Holding Officers Accountable: Controlling Critical Incidents

Police officers hold awesome powers—powers that are not granted to any other public or private officials. They have the power to deprive people of their liberty through arrest, to intrude into their privacy through a stop and frisk, to physically harm them through the use of force, to engage in racial or ethnic discrimination through the discretionary use of these powers, and they have the ultimate power to take human life through the use of deadly force. It is essential in a free society that these powers are used only when absolutely necessary and legally justified.¹

Looking back over police history, it is astonishing how comparatively recently police departments have developed formal policies to control officers’ use of their powers. As late as the early 1970s, departments sent their officers out onto the streets with hours of training about how to fire their weapons but no meaningful guidelines on when to shoot. In 1965, for example, the American Bar Foundation praised the Milwaukee Police Department’s policy that permitted shooting in cases of “any felony” for the simple reason that it was a written policy.² Departments typically kept no records on officers’ use of force and made no effort to learn about which
officers used force more than others. The Supreme Court did not address the use of deadly force until the 1985 case of *Tennessee v. Garner*, where Memphis officers had shot and killed an unarmed 14-year-old named Edward Garner who was fleeing a building. The Court declared unconstitutional the existing “fleeing felon” rule on the use of deadly force, and departments rapidly replaced it with the “defense of life” standard.

The law and police policy and practice have changed dramatically since the early 1970s. It is now well established that police departments must take the necessary steps to ensure that officers are held accountable for their actions. In practice, this means that police departments have a *written policy* clearly specifying, for example, what amount of force is permissible in particular situations, or when officers may engage in a high-speed vehicle chase. Officers must then complete a *written report* after each critical incident, describing what they did and the justification for it. Finally, all incident reports are *reviewed* by supervisors to determine that the officer or officers complied with the law and department policy. The report and review process is now a recognized best practice in policing and is at the heart of the PTSR accountability framework described in Chapter One.

The Department of Justice 2001 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 asphyxiation, bar arm restraints, and the use of chemical agents.” Even by 2001 most departments had gone far beyond the DOJ recommendation and adopted policies covering a wider range of police critical incidents. As we discussed in Chapter One, this book defines a critical incident as *any police action that poses a risk to the life, liberty, or dignity of a person*. The list of critical incidents covered by the PTSR framework should continue to grow as new issues surrounding the use of police powers arise. This chapter examines some of the more important critical incidents to illustrate how police departments have addressed (or not addressed) them through formal policies.

**Administrative Rulemaking: The Basic Accountability Process**

The policy, report, and review process for critical incidents in policing is a part of a general legal process known as administrative rulemaking. It is
standard practice in large organizations in both the public and private sectors. The following section examines the history of rulemaking in policing and how it has been applied to policing.

**Turning Point: The New Deadly Force Policy in New York City, 1972**

The historic turning point in police accountability occurred in 1972 when New York City Police Commissioner Patrick V. Murphy adopted a new use of deadly force policy. A few departments had already begun to develop more restrictive policies in the 1960s, and at least six national-level blue-ribbon commissions recommended change in the 1960s and early 1970s as a result of the riots of the 1960s. The NYPD policy had the most impact on local police departments, however, mainly because of its status as the largest department in the country. Additionally, the policy was evaluated by Professor James Fyfe (himself a former NYPD officer and future deputy commissioner), and his finding that the policy reduced firearms discharges gave important support to the idea that formal policies can have a positive impact on officer discretion.

The NYPD’s policy did not emerge out of thin air. In response to the riots of the 1960s, there was growing awareness among police experts of the need to control shootings and other police actions through detailed rules. Lorie Fridell identified four factors contributing to the movement for new deadly force policies: the broader movement to control police discretion, demands for racial justice arising from the disproportionate number of African Americans shot and killed, court rulings that expanded municipal liability for unjustified police shootings, and the growing social science research on officer-involved shootings that documented the racial disparities in shootings. The President’s Crime Commission in 1967 recommended “The Development of Guidelines for Police Action,” and the following year the Kerner Commission cited “The Need for Policy Guidelines” that would cover a short but important list of police actions.

NYPD policy TOP 237 had the basic elements that have shaped use of force policies over the past 40 years and the entire police accountability movement. Substantively, the policy limited 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 were permitted to use deadly force only in the defense of life,
either their own lives or the life of another person. 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. Procedurally, the policy required officers to complete a written report for each firearms discharge and mandated an automatic review of each report by supervisors.\textsuperscript{10}

The NYPD policy quickly won favor within the law enforcement profession and spread to other departments. A 1977 report on police use of deadly force by the Police Foundation endorsed the mandatory reporting and review requirements.\textsuperscript{11} The U.S. Civil Rights Commission’s influential 1981 report, \textit{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.”\textsuperscript{12} By the time of the Supreme Court’s 1985 decision in \textit{Tennessee v. Garner}, most big-city police departments had already adopted deadly force policies that were more detailed and restrictive than the \textit{Garner} decision. This development reflected a new national consensus on the basic elements of the original 1972 NYPD policy.

Fyfe’s evaluation of the 1972 NYPD policy found that it reduced firearms discharges by 30 percent over the next three years. Additionally, there was an increase in the number of “accidental” shootings but they were still only 9 percent of all discharges, which suggested that officers were not systematically trying to evade the new restrictions falsely reporting unauthorized discharges as accidents. Fyfe’s findings, in short, suggested a high rate of officer compliance with a restrictive policy that significantly intruded on their traditional discretion.\textsuperscript{13}

It is important to note in this regard that the NYPD policy required officers to report \textit{all firearms discharges}, and not just shootings where someone was injured or killed. This approach recognizes that all discharges are potentially dangerous—to the officer and others—and that the control of firearms requires a complete picture of firearms usage.

By the 1980s, national data on persons shot and killed suggested that as more police departments adopted the defense of life policy significant reductions in police shootings had occurred. Additionally, 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. 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 had the collateral positive effect of reducing racial disparities in persons shot and killed.\textsuperscript{14}

The positive impact of the initial restrictive deadly force policies is easy to understand. As we pointed out, police departments traditionally sent their police officers out onto crime-ridden streets 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 departments surveyed relied on an “oral policy.”\textsuperscript{15} The 1963 edition of O. W. Wilson’s influential textbook \textit{Police Administration} said nothing about the use of deadly force.\textsuperscript{16} A 1999 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.”\textsuperscript{17} In short, given the near total lack of controls over shootings, one could reasonably expect that even minimal controls would have a significant impact. 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. A 1968 book on Los Angeles pointed out that for years the LAPD conducted an automatic investigation if an officer damaged a patrol car, but not until March 1965 did it require a board on inquiry investigation if an officer shot and wounded a person.\textsuperscript{18} 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 lack of a formal policy and review process presumed that officers would use good judgment and should not be second-guessed in dangerous encounters. In effect, they were literally unaccountable for their behavior.\textsuperscript{19}

\section*{The Administrative Rulemaking Framework}

\textbf{Confine, Structure, and Check Discretion}

The framework for administrative rulemaking in policing was developed by law professor Kenneth Culp Davis in his short 1975 book, \textit{Police Discretion}. His framework consists of three elements: confining, structuring, and checking discretion.\textsuperscript{20}
Confining Discretion

Confining discretion involves having a written policy that clearly defines what an officer can and cannot do in a particular situation. This approach does not attempt to abolish discretion but only to limit its use to a narrow range of situations where judgment is still called for. In the entire criminal justice system, the idea of attempting to abolish discretion, in plea bargaining and sentencing, for example, has been rejected as futile and unwise. Confining discretion through clear and reasonable rules preserves a necessary amount of discretion to accommodate particular circumstances while enhancing consistency and equity in decision making.\(^\text{21}\) Davis puts it bluntly: discretion “cannot be eliminated. Any attempt to eliminate it would be ridiculous.”\(^\text{22}\)

The principle of confining police discretion is illustrated by the following examples.

**Use of deadly force policies prohibits firing warning shots.**
**Police policies that mandate an arrest in a domestic violence incident where there is evidence of a felonious assault.**\(^\text{23}\)

Structuring Discretion

Discretion is structured in the Davis model by allowing a certain amount of discretion while specifying the factors that an officer should consider in making a decision. The admonition to “use good judgment” is too vague and does not give officers meaningful guidance on when they can and cannot shoot. As Davis explains, policy should advise officers to “let your discretion be guided by these goals, policies, and principles.”\(^\text{24}\) For example:

**Vehicle pursuit policies that instruct officers to consider road conditions and the potential risk to pedestrians or other vehicles before initiating a pursuit.**\(^\text{25}\)
**A use of force continuum that instructs officers to use a certain level of force in response to a specific form of resistance.**

In all of these examples, officers retain considerable discretion in choosing a response, but their response is guided by considerations that enhance compliance with the law and department policy.

Checking Discretion

Discretion is checked in the Davis model by having incident reports reviewed by supervisors and other higher command officers. In the original 1972 NYPD, deadly force policy, reports were reviewed both by an
officer’s immediate supervisor and by a departmental Use of Force Review Board. Since that time, the review/checking process has expanded in important ways.

** Some police departments conduct two parallel investigations of shooting incidents, with one directed toward whether the officer violated law or department policy and the other directed toward identifying any possible deficiencies in department policy, training, or supervision.26

** An early intervention system (see Chapter Five) that tracks officer-involved shootings can identify officers who have an unusually high rate of such incidents, even where no citizen has been shot and killed.27

The checking procedures described above all involve a commander or committee of supervisors of higher authority than an officer’s immediate supervisor. This approach recognizes the fact that in policing, sergeants develop close relations with the officers under their command, and as a result might not be completely objective when evaluating whether an officer violated the law or department policy. Robin Engel’s research on supervisors, for example, found that almost a quarter (23 percent) played a “supportive” role, seeking to protect officers under their command from “unfair” discipline, and acting as a “buffer” between them and upper management.28 Sergeants’ knowledge that the review of their incident reports by higher ranking officers is likely to enhance their objectivity in reviewing incident reports.

**Collateral Aspects of Rulemaking**

The administrative rulemaking process has several collateral effects in addition to guiding police officer behavior and controlling discretion.

**Rules as Statements of Values**

Rules governing police actions in critical incidents are statements of values. Use of force policies typically begin with the statement about the importance of protecting human life. The Use of Force Policy of the Metropolitan Police Department of Washington, D.C., for example, states that

The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the 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.29

The 2012 Las Vegas Collaborative Reform Process report found that the Las Vegas Metropolitan Police Department’s policy on deadly force, while good in many respects, lacked a statement on respect for the sanctity of human life, and recommended that one be added.30

The typical defense of life policy affirmation of the value of life stands in sharp contrast to the implicit values of the old fleeing felon rule. The latter prioritized arrest, communicating the message that arrest of a fleeing suspect was highest priority and that if the wrong person was sometimes shot and killed, that was just one of the mistakes we have to live with. The defense of life standard reverses the order of priority, indicating that the possible escape of a genuine felon is the mistake we are willing to pay in order to ensure the protection of life. Similarly, restrictive vehicle pursuit policies communicate the message that the safety of bystanders and other drivers is a higher value in certain circumstances than the arrest of a fleeing suspect.31 The San Jose (California) Police Department vehicle pursuit policy states that:

The primary purpose of this policy is to protect the public by assisting Department members in making reasonable pursuit related decisions that emphasize the importance of protecting the public. This requires balancing the known or reasonably suspected offenses and the apparent need for immediate capture against the risks to peace officers, innocent motorists, and others.32

**Rules as the Basis for Training**

It goes without saying that policies on critical incidents serve as the basis for officer training. Preservice academy training, however, is only one part of a comprehensive training program that should include regular inservice training. Academy training is 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 California P.O.S.T. program recognizes the special legal and social significance of certain policies and has a required inservice component labeled “Perishable Skills.” Every two years, officers are required to complete 12 hours of training, with 4 hours each over arrest and control, driver training/awareness, and tactical firearms or force options.33 This requirement recognizes that under the pressure of routine
police work policies can easily erode and that it is necessary to provide regular refresher training.

**Rules and Contributions to Openness and Transparency**

Departments can enhance openness and transparency and build public trust and legitimacy by making their rules public. In the crisis atmosphere of the 1960s, one of the common criticisms of the police was that they were closed, secretive bureaucracies. Today, openness and transparency are recognized as important values, and an increasing number of departments place their policy manuals on their websites. Making public a department’s policies on use of force or domestic violence, for example, allows people to understand why officers acted as they did in a controversial incident, or to see how a particular officer violated department policy. With policies public, moreover, it is then possible for community activists, civic leaders, and elected officials to engage in an informed debate over whether a revised policy is needed. In Los Angeles Sheriff’s Department, the Office of Independent Review (OIR) recommended placing the Manual of Policies and Procedures on the department website and the sheriff quickly agreed. The OIR explained that “the public has an interest in being able to know the internal rules that govern the actions of the Sheriff’s Department.”

**Critical Incidents**

As we have already mentioned, the control of police officer conduct in critical incidents through written policies has expanded considerably since the early 1970s. They now cover a wide range of incidents. This book argues that there is no known limit to how many incidents should be covered. Many police actions that were barely even thought of as raising potential legal and practical problems a few years ago (foot pursuits are a good example) are now regarded as matters of great concern and are covered by written policies. The following section discusses police policies in a selected group of critical incidents. It is not meant to be an exhaustive list.

**Use of Deadly Force**

The first and most important development of administrative rule-making in policing applied to the use of deadly force. We have already
discussed the influence of the 1972 New York City policy on the entire administrative rulemaking process. The 1985 Supreme Court decision in *Tennessee v. Garner* illustrates one of the great virtues of department rulemaking: its flexibility and capacity for specificity. By the time of *Garner*, the defense of life rule had already been widely adopted by police departments and went further in terms of the range of issues covered—the prohibition on warning shots and shooting at moving vehicles, for example. Supreme Court decisions are necessarily limited by the terms of constitutional law (and how a minimum of five Justices interpret the Constitution).\(^{35}\) A police department, however, can develop administrative rules that cover issues that are simply good policy but do not necessarily raise issues of constitutional law. Moreover, a police department can act quickly on a particular issue that comes up without waiting for a court ruling.

Deadly force policies typically allow some limited exceptions to the strict defense of life rule, authorizing the use of deadly force where the officer believes a suspect has committed a felony involving the use of deadly force and is likely to commit another violent crime. The third paragraph of the Minneapolis Police Department policy is typical in this regard in allowing deadly force:

To effect the arrest or capture, or prevent the escape, of a person who the officer knows or has reasonable grounds to believe has committed or attempted to commit a felony if the officer reasonably believes that the person will cause death or great bodily harm if the person’s apprehension is delayed.\(^{36}\)

It is important to note that while the policy creates an exception, it structures discretion by specifying that there must be reasonable grounds to believe there is a serious potential threat to someone’s life (“will cause...if...”). It does not represent a return to the old fleeing felon rule.

One collateral issue regarding police use of firearms involves the display of a firearm in encounters with citizens. Some departments now explicitly prohibit the display of an officer’s handgun. The Washington, D.C., police department use for force policy, for example, directs that no officer “shall draw and point a firearm at or in the direction of a person” unless a substantial risk of harm exists. Additionally, officers are required to complete a use of force report for “drawing and pointing their weapon at another person.”\(^{37}\) Two considerations underlie this policy. First, there is the risk of an accidental discharge that could result in the unintended
injury or death of a citizen or another police officer. Second, an officer displaying a handgun in a contact with a citizen is an intimidating expression of police power. This practice strained police-community relations in some cities, notably Cincinnati in the events leading up to the riot in 2001 and the resulting federal consent decree in 2002.38

Less-Lethal Force

In an effort to reduce the use of deadly force, police departments adopted various forms of less-lethal force. These include chemical sprays, conducted energy devices (CEDs, popularly known by their trademarked name Tasers),39 and others devices. Providing alternatives to the use of deadly force had the laudable goal of reducing officer-involved shootings and saving lives. The Department of Justice in 2003 faulted the Detroit police for having only “a limited array of [nonlethal] force options available,” providing only firearms and chemical spray.40 The new devices, however, introduced new issues regarding their use that needed to be addressed. As a result, they too are now covered by written policies governing their proper use.

When first introduced into policing, CEDs were greeted with both enormous popularity and controversy. Aggressively promoted by their manufacturers, they were quickly adopted by police departments.41 The two most popular CED models were introduced in 1999 and 2003, and by 2007 an estimated 8,000 law enforcement agencies had adopted them, covering the majority of the people in the United States. Very quickly, however, there were a number of deaths of people against whom police CEDs had been used, and civil rights groups protested their use.42 The protests led to the first research on the potential lethality of CEDs. In most of the initial publicized cases it was not clear that the victim’s death was directly caused by the CED or was the result of other medical factors. Recognition of the potential lethality had one important effect on generally used terminology. Initially, CEDS and other weapons had been referred to as “less-than-lethal” weapons, suggesting that they were not potentially lethal. The commonly used terminology today is “less lethal” weapons, in recognition that they can result in death in certain circumstances.

Some police departments adopted CEDS without detailed policies governing their use. In response to the public controversy, formal policies are now standard and a national consensus over the content of those policies has emerged. The model policy developed by the Police Executive Research
Forum (PERF) and the COPS office appears in Figure 3.1. The policy confines CED use by limiting use to incidents involving active resistance, active aggression, and also by limiting it to one officer per incident and prohibiting use against pregnant women, the elderly, children, and frail persons.\textsuperscript{43} CED deployment is checked by requiring an officer report on every

**Figure 3.1  Model CED Policy (Excerpts)**

1. CEDs should only be used against persons who are actively resisting or exhibiting active aggression, or to prevent individuals from harming themselves or others. CEDs should not be used against a passive suspect.

2. No more than one officer at a time should activate a CED against a person.

3. When activating a CED, law enforcement officers should use it for one standard cycle and stop to evaluate the situation (a standard cycle is five seconds). . . .

7. CEDs should not generally be used against pregnant women, elderly persons, young children, and visibly frail persons unless exigent circumstances exist.

8. CEDs should not be used on handcuffed persons unless they are actively resisting or exhibiting active aggression, and/or to prevent individuals from harming themselves or others. . . .

12. Officers should avoid firing darts at a subject’s head, neck, and genitalia.

13. All persons who have been exposed to a CED activation should receive a medical evaluation. Agencies shall consult with local medical personnel to develop appropriate police-medical protocols. . . .

16. Following a CED activation, officers should use a restraint technique that does not impair respiration.

18. Agencies should create stand-alone policies and training curriculum for CEDs and all less-lethal weapons, and ensure that they are integrated with the department’s overall use-of-force policy. . . .

32. Every instance of CED use, including an accidental discharge, should be accounted for in a use-of-force report.

usage and also by creating a special out-of-chain-of-command review for any deployment that results in death.44

One of the main concerns regarding CED deployment is that instead of being an alternative to use of a firearm they become a substitute for less serious uses of force, with the result that more serious force is used than would be the case if CEDs were not available. One example would be using a CED against a suspect who becomes passively resistant by going into a fetal position. The model policy addresses that concern by limiting CED use to incidents of aggressive resistance. Nonetheless, the national survey of CED use found that almost half of all agencies permitted the use of CEDs against persons who only passively resisted an officer’s commands.45 Concerns about inappropriate use of CEDs were confirmed by a 2011 Justice Department investigation of the Portland, Oregon, police department that found a pattern of inappropriate CED use against mentally disturbed people. “These practices,” the report concluded, “engender fear and distrust in the Portland community,” which adversely affects the department’s “ability to police effectively.”46

On the positive side, the national survey of CED use found that CED deployment incidents involved far fewer injuries to both citizens and officers than did officer use of physical force. Citizens were injured in 25.1 percent of CED incidents, compared with 48.9 percent of officer use of physical force incidents. Officers, meanwhile, experienced injury in 7.6 percent of CED incidents, compared with 21.2 percent of physical force incidents.47

**Use of Physical Force**

Allegations of “police brutality”—meaning the use of excessive physical force—have been as much a volatile civil rights issue as deadly force. Police use of force is a relatively rare event. Research has consistently found that officers use force in only between 1 and 2 percent of all citizen encounters. Nonetheless, force has a significance far exceeding its numbers. It represents a visible exercise of coercive police power and is one of the flash points of police tensions with communities of color, along with arrests and officer-involved shootings. Not only are citizens often injured but police officers are most likely to be injured in incidents where they use force.48

In several important respects, physical force is more difficult to control than deadly force. It includes a wide range of actions, ranging from verbal commands through “soft empty hand” control to the use of a baton. There is no consensus over whether routine handcuffing is a form of force that
officers should be required to report. Additionally, the number of nonlethal force incidents in any given year far exceeds the number of shooting incidents, which greatly complicates the task of reporting, reviewing, and controlling such incidents.49 Finally, and perhaps most important, “excessive” force is typically a matter of perception. What the officer regards as necessary to overcome a suspect’s resistance, the person involved often regards as excessive. In one revealing study of comparative perspectives on incidents that involved force, 33.4 percent of officers reported either active aggression or a deadly threat by the citizen, while no citizen reported such behavior. And no officers, meanwhile, reported that they faced no resistance or passive resistance, while 76.7 percent of the citizens reported that they did not resist.50 Other studies reviewed by Alpert and Dunham, however, found higher levels of agreement between officer and citizen accounts of incidents.51 The prevailing standard is that an officer may use the minimum amount of force necessary for achieving a lawful purpose. The Washington, D.C., police department limits lawful purposes as “(a) To protect life or property, (b) To make a lawful arrest, (c) To prevent the escape of a person in custody, [and] (d) To control a situation and/or subdue and restrain a resisting individual.”52

The Supreme Court standard in *Graham v. Connor*53 provides some guidance regarding the use of force but does not completely resolve all the issues. In brief, the Court held that the use of force is objectively reasonable depending on the severity of the crime in the precipitating incident, whether the suspect poses an immediate threat to the officer, and whether he or she is actively resisting arrest. A Supreme Court decision, however, is based on constitutional law. As discussed earlier with regard to *Tennessee v. Garner*, however, police departments can go further than a Supreme Court decision (without, of course, countermanding any part of the decision) with more detailed and more restrictive policies, providing additional guidance for officers.

One recurring problem is that police departments fail to clearly define uses of force. In 2002, for example, the Justice Department found 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.”54 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. As recently as 2012, the Spokane (Washington) Police Department’s policy required officers to complete a report only when physical force resulted in injury, or the person complained of an injury, or was rendered unconscious or experienced some other adverse consequence. A city commission recommended expanding the list of reportable force incidents to include “head strikes, knee strikes, elbow strikes, open and closed hand strikes; baton/flashlight strikes; all applications of less lethal devices (OC spray, foam or wood rounds, beanbag rounds, etc.); carotid neck restraint (Level I) …; [and] all takedowns and prone handcuffing incidents that result in any head or facial injury.”

The Use of Force Continuum

In terms of administrative rulemaking, the use of force continuum emerged as a strategy for structuring officers’ discretion in the use of force. Continua vary from department to department but all are designed to correlate the level of force used by an officer to the conduct of the citizen. A model continuum developed by the U.S. Department of Justice begins with Officer Presence, noting that “The mere presence of a law enforcement officer works to deter crime or diffuse a situation.” It then proceeds upwards to verbal questions or commands, to “empty hand control,” such as grabbing or holding a person, and on to less-lethal devices and finally the use of deadly force.

An officer does not have to begin at the bottom of the use of force continuum (officer presence) and work his or her way up to higher levels of force. If the person is immediately aggressively resistant, the officer can and should begin at that point on the continuum. Some departments use a “plus one” rule, which means that the officer can use one level of force higher than that prescribed by the continuum for a given level of resistance. (The “plus one” rule, however, does not apply to the use of deadly force. An officer may not use deadly force where there is no threat to life, as described in the earlier section of this chapter.)

De-escalation, Disengagement

The idea of de-escalating encounters with people that have the potential for conflict has emerged as a best practice in policing. A long-standing problem in American policing has been the tendency of officers to escalate an encounter in response to their perception of disrespect or lack of cooperation on the part of a citizen. Critics have labeled the practice “contempt
of cop,” meaning that in response to disrespect or noncooperation an officer is more likely to reply with verbal abuse, use of force, and/or an arrest.\(^5\) Research on police-citizen interactions has consistently found that citizen disrespect increases the probability of an officer using force and/or making an arrest.\(^6\) The Justice Department found that Seattle police officers used excessive force against citizens who “talk back” to officers and express their discontent with the situation. The DOJ labeled this practice an unconstitutional and unreasonable attack on freedom of speech.\(^7\) In some cases the officer files resisting arrest charges (often referred to as “cover” charges since they are designed to cover an arrest that lacks justification). The practice is considered sufficiently common that many early intervention systems include resisting arrest charges as a performance indicator (see Chapter Five). Philadelphia Police Commissioner Charles Ramsey argues that “a large number of ‘contempt of cop’ arrests is a hint that officers may not be going in the right direction,” and recommends close scrutiny of data on such arrests.\(^8\)

De-escalation is a tactic designed to reduce conflict and reduce police officer use of force in situations where it was not really necessary. The Kansas City (Missouri) Police Department policy explains that in many situations “mere police presence often avoids the need for any force.”\(^9\) Philadelphia Police Commissioner Charles Ramsey told a PERF meeting that “one of the things that I have discovered during my time as a police officer is that it’s easy for us to go up the use-of-force continuum, but the hard part is bringing it back down, and de-escalating situations effectively.”\(^10\) In the most detailed analysis of the sequence of events in police use of force incidents, Alpert and Dunham agree. “Once a cycle of force is initiated,” they argue, “there appears to be only limited opportunity to deescalate the level of force.”\(^11\)

A Justice Department investigation of the Portland, Oregon, police department found that the lack of policy and training on de-escalation was partly responsible for a pattern of excessive force against mentally ill persons. (See the discussion below, pp. 89–91). The report concluded that “strategic disengagement—a practice of withdrawing from a situation to avoid use of force when a subject does not appear in imminent danger to harm to self or others”—is a valuable tactic. Also important, “properly applied, de-escalation begins long before the officer is faced with the choice of using force and will often make that decision unnecessary.”\(^12\)

The idea of de-escalation illustrates the crucial point that police-citizen encounters are fluid events that can go in different directions and that officers
have some capacity to shape the outcome. Peter Scharf and Arnold Binder identified four stages of police-citizen encounters: 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, the officer’s response, and the person’s response to the officer’s initial action. Although the scenario originated in a study of deadly force, it is relevant to all police-citizen encounters. Alpert and Dunham developed the most sophisticated analysis of the sequence of events in police-citizen encounters involving force, identifying 10 different steps in the entire sequence. As we have already noted, the Justice Department 2012 report on a pattern of excessive and unnecessary use of force against mentally ill persons in Portland emphasized that “properly applied, de-escalation begins long before the officer is faced with the choice of using force and will often make that decision unnecessary.”

Mike Gennaco, head of the Office of Independent Review in the Los Angeles Sheriff’s Department, explains how de-escalation increases officer control of situations. Many officers, he points out, argue that the resistant person controls the encounter. Gennaco explains that

A progressive policing model [of officer use of force] equips officers with strategies that do not allow subjects to dictate the response. It is the peace officer that must effectuate an effective plan of detention that avoids the use of deadly force if at all possible and still safely takes a dangerous individual into custody. The police should dictate the situation; not the subject, and should approach any tactical situation with that mindset.

The fluidity of police-citizen encounters, meanwhile, highlights the importance of communication between an officer and a citizen. Officers can de-escalate an encounter in several ways. One is by giving the citizen clear and firm direction as to what to do. Another is by not using language likely to insult or anger a citizen and cause him or her to exert a higher level of resistance. The Las Vegas Collaborative Reform Process report found that verbal commands to citizens were “insufficient” in about 15 percent of officer-involved shootings [OIS]. It concluded that explicit, clear, and direct commands produce higher levels of citizen compliance in all types of encounters, both violent and nonviolent. Additionally, in 21 percent of the OIS incidents, a flawed approach by the officer “failed to slow the momentum of the incident,” and allowed it to escalate to the point where deadly force was used. The report recommended that one quarter of training on defensive tactics should be devoted to de-escalation.
De-escalation can also contribute to a reduction in injuries to both citizens and police officers. A national survey of CED use found that citizens experienced injury in 48.9 percent of the incidents where an officer used hands-on physical force, and officers experienced injury in 21.2 percent of the incidents. Most of the injuries were minor, but they were injuries nonetheless. Injuries were also lower when officers used OC chemical spray. It follows that de-escalation techniques that can avoid any officer use of force can significantly reduce injuries to all parties.73

Vehicle Pursuits

High-speed vehicle pursuits are extremely dangerous events. The first study to gain national attention, by the Physicians for Automotive Safety, reported the alarming estimate that 20 percent of all pursuits ended in someone being killed, 50 percent ended in at least one serious injury, and 70 percent ended in an accident. Subsequent studies produced much lower estimates but nonetheless confirmed that pursuits are highly dangerous. Alpert and Dunham’s study of 952 pursuits in Dade County, Florida, in the mid-1980s found that 33 percent of all pursuits ended in an accident, and 17 percent ended with someone being injured (11 percent ended with an injury to the driver or passenger in the fleeing vehicle, and 2 percent ended with an injury to the police officer); seven of the 952 ended in a fatality.74 It should be noted, moreover, that Alpert and Dunham conducted their study after the Miami-Dade Police Department had instituted a restrictive pursuit policy.

As with deadly force, vehicle 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”).75 With the development of media technology (helicopters, more mobile cameras) high-speed pursuits became a part of the public image of policing, featured on the news ironically just as police departments have begun to limit them.

The new controls over high-speed pursuits follow the basic administrative rulemaking model. Written policies confine officer discretion by forbidding pursuits in certain situations (e.g., for suspected minor offenses) and structure it by directing officers to consider dangerous road conditions, school zones, or other risk factors before initiating a pursuit.76
Discretion is checked by giving supervisors and/or dispatchers authority to terminate a pursuit and requiring officers to complete pursuit reports.

Research on vehicle pursuit policies indicates that restrictive policies effectively reduce the number of pursuits, accidents, injuries, and deaths. Alpert found that a new restrictive policy in the Miami-Dade Police Department in 1992 reduced pursuits by 82 percent. Training also had a dramatic effect on officer attitudes. Prior to training, in St. Petersburg, Florida, 58 percent of officers would pursue in the case of a “low risk” traffic violation; following training, only 24 percent would pursue in such cases.77

Foot Pursuits

Until a few years ago, foot pursuits by officers were rarely discussed in terms of either officer safety, effectiveness, or legal liability. Today, they are recognized as highly dangerous events that need to be governed by detailed policies providing guidance for officers and encouraging restraint. Foot pursuits 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, they are not covered by a department’s vehicle pursuit policy. Nor did departments require reports on such events. The Special Counsel to the Los Angeles Sheriff’s Department in 2003, for example, 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.”78 Pursuing the person on foot is motivated by both an officer’s understandable desire to apprehend a fleeing suspect and also to assert the officer’s authority over what is regarded as “contempt of cop.”

A 2003 study by the LASD Special Counsel brought the issue of foot pursuits to public attention, finding them to be extremely dangerous. About 22 percent of all LASD officer-involved shooting cases between 1997 and 2002 (52 of 239 incidents) involved “shots fired by deputies during or at the conclusion of a foot pursuit.”79 One case study illustrated the problems and dangers with foot pursuits:

1. The deputy was all alone; 2. It was dark; 3. The stop was made in a high crime area; 4. Until the suspect ran, he had engaged in no illegal activity more serious than driving without a license and running a stop sign; 5. No one from the deputy’s station knew his whereabouts or that he was chasing a suspect on foot; 6. The suspect was taller and heavier than the deputy and
was on parole; 7. The deputy lost sight of the suspect in the darkness before starting to run after him; 8. The deputy evidently had no clear plan of action other than to chase the suspect; 9. The deputy apparently failed to follow his training, in which case he would have established contact with his station, resisted the impulse to run after the suspect, and would have coordinated a containment to isolate the suspect and prevent his escape. He should have summoned other deputies to the scene and established a plan to search for and capture the suspect that posed the minimum possible risk to the suspect’s or the deputies’ lives.80

Compounding the problem, the LASD had been 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.”81

In response to growing awareness of the dangers of foot pursuits, the IACP (International Association of Chiefs of Police) issued a model policy. (See Figure 3.2, which follows the administrative rulemaking model of confining and structuring officers’ discretion.)

Gender Bias Issues: Domestic Violence and Sexual Assaults

While use of force issues often involve questions of racial or ethnic bias, gender bias is also a matter of concern in terms of equity in policing. The most serious involve the failure of police officers to respond appropriately to incidents of domestic violence and sexual assault allegations.

Research established that the traditional (that is, pre-1970s) police response to domestic violence incidents involved a practice of not making arrests, even where there was evidence of a felonious assault of a woman. The no-arrest practice reflected the prevailing social attitude that domestic violence against a woman was a private matter and not a crime.82 In the 1970s, the women’s movement identified domestic violence as a serious problem and began challenging traditional police no-arrest practices. Several early lawsuits alleging denial of equal protection of the law to domestic violence victims resulted in court decisions requiring police department policies that mandated arrests where there was evidence of a felonious assault. The Oakland, California, police department was required in 1979 to adopt a policy directing that “arrest shall be presumed to be the most appropriate response in domestic violence cases which involve an alleged felony.”83 The Oakland suit and other cases, along with
Figure 3.2  IACP Model Policy on Foot Pursuits (*with emphases added*)

2. Unless there are exigent circumstances such as an immediate threat to
the safety of other officers or civilians, officers shall not engage in or
continue a foot pursuit under the following conditions:
   a. If the officer believes the *danger to pursuing officers or the public*
      outweighs the necessity for immediate apprehension.
   b. If the officer becomes aware of any unanticipated circumstances that
      substantially increases the *risk to public safety* inherent in the pursuit.
   c. While acting alone. If exigent circumstances warrant, the *lone officer
      shall keep the suspect in sight from a safe distance* and coordinating
      containment.
   d. *Into buildings, structures, confined spaces, or into wooded or
      otherwise isolated areas without sufficient backup and containment
      of the area.* The primary officer shall stand by, radio his or her
      location, and await the arrival of officers to establish a containment
      perimeter. At this point, incident shall be considered a barricaded or
      otherwise noncompliant suspect, and officers shall consider using
      specialized units such as SWAT, crisis response team, aerial
      support, or police canines.
   e. If the officer loses possession of his firearm.
   f. If the *suspect’s identity is established* or other information exists that
      allows for the suspect’s probable apprehension at a later time and
      there is no immediate threat to the public or police officers.
   g. If the suspect’s location is no longer known.


political activity by the new women’s movement, provoked a national
debate over the best approach to handling domestic violence incidents.
While some activists wanted *mandatory arrest* in all cases of alleged
domestic violence, a consensus developed in favor of an *arrest preferred*
policy that allowed the officer some discretion where there was no clear
evidence of a felonious assault.84

Although most departments today have a domestic violence policy,
some still lag behind in terms of policy and actual practice. A 2011 Justice
Department investigation of the New Orleans Police Department found
serious deficiencies in the department’s handling of domestic violence
incidents. Both the department’s main policy and a separate Domestic
Violence Unit’s manual were vague and inadequate with regard to how
911 operators should take calls, procedures for preliminary investigations of crime scenes, the identification and documentation of victim injuries, and procedures for follow-up investigations. The Domestic Violence Unit, moreover, lacked sufficient staff, with only three detectives attempting to handle the 6,200 domestic violence calls received in the first half of 2010. Incident reports, moreover, did not indicate follow-up interviews of witnesses. Most of the follow-up work was done by the prosecution unit in the District Attorney’s office. The DOJ report concluded that the department’s “involvement in investigating a case appears to end at the point of arrest.”

A subsequent DOJ consent decree for the New Orleans Police Department mandated a series of reforms, including “clear and detailed guidelines” for each stage in the handling of domestic violence incidents, prioritizing victim safety, discouraging dual arrest of both alleged victim and offender, requiring custodial arrest for violating an outstanding protection order, developing a working relationship with the New Orleans Family Justice Center, assigning “sufficient staff” to the Domestic Violence Unit, and additional training for all officers related to their specific duties.

The Justice Department investigation of the New Orleans Police Department’s handling of sexual assault cases closely paralleled its findings related to domestic violence. The department misclassified many rape and attempted rape cases, with the result that they were not investigated; among those cases that were investigated there were patterns of inadequate documentation in reports, including failure to locate and interview witnesses, and there was heavy influence of “stereotypical assumptions and judgments about sex crimes and victims of sex crimes.” The department’s policies on sexual assaults were “outdated and in need of revision,” and supervision was inadequate. The resulting consent decree mandated a set of reforms designed to overcome these deficiencies.

The mandated reforms in the consent decree dramatize a number of issues related to a comprehensive accountability process. It demonstrates that simply having a written policy and even a special unit for a particular issue is not sufficient. Departments need to commit sufficient resources to be able to carry out its mission. Finally, for many issues a department’s effectiveness is greatly enhanced by developing partnerships with social service agencies. These issues include police responses to mentally disturbed persons (see below) and homeless people.
Deployment of Canines

Police use of canines has a long history of controversy with the African American community. Police dogs evoke memories of the 1960s civil rights movement, particularly the famous newsreel footage of dogs attacking civil rights demonstrators in Birmingham, Alabama, in 1963. The more recent problem has been police departments maintaining canine units with either inadequate policies or no formal policies at all governing their deployment.

The Department of Justice 2001 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,” and should be incorporated into a department’s general use of force policy. In Philadelphia in the 1970s, “several hundred police canines were trained to bite first and bark second.” 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.”

The case of canines in the Los Angeles Sheriff’s Department illustrates both the impact of a new restrictive policy and the difficulties in maintaining the positive effects that were initially achieved. The Special Counsel to the LASD examined the use of canines in 11 different reports over 11 years. These reports provide an illuminating picture of how a policy does not remain fixed, but changes in response to developing circumstances, some of which include lobbying by department stakeholders.

The issue of canine policy in the LASD arose with the 1992 Kolts Report, which found many lawsuits arising from canine-involved incidents. The Special Counsel, created as a result of the Kolts Report, immediately took up the issue and in 1993 recommended changes in the department’s canine policy. Perhaps the most important change involved substituting “find and bark” for the existing “find and bite” policy. As a result of this and other changes, the number of canine deployments dropped by almost half from 1991 to 2001, and the average number of bites over three-year periods dropped by two-thirds (from about 50 to about 20 per year). One change was an end to deployment of canines regarding auto theft suspects. The department’s data indicated that many...
of these cases involved teenage joy rides, where there was no serious danger requiring a canine. The ban eliminated about 25 percent of all canine deployments.91

After the initial successes in reducing canine deployments and bites, however, canine unit handlers and canine trainers lobbied successfully for loosening some of the new restrictions. The Special Counsel reported that the department’s “guard and bark” policy had become indistinguishable from “find and bite.” By 2004 the number of deployments and bites was rising, although the Special Counsel was unable to identify any specific cause. It continued the dialogue with the LASD over canine deployments, recommending consideration of alternative technologies such as clear-out gas to remove people from buildings or hiding places, pole cameras to permit viewing around corners, and night-vision technologies.92

The story of the continuing struggle over of the LASD canine policy has a number of important lessons that are relevant to other critical incidents. First, the initial successes indicate that a properly designed restrictive policy can successfully reduce potentially harmful police activities. Second, even good policies can and do change over time. In this instance, the unit officers affected by new restrictions fought back and successfully won revisions loosening some of the new restrictions. With various interests and perspectives at stake, we should never assume that any policy remains the same. Third, the Special Counsel played a particularly important role in continuously monitoring the changes in both policy and practice over time. It helped to bring about the initial policy changes, analyzed department data on deployments and bites, monitored subsequent changes in policy and their impact, and was an active player in the ongoing debate over policy. The role of external review is discussed in greater detail in Chapter Six.

As a final note, the story of LASD canine policy illustrates the importance of systematic data in the new police accountability. The incident reports, which provided data on deployments, bites, bite ratios, and the racial and ethnic background of people bitten, tracked the department’s performance over time and allowed for informed discussions over policy and policy changes.

Responding to People With Mental Disorders

Responding to people with mental health issues is a routine part of policing. Such incidents sometimes require the use of force. Persons with
mental health problems may pose a threat to themselves or other persons, including police officers. In some cases the person has a weapon or object that could cause harm. The problem of police encounters with mentally ill persons has been accentuated in recent years because of cuts in social services for the mentally ill, leaving people without proper treatment. The Justice Department investigation of the Portland, Oregon, police department found “serious deficiencies in the mental health system,” which resulted in increased burdens on law enforcement agencies. One veteran Portland police officer commented that over the course of his career the number of encounters with mentally ill people had gone from “a couple of times a month to a couple of times a day.”

When police officers do use force in mental illness encounters, department force incident investigations often focus narrowly on the final moments of the encounter. At this point, the mentally ill person with a weapon probably poses a threat to the officer’s safety and the officer’s force was justified. This is true of many use of force incidents not involving mentally ill people. The best practice regarding encounters with mentally ill persons emphasizes examining the full scenario of the encounter to determine whether the officer could have taken some action at an earlier stage that would have de-escalated the encounter and avoided any serious use of force by the officer.

The Justice Department investigation of the Portland, Oregon, police department found a number of serious “deficiencies in policy, training, and supervision” with regard to the handling of mentally ill persons. It concluded that officers “often do not adequately consider a person’s mental state before using force and that there is instead a pattern of responding inappropriately to persons in mental health crisis, resulting in a practice of excessive use of force, including deadly force, against them.” It particularly noted the inappropriate use of CEDs in response to mentally ill persons. The report noted both “the absence of officers specially trained in and proficient at responding to mental health crisis,” and “the lack of strategic disengagement protocols involving mental health providers.” De-escalation and disengagement, which we discussed earlier in this chapter, are particularly relevant with regard to police-citizen encounters involving mental health issues.

The most widely used 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. The Justice Department report on Portland found that while the department trained all officers in crisis intervention, it did not have a specialized CIT of officers “who have expressed a desire to specialize in crisis intervention and have demonstrated a proficiency at responding to individuals in mental health crisis.” The Justice Department argued that mere academy training was inadequate and that “expertise requires vast field experience” acquired over time in real-life situations. And paralleling the recommendation in the report on gender issues in the New Orleans Police Department (see above, pp. 86–87), it noted a lack of engagement with mental health services providers.

The case of police handling of mentally ill people in Portland illustrates an important point about critical incident policies. In practice, policies are not isolated issues, but in most cases implicate other policies. Police handling of mentally ill people involved the department’s policies on use of force and CEDs in particular, and raised broader policy questions related to the creation and use of a special unit and relations with community social service providers.

Ensuring Bias-Free Policing

Allegations of discrimination based on race and ethnicity are recurring police controversies in every type of police-citizen encounter. Indeed, race and ethnicity are a central issue in the entire criminal justice system. The problem of eliminating discrimination in policing is complicated, however, by the complex nature of police-citizen encounters, in which many factors are often at work simultaneously that make it difficult to conclude that race was the sole or even the primary factor in, for example, a pedestrian stop or a traffic stop. Police officers can easily claim that a car was weaving or that a pedestrian made a furtive movement to justify a stop. In such circumstances, it is difficult if not impossible to say for certain that race or ethnicity was the sole reason for the stop.

The debate over the legitimate use of race or ethnicity in policing has resulted in a consensus of opinion that is well stated in a model policy by the Police Executive Research Forum (Figure 3.3). Officers may not use race or ethnicity as the sole factor in any enforcement decision, but they may use it as one of several factors related to an individual suspect. Following the administrative rulemaking approach, the policy confines
discretion by forbidding the use of race or ethnicity as the exclusive factor, and then *structures* discretion by describing the circumstances under which race and ethnicity may be used. Thus, police officers may not stop all young African American men in a neighborhood but may stop a young African American man who, as described by witnesses, is tall, thin, and bald. The use of race is appropriate here because it is linked to other characteristics. Similarly, police officers may not stop all young white men in a neighborhood, but may stop a middle-aged white man who was short and overweight, as described by witnesses.

The Washington, D.C., police department adopted a policy on Unbiased Policing based on the PERF model, which includes a broad list of categories that officers may not use as the sole criterion for arrest (*race, color, ethnicity, national origin, religion, age, gender, gender identity, sexual orientation, family responsibilities, disability, educational level, political affiliation, source of income, and place of residence or business of an individual*), and states that an officer may use any one of them only “in combination with other identifying factors when the law enforcement member is seeking to apprehend a specific suspect.”

Complicating the issue of race and ethnicity in policing is the fact that bias can be unconscious as well as conscious. That is, a person may act in a racially biased way without being aware of the influence of race or ethnicity when it is buried in deeply held assumptions and stereotypes. Social

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**Figure 3.3 Model Policy on the Use of Race or Ethnicity in Police Work**

> Except as provided below, officers shall not consider race/ethnicity in establishing either reasonable suspicion or probable cause. Similarly, except as provided below, officers shall not consider race/ethnicity in deciding to initiate even those nonconsensual encounters that do not amount to legal detentions or to request consent to search.

> Officers may take into account the reported race or ethnicity of a specific suspect or suspects based on trustworthy, locally relevant information that links a person or persons of a specific race/ethnicity to a particular unlawful incident(s).

> Race/ethnicity can never be used as the sole basis for probable cause or reasonable suspicion.

science research has explored the phenomenon of unconscious racism, and there is now an area of social psychology known as the “science of bias.” The Fair and Impartial Policing (FAIP) project explains that “even well-intentioned humans (and thus, officers) manifest biases that can impact on their perceptions and behavior.” These biases, moreover, can express themselves below the level of consciousness. “Implicit” or “unconscious” bias affects what people think and do even among “people who consciously hold non-prejudiced attitudes.” An officer, for example, might perceive a potential crime when he or she “observes two young Hispanic males driving in an all-Caucasian neighborhood or lead an officer to be ‘under-vigilant’ with a female subject because he associates crime and violence with males.” 100

Many people have trouble accepting the idea of unconscious or implicit bias. The science of bias research, however, offers persuasive research evidence that it exists and affects perceptions and decisions. One study first collected self-reported beliefs and attitudes about African American suspects compared to white suspects among a group of police officers and then, using a computer simulation, examined their decisions to shoot or not shoot criminal suspects. Officers with negative attitudes toward African American suspects and negative beliefs about the alleged criminality of African Americans were more likely to shoot unarmed African American suspects than officers with more positive attitudes. 101 Another study used simulations to compare police officers to community members with regard to their decisions to shoot or not shoot in simulations involving African American and white armed and unarmed targets. Both the police and community members exhibited racial bias with respect to how quickly they made a decision to shoot. Police officers were better able to distinguish between armed and unarmed persons, and community members were more likely to shoot African Americans than whites. The study’s authors linked the more positive officer results to high-quality police use-of-force training, which the community member suspects in the study had not had. 102

More police departments are incorporating the issue of unconscious bias into their training, in some cases contracting with FAIP. The Las Vegas Collaborative Reform report, after finding a pattern of potential racial bias in officer-involved shootings, recommended fair and impartial policing training for the department. 103 The FAIP program offers a six-hour training program for recruit and patrol officers that is designed to (a) “Understand that even well-intentioned people have biases”;
(b) “Understand how implicit biases impact on what we perceive/see and can (unless prevented) impact on what we do”; (c) “Understand that fair and impartial policing leads to effective policing”; and (d) help officers “(1) recognize his/her conscious and implicit biases, and (2) implement ‘controlled’ (unbiased) behavioral responses.”

The principal significance of training on unconscious bias for the issues in this book is that formal policies on use of force, foot pursuit, and the handling of mentally ill persons, to name only three, may properly address the objective conditions of a police-citizen encounter but not take into account how unconscious bias may at times be the determining factor in an officer’s action. That is, they may be more likely to perceive a threat from the African American person compared with the white person, and as a result be more likely to use deadly force, a less lethal weapon, or physical force.

Additional Critical Incident Issues

Failure to Report Incidents and Incomplete Reports

Critical incidents are a crucial element of police accountability tools, but if officers fail to complete required reports or do not provide complete and accurate data the entire accountability system begins to collapse. An early intervention system (Chapter Five), for example, is useless without timely and accurate incident reports. There is evidence that officers do not always file required reports. The Justice Department’s 2011 investigation of the Seattle Police Department found “multiple cases” where officers failed to report force incidents. There were also incidents where a second officer used force but was not named in the primary officer’s report. A related problem is the use of what the DOJ called “patterned and non-descriptive language” in force reports. Officers, for example, reported that people “struggled,” without specifying the exact nature and seriousness of their resistance. In New York City, more than half of stop and frisk reports said that the stop was prompted by “furtive movements,” without describing the exact movements and why they justified a stop and frisk. In short, a reporting requirement is an important advance in police accountability but it is not always sufficient in and of itself.

Ensuring full compliance with critical incident reporting requirements is a major challenge for which there is no easy solution. Much
depends on the culture of a police department. Ideally, officers would feel a professional commitment to file required reports; in a less than ideal organization, they would file reports out of fear of being reported by other officers. Close supervision and enforcement of department rules is also likely to ensure compliance.

**Officers in Critical Incidents**

A long-neglected issue in policing involves how departments respond to officers involved in shootings and other critical incidents. Typically, officers remained on the job in their regular assignment. This approach reflected two aspects of traditional police culture. The first is that officer-involved shootings were simply not considered that important. The second is that in the traditional macho culture of policing, no one wanted to acknowledge the emotional impact of a shooting on an officer who did the shooting and take steps to reduce an officer’s stress level.

Police practices have changed dramatically on this subject. Officers involved in officer-involved shooting incidents and other critical incidents where discipline may result are typically placed on administrative assignment pending the outcome of the investigation of the incident. It recognizes that sending an officer back onto the streets is unfair to the officer and creates potential risks to the public should the incident affect his or her conduct in subsequent contacts with the public. Additionally, an officer is under investigation for an action that might result in departmental or even possible criminal charges and should not be on duty until the investigation of the incident is concluded.

The Phoenix Police Department’s Serious Incident Policy represents an emerging best practice in this area. A supervisor “will accompany the involved employee away from the scene to a quiet place . . . as soon as possible.” When more than one officer is involved in an incident, they are to be separated “to avoid common discussion.” Also, “When practical, every effort will be made to provide one-on-one support” to the involved officers. Finally, access to the officers is restricted to a designated supervisor, other department officials involved in investigating the incident, family members, and a designated officer union official. Officers are not to discuss the incident with other officers involved in it. The Phoenix policy simply respects the humanity of officers involved in critical incidents.
A related issued involves the integrity of incident investigations, especially officer-involved shootings. The practice of officers talking among each other immediately after an incident in order to create an agreed-upon version of the incident and to cover for violations of law or policy has been an unfortunate tradition in American policing. The Los Angeles Police Department was required by the 2001 consent decree to develop a post-incident “no huddling” policy for this reason.\textsuperscript{108}

**Ensuring Consistency Among Policies**

Critical incident policies, along with all other department policies, are collected in the policy and procedure manual (which is known by various names). The manual itself raises a number of important issues requiring close administrative attention.

The first issue is that to be useful, a policy and procedure manual needs to be organized on a rational basis so that officers and others can quickly find a policy they need to consult. This simple proposition is not as easy to achieve as one might think. In the Kansas City (Missouri) Police Department, policies are spread among 12 different categories: Procedural Instructions, Administrative Bureau Memorandums, Board Resolutions, Chief’s Memorandums, Department Memorandums, Executive Services Bureau Memorandums, Investigative Bureau Memorandums, Legal Bulletins, Patrol Bureau Memorandums, Professional Development and Research Memorandums, Special Orders, and finally a Personnel and Policy Benefit Manual.\textsuperscript{109} An alphabetical index helps one find a particular policy, but overall the body of policies and procedures is disorganized and incoherent.

A second issue is that many policies implicate several other policies. A policy on arrest procedures, for example, may include a section on the use of force when making an arrest. It is a best practice for policy manuals to cross-reference all the relevant policies. Departments typically revise a policy in a crisis atmosphere without also updating the other related policies. The resulting lack of consistency between policies creates confusion for officers. The Justice Department, for example, found in 2003 that while one policy on use of force in the Miami Police Department 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. The DOJ concluded that “The MPD . . . fails to provide officers with clear guidance on what constitutes a reasonable use of force.”\textsuperscript{110}
Conclusion

The American police have made enormous progress in developing meaningful controls over officer conduct in critical incidents where the lives, liberty, and safety of citizens are potentially at risk. That progress is comparatively recent, however. There are many people today who were adults and even police officers at a time when police departments provided no guidance on when their officers could use deadly force. There has been considerable progress in recent years over emerging issues such as foot pursuits and the value of de-escalation as a tactic for minimizing use of force. The administrative rulemaking process of confining, structuring, and checking officer discretion, as described in this chapter, is firmly established in American policing and provides a framework for responding to future issues as they may arise.

It is worth noting that the experience with critical incident policies over the last 40 years offers an optimistic view of the capacity to change and improve policing. It is an old cliché that the American police are resistant to change, and this view is firmly held by some critics of the police. The evidence does not support this interpretation. Change has been positive in two respects. First, departments have adopted a wide range of policies covering critical incidents. To be sure, they typically had to be dragged kicking and screaming into the future through community protests, media exposes, and litigation. But change they did. Second, there is good evidence that officers generally, although certainly not always, conform to new restrictive policies, albeit often reluctantly and not completely, as each week’s media headlines remind us. Nonetheless, the evidence clearly indicates that American policing is extremely fluid and constantly changing. This conclusion should encourage efforts to make still more changes in the near future.

Despite this progress, however, a number of significant challenges remain. The first challenge is to continue the expansion of the list of critical incidents that need to be covered by a detailed policy and articulated with existing policies. As we argued at the beginning of this chapter, no one knows what tomorrow’s list of critical incidents might look like. Recent experience teaches us that events continue to cause us to look anew at familiar events and assess them from a different perspective. Just as a few years ago not many people thought foot pursuits were dangerous events that needed to be governed by strict policies, so additional issues will arise in the near future.
Second, we have learned that even with respect to one issue, reassessment and revision is a continuous process. Policies on use of force and the handling of people with mental health issues have changed over time. Consequently, it is safe to assume that these and other policies will also change, in response to new perspectives and new evidence on the implementation of existing policies.

Third, the search for new and better policies requires a police department commitment to becoming a “learning organization,” as described in Chapter One. Individual departments and the law enforcement profession as a whole need to develop institutionalized procedures for developing and disseminating best practices.

Notes

1 The classic discussion, which is still relevant today, is Egon Bittner, “The Capacity to Use Force as the Core of the Police Role,” in Aspects of Police Work (Boston: Northeastern University Press, 1990), 120–32.
2 William A. Geller and Michael S. Scott, Deadly Force: What We Know (pp. 248–57), discusses the history of the “long march” toward the current defense of life rule.
3 Geller and Scott, Deadly Force: What We Know (pp. 248–57), discusses the history of the “long march” toward the current defense of life rule.
5 Department of Justice, Principles for Promoting Police Integrity (Washington, DC: Department of Justice, 2001).
10 Fyfe, “Administrative Interventions on Police Shooting Discretion.”
11 Catherine H. Milton et al., Police Use of Deadly Force (Washington, DC: The
Finding 3.1,136.
13 Fyfe, “Administrative Interventions on Police Shooting Discretions.” The
most comprehensive review of the deadly force policy is Geller and Scott,
Deadly Force: What We Know.
14 Geller and Scott, Deadly Force, What We Know. Bureau of Justice Statistics,
Policing and Homicide, 1976–98: Justifiable Homicide by Police, Police Officers
www.ncjrs.org, NCJ 180987. Jerry R. Sparger and David J. Giacopassi,
“Memphis Revisited: A Reexamination of Police Shootings After the
15 James J. Fyfe, “Police Use of Deadly Force: Research and Reform,” Justice
17 Philadelphia Police Department, Integrity and Accountability Office, Use
of Force (Philadelphia: Philadelphia Police Department, July 1999), 10. The
Office has since been abolished.
18 Paul Jacobs, Prelude to Riot: A View of Urban America from the Bottom (New
21 Samuel Walker, Taming the System: The Control of Discretion in Criminal
22 Davis, Police Discretion, 140.
23 Lawrence W. Sherman, Janell D. Schmidt, and Dennis P. Rogan, Policing
24 Davis, Police Discretion, 145.
25 Geoffrey P. Alpert and Roger G. Dunham, Police Pursuit Driving: Controlling
26 Police Assessment Resource Center, The Portland Police Bureau: Officer-
Involved Shootings and In-Custody Deaths (Los Angeles: Police Assessment
Resource Center, 2003).
27 Samuel Walker, Early Intervention Systems for Law Enforcement Agencies: A
Planning and Management Guide (Washington, DC: Department of
Justice, 2003).
28 Robin Shepard Engel, How Police Supervisory Styles Influence Patrol Officer
Behavior (Washington, DC: Department of Justice, 2003).
29 Metropolitan Police Department of Washington, DC, GO-RAR-901.07, Use of Force, October 7, 2002.


31 Ibid.

32 San Jose Police Department, Duty Manual, Policy L.2100.


37 Washington, DC, Metropolitan Police Department, General Order RAR – 901.07, October 7, 2002.

38 United States v. City of Cincinnati, Memorandum of Agreement (April 12, 2002).


41 By one estimate, Taser, Inc. controls over 90 percent of the American CED law enforcement market.


44 See, for example, Phoenix Police Department, Operations Order 1.5, Use of Force, 25–9.


47 Alpert and Dunham, “Policy and Training Recommendations Related to Police Use of CEDs.”

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49 Department of Justice, *Principles for Promoting Police Integrity*, 5–6.
52 Metropolitan Police Department of the District of Columbia, General Order RAR 901.07, “Use of Force.”
60 Alpert and Dunham, *Understanding Police Use of Force*.
63 Kansas City Police Department, Procedural Instruction C 01-3, “Use of Force.” Available at http://www.kcpd.org.
65 Alpert and Dunham, *Understanding Police Use of Force*, 122.
68 Alpert and Dunham, *Understanding Police Use of Force*, 87–123.
Stewart et al., *Collaborative Reform Process*, 44–51.

Stewart et al., *Collaborative Reform Process*, 79.

Alpert and Dunham, “Policy and Training Recommendations Related to Police Use of CEDs.”

Geoffrey P. Alpert and Roger Dunham, *Police Pursuit Driving: Controlling Responses to Emergency Situations*.

Lopez, “Disorderly (mis)Conduct.”

Alpert and Dunham, *Police Pursuit Driving: Controlling Responses to Emergency Situations*.


Ibid., 5.

Ibid., 10.

Ibid., 7.


Sherman et al., *Policing Domestic Violence: Experiments and Dilemmas*.


United States v. City of New Orleans, *Consent Decree* (July 24, 2012), 58–9. After the Consent Decree was signed, the Mayor of New Orleans changed his mind and asked to withdraw from the Decree but the motion was denied.


Department of Justice, *Principles for Promoting Police Integrity*, 4.


Department of Justice, *Investigation of the Portland Police Bureau*, 10, 12.
CHAPTER 3  Critical Incident Policies  103

98 Fridell et al., *Racially Biased Policing*.
99 Metropolitan Police Department of Washington, DC, GS-OPS-304.15, Unbiased Policing (March 19, 2007).
100 http://fairandimpartialpolicing.com/
104 http://fairandimpartialpolicing.com/