



**SAN FRANCISCO POLICE OFFICERS ASSOCIATION**

800 Bryant Street, Second Floor

San Francisco, CA 94103

415.861.5060 tel

415.552.5741 fax

www.sfpoa.org

MARTIN HALLORAN  
President

TONY MONTOYA  
Vice President

MICHAEL NEVIN  
Secretary

JOE VALDEZ  
Treasurer

VAL KIRWAN  
Sergeant At Arms

**MEMORANDUM**

**DATE:** May 2, 2016  
**TO:** San Francisco Police Commission  
**FROM:** San Francisco Police Officers' Association  
**RE:** **San Francisco Police Officers' Association's evaluation of stakeholder proposal to require the use of "minimum force."**

**SFPOA POSITION:**

The San Francisco Police Officers' Association ("SFPOA") does not object to the Department continuing to require that its officers have a goal of using the minimum amount of force necessary to accomplish a lawful police task, provided however the Department does not require that an officer's use of force is to be evaluated with 20/20 hindsight to determine whether less force could have been used.

**ANALYSIS:**

Since 1975 the Department has stated that the goal of San Francisco police officers is to use that force that is minimally necessary to accomplish a lawful purpose. The SFPOA agrees that this is an appropriate goal, and that all San Francisco police officers should be trained with that goal in mind. Some of the stakeholders have suggested,<sup>1</sup> however, that the use minimal force should not only remain a goal of the new policy, it should supplant the *Graham v. Conner* analysis for determining whether an officer's use of force is appropriate. This would be a grave mistake and, contrary to the suggestion of the other stakeholders, finds no support in the case law, nor in the general orders of any of the cities that they cite as examples.

Specifically, some of the other stakeholders have claimed that the police departments of Albuquerque, Chicago, Cleveland, Denver, Las Vegas, Los Angeles, Milwaukee, New Orleans, Oakland, Portland, Seattle and Washington D.C. have switched from a requirement

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<sup>1</sup> Specifically the OCC, the San Francisco Bar Association, the ACLU, and the Coalition on Homelessness have made this recommendation. For ease of reference, the SFPOA shall refer to those groups collectively as the "other stakeholders."

that an officer's use of force will be examined under *Graham v. Conner*, and will instead look to a new "higher" standard – that officers must use minimal force. This is simply not true. While many of these departments state that officers should use minimal force, or encourage de-escalation, *none of them states that the requirement to use minimal force supplants the objectively reasonable test outlined in Graham v. Conner*. In fact, the general orders of each of these cities explicitly state that the *Graham v. Conner* analysis still governs. What the other stakeholders fail to understand is that these two principles – requiring the use of minimal force and the *Graham v. Conner* analysis – work together, serving different purposes, as has been the case in San Francisco since at least 1989.

Below are summaries of the general orders for each cities cited by the other stakeholders, showing that in each case, although they require officers to use "minimum" amounts of force or emphasize de-escalation, the cities also provide that any use of force by an officer is *not* to be evaluated with 20/20 hindsight, but instead is to be evaluated using the *Graham v. Connor* analysis.

(1) **Albuquerque:** states that officers are to use "the minimum amount of force necessary" and that any use of force shall be evaluated pursuant to the test provided by *Graham v. Connor*. Specifically, Albuquerque provides that "the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight." (Albuquerque Police Department, Procedural Orders, Use of Force, 2-52-1 and 2-52-2.)

(2) **Chicago:** states that its officers should use "the least amount of appropriate force." Chicago also cites *Graham v. Connor* and states that "[t]he reasonableness of a particular use of force will be judged under the totality of the circumstances viewed from the perspective of a reasonable officer on the scene." (Chicago Police Department Use of Force Guidelines, General Orders G03-02 III.C.2. and G03-02-02.II.B.)

(3) **Cleveland:** emphasizes de-escalation procedures before using force. However, citing *Graham v. Connor*, Cleveland also states that "Objectively Reasonable Force is that level of force that is appropriate when analyzed from the perspective of a reasonable officer possessing the same information and faced with the same circumstances as the officer who actually used force. Objective reasonableness is not analyzed with hindsight, but will take into account, where appropriate, the fact that officers must make rapid decisions regarding the amount of force to use in tense, uncertain, and rapidly evolving situations." (Cleveland Division of Police General Police Orders 2.1.01 pages 2, 4-5.)

(4) **Denver:** requires its police officer to "exercise control" and "de-escalate the use of force as the situation progresses or circumstances change." Denver, however, also provides that "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 policy further explains "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. The reasonableness inquiry in an excessive force case is an objective one; the question is whether the officers' actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Denver also specifically cites *Graham v. Connor*, stating that "Law enforcement officers are permitted to use force to affect an arrest only to the extent that it is 'objectively reasonable' under the circumstances." (Denver Police Department, Use of Force Policy 105.01(1)(a) and 105.01(3)(a).)

(5) **Las Vegas:** introduces its use of force policy by stating that its officers should "place minimal reliance upon the use of force." Las Vegas, however, defines reasonable force as "an objective standard of force viewed from the perspective of a reasonable officer, without the benefit of 20/20 hindsight, and based on the totality of the circumstances presented at the moment the force is used." The policy further explains how to determine objectively reasonable force, citing *Graham v. Connor*: "The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 20/20 vision of hindsight. The reasonableness must account for the fact that officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving." (Las Vegas Metropolitan Police Department General Order, Use of Force, GO-008-15, Sections I, II.W. and III.)

(6) **Los Angeles:** states "the police should use physical force to the extent necessary." Los Angeles also cites *Graham v. Connor*, stating that "[t]he 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. The test of reasonableness is not capable of precise definition or mechanical application." Los Angeles further provides "the force must be reasonable under the circumstances known to the officer at the time the force was used. Therefore, the Department examines all uses of force from an objective standard rather than a subjective standard." (Los Angeles Police Department Policy, 115 and 556.10.)

(7) **Milwaukee:** states that its officers should use "the minimum force and authority necessary to accomplish a proper police purpose." Although Milwaukee does not expressly cite *Graham v. Connor*, it incorporates the *Graham v. Connor* test. Under the "objective reasonableness" section of its policy, it states that "objective reasonableness is judged from the perspective of a reasonable police member facing similar circumstances and is based on the totality of the facts known to the police member at the time the force was applied, along with the member's prior training and experience, without regard to the underlying intent or motivation of the police member." (Milwaukee Police Department Code of Conduct, 6.00 and Milwaukee Police Department General Order 2015-17 460.10.)

(8) **New Orleans:** defines reasonable force as “the minimum amount of force necessary to effect an arrest or protect the officer or other person,” but clarifies this use of force as that which an “objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” Furthermore, New Orleans states “any evaluation of reasonableness must allow for the fact that officers must sometimes make split-second decisions about the amount of force that is necessary in a particular situation with limited information and in circumstances that are tense, uncertain and rapidly evolving.” (New Orleans Police Department Operations Manual, Chapter 1.3 Use of Force, pages 3, 5.)

(9) **Oakland:** states its “members are required to de-escalate the force when the member reasonably believes a lesser level or no further force is appropriate.” That sentence is preceded with “members are allowed to use a reasonable amount of force based on a totality of the circumstances.” Oakland cites *Graham v. Connor* and says “the determination of reasonableness is not based on the 20/20 vision of hindsight.” (See Oakland Police Department’s General Order K-3, Sections I. A. and C.)

(10) **Portland:** provides that “it is the intention of the Bureau to accomplish its mission as effectively as possible with as little reliance on force as practical.” Portland further “adopts the constitutional standard for the use of force established in *Graham v. Connor*” where “the determination of reasonableness is not based on the 20/20 vision of hindsight.” (Portland Police Department’s Use of Force, Policy 1010.00.)

(11) **Seattle:** states that “it is the policy of the Seattle Police Department to accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force.” Seattle also provides that “the reasonableness of a particular use of force is based on the totality of circumstances known by the officer at the time of the use of force and weighs the actions of the officer against the rights of the subject, in light of the circumstances surrounding the event. It must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” (Seattle Police Department Manual, 8.000.1, 8.050, 8.100.)

(12) **Washington, D.C.:** states “officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in the light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.” Washington, D.C., also provides, however, that the “reasonableness inquiry is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them” and the force “must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.” (Washington, D.C. Metropolitan Police Department, Use of Force, GO-RAR-901.07, Sections I and III.E.)



Therefore, contrary to the suggestions by the other stakeholders, none of the police departments cited by the other stakeholders has policies that replace the *Graham v. Connor* analysis with a requirement to use minimal force or to de-escalate. In fact, the SFPOA could not find a single department in the entire country which does what the stakeholders are recommending. This is not by accident. Although it is an important and appropriate goal to expect officers to use the minimal amount of force necessary, it is inappropriate to assess whether they did so based on the benefit of 20/20 hindsight vision and without determining what information was known to the officer at the time force was used.

For example, if an individual points an unloaded gun at an officer while yelling “I am going to kill you,” but the officer is unaware that the gun is not loaded, it would be appropriate for the officer to use deadly force, based on the totality of the circumstances known to the officer at the time. But, with 20/20 hindsight, the officer could have used non-lethal force because an unloaded gun is not capable of inflicting great bodily injury or death. Thus, with the benefit of 20/20 hindsight the minimal amount of force necessary for the officer to detain the suspect in this hypothetical is far less than what was reasonable for the officer to use based on the totality of circumstances known to the officer *at the time*. This illustrates the distinction between officers having a goal of using minimal force (which is prospective), and officers being disciplined because, in retrospect, they failed to use the least amount of force necessary had they known all of the relevant circumstances.

Although the stakeholders also cite to the PERF position paper that advocates that departments should use a more exacting standard than *Graham v. Conner*, this recommendation by PERF is poorly thought out and has not been followed by any city in the United States. *Graham v. Conner* requires that officers’ use of force must be objectively reasonable, based on the totality of circumstances known to the officer at the time. How can a department have a higher standard than “reasonable?” Can it require that the use of force be “extra-reasonable?” or “super-duper-reasonable?” Conversely, do any of the stakeholders believe that an officer should be disciplined if the officer used force that was reasonable under the totality of circumstances known to the officer? Of course not. The notion of asking an officer to strive towards using minimal force, but judging their use of force based on the totality of circumstances known to the officer at the time go hand-in-hand. This is supported by every city in the United States, as well as every court that has addressed this issue.