serious” force incidents and all canine bites that cause injury or require hospitalization.²¹⁸ In the Los Angeles Sheriff’s Department (LASD) the Office of Independent Review, a team of seven attorneys, rolls out to all shooting incidents.²¹⁹ In Miami, Florida, the State Attorney’s Office, which has the authority to prosecute an officer for homicide, responds to all shooting incidents in which a citizen or officer is fatally shot or wounded.²²⁰

Several other aspects of the immediate aftermath of a shooting incident are also subject to new rules. In the LAPD, the consent decree requires that all officers and witnesses are to be “separated immediately” after a shooting incident.²²¹ This is designed to prevent officers from colluding to create a common version of the incident that justifies the shooting. The decree also directs the

department to negotiate with the police union to secure a requirement that, in the case of shootings involving more than one officer, each officer be represented by a different attorney.²²² Some departments conduct formal debriefings of officers involved in use of force incidents. The settlement agreement with the Riverside, California, Police Department, for example, requires a debriefing after each “critical incident,” defined as any unplanned event that threatens community peace and safety.²²³ Finally, higher-ranking officers who respond to force incidents are required to evaluate whether or not an immediate supervisor was present.²²⁴ Investigation of the role of supervisors in critical incidents is discussed in more detail below.

Ensuring Unbiased Investigations

Ensuring fair and unbiased investigation of use of force incidents is another critical issue that is increasingly addressed through specific policies and procedures. The belief that investigations are biased and essentially “whitewashes” of official misconduct has been a major issue for civil rights activists since the 1960s. The 1992 Kolts report on the Los Angeles Sheriff’s Department found “explicit and implicit biases against civilian complainants at every level of the complaint process.” These problems included investigations being conducted by the supervisor of the officer under investigation, with resulting evidence of bias, investigations being “closed before completion—at times under highly suspicious circumstances,” and complaints that are “corroborated by physical evidence and independent witnesses are frequently not sustained.”²²⁵ The first report by the court-appointed monitor in Philadelphia found that investigators failed to follow leads and take obvious investigative steps, and had an ingrained tendency “to view the case only from the officer’s perspective.”²²⁶

As a corrective measure, investigators in the LAPD are now directed not to ask “leading questions” of either officers or citizens, nor to give an automatic preference for the statements of officers over those of citizens.²²⁷ Other new policies and procedures designed to ensure fair investigations are discussed in Chapter Four with respect to citizen complaints.

Witness Officers and the Code of Silence

One of the greatest obstacles to the investigation of misconduct incidents and to police accountability generally has been the refusal of involved officers to give honest answers to investigators. Officers who witness events

2.11.2 RESPONSIBILITIES OF ALL MEMBERS

Members are required to immediately notify their commanding officer or civilian supervisor of violations of orders, policies or procedures, disobedience of orders by other members, or mismanagement related to the effective and efficient operations of the Department. The supervisor or commanding officer must document specific violations. Members inhibited by the chain of command from reporting misconduct are required to submit the information directly to the Chief of Police or to the Commander of the Professional Standards Unit in writing. Members are prohibited from taking punitive action or discriminating against any member who reports a violation under this policy.

Figure 3.2 Louisville Police Department SOP: "Discipline" 11/16/03

under investigation often refuse to either report what they observed or give complete and honest answers to investigators. This problem is generally referred to as the "code of silence," and it has been identified in innumerable reports as an impediment to the investigation of officer misconduct.²²⁸

Some new policies and procedures have been developed that address this long-standing problem. An increasing number of departments have a policy explicitly directing officers to report and testify accurately about misconduct by other officers. Figure 3.2 contains the policy recently adopted by the Louisville, Kentucky, Police Department.

Some attention has also been given to providing protection for whistleblowers, officers who voluntarily come forward and report misconduct by other officers. The consent decree with the Los Angeles Police Department directs the Inspector General for the LAPD to receive anonymous complaints from officers and not be compelled to disclose their names.²²⁹ There are few other programs specifically designed to protect whistleblowers, however. In April 2004, Rutgers Camden Law School and the ACLU cosponsored the first conference to address this issue.²³⁰

A Neglected Issue: The Police Officer's Bill of Rights

Another problem that has not received sufficient attention involves potential obstacles to investigating misconduct posed by legal protections of the rights of police officers. About 14 states have laws known as the Law

Enforcement Officers Bill of Rights (or some variation of that), that provide specific due process protections for officers under investigation. Additionally, an unknown number of local collective bargaining agreements provide similar and often more extensive protections. These protections typically include the right to notice of the charges; the right to an attorney; a requirement that interviews be conducted at a reasonable time and place; prohibitions on threats, coercion, or retaliation; and so on.²³¹ Some local collective bargaining agreements contain provisions protecting the rights of officers under investigation that provide far more protective of officers than do the state statutes.²³²

An analysis of the 14 state statutes found that most of the provisions are legitimate due process protections that pose few obstacles to investigations. However, a few provisions are pernicious. Some union contracts include waiting periods that prevent investigators from interviewing an officer for up to 48 hours. Two state laws, meanwhile, prohibit interviews of officers by nonsworn officials, a provision that precludes investigations by a citizen oversight agency. More research is needed on the nature of police officers' bills of rights and their impact on day-to-day investigations of misconduct.

The Framework for Investigations

A critical but neglected aspect of the investigation of force incidents is the framework that guides investigations. A report on use of force in the Portland, Oregon, Police Bureau by the Police Assessment Resource Center (PARC) points out that traditionally shooting incidents are investigated as homicides. This framework immediately focuses the investigation on the narrow (albeit important) question of whether or not criminal charges should be filed against the officer who did the shooting. The PARC report forcefully argues that this approach is no longer "consistent with best practice," and points out that "numerous agencies" have abandoned the practice.²³³ PARC argues that "while Homicide investigators are typically well qualified to conduct a *criminal* investigation, they lack either the training or perspective necessary to investigate officer-involved shooting or in-custody death cases from an *administrative* and *tactical* point of view."²³⁴ Investigations should address "the policy and training aspects of such cases."²³⁵ A broader framework can "use the incident as a learning tool . . . to inform and improve the department's policies, procedures, training, and management." Current Portland policy requires that

after action reports include a narrative of the incident; a conclusion about whether the officer's action was in compliance with department policy; a critique of whether the incident was handled well; and any appropriate recommendations regarding possible changes in departmental policy, procedure, or training.²³⁶

The PARC report reflects the recommendation of the Department of Justice that "To the extent possible, the review of use of force incident and use of force reports should include an examination of the police tactics and precipitating events . . . so that agencies can evaluate whether any revisions to training or practices are necessary."²³⁷

A broader framework for investigations can also inquire into the conduct of an officer's immediate supervisor in a force incident. It is likely that many questionable incidents could be avoided if the supervisor had acted properly, either in the incident itself or in terms of general supervision prior to the incident. The LAPD consent decree addresses this problem by requiring that when reviewing critical incidents, commanders "shall analyze the circumstances surrounding the presence or absence of a supervisor." Additionally, "such supervisory conduct shall be taken into account in each supervisor's annual personnel performance evaluation."²³⁸

Consistency in Discipline

In the end, officers learn that a department is serious about accountability when they see critical incidents investigated thoroughly and discipline actually imposed for violations of policy. Nothing undermines a use of force policy more quickly than the failure to discipline an officer who clearly used excessive force or who violated some departmental policy. The Philadelphia Integrity and Accountability Office found many instances of officers not disciplined even though the department had sustained the allegations against them.

A related problem is a lack of consistency in discipline. One of the greatest causes of morale problems among rank-and-file officers is the perception that some favored officers escape proper discipline. To correct this problem some departments have adopted a discipline matrix, a schedule of discipline similar to sentencing guidelines in criminal courts that prescribes a disciplinary action based on the seriousness of the immediate incident and an officer's disciplinary record.²³⁹ A few departments have developed discipline matrices but there have been no studies of their impact or the best form they should take.

THE CHALLENGE OF IMPLEMENTING USE OF FORCE POLICIES

The formal elements of a comprehensive use of force and critical incident reporting system are clear: written policies clearly indicating approved and unapproved behavior, required reports after each incident, and automatic review of all incident reports by supervisors. What is less clear is how to implement a comprehensive policy in a department in which one does not exist and in which the prevailing organizational culture does not embody a commitment to accountability. Changing the organizational culture of policing, in fact, may be the greatest challenge and impediment to the new police accountability.

The Struggle for Change: The Case of Philadelphia

The Philadelphia Police Department represents an excellent case study in the difficulties in changing the organizational culture of a department. The problems are well documented because of the reports by the Integrity and Accountability Office (IAO). The IAO was created as part of the settlement agreement ending a suit brought by the ACLU, the NAACP, and the Barrio Project against the Philadelphia Police Department, and it functions as a form of the auditor model of citizen oversight of the police (see Chapter Six).²⁴⁰ The IAO Director has the authority to investigate accountability related issues such as the use of force and disciplinary practices and to issue public reports. The IAO reports to date are particularly valuable in not only documenting the problems in the Philadelphia Police Department, but in illustrating how accountability issues are embedded in deeply ingrained administrative practices. These practices, in turn, reflect both formal policies and informal practices that, together, constitute a distinct organizational culture.

The 1999 IAO report on use of force in the Philadelphia Police Department provides a revealing picture of the department's norms. Ellen Ceisler, director of the IAO, found that as recently as the 1970s, "The police culture at that time was completely intolerant of internal reporting of excessive force." Veteran officers "recall this era as the 'wild west,' 'open season' and a 'free for all'" with respect to the use of force. Some officers "recalled the use of plant guns and other weapons as an accepted, albeit unofficial practice." The canine unit was shaped by the same norms. In the 1970s, "Several hundred police canines were trained to bite first and bark second. . . ."²⁴¹

Although the Philadelphia Police Department has in place many of the formal requirements of a use of force reporting system, the IAO found a deeply ingrained resistance to implementing the system. Some commanders, for example, regard controls over use of force “with resentment, cynicism and suspicion, viewing them as burdensome and unnecessary chores. . . .” Moreover, the IAO report continued, “A number of supervisors and commanders we interviewed did not seem to understand the goal or purpose of the use of force reporting and investigation policies and procedures, viewing the process as a waste of time.”²⁴² Many commanders viewed the reporting requirements and resulting investigations as “inherently punitive.” Supervisors are reluctant to “jam up” (i.e., investigate) officers “who they feel were just doing their jobs.”²⁴³

The IAO investigation found a number of deficiencies in use of force reporting practices. Many reports suffered from a “Lack of detail regarding the nature and extent of the subject’s injuries.” A report, for example, might mention a “head injury,” without specifying whether that involved a scratch or a broken skull. The details of force incidents were “routinely sparse, vague, inaccurate, or incomprehensible.” Even more fundamental, “The type of force [used] was not always disclosed” in official reports, and the names of officers involved not always provided.²⁴⁴

The IAO also found that low-level uses of force (grabs, pushes, shoves) were required to be reported but in practice were not subject to systematic review by supervisors. In fact, the department had no formal policy “regarding supervisor/commander obligations to review use of force notifications and incidents.” The Internal Affairs Bureau (IAB) had its own internal guidelines for investigating use of force incidents, but they were neither formal written policies nor official department policy.²⁴⁵

Astonishingly, the official Discipline Code of the Philadelphia Police Department “does not include a provision which specifically addresses inappropriate use of force.” Consequently, disciplinary actions are usually brought as charges of conduct unbecoming an officer or neglect of duty. Even then, many inappropriate uses of force incidents were never brought forward for disciplinary action. The IAO office found “Numerous cases” of allegations of physical abuse that were sustained by IAB but then not included in the formal charges prepared by the commander who prepared the case for review by the Police Board of Inquiry (PBI).²⁴⁶

The IAO concluded that, with respect to discipline, the Philadelphia Police Department remained deeply resistant to change. “With few exceptions,”

the formal Disciplinary Code and the informal disciplinary process “has remained fundamentally the same for decades.”²⁴⁷ Despite this gloomy assessment, the IAO did find some signs of progress. The 1996 consent decree had some positive effects on use of force reporting practices, including examples of “innovative and productive uses of use of force information” by the department. For example, under a new Case Review Program, three members of the IAB conduct review sessions with officers whose records indicate a pattern of force incidents.²⁴⁸

Philadelphia may be an extreme case in terms of the apparent resistance to the basic principle of seriously investigating critical incident reports, but the problem of changing established habits exists in all police departments—in all large organizations, for that matter. With this in mind, we need to conclude the discussion of use of force reporting with the recognition that, while we now know what needs to be done to reduce misconduct, we face a major challenge in terms of how to implement the necessary reforms.

CONCLUSION

The police have awesome powers unrivaled by any other public officials: to deprive people of their liberty, to use physical force against resisting clients, and ultimately to take human life. Ensuring that these powers are used only when absolutely necessary and without bias against any group is a matter of the highest priority. After many decades of shameful neglect, the police have developed a process for controlling police use of force. The essential features of that process are simple: specifying when force can be used, requiring officers to complete a report on each force incident, and reviewing each report. As this chapter has explained, however, each of those elements is extremely complex and filled with problematic issues. Only in recent years have police departments begun to address all of the relevant issues, often under the compulsion of the U.S. Department of Justice and the federal courts. Much remains to be done. The primary issue confronting the police today is one of organizational change: how to implement the necessary changes in a complex bureaucracy and ensure that they become a part of the organization’s operational life. The problem of effecting organizational change reappears in the two chapters that follow.