

Controlling Use of Force: Identifying Police Use of Excessive Force through Analysis of Administrative Records

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Abstract Law enforcement agencies have a responsibility to control the use of force by police so as to minimally impact the liberty of citizens while ensuring both officer and public safety. Yet, there is an alarming disconnect between how the police, the public, and the courts view use of force. How can police administrators reliably distinguish justifiable applications of force from unnecessary force, or the use of excessive force, and do so in a manner that balances these differing views while ultimately adhering to legal doctrine? We propose a model and administrative process for identifying and addressing potential incidents of unnecessary force or use of excessive force by combining force factor methodology [Alpert, G. and Dunham, R. (1997). *The Force Factor: Measuring Police Use of Force Relative to Suspect Resistance*. Washington, DC: Police Executive Research Forum.] with the operationalization of the core test and mitigating factors delineated in *Graham v. Conner*. We provide a preliminary empirical test of this approach using administrative data on use of force incidents in the Seattle Police Department during a recent two-and-a-quarter year period. Results based upon both quantitative and qualitative analyses of administrative records suggest that the proposed model may assist in the identification of potentially excessive force incidents. Implications for policy and practice are discussed.

Introduction

In recent years police use of force has become a popular topic in newspapers and blogs, in classrooms, and around the water cooler. No other civil servant is imbued with the powers of coercion that we afford sworn law enforcement officers. Citing exigency, a law enforcement officer may detain an individual for a reasonable period of time, search their person, and use force if necessary, essentially without due process. As guardians of public safety and individual liberty in a free society,

it is important to scrutinize the methods by which these agents compel compliance.

The academic treatment of police use of excessive force tends toward the abstract. Research typically indicates in general terms the nature of excessive or abusive force but does not establish a clear baseline or standard for evaluation. Academics and police practitioners alike struggle to quantify the use of force, and have made far less progress with the use of excessive force. Yet, Congress requires the federal government to

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report on this somewhat arbitrary construct (42 U.S.C. § 14142) and law enforcement agencies are held accountable for a standard of conduct not well established.

In this study, we attempt to advance research on the use of excessive force by describing and empirically testing an approach for identifying potentially excessive incidents within police administrative data. In 2011, following several highly publicized incidents of police use of force, the civil rights division of the US Department of Justice (DOJ) launched a formal investigation into the conduct of the Seattle Police Department (SPD). After 7 months the DOJ issued a findings letter citing a “pattern or practice” of excessive force by the SPD, which stated that 20% of all force used during a two-and-a-quarter year period was excessive. This was a somewhat alarming finding, given that the 20% figure would amount to more than 250 use of excessive force incidents during the study period, which the SPD had apparently not identified as such. This study draws on the same data used by the DOJ for the purpose of testing the approach we describe herein.

In the area of use of force, the legal is necessarily intertwined with the social and the psychological. In the following section we review the relevant case law and legal tests for excessive force. With an understanding of the state of jurisprudence on the topic, we explore briefly the public perception of force and misperceptions about the relationship between police and the public in the force/resistance interaction. We then review the various methodologies which have been applied to the study of excessive force since Graham before introducing and testing our proposed methodology.

Literature review

While the literature on police use of force spans nearly 60 years (Klahm and Tillyer, 2010) probative case law on the subject dates only to the mid-1980’s,

beginning with *Tennessee v. Garner*, 471 U.S. 1 (1985). Since then, the law enforcement profession has become increasingly formalized. Standards and training have evolved under centralized Police Officer Standards and Training authority in many states, but standards for the analysis of use of force remain largely subjective.

The Fourth Amendment grants citizens of the USA the right to be secure in their person or property, and the government may abridge these rights under two conditions. First, a warrant may be issued upon ‘probable cause’ to search a person or their property. Second, on the principle of ‘reasonability’ a law enforcement officer or duly appointed government agent may search your person or property. The principles of probable cause and reasonability date back to the early years of the Republic; however, as it pertains to force, reasonability relies heavily on the *Garner*, *Graham*, and *Scott* decisions for specificity. Harmon (2008) describes the state of jurisprudence on the issue as ‘deeply impoverished’ referring to the standard as ‘indeterminate and undertheorized, particularly as applied to non-deadly force’. The limited nature of case law in this area leaves precedent narrow and contradictory, making social science analysis and administrative control of force (including identification of use of excessive force incidents), a largely theoretical pursuit.

Under *Graham*, the government must weigh the need for force against the impact of force on the subject, and in so doing establish a compelling governmental interest for the intrusion. Under this guidance, *Graham* held the ‘split-second’ decision making required of police officers takes precedent over the benefit of hindsight. Force is to be judged from the reasonable observations of the facts as they presented themselves at the time force was applied; as such, *Graham* gives deference to the reasonable assumptions of the officer over facts as they may appear later. The objective reasonableness standard has come to be the prevailing method for analysis of force.

Objective reasonableness

Reasonability of force begins and ends with a theoretical officer's objectively reasonable assessment of justification at the time force is applied. The notion that law enforcement officers must weigh the interests of the government against the impact of the intrusion has gone largely without additional guidance since *Graham*. In fact, the only other case to address use of excessive force since *Graham* (*Scott v. Harris*) would seem to offer contradictory guidance. *Graham* established a four-factor test for determining the reasonableness of force. The Rehnquist Court held that this balancing test must include an analysis of '[1] the severity of the crime at issue, [2] whether the suspect poses an immediate threat to the safety of the officers or others, and [3] whether he is actively resisting arrest... or [4] [whether he is] attempting to evade arrest by flight' (Harmon, 2008).

These criteria are to be judged by a reasonable actor, where the 'reasonable man' refers to the acceptable conduct of a member of a given community. With regard to law enforcement officers, reasonability refers to the capabilities and decision making of a similarly educated and experienced officer. *Graham* expressly prohibits the use of 20/20 hindsight, and any analysis of force must be conducted with the facts as they appear and are understood at the time. This standard, in the context of a reasonable actor interpreting the facts in a 'split-second', presents tremendous latitude for the application of force.

Alternate perceptions of reasonability

Johnson (2007) posited that the disconnect between public perceptions of police use of force and those of law enforcement and the justice system may stem primarily from media influences. In the 'video age' the public routinely views force incidents without the aid of expert guidance, as would accompany such exhibits in a court. This video material is instead viewed and interpreted through the lens of what Johnson terms 'The

Hollywood Factor'. The Hollywood Factor has allowed the public to 'witness literally thousands of force incidents... The problem is, none of it was real. It was all filmed by people who have little or no experience in police force situations'. (Johnson, 2007). Johnson goes on to outline three distinct categorical distortions, including the Demonstrative Bullet Fallacy, the Code of the West and the Violent Police—Violent Business, which contribute to a gross misunderstanding of the dynamics of a force incident and thus the expectations for reality. These distorted interpretations of staged force incidents translate into outrage when force is applied by the police and captured by a citizen or an officer's dashboard camera.

What happens when unprofessional conduct such as would violate the public's 'Code of the West' expectation is depicted in a dashboard camera video from a law enforcement officer's patrol car? The public, rightfully outraged at the rude or unprofessional—though not unconstitutional—conduct of the officer(s) involved will respond. A typical reaction begins with the television news media airing footage of the incident and commentary from witnesses or experts. Shortly thereafter, print media, including online news outlets and blogs repeat the analysis with additional commentary from interest groups such as the American Civil Liberties Union or the local police guild or union. Within a few days, interest in the story wanes but after a series of these incidents are publicized over an extended period of time, public opinion of the agency in question suffers.

A rational and transparent method for the objective identification and control of force is necessary for effective risk management. An effective force monitoring system needs to be able to help identify use of excessive force incidents through quantifiable criteria. Once identified as a potential occurrence of excessive force, the event can be further scrutinized through the lens of *Graham* as well as departmental policy and procedure.

Force research

Observational and archival data analyses are the dominant data sources in use of force research. Hickman *et al.* (2008) identified 36 studies that reported a rate of use of non-lethal force. Of the 36 studies reviewed, 15 involved independent observers and nine involved the use of archival data. Observational studies drove early use of force research and are often regarded as a useful approach to collect data on remote activities (Worden, 1996). However, due to the relatively infrequent occurrence of police use of force, a finding reported by nearly every study on the subject (Worden, 1996; Hickman *et al.*, 2008), observational studies often require thousands of hours and teams of trained observers to capture the rare occurrence of force. Additionally, while the quality of observational data is generally high, subject reactivity effects are a real concern that must be controlled (Mastrofski and Parks, 1990).

The use of police administrative data (i.e. archival study) has become more popular since the advent of automated law enforcement record keeping in the form of Computer Aided Dispatch (CAD) and Records Management Systems. Early efforts were heavy on manual labor to code and analyse paper records. Croft (1985), for example, analysed over 2,000 reports of use of force filed between 1973 and 1979. Eight of the nine archival studies reviewed by Hickman *et al.* (2008) took place after 2001. While observational studies have provided a window into the general dynamics of police–citizen encounters, archival analysis can also provide important insight into the nature and scope of use of force incidents. Some consistency in findings across studies with regard to disproportionality and race, and particularly the role of suspect demeanor, are encouraging.

Since the late 1990s researchers have been moving away from simple dichotomous explanations of force towards understanding what constitutes force and the severity or degree of force relative to suspect resistance. Alpert and

Dunham's (1997) force factor, which is essentially a measure of proportionality, is such an example. When combined with other variables in archival records, such as the presence of intoxicants, weapons, or articulated evidence of a compelling governmental interest, the force factor lends itself to an understanding of reasonability in the analysis of force.

This study presents a prototype method called Graham Factor Filtering (GFF). Drawing on the use of archival data and force factor analysis, in this method, parameters logged in administrative use of force documents for tracking and oversight are filtered for indicators of the presence of Graham factors. The resulting pool of *potential* use of excessive force cases are then reviewed by a reasonable person against the objective criteria outlined in the Graham decision. The GFF method does not explicitly identify excessive force cases, rather, the method identifies cases which potentially lack justification (under Graham) and subjects them to additional scrutiny. In the next section, we detail this approach.

Methodology

Data were drawn from use of force reports that were provided to the US DOJ in their 2011 'pattern or practice' investigation of the SPD. The raw data consist of a series of PDF files containing scanned images of SPD use of force reporting forms and related documents during the period 1 January 2009 through 25 March 2011, amounting to 1,240 records in all. Data for this study were coded from the content of these official records, as reported in Hickman and Atherley's (2012) attempted replication of DOJ's findings concerning the incidence of excessive force. Each report included officer identifier information, suspect demographic information, a categorization of the type of suspect resistance, and how force was applied as well as information about location, booking, injuries, and evidence of impairment or suspected impairment.

The first four pages of these reports (more if supplemental forms are required) are comprised of entries and check boxes which were coded into a computer database using a numeric coding system. The remainder of a report packet varies depending on the presence of supplemental documentation, report narratives, photographs, Washington Crime Information Center reports, Labour and Industry claim forms and CAD call logs as well as routing information and other administrative documentation. These data fields were entered as they appeared in the record.

Coding

The 1,240 use of force reports amounted to more than 16,000 pages of administrative records. These were split evenly between the two authors, who visually reviewed and entered the information into a database. In addition to the variables coded from the boxes in the use of force cover sheets, the

report summaries and narratives (including statements from involved and witnessing officers) were reviewed and their content coded. Use of force statements were read and coded as an observation of the dyadic exchange between the officer(s) and the subject(s). Up to 10 dyadic force/resistance interactions were coded using the coding scheme outlined in Table 1 (and discussed in greater detail below). Additionally, the presence of and nature of threats were coded to indicate whether the incident involved any psychological threat (verbal threats or insinuation of violence), physical threat posed by the size or capability of the subject, threat posed by a subject's outnumbering officers on scene, or the presence of a weapon.

It must be acknowledged that official statements given by officers come with limitations. These statements were written for the purpose of justifying their actions; as such, they cannot be considered strictly objective accounts. The official statements

Table 1: Suspect resistance and officer force levels

Level	Description	Level	Description
Resistance 1	No resistance. The Subject is offering no resistance or threat.	Force 1	Officer presence in uniform or marked police vehicle.
Resistance 2	Verbal resistance to complying with lawful orders. Subject may challenge authority or standing and may present as 'dead weight'.	Force 2	Issuance of lawful orders and light physical contact to include guiding, leading and/or handcuffing. No intentional infliction of pain for the purpose of compliance.
Resistance 3	Use of posture and verbal threats of physical violence. Subject may attempt to intimidate or otherwise pose a physical threat to officers.	Force 3	Chemical agents for the purpose of crowd dispersal or distraction. Tactic is often reserved for large gatherings, civil disobedience, and fight disturbances.
Resistance 4	Physical non-compliance including refusal to give up hands for cuffing and attempts to flee.	Force 4	Physical control tactics such as pain compliance holds, joint manipulation, and open handed strikes.
Resistance 5	Active physical resistance to compliance. Subject may attempt to strike officers, kick and struggle free from holds, and compliance positions.	Force 5	Advanced physical control tactics including closed fist strikes, knee and elbow strikes to the body and the extremities.
Resistance 6	Use of non-lethal weapons to injure or otherwise actively assault officers. Drug paraphernalia, beverage containers, and rocks may be employed as cutting and impact weapons.	Force 6	Intermediate weapon use, deployment of electronic control weapons and impact weapons for pain compliance and strikes to the body and extremities.
Resistance 7	Use of lethal force as presented by whatever means are available: firearms, knives, and motor vehicles.	Force 7	Use of lethal force including carotid artery holds, head strikes, and intentional discharge of firearms.

were judged to be preferable to accounts given by the subjects of the use of force because: (i) the statements given by officers are treated as legal documents and are written with the assumption they will be admissible in court and thus subject to laws of perjury; (ii) any statement given by the subject would be problematic due to inherent self-interest; and (iii) subject statements, either solicited in the supervisors investigation or in official statements were rarely available and thus an inconsistent source of information.

Force factors

Force and resistance were classified based on complimentary scales drawing from previous research (Alpert and Dunham, 2004). For each record in the dataset, we calculated a 'static force factor'. This compares the maximum force applied by the officer to the maximum level of resistance (i.e. officer force level minus suspect resistance level) and takes on numeric values ranging from -6 to 6 (Table 1). For example, if the maximum level of suspect resistance was 'Resistance 4', and that was met with a comparable level of officer force ('Force 4'), this would result in a static force factor equal to 0, indicating a proportional response. If the officer used a higher level of force, (e.g. Force 5), then the corresponding force factor would be $+1$, indicating the officer used one level of force higher than the degree of suspect resistance. If the officer used a lower level of force (e.g. Force 3), the force factor would be -1 .

In addition to the static indicator of maximum force and resistance, we also coded 'dynamic force factors' throughout the force incident. Narratives from all 1,240 cases were read and we coded up to 10 iterations of dyadic action/reaction using the same coding scheme as was used to code the static force factor. This helps to assess how force incidents evolve from the perspective of the officer and provides a dynamic overview of the incident from start to finish. Where multiple officers or suspects are involved, their actions were represented as a composite.

Importantly, a replication study with coding conducted by independent researchers at another institution and using the same raw materials has demonstrated that the force factor coding as described above has a fairly high degree of reliability (M. Hickman *et al.*, unpublished data).

GFF method

The GFF method was developed to identify characteristics of the data that suggest a lack of justification (or administrative error) in the use of force report. The GFF analysis is a multi-staged elimination of cases based on the four-factor test outlined in *Graham v. Conner*. The first stage begins with a logical elimination of incidents having proportional static force factors as well as incidents in which the officer has a static force deficit. The second stage of analysis utilizes Graham factors directly. The administrative elements of each use of force packet contains variables indicating whether the subject presented with 'Evidence of threat or intention to inflict harm...intention to flee' or other 'Evidence of a compelling governmental interest to intervene or interdict' such as being involved in a 'domestic violence' incident (which presents the officer with a statutory obligation to intervene). Additionally, the authors coded the presence of an explicit threat or implied threat of a weapon or actual presence of a weapon as would cause the officer to believe their life, the life of another or the public safety were in danger.

The final stage in the GFF method includes determining whether a preponderance of evidence suggests the subjects' capacity for rational thought was impaired. Klahm and Tillyer (2010) noted that 'Several studies have reported that suspects who were under the influence of drugs or alcohol...were more likely to have force used against them... (see also: Engel *et al.*, 2000; Terrill *et al.*, 2003; 2008; McCluskey and Terrill, 2005; McCluskey *et al.*, 2005). Accordingly, those who presented with three or more indicators of intoxication or mental illness are removed from the pool.

It is important to recognize the low specificity of this type of approach. The GFF method identifies incidents which lack *prima facie* justification for the use of force. This technique should only be regarded as a 'pointer system' and as such will lead to many false positives. With a rate of use of excessive force incidents, lower than 2 per 1,000, identifying use of excessive force without the aid of a pointer can be difficult. In the context of all police interactions the task becomes similar to the proverbial search for a needle in the haystack. The GFF method should narrow the focus of review considerably. Regardless of whether the incidents identified through this method are adjudicated to be excessive by an administrative or judicial official, the GFF method indicates a need for additional documentation or justification. As such, the GFF method is a blunt but effective tool to narrow review and focus scrutiny by command staff or civilian oversight bodies.

Comparative analysis

As a means of testing the utility of the method for identifying a pool of potentially excessive incidents, we will lastly compare the pool of selected incidents identified by the GFF method to a balanced comparison group of cases drawn from the same data. As the GFF method identifies records which, initially, lack justification under Graham, it was hypothesized that the approach would concentrate on potential use of excessive force incidents at a rate greater than chance; thus comparison to a chance sample of a similar size should reflect a higher concentration in the filtered data.

A random probability-based sample of an approximately equal number of cases will be drawn from the full dataset. Using the objective reasonableness standard, we will qualitatively evaluate the cases for quality and content with the goal of answering the following questions: (i) was the administrative record complete and correct; and (ii) was the force objectively reasonable under Graham? These two questions will then be used to determine

whether there was a compelling governmental interest to use the force as depicted in the report.

Analysis

The first tier of filtering (i.e. removal of cases with proportional static force factors and static force deficits) removed just <50% of the force incidents from the pool. The second and third stages (focused on Graham factors and impairments) resulted in a final pool of potential use of excessive force cases containing 43 incidents (or 3.5%) of the total 1,240 incidents spanning the study period. Ultimately, this method seeks to understand why the 43 cases identified by the GFF method appear in that sample. Two hypotheses account for this condition: (i) either the record is incomplete or improperly articulated by the officer(s) and supervisors, leading to a critical Graham factor being absent from the database record; or (ii) the record did not articulate a 'compelling governmental interest' for the Fourth Amendment intrusion on the subject.

A random sample of 50 cases was selected for comparative purposes. Of the 93 total cases reviewed for completeness and objective reasonableness (43 identified by the GFF method and 50 comparison cases drawn from the full dataset), only four were ultimately identified as 'potential' use of excessive force incidents. All four of the incidents were found within the filtered set of 43 potential incidents as identified by the GFF method.

The pool of 43 filtered cases, though not strikingly dissimilar from the comparative sample of 50 cases, is not without distinctions. For instance, while force tends to be more common on weekends and the third watch (60%), the pool of 43 cases is represented in a fairly balanced way between first and second watch (40% and 44%, respectively). Additionally, while force is concentrated in Seattle's West Precinct and that trend is reflected in the pool, the East Precinct has a share of potentially excessive cases far above their representation in the comparison set (17% of force incidents occur

in the East precinct, but 28% of cases identified as potentially excessive occurred there).

Force is typically used against males (83%), in their late 20s or early 30s (median age 29 years), but some effect of race may be present in the pool of potentially excessive force incidents. White subjects comprise 50% of all arrests, 45% of force incidents, and 40% of those incidents in the pool, whereas those identified as 'Asian' or 'Other' have a disproportionately higher representation in the pool. 'On-view' incidents were more frequently represented in the pool than all other classifications, such as calls for service. Although the tactics employed by officers were similar, all but two incidents involved a single subject and, typically, only one (54%) or two (35%) officers were involved in the use of force. While subjects in the pool were booked in about 60% of the incidents, they were booked for relatively minor infractions (obstructing, assault, resisting, trespass, and warrants).

Case studies

As we explored earlier, the term 'excessive' in the law enforcement context, is broad and subjective. A reasonable assessment of the incident, in context, is required to determine if force was applied properly. As previously mentioned, the authors conducted a qualitative analysis of 93 cases (43 identified by the GFF method and 50 comparison cases drawn from the full dataset). What follows is a case study of each of the four incidents identified by the researchers as excessive.

Case 1: a SWAT officer, on scene with a motor vehicle accident, utilized a 'hair pull' technique to extract an uncooperative subject from a vehicle. The incident was initially reported as a possible DUI; however, by the time officers arrived the vehicle had impacted a barrier on an expressway and come to rest. Officers immediately identified the subject was impaired and reports indicate they were unsure whether the

subject was intoxicated or suffering from a medical emergency, but they did note the 'odor of intoxicants' was not present. No justification for removing the subject from the vehicle was articulated. It was later identified that the subject was experiencing a diabetic medical emergency. He was treated at the precinct, and released.

Although the subject of this incident was resistant to commands to exit the vehicle, there was no apparent 'compelling governmental interest' supporting the use of force. The vehicle was disabled and the subject was not attempting to flee by other means. There was no indication that the subject posed an imminent danger to the officers or public; however, it is unclear what prompted the backup officers to order the subject from the vehicle, as statements from these officers were not included in the record. It was clear to the SWAT officer and the transporting officer that the subject may be suffering from a 'medical emergency'. The report narrative from the SWAT officer and statements made to the investigating supervisor indicate that the potential (and later factual) reality of a diabetic emergency was considered possible from the beginning of the incident. Finally, use of a 'hair pull' technique on the subject of a motor vehicle accident may put the subject at risk for neck/spine injury.

Case 2: a patrol officer 'on-viewed' a female walking away from an area 'commonly used for narcotics sale and usage', and the subject was 'placing an object into her pants pocket'. The officer recognized the subject from previous contacts associated with 'narcotics usage'. Using the in-car computer system, the officer conducted a records check of the subject and established a valid misdemeanor warrant for driving while license suspended (DWLS). The subject became non-compliant when

the officer attempted to take her into custody. Unable to control the subjects hands, described as 'flailing . . . to resist being handcuffed' the officer delivered three closed fist strikes to the subjects 'right side' and was able to take her into custody. The subject was booked into the King County Jail on a \$3,000 warrant and an additional charge of 'Obstructing' resulting from the use of force incident.

While a confirmed warrant is probable cause for an investigative stop, and the officer was further justified in their use of force by the subject's attempt to flee, the stop originated with circumstantial evidence of potential drug activity that appears unfounded, according to the record. The charging record does not indicate drugs or drug paraphernalia were present on the subject at the time of booking. The warrant was for a non-violent traffic offence; furthermore, if the dollar amount of the charge (\$3,000), is an indication of the severity or priority of the offence, it could be considered a minor infraction. The subject did not pose a threat to the officer or public, and no offensive resistance was indicated. The officer specifically stated the flailing was in an attempt to flee and did not indicate any attempt on the part of the subject to inflict injury on the officer. The 'distraction strikes', while an acceptable escalation under the department's use of force policy and force continuum, may not have been necessary if more officers were available to take the subject into custody.

Case 3: two officers from the Community Police Team contacted a group of juveniles at a bus stop described 'as a place where gang members hang out'. Outnumbered seven to two by a group of highly agitated juveniles accusing the officers of 'harassing' them, the officers were attempting to disperse the group when a male subject became non-compliant. Asked to walk

over to a police car, the subject resisted attempts by the primary officer to 'guide or lead' him. The officer, fearing an imminent attack, took the subject to the ground in a 'bear hug'. At this point the other officer assisted in taking the subject into custody. No statement from the second officer is in the record. The subject was released into his parents' custody from the precinct. During the incident the subject sustained a superficial abrasion to his chin. No medical aid was requested or rendered. No charges were filed.

Although SPD encourages their officers to make 'social contacts' and provides a procedure in the Seattle Police Manual, it appears that the procedure was not followed, nor did justification exist for an investigative or *Terry* stop. The juveniles were congregating in an area known for 'gang activity', however, the officers did not articulate that they suspected a crime had or was going to occur. The officers' actions were necessary to respond to a non-compliant subject, however, it is not clear the officer had the authority to detain the subject. While no criminal charges were filed and the officer did not cite any criminal statute violation, the subject of the use of force was witnessed, by the primary officer, spitting on the ground at a bus stop. The act of spitting at a bus shelter may be punishable by a fine of up to \$1,000 and/or 90 days in jail. If it was the intention of the officer to take the subject into custody for some offence, this would have been sufficient probable cause. As the officer did not list any charges and the 'Code of Conduct' violation was not mentioned in the report further suggests this was a social conduct and that coercive means, such as were employed by the officer, were unnecessary.

Case 4: a patrol unit driving a marked car observed a Hispanic male committing a pedestrian infraction, 'jaywalking'. When the unit attempted to

signal a stop by activating their emergency lights, the subject fled on foot. After a brief foot pursuit and the use of a K-9 unit, the subject was confronted at gunpoint and ordered to the ground. The subject did not comply with commands to get on the ground and so the officer used a combination of pain compliance and closed fist distraction strikes, including strikes to the head and face, but was unable to bring the subject into custody. Finally, the K-9 had to be applied to achieve compliance. The subject was taken into custody and transported to the precinct. Though the subject sustained minor cuts and abrasions, he refused medical attention. When asked why he ran, the subject replied he was afraid of the police. Witness accounts (the subjects' girlfriend) report the subject had been deported twice already and was newly back in the USA. When questioned further, the subject 'stated something about immigration' and that he returned to the country for his children.

On its face, the force used in this incident could be justified when the subject fled the attempted stop. Under *Graham*, however, the officer must take into account the threat posed by the subject, whether they fled, and the severity of the infraction. An objective assessment of this event could argue that the severity of a pedestrian infraction did not merit the use of force. Tactics employed to bring the subject into custody were appropriate and necessary; however, pedestrian infractions are common violations used as a pretext for *Terry* stops. The reasonable officer must weigh the possibility that they may encounter resistance with these pretext stops before they initiate them, and consider the amount of force deemed reasonable by the violation, if no additional facts develop. Until the subject

began to resist handcuffing he indicated no implied or overt threat to do harm to the police or the public. In fact, even when the subject withdrew his arms in a defensive posture, none of the resistance described by the officers indicates any active resistance. Although the articulated fear that the subject may be attempting to access a weapon justified the use of closed fist strikes and the K-9, it is not clear that the original justification for the stop was sufficient to take the subject into custody. Charges listed in the use of force packet indicate the subject was booked for 'Obstructing' and 'False Reporting'. Had the subject complied with police instructions prior to fleeing, he likely would have been given a warning or cited and released.

Summary analysis

Four themes emerge in the case studies and suggest areas for future research. Aggressive attitudes in law enforcement are a double-edged sword: while quick reflexive action can save lives, it also has the potential to escalate a dynamic and not fully understood situation. There is a fine line between the social contacts justified by the community policing model and the justification for an investigative stop under *Terry*; the result can be construed as harassment by the minority community and leaves the officers with little justification for force. Finally, once a stop is initiated, even for a minor infraction, it is difficult for the officer to disengage without potentially endangering himself or others by setting a precedent that resistance can be effective.

Conclusion

This study finds initial support for the GFF method, and finds that while it may be possible to establish a baseline, monitor, and mitigate use of force incidents using existing administrative data, the diagnostic sensitivity of such an approach is limited in its present form. This method helps to identify cases

for additional review, but it does not stand alone. Although mechanisms exist to control force, more guidance is required to establish exactly what constitutes excessive or unnecessary use of force as defined by a national coordinating body or authority. Ultimately, without further research to establish baseline figures for use of excessive force locally, regionally, and on a national level critical mitigation strategies cannot be constructed to address the problem.

Evaluating the efficacy and propriety of use of force is a broad social conundrum, one without an easy answer. Research on use of force lacks much of the foundation for systematic analysis, but the public demands that law enforcement agencies control their impact on the public at large. The USA takes some pride in being a free society; however, without a verifiable and agreed-upon standard for assessing the use of force, any analysis may lead to misguided responses.

Garner, Graham, and Scott all address the use of force; however, case law on the subject is relatively limited and contradictory. We know that a reasonable law enforcement officer is responsible for the real-time assessment of the use of force, and the decision must be based on the severity of the infraction, the threat or potential threat posed by the subject and whether they have fled or attempted to flee the interdiction of the officer. Despite the practical hurdles, law enforcement agencies are held accountable for their use of force. The GFF method is one way of operationalizing limited guidance on the subject and represents prototypical development in the administrative control of use of excessive force. To the extent that the study site represents a typical agency, numerous command staff is required to take part in a rotating review of use of force incidents. The use of the GFF method as a pointer or flagging system for the identification of use of force incidents requiring further review or justification may improve this process and reduce unnecessary resource burdens.

What constitutes an acceptable justification for use of force under officer safety standards? What

constitutes an acceptable justification for use of force under public safety standards? What is reasonable according to a social science-based approach to reasonableness and proportionality? These types of questions demand further exploration, but cannot proceed without a fundamental understanding of the problem. Law enforcement agencies are increasingly being held accountable by the federal government for 'patterns or practices' of use of excessive force. What constitutes a 'pattern or practice' of excessive force? Government lawyers construct legal realities within the framework of the law, but these legal realities are often at odds with experienced realities on the street. The use of force is viewed quite differently by the public, the police, and the courts, and social scientists who study the use of force using systematic methods are left with what one might call a challenge of operationalization. Democratic policing requires a solution to this problem.

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