



WHAT DO OFFICERS AND AGENCIES NEED TO KNOW?

The preservation of human life is the highest priority in policing. Police authority to use force, including deadly force, is subject to constitutional limitations. In a recent Fourth Amendment case, *Barnes v. Felix*, the Supreme Court reiterated that evaluating the constitutionality of an officer's uses of force requires reviewing the totality of the circumstances, including events leading up to the ultimate use of force.

POLICING PROTESTS AND DEMONSTRATIONS

First Amendment Considerations

The First Amendment provides strong protections for free speech and expressive conduct, and for the right to peacefully assemble.¹ The government generally cannot restrict free speech, including expressive conduct such as demonstrations, by either preventing it before the fact (called a "prior restraint") or responding with coercive authority after the fact (e.g., by making an arrest). Like all rights, however, the First Amendment freedom of speech is subject to a number of limitations.

The government may impose appropriate prior restraints on protests and demonstrations. The First Amendment generally allows state or local governments to adopt content- and viewpoint-neutral licensing or permitting requirements and to impose reasonable limitations on the time, place, and manner of the event.

Beyond those basic limitations, the scope of governmental authority to regulate speech depends on the location in which the event occurs. The government has less authority to restrict speech in locations that are broadly open to the public, such as public parks. The government has relatively more authority in those that have been opened to the public for specific purposes, such as public school buildings that are made available for community meetings. In the latter locations, but not the former, the government may be able to restrict the topics or subject matter of the event or exclude certain speakers based on the purpose of the forum.

For example, the government could open a public school auditorium, but limit the subject matter to educational topics or limit the speakers to individuals affiliated with the school.

Any governmental restrictions must be viewpoint-neutral; that is, governmental restriction must not be based on the perspective being expressed. Agencies and officers should recognize that their role is not to evaluate the purpose of a demonstration or the viewpoints being expressed. Instead, the police mission is to uphold the law in a way that respects constitutional rights, preserves public safety, and maintains public trust.

For more about governmental authority to regulate speech, including protests and demonstrations, in different locations, see our companion bulletin, *First Amendment Freedom of Speech: Location-Based Restrictions*.

Event Management

Preparing for mass events

Preparations for a protest or demonstration begin well before any event is even planned, by building trust and establishing lines of communication with an array of community stakeholders. As with many other aspects of policing, waiting until an incident occurs to begin thinking about how to respond can set the stage for failure. During the planning stages of an event—and well before the event begins—agencies should treat planning as a joint venture with organizers rather than as an adversarial exercise. Commanders should assign a small, clearly-identified “Liaison Team” (or “Dialogue Team”)—typically a small group of officers in regular uniform—whose sole mission is to maintain two-way communication with event participants (e.g., protest organizers) from first contact through and after the culmination of the event. Research shows that such teams give commanders real-time, ground-truth intelligence, correct misperceptions that might otherwise trigger premature tactical moves, and, crucially, signal to the crowd that police intend to facilitate lawful protest, not suppress it.

Police agencies, working through the Liaison Team, should work with event organizers by engaging in route walks, publishing event maps, and discussing ingress, egress, medical posts, and “quiet zones” to further prevent and reduce rumor and distrust.³ Advance planning that addresses crowd flow, amenities, and signage stabilizes group emotions during the event, reducing the likelihood of confrontation. Advance planning should

POLICE USES OF FORCE AND THE FOURTH AMENDMENT

The Fourth Amendment protects the right to be free from unreasonable searches and seizures, including most police uses of force. In *Graham v. Connor*, the seminal use-of-force case, the Supreme Court wrote, “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of ‘the nature and quality of the intrusion on the individual’s Fourth Amendment interests’ against the countervailing governmental interests at stake.”

The constitutional question, the Court held, is whether the force was “objectively reasonable.”²

also include logistics for officer wellness, including the provision of hydration and food, locating or supplying restroom facilities,



and ensuring sufficient operational staffing (e.g., having sufficient officers staged to regularly rotate officers off of a protest line)

During an Event

Contrary to popular belief, crowds are not irrational; instead, they respond predictably to perceived fairness, clarity, and respect. Police agencies can take advantage of that by ensuring that police actions are clear and perceived as fair. Once an event is under way, agencies can use transparent, continuous messaging to maintain legitimacy and reduce the likelihood of escalation.

Communicate. Liaison Team officers, line officers, and public statements provided via loudspeaker and social-media channels should explain why a particular order is given (e.g., “Move to the sidewalks so we can respond to a medical incident.”).⁴ Crowd-psychology research likewise shows that uncertainty and anonymity—rather than mere group numbers—erode selfcontrol; clear information therefore helps individuals behave in a socially acceptable way rather than losing their inhibitions to a mob mentality.⁵ A study of thirty protests in two different countries found that, across all incidents, violence occurred only after protester-police communication was interrupted or collapsed.⁶

Spatial Management. Incident commands and officers should ensure that they establish clear boundaries over location. Research on protests has found that peaceful protests almost invariably degenerate into confrontation when either side—police, protestors, or counter-protestors—unexpectedly intrudes into space claimed by the other.⁷ Across more than thirty incidents, every violent outbreak was preceded by such an incursion, whereas every peaceful event maintained visible boundaries.⁸ These boundaries can be low-profile, such as bike lines, cones, or loose officer lines; the goal is to establish obvious boundaries that are porous enough to avoid giving demonstrators the impression of being under siege. Officers therefore should take note of and protect (that is, avoid infringing on) protester space, and ensure that counterprotestors similarly avoid infringement, while ensuring that exit routes remain open.

Avoid Escalation. Incident commanders should keep in mind that both equipment and police posture escalate an event. Research similarly links “escalation signals”—protesters donning masks, officers donning helmets—to emotional “waves” that precipitate disorder.⁹ For example, having officers appear in or put on riot gear, can create anxiety and communicate the expectation of violence.¹⁰ For that reason, the best approach is often to stage hard gear out of sight but within rapid reach, deploying it only after the Liaison Team has made public announcements explaining to the crowd the reason, the intended duration, and the geographic limits of the escalated posture. Research across dozens of crowd events found that when escalation signals were counter-balanced by explicit explanation (e.g., officers explaining why they were putting on helmets), tensions remained low.¹¹

Command and Control. Good incident management is essential. A clear command hierarchy, linked by interoperable radio traffic and fed by Liaison Team intelligence, was found in one study to enable thirty-minute face-to-face “triage cycles” that prevented the perception-action gaps that can lead to police over-reaction.¹² A poorly managed incident, however, with inadequate communication between

front-line officers and incident command contributes to officer anxiety and can increase the likelihood of over-reaction.¹³

Taking Enforcement Action

Police agencies are legally empowered to enforce content- and viewpoint-neutral, reasonable time, place, and manner restrictions. For example, in *Ross v. Early*, the Fourth Circuit upheld the arrest of a protestor who refused to remain in a designated protest area, violating permit conditions and creating traffic and safety risks. The court found that restricting protestors to a designated zone was a permissible time, place, and manner regulation because it was content-neutral, narrowly tailored to serve a significant government interest, and left open ample alternative channels of communication.¹⁴ For that reason, protesting outside of the designated zone was unlawful and could result in arrest.

However, incident commanders and officers should keep in mind that arrests can escalate the overall tone of an event. In most protests and demonstrations, the crowd outnumbers the police officers (often to a substantial degree), making the crowd's perceptions an important officer safety consideration. It is often preferable for Liaison Team to attempt to intervene without taking enforcement action, either by communicating directly with the individual(s) or with other demonstrators who can encourage the individual to moderate their behavior. When enforcement action is unavoidable, officers should keep in mind the spatial management considerations discussed above; bringing an individual into the police "zone" for arrest is typically less provocative than physically penetrating the protestor "zone" to do so. Designated arrest teams should avoid, to the extent possible, forward momentum that pushes into what the crowd perceives as its space.

Arrests and the use of force should also be highly targeted. "Kettle-style" mass containment or indiscriminate use of less-lethal munitions reduce peaceful participants' ability or willingness to self-regulate, whereas isolating and surgically removing violent or destructive actors leaves the majority confident that police actions are fair.¹⁵

While the First Amendment provides strong protections for peaceful protests and demonstrations,¹⁶ an event that begins lawfully loses its constitutional protection, and may be lawfully dispersed, if participants create a real risk of inciting imminent lawlessness¹⁷ or engage in violent or destructive conduct.¹⁸ Importantly, the government's authority to disperse a protest must still comply with constitutional limitations and must not be based on the content of the speech or the viewpoint being expressed. Additionally, officers and agencies must distinguish between unlawful acts by protests and unlawful acts by individuals responding to the protestors. In *Gregory v. Chicago*, the Supreme Court reversed the convictions of civil rights protestors who were arrested after hostile onlookers began causing a disturbance at a march. The court held that the officer lacked the authority to disperse the protestors because it was the onlookers, not the protesters, who engaged in or threatened a breach of peace.¹⁹ This means a dispersal order must not be based solely on anticipated or actual hostile audience reaction.

To the extent possible, officers must also distinguish between protestors engaging in protected expressive activity and individuals committing criminal acts. Blanket dispersal orders may be challenged as overbroad if they include individuals not participating in the unlawful conduct, and are only appropriate when it is not feasible to either distinguish between lawful protestors and individuals engaged in unlawful acts or to address unlawful acts without affecting lawful protestors.

After an Event

Officers and supervisors should ensure that all relevant aspects of the incident, including any enforcement actions such as dispersal orders, arrests, and uses of force, are thoroughly documented, and that relevant body-worn camera footage is appropriately tagged. Documentation after a large-scale event can be challenging, but a detailed record of officer observations, actions, and justifications can be essential to maintain public trust, to support any prosecutions, to support an after-action review, and in the event of future civil litigation.

The police-community relationship does not end when the last protestor leaves. Immediate joint debriefings that include officer and external stakeholders (potentially including event organizers), prompt release of body-worn video from critical incidents, and a published after-action report within a reasonably short period of time (e.g., thirty days) reinforce community perceptions of fairness and build the trust that the agency will rely on during future events.²⁰

Agencies should also take advantage of the opportunity to debrief and assess what worked well and what issues—e.g., communications and the flow of information, tactics, and equipment—could be improved in future events.

Implications for Agencies and Officers

Protests and demonstrations rarely turn violent or destructive, and there are contributing factors that can predictably improve outcomes. Agencies that institutionalize Liaison Teams, use good spatial management, communicate well and transparently, stage equipment for graduated response, and enforce the law surgically rather than indiscriminately consistently see fewer injuries, fewer arrests, and lower civil-liability exposure—all while better protecting the constitutional rights they are sworn to uphold. Conversely, poor outcomes become substantially more likely when communication collapses, when either side breaches the other's space, or when officers escalate, even appropriately, without explanation.

The research findings and legal principles outlined in this bulletin converge on a single, overarching prescription: agencies should view demonstrations through the lens of facilitation rather than control. Doing so reframes crowd events from security problems to constitutional opportunities, guiding policy toward cooperative planning, clearly bounded enforcement authority, and transparent post-event review.

Agencies should:

- Memorialize in policy that the primary mission during protests is to enable lawful expression while safeguarding public safety, giving officers an anchor for discretionary decisions and offering the public a clear standard by which to judge agency and officer performance;
- Explicitly identify Liaison Teams in every event operations plan. Liaison Team members are tasked with simultaneously providing incident commanders with real-time intelligence and communicating to event organizers and crowds that the agency is there to facilitate, not suppress, free speech. Liaison Team members will be most effective with training in negotiation, cultural competence, and crowd psychology;
- Use pre-event route walks, maps, and low-profile but visible clearly boundaries to help all parties understand and operate within the event space;
- Stage riot gear and other equipment that may be viewed as an escalation nearby, but out of visible range;
- Adopt clear policies or training that articulate the evidentiary threshold for declaring an unlawful assembly, detail the notification methods (audible warnings, signage, social media), and require documentation of the objective facts that triggered the order; and
- Formalize an after-action review process that can be used to identify and apply lessons learned.

Officers should:

- Familiarize themselves with any applicable permit conditions and time, place, and manner restrictions, keeping in mind that if protesters are complying with permit conditions, their actions are likely protected even if their behavior would otherwise be criminal (e.g., walking in a roadway).
- Focus enforcement and dispersal efforts on specific individuals who have engaged in, or who are engaging, in unlawful conduct, ideally For More Information Visit our website. See our Advisory Board. Join our listserv. 8 without negatively impacting individuals who are lawfully exercising their free speech rights. Unlawful conduct should be identified and articulated in later documentation. Video, including body-worn camera footage, should be used to document police activity whenever possible;
- When issuing orders or taking action, explain the underlying justification (how the order or action advances public safety);
- Give any dispersal orders loudly and clearly, using amplification as needed to communicate with a crowd. The order should inform the crowd of the situation (e.g., that it has been declared an unlawful gathering), of what to do (e.g., to immediately disperse), of how to comply (e.g., which route to use to exit the area), and about the consequences of noncompliance (e.g., “You will be arrested.”). The order should be repeated multiple times for a reasonable time frame, and both the orders and crowd response should be documented on video. After giving a dispersal order, provide adequate time for compliance

before taking enforcement action. Avoid targeting protestors who appear to be reasonably trying to comply with the order and those who legitimately may not be aware of the order; and

- Thoroughly document any enforcement actions (e.g., dispersal orders, arrests, the use of force) and the corresponding justifications.

2. Why is it important to distinguish between protestors engaged in unlawful conduct and those lawfully expressing their views? What legal or public trust consequences might follow from overbroad enforcement?

3. How can an officer distinguish between protected expressive conduct and unlawful activity during a protest or demonstration? What signs should they look for?

4. How can your agency prepare officers in advance of an event to ensure decisions about enforcement and dispersal comply with constitutional standards and withstand public and legal scrutiny?

5. How can a line officer use simple, on-scene explanations (“We need to keep this lane open for EMS”) to reinforce legitimacy and reduce crowd anxiety without delaying tactical responses? For More Information Visit our website. See our Advisory Board. Join our listserv. 9

6. Available research suggests that both “kettle-style” mass containment and police imposition into areas perceived as “crowd” space erodes crowd self-regulation and can create conflict. Similarly, the law frowns on enforcement efforts (e.g., dispersal orders or arrests) that are broader than the circumstances require. What less intrusive tactics can agencies use when faced with small clusters of bad actors inside a larger peaceful crowd?

7. Imagine a permitted march that unexpectedly diverts down an unpermitted side street. Walk through your decision-making process: liaison engagement, spatial management, and potential enforcement.

8. After-action reviews are an opportunity for an agency to both learn from an event and detail its response for a public audience. What key information should agencies include in an after-action report to allow a fair assessment of whether the agency appropriately balanced First Amendment rights?

In light of existing precedent in a majority of circuits, there is at least the potential for an officer’s *unreasonable* actions to affect the reasonableness analysis if those actions contribute to or create a dangerous situation that *reasonable* police action would have avoided. In this case, if the courts concluded that it was *unreasonable* for Ofc. Felix to physically jump onto a moving car, and that his unreasonable actions created the danger of being struck or run over by the vehicle (keeping in mind the actions of Barnes), they may conclude that the use of deadly force resulting, in part, from Ofc. Felix’s action was itself unreasonable.

Implications for Agencies and Officers

As always, officers should use sound, situationally appropriate tactics and communications because those are the best ways to protect officer safety. Of course, no legal standard requires perfection; it is inevitable that officers operating in high-pressure situations will make mistakes. Precedent from the eight federal circuits that have, for years, already looked beyond the moment of threat establishes that courts have been, and remain, fully capable of both considering an officer's actions leading up to a use of force and, separately, determining whether an officer's actions *unreasonably* contributed to the threat that they ultimately used force to address.

Agencies should keep in mind that the standard for the administrative reviews of officer conduct, including uses of force, are distinct from constitutional review. Judicial review, such as in civil litigation, is concerned with the constitutionality of an officers' actions. Administrative reviews, in contrast, are conducted to determine whether an officer's actions were consistent with agency policy, procedure, and training.³⁰ The Constitution sets a baseline for legality, agency policies often impose higher or more specific standards designed to promote professionalism, accountability, and community trust. An officer's actions may be deemed constitutionally reasonable under *Graham* and *Barnes* but still fall short of departmental expectations. Although administrative review should take into account the "totality of the circumstances," including considerations that are simply not subject to Fourth Amendment regulation—such as officer professionalism, activation of body-worn cameras, etc.—investigators, supervisors, and review boards should understand that *their* role is to assess whether an officer acted consistently with the training, tactics, and principles outlined in department policy. The constitutionality of officer actions is left to the courts. Maintaining this distinction helps ensure policy compliance, supports public confidence, and reinforces a culture of continuous improvement within law enforcement.

Conclusion

Barnes v. Felix decisively settles a circuit split by reaffirming that courts must evaluate police uses of force under the totality of the circumstances, as viewed from the perspective of a reasonable officer on scene. By rejecting the narrow "moment of threat" doctrine, the Supreme Court has ensured that courts can fully consider the broader context of an encounter, including events leading up to the use of force. This approach supports a more accurate, fair, and realistic assessment of officer conduct—one that recognizes both the challenges of policing and the importance of accountability under the Fourth Amendment. Moving forward, officers can be confident that the law continues to protect reasonable decision-making in difficult, evolving situations, while also ensuring that uses of force are evaluated with the depth and nuance they deserve.

Discussion Questions

These questions are designed to foster reflection, reinforce legal standards, encourage alignment with departmental policy, and promote critical thinking about decision-making in dynamic environments

1. How does the Supreme Court's decision in *Barnes v. Felix* align with or differ from your department's use-of-force policies?
2. In what ways does *Barnes v. Felix* reinforce the importance of sound decision-making early in an encounter?
3. Does the Supreme Court's decision in *Barnes v. Felix* affect how officers should write use-of-force/response-to-resistance reports?
4. What is the difference between constitutional review and administrative review of officer conduct, and why is it important to maintain that distinction?
5. What lessons can be learned from the officer's decision to step onto the doorsill of a moving vehicle in *Barnes v. Felix*?

