



OFFICE OF
INSPECTOR GENERAL
U.S. DEPARTMENT OF THE INTERIOR

Alleged Excessive Use of Force, NPS, DC

This is a revised version of the report prepared for public release.



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REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

We investigated allegations that two U.S. Park Police (USPP) officers, Officer 1 and Officer 2, used excessive force against two members of the news media (hereinafter referred to as the Cinematographer and the Reporter) during the operation to disperse protesters in and around Lafayette Park in Washington, DC, on June 1, 2020. During the operation, Officer 1 struck the Cinematographer with his¹ USPP-issued shield and then pushed the Cinematographer's camera, and Officer 2 struck the Reporter with his USPP-issued baton.

We examined the officers' actions in light of relevant USPP policies. These policies define appropriate uses of force by USPP personnel and require officers to use "only the minimum level of reasonable force necessary to control a situation,"² which includes a requirement that an officer "shall de-escalate the amount of force to the lowest level necessary to maintain control" of a subject.³ USPP policy incorporates the standard set forth in U.S. Supreme Court jurisprudence, which requires that officers' uses of force be "objectively reasonable" when viewed "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."⁴ Read together, these standards required us to consider whether the officers' uses of force were objectively reasonable given the facts and circumstances facing them at the time and, moreover, whether the officers used the minimum level of reasonable force necessary to control the situation. In conducting our analysis, we also considered other, more specific policies, such as the USPP's defensive equipment policy, which provided additional context regarding whether the officers' conduct constituted the "minimum level of reasonable force" in particular situations. We also looked at whether the officers' actions were consistent with their training because this analysis contributed to our assessment of whether their uses of force were "objectively reasonable."

We determined that Officer 1's shield strike against the Cinematographer was permitted under USPP policy because it was objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation based on the facts and circumstances confronting him at the time. However, we drew a different conclusion with respect to Officer 1's later actions when he pushed the Cinematographer's camera because the force that Officer 1 used did not appear to be the *minimum* level of reasonable force necessary to get the Cinematographer to leave the area. We acknowledge, however, that the USPP policy does not define "minimum

¹ We have referred to all subjects and witnesses, regardless of gender, as "he" or "him" to maintain anonymity.

² USPP, General Order No. 3615, *Use of Force*, § 3615.02.

³ *Id.* § 3615.04.

⁴ *Graham v. Connor*, 490 U.S. 386, 397 (1989). See also USPP, General Order No. 3615, *Use of Force*, § 3615.02 ("The Supreme Court has stated that the Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.").

level of reasonable force,” nor could we find other legal guidance shedding light on this term. Further, the USPP training focuses primarily on the constitutional “objective reasonableness” standard rather than the “minimal level of reasonable force.” While the U.S. Department of the Interior (DOI) may wish to address these points, we nonetheless concluded that both the conduct at issue and the policy are sufficiently clear to find a violation of the policy.

We concluded that Officer 2’s use of force against the Reporter did not comply with USPP policy. We made this determination because USPP policy does not permit an officer to use his baton to strike an individual who is running away in accordance with law enforcement officers’ commands to leave the area. Moreover, we determined that an objectively reasonable officer on the scene would not have concluded that the Reporter posed a threat under the circumstances, and none of the other circumstances authorizing the use of a baton strike under the USPP’s defensive equipment policy were present at the time Officer 2 struck the Reporter.

We provided this report to the National Park Service Director for any action deemed appropriate.

II. BACKGROUND AND SCOPE

On May 25, 2020, George Floyd, a 46-year-old African American man, was killed while in the custody of the Minneapolis, Minnesota police department. Floyd’s death, as well as the broader Black Lives Matter movement, resulted in protests across the United States, including at Lafayette Park in Washington, DC, starting on May 29, 2020.⁵ The USPP, along with the U.S. Secret Service, established a police presence in Lafayette Park to coordinate the law enforcement response to the protests near the White House and the park.

We concluded in an earlier report that, due to the violence and property damage that occurred on May 29 through May 31, 2020, the USPP decided to clear protesters from Lafayette Park and the surrounding areas to allow a contractor to install an anti-scale fence. These events took place on June 1, 2020.⁶ During the clearing of protesters from H Street, two USPP officers used force against two members of the news media, who later filed an administrative tort claim with the DOI stating that the use of force injured them and damaged their camera equipment.⁷

The USPP Internal Affairs Unit investigated the officers’ uses of force and referred its interim report to the U.S. Attorney’s Office (USAO) for the District of Columbia. The USAO ultimately declined to prosecute the two officers. Our office then began an administrative investigation of the incident to determine whether the USPP officers’ uses of force were consistent with USPP policy.⁸

⁵ Lafayette Square, also known as Lafayette Park, is a 7-acre public park located within President’s Park, directly north of the White House on H Street in Washington, DC.

⁶ The events surrounding the USPP’s clearing of protesters on June 1, 2020, are set forth fully in our report, *Review of U.S. Park Police Actions at Lafayette Park*, which is available on our website. See U.S. Dept. of the Interior, Office of Inspector General, 20–0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReviewUSPPActionsAtLafayetteParkPublic.pdf>).

⁷ See also testimony from the hearing held by the House Committee on Natural Resources on June 29, 2020.

⁸ We set forth a more detailed explanation of the standards we applied in the section titled “Governing Standards.”

III. RESULTS OF INVESTIGATION

A. Facts

1. *The USPP Officers Received All Required Use of Force Training*

Both Officer 1 and Officer 2 had more than 10 years of experience with the USPP.⁹ The officers both attended police officer training at the Federal Law Enforcement Training Center (FLETC).¹⁰ As part of their basic training program, both officers received instruction on the use of force, baton control techniques, nonlethal control tactics, and crowd control.

USPP training records showed that the officers received additional use of force training throughout their careers as required by DOI policy, which mandates that officers attend annual training on the use of force.¹¹ USPP training records showed that both officers were in compliance with this policy and had most recently attended training in 2019. In particular, Officer 2 attended USPP inservice training on use of force in spring 2019, and Officer 1 attended USPP inservice training on use of force in fall 2019.¹²

As members of the USPP's Civil Disturbance Unit (CDU), both officers also received advanced civil disturbance response training from an outside vendor, which included training on using a shield and baton to manage a crowd and for officer safety. Officers 1 and 2 attended initial civil disturbance training from an outside vendor in fall 2016 and attended a civil disturbance unit training exercise from the same vendor in spring 2019. During these training sessions, officers participated in exercises responding to hostile and violent crowds using advanced civil disturbance techniques.

2. *Protest Demonstrations at Lafayette Park Leading Up to June 1*

As described in our June 2021 report,¹³ protests occurred in and around Lafayette Park on May 29, 30, and 31, 2020, and were mostly peaceful during the day. However, acts of violence increased in the late afternoons and evenings. USPP officers reported that some protesters threw projectiles, such as bricks, rocks, caustic liquids, frozen water bottles, glass bottles, lighted flares, and fireworks, at law enforcement officials. Overall, 49 USPP officers were injured

⁹ Officer 1 left the USPP in the summer of 2022.

¹⁰ While at FLETC, officers study basic law enforcement concepts that a new officer should understand and/or be able to perform upon employment in a Federal law enforcement organization. The program is designed to provide the new officer with the specific knowledge and skills necessary to perform at the entry level in a Federal law enforcement position.

¹¹ See DOI Office of Law Enforcement and Security, 446 *Departmental Manual (DM)* 15, "Training Standards for Law Enforcement Officers" at 15.10 (b)(1) (Aug. 1, 2016).

¹² The USPP told us that the training courses for 2020 did not begin until after June 1, 2020.

¹³ See U.S. Dept. of the Interior, Office of Inspector General, 20-0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReviewUSPPActionsAtLafayetteParkPublic.pdf>).

during the protests from May 29–31. Federal and private property, including the comfort station, which was set on fire on May 31, was also damaged during the protests.¹⁴

3. *The June 1, 2020 Protest Demonstrations*

a. *CDU Deployed To Move Protestors*

Officers 1 and 2 were assigned to the USPP CDU that cleared protesters from Lafayette Park on June 1, 2020. CDU officers were told that the comfort station was a “flashpoint” for violence during the previous nights and that there was concern that protesters would use the building to conceal themselves and projectiles they could use against officers.

In the evening on June 1, as the USPP incident commander was completing the dispersal warnings, USPP CDU officers moved out of Lafayette Park and began marching down H Street using various police tactics to clear protesters from the area. As described in our June 2021 report, the dispersal warnings could not be clearly heard by some of the protesters on H Street.¹⁵ Both witness statements and video evidence demonstrated that as USPP officers moved west on H Street, they issued verbal commands to the crowd to “move, move, move.” Many protesters ran from the scene, but others refused to clear the area. When officers encountered such protesters, they told them to move back and, in some instances, pushed them with their shields. USPP officers, including Officers 1 and 2, reported that some protesters resisted the officers’ attempts to get them to leave the area by grabbing the officers’ shields, punching them, and throwing water bottles and other objects at them.

b. *The Cinematographer and the Reporter Positioned Themselves Next to the Comfort Station*

Shortly before the clearing operation began, the Cinematographer and the Reporter, who were working together for a television network, were on H Street near Vermont Avenue behind a large tree. The Cinematographer told us that their position provided “good cover” when the police arrival “stirred up the crowd a little bit.” The Cinematographer was shooting video while the Reporter was reporting back to the television network. The Cinematographer and the Reporter moved west on H Street behind the comfort station, and the television network went live with their coverage. The Cinematographer told us that he and the Reporter positioned themselves next to the comfort station so that they would be out of the way of CDU officers when they advanced up H street (see Figure 1). The Cinematographer and the Reporter told us they did not believe they were required to leave because they were with the media, and no one told them they needed to leave the area. The Reporter also told us the police “moved right past” them the prior evening enabling the Reporter and the Cinematographer to move in behind the police line and continue

¹⁴ The comfort station is a small building on the north end of Lafayette Park near the intersection of 16th and H Streets. The building houses two public restrooms (closed at the time of the protests) and a breakroom for National Park Service maintenance staff. On the H Street side, the comfort station is enclosed by an approximately 6-foot solid concrete wall with an opening in the middle covered by interlocking gates.

¹⁵ See U.S. Dept. of the Interior, Office of Inspector General, 20–0563, *Review of U.S. Park Police Actions at Lafayette Park* (2021) (<https://www.oversight.gov/sites/default/files/oig-reports/DOI/SpecialReviewUSPPActionsAtLafayetteParkPublic.pdf>).

their news coverage.¹⁶ The Cinematographer and the Reporter also stated they did not hear the USPP’s warnings to leave the park that had been issued earlier that evening.

Figure 1: Map of Lafayette Park and Surrounding Area



Source: National Park Service. (The DOI Office of Inspector General (OIG) overlaid the orange box to illustrate the approximate location of the comfort station and the blue arrows to illustrate the direction the officers moved).

c. Officer 1’s Use of Force Against the Cinematographer

The police line stopped on H Street near the comfort station’s gated opening. The comfort station is on the south side of H Street and on the officers’ left side as they approached it. Officer 1 was the USPP officer closest to the comfort station, and its solid concrete wall was against his left side.

The Cinematographer was standing on an elevated curb with his right shoulder against the comfort station’s south wall and his back to the bike rack fence enclosing Lafayette Park. The police line started moving forward again more rapidly, and as Officer 1 ran toward the corner of the comfort station keeping pace with the police line, he said he noticed out of the corner of his eye someone standing there but could not see the person’s hands. Officer 1 said, “I perceived a threat from the person hiding behind the wall during a violent demonstration.” Officer 1 explained that, from his view, the individual appeared to be “purposely concealed, hiding, waiting for us to come to his position, like an ambush.” This, according to Officer 1, was an

¹⁶ An 11 p.m. curfew was in effect on May 31, 2020. The Reporter and the Cinematographer could not identify the law enforcement agency that they stated had walked past them and that they believed had implicitly allowed them to remain in the cleared area the previous night.

“indicator” that the individual was not “retreating” as directed by the officers and led Officer 1 to believe that the individual was there “to do harm and hurt me or somebody else.” Officer 1 said he was concerned he would be “hit with something or attacked” by the person. Officer 1 told us that, at the time, he had only his shield to defend himself against what he perceived as a threat. Officer 1 then struck the individual, later identified as the Cinematographer, in the stomach with the edge of his shield, causing the Cinematographer to sit down onto a milk crate that was behind him (see Figure 2).

Figure 2: Officer 1 Striking the Cinematographer at the Comfort Station



Source: News Media.¹⁷

The Cinematographer told us Officer 1 “wouldn’t have been able to see” him until Officer 1 had passed the corner of the comfort station. When asked if he thought Officer 1 could see his camera as Officer 1 approached the comfort station, the Cinematographer said he did not believe it would have been visible because of the camera’s position.

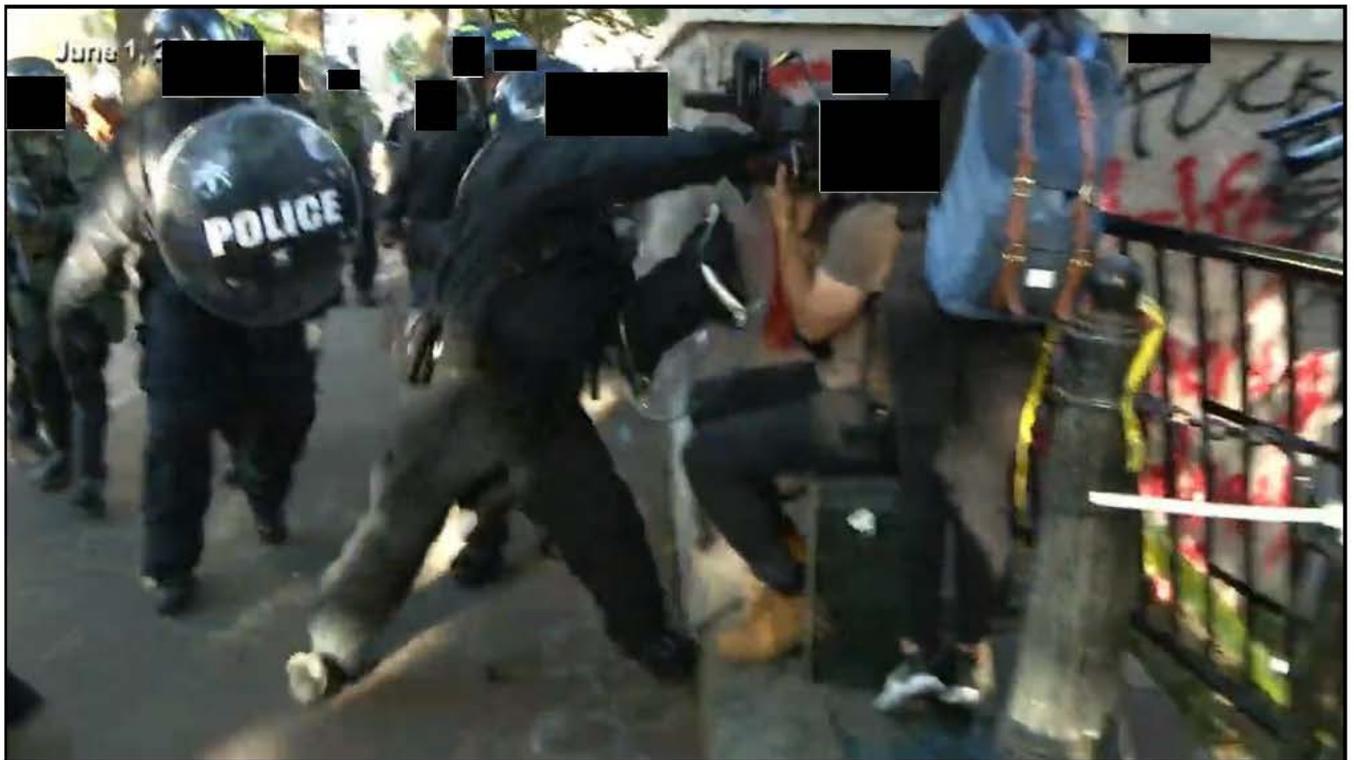
The Cinematographer also told us he was not wearing visible media credentials at the time Officer 1 struck him. In addition, Officer 1 told us, and we independently confirmed with other USPP officers, that, based on briefings they had received, officers generally understood that

¹⁷ The DOI OIG asserts no ownership of the images contained in this report.

everyone, including the media, was required to leave when the USPP began its operation to clear Lafayette Park and the surrounding area on the evening of June 1.¹⁸

After striking the individual with his shield, Officer 1 told us that he noticed the individual was holding a video camera on his shoulder. Officer 1 told us that, once he saw the camera, he no longer felt threatened. Officer 1 explained that, at that point, the individual was “distracting me from other people.” Officer 1 went on to state, “[H]e’s not a viable threat, but he’s a threat to a point where he’s taking my attention away from other people that are violent.” When asked by the OIG investigator whether an officer is permitted to strike someone if he or she is no longer a threat and is, in the officer’s words, “distracting” an officer’s attention, Officer 1 responded, “No,” but stated that he “didn’t strike [the Cinematographer] twice.” Officer 1 stated he reached out to the individual with his right hand and told the individual to “[m]ove. Get out here.” The video evidence, however, showed that Officer 1 reached out and grabbed the Cinematographer’s camera, pushing it off the Cinematographer’s shoulder and onto his lap (see Figure 3).¹⁹ Officer 1 stated that, in taking this action, he was trying to push the individual out of the way and west down H Street.

Figure 3: View of Officer 1 and the Cinematographer



Source: News Media.

¹⁸ During a June 1, 2020 press conference, District of Columbia Mayor Muriel Bowser announced a 7 p.m. citywide curfew for that day. Members of the media and those serving essential functions were exempt from the curfew. As we found in our June 2021 report, the clearing operation was not related to the curfew.

¹⁹ A review of the video evidence showed that Officer 1 did not “punch” the Cinematographer or his camera as the Cinematographer stated in his interview. Instead, the video evidence showed Officer 1 reached out with an open palm and then grabbed the camera, pushing it off the Cinematographer’s shoulder and onto his lap.

When Officer 1 pushed the Cinematographer's camera, several USPP officers were standing in close proximity to Officer 1 and the Cinematographer. Officer 3, who was standing behind Officer 1, told the Cinematographer to move and pointed in the direction the Cinematographer should go. The Cinematographer then stood up and began running in the direction Officer 3 had pointed. Officer 1's interaction with the Cinematographer lasted no more than 5 seconds (see Figures 4 and 5).

The Cinematographer continued to film the protest after being struck by Officer 1 and while running away from the comfort station. The Cinematographer told us that when Officer 1 "punched" his camera, it caused the camera to hit back into his head, making him see "stars" and causing a "bit of whiplash." The Cinematographer told us he went to an urgent care medical facility approximately 6 to 7 days after June 1 based on advice he received from his employer, who insisted he obtain a "clean bill of health." The Cinematographer told us the medical staff at the urgent care medical facility had seen the news coverage of the incident and said it was a "traumatic injury" and suggested the Cinematographer go to the emergency room to undergo additional testing. The Cinematographer told us he declined those tests because he "felt okay" and was "pretty confident" he did not have any internal injuries. The Cinematographer said that, since the incident, he has had "a bit of lower back pain" but "nothing too significant."²⁰

D. Officer 2's Use of Force Against the Reporter

Officer 2 was to the right of Officer 1 as the USPP officers moved west on H Street past the comfort station. Officer 2 moved several feet past the comfort station and ahead of Officer 1. Officer 2 then stopped and turned toward his left, moving back toward the comfort station where Officer 1 and Officer 3 were interacting with the Cinematographer and the Reporter, as described above (see Figure 4).

²⁰ In winter 2023, the attorney for the Cinematographer submitted documentation to the DOI in support of the Cinematographer's administrative claim for personal injuries and property damage to his video journalism equipment allegedly resulting from this incident caused by the officers' uses of force on June 1, 2020. This documentation shed no new light on the cause or extent of the Cinematographer's physical injuries as the documentation did not include records or other information from the urgent care medical facility or any other medical, hospital, or emergency facility or personnel. The attorney also submitted estimates and/or receipts in support of damages to the Cinematographer's video camera and camera lens.

Figure 4: Officer 2 Turns Toward Officer 1 and Officer 3



Source: News Media. (Note: The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3.)

Officer 2 told us he saw two officers involved in a “confrontation.” Officer 2 said he saw Officer 1’s “hands up, a commotion, going at it with someone. . . . I took that as a threat, that he was defending himself.” Officer 2 said it “looked like” Officer 1 was being assaulted. Officer 2 moved closer to Officer 3 and was directly behind Officer 3 when Officer 3 told the Cinematographer and the Reporter to move and pointed in the direction they should go to clear the area. The Cinematographer then stood up, and he and the Reporter began running away in the direction Officer 3 had pointed (see Figure 5).

Figure 5: View of Officer 3 Directing the Cinematographer and the Reporter To Depart



Source: News Media. (Note: The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3.)²¹

Officer 2 then stepped to his right, moved beside Officer 3, and reached around Officer 3 to hit the Reporter with his baton as the Cinematographer and the Reporter began running west on H Street away from the officers as instructed (see Figure 6).

²¹ The officer in this figure standing behind the fence with his hand on the Reporter's backpack is not a USPP officer. We have reason to believe the officer is with the Federal Bureau of Prisons (BOP). As noted in our June 2021 report, we provided the U.S. Department of Justice OIG, which oversees the BOP, with information relating to the actions of the BOP in Lafayette Park on June 1, 2020.

Figure 6: View of Officer 2 Reaching Out With His Baton



Source: News Media. (Note: The DOI OIG overlaid the white arrows identifying Officers 1, 2, and 3.)

Officer 2 told us he saw the Reporter as part of a group of people standing near or around Officer 1 and that the Reporter came out from in front of Officer 1. Officer 2 stated he was “unsure” whether the Reporter was going to turn and come back toward CDU lines, and that, “in my mind, [the Reporter] had just previously assaulted a Federal officer and was then leaving the area.” Officer 2 said, “I didn’t know if [the Reporter] was coming to try to penetrate our lines and then assault another officer.” Officer 2 said he saw “[s]omeone came out from the side, and I thought that you know, that looked like someone that was part of the confrontation, and I didn’t want them coming back because we didn’t have any arrest teams behind us, and that’s when I deployed my force-issued baton.”²²

²² As explained in our June 2021 report, the evidence demonstrated that the clearing operation was not a mass arrest situation, which has specific requirements and associated policies. However, USPP officers told us “hands teams”—USPP officers who were behind the CDU officers—could remove or arrest, if necessary, protesters who passed through the police line so the CDU unit could continue moving west.

Officer 2's baton strike hit the Reporter across his upper back on top of his shoulders and the backpack he was wearing. In explaining his decision to use his baton, Officer 2 said, "When I made that decision in my head there was an assault and that's why I was using [the baton]. It was also an emergency situation to clear the street to erect the fencing." When asked if he was allowed to strike someone with a baton who was complying with commands to leave the area, Officer 2 said, "Hypothetically if the person is 100 percent not resisting, listening to your verbal commands and walking away, no." He stated, however, that he believed the Reporter had "assaulted a Federal officer and would be a fleeing felon."

After being struck, the Reporter cried out and continued to move west on H Street. Officer 2's interaction with the Reporter lasted no more than 3 seconds. A few minutes after being struck by Officer 2, the Reporter continued the live broadcast to the television network from further down H Street near 16th Street.

The Reporter told us Officer 2's baton strike landed on top of his shoulders and hit the strap of his backpack. He said the backpack took the impact of the strike and that a camera lens inside the backpack was damaged. The Reporter told us he had no bruising from the baton strike, only some tenderness and soreness around his neck and shoulders. The Reporter also said he received physical therapy for his injuries due to ongoing "pain and discomfort" since the incident.²³

B. Analysis

We analyzed whether the officers' uses of force against the Cinematographer and the Reporter violated USPP policy. We did so by examining whether the officers' actions on June 1, 2020, were objectively reasonable "in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation" and whether the use of force was the minimum level necessary under the circumstances. We used more specific policies, like the USPP's defensive equipment policy, where applicable, to determine whether the officers' uses of force constituted the minimum level of reasonable force necessary under the circumstances. Similarly, in assessing whether the officers' uses of force were objectively reasonable, we reviewed the officers' training to determine whether the officers' actions were consistent with that training.

The USPP use of force policy requires that its officers "employ only *the minimum level of reasonable force necessary to control a situation.*"²⁴ The USPP's use of force policy further instructs officers by providing examples of what levels of force are appropriate depending on the subject's level of resistance and requires that once a subject is under control, officers de-escalate the amount of force to the lowest level necessary to maintain control.²⁵ In addition, the defensive

²³ In winter 2023, the attorney for the Reporter submitted receipts for services to the DOI to support the Reporter's administrative claim for personal injuries allegedly resulting from Officer 2's use of force on June 1, 2020. The documentation the attorney submitted on behalf of the Reporter did not provide sufficient detail to explain to us the nature or extent of the Reporter's injuries.

²⁴ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (emphasis added). Compare DOI Office of Law Enforcement and Security, Interim Policy 446 DM 20 – Use of Force (Dec. 20, 2019) (stating law enforcement officers "are permitted to use force that is reasonable in light of the totality of the circumstances. This standard does not require [law enforcement officers] to meet force with equal or lesser force.").

²⁵ USPP, General Order No. 3615, *Use of Force*, § 3615.04; see also *id.* § 3615.02 ("Once a level of force is no longer required, it must be decreased or discontinued.").

equipment policy sets forth parameters on how and when defensive equipment, such as a shield or baton, may be used “to gain control of an individual or group of individuals.”²⁶ USPP officers are required to know these policies and receive annual use of force training.²⁷

We analyzed Officer 1’s conduct as two separate uses of force. We determined that his initial shield strike against the Cinematographer was permitted under USPP policy because it was objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation given the facts and circumstances confronting him at the time. However, we were unable to draw the same conclusion with respect to the subsequent use of force—namely, pushing the Cinematographer’s camera. In particular, regardless of whether it was “objectively reasonable” under the circumstances, other less intrusive force options were available. Therefore, we concluded the level of physical force used in this instance was not a minimal use of force.

As to Officer 2’s use of force against the Reporter, we concluded that his baton strike exceeded the minimum level of reasonable force necessary to control the situation. The evidence showed that at the time of Officer 2’s baton strike, the Reporter was following law enforcement officers’ commands to leave the area and was running away from them. Officer 2’s contention that he was justified in striking the Reporter because he believed the Reporter might turn and run behind their police line and assault another officer was objectively unreasonable because we identified no evidence to support his stated belief. First, Officer 2 confirmed he did not know whether it was the Reporter or someone else who committed the alleged assault and that he was not attempting to arrest the Reporter when he struck him. We also found no evidence supporting Officer 2’s general statement that the Reporter, as opposed to any other fleeing protester, might return to assault another officer.²⁸ Taken together, Officer 2’s statements appeared to be post-hoc justifications for the baton strike rather than credible recollections of what he perceived at the time. Moreover, none of the circumstances authorizing the use of a baton under the USPP’s defensive equipment policy were present at the time Officer 2 struck the Reporter. We therefore concluded that Officer 2’s baton strike did not comply with USPP policy.

1. Governing Standards

In assessing the officers’ uses of force, we looked to USPP policy, which sets forth a more restrictive standard than the “objectively reasonable” standard under Fourth Amendment jurisprudence and requires officers to “employ only the minimum level of reasonable force

²⁶ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.01.

²⁷ USPP, General Order No. 31.01, *Conduct*. See also USPP, General Order No. 32.03, *General Rules*. Witnesses told us that the annual use of force training focused primarily on *Graham v. Connor*’s objective reasonableness standard.

²⁸ See *Deorle v. Rutherford*, 272 F.3d 1272, 1281 (2001) (providing that “a simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern”).

necessary to control a situation.”²⁹ We did *not* analyze whether the officers’ uses of force were permitted under the Fourth Amendment.³⁰ We also considered relevant legal precedent in assessing whether we should analyze Officer 1’s conduct as one or two separate uses of force.

a. *USPP Policies Governing Uses of Force by USPP Officers*

1. *USPP General Order Number 3615 – Use of Force Policy*

USPP General Order No. 3615 governs the use of force by USPP officers. This policy provides:

The type and level of force used must be reasonable, depending on the dynamics of the situation. This force may take the form of verbal commands, persuasion, warnings, directives, bodily contact, use of baton or other nonlethal weapon, or the use of deadly force. *Once a level of force is no longer required, it must be decreased or discontinued. An officer is expected to employ only the minimum level of reasonable force necessary to control a situation.*³¹

The USPP’s use of force policy defines a “reasonable” use of force with reference to the decision in *Graham v. Connor*, 490 U.S. 386 (1989):

The Supreme Court has stated that the Fourth Amendment “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police

²⁹ The Fourth Amendment in general requires an officer’s use of force to be “‘objectively reasonable’ in light of the facts and circumstances confronting them.” *Graham*, 490 U.S. at 397. The USPP’s use of force policy, however, requires that officers “employ only the minimum level of reasonable force necessary to control a situation.” This is not a requirement of the Fourth Amendment. See *Stevenson v. City of Albuquerque*, 446 F. Supp.3d 806, 858 (D.N.M. 2020) (stating that “the Fourth Amendment does not require the use of the least, or even a less, forceful or intrusive alternative to effect custody, so long as the use of force is reasonable under *Graham v. Connor*.”). An agency may hold its officers to a higher standard than that required under the Fourth Amendment. See *Nguyen v. Navy*, No. SF-0752-17-0079-I-1, 2017 WL 4367439 (M.S.P.B. Sept. 27, 2017) (stating that an “agency is at liberty to set a higher standard for its officers than the minimum requirements of the Fourth Amendment, and there is no need for the agency to wait until an officer violates a civilian’s constitutional rights before initiating disciplinary action against the officer for unacceptable conduct”). Because we do not analyze the constitutional claims, we do not attempt to resolve the question of whether the Fourth Amendment’s reasonableness standard would apply in this case, as opposed to the higher “shocks the conscience” standard. See *County of Sacramento v. Lewis*, 523 U.S. 833, 846 (1998). Moreover, there is no claim that Officer 1 and Officer 2 were attempting to “seize” or otherwise arrest the members of the news media; instead, it is undisputed that they were trying to get them to leave the area. Accordingly, we do not analyze the legal issues associated with such a determination. See e.g., *Black Lives Matter D.C. v. Trump*, 2021 WL 2530722, at *8, *20 (D.D.C. 2021) (recognizing that it is unsettled whether attempting to move members of a crowd rather than keeping the crowd in a location can constitute a seizure under the Fourth amendment); see also *Jones v. District of Columbia*, C.A. No. 21-836, 2021 WL 5206207, at *4 (D.D.C. Nov. 9, 2021) (finding no seizure occurred because “an intent to keep out or redirect is not an intent to ‘restrain’ or ‘apprehend’”).

³⁰ See *Graham v. Connor*, 490 U.S. 386, 395 (1989) (holding that claims of excessive force in the context of an arrest, detention, or other seizure should be analyzed under the Fourth Amendment’s reasonableness standard).

³¹ USPP, General Order No. 3615, *Use of Force*, § 3615.02 (emphasis added).

officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.³²

Pursuant to *Graham*, there is no mechanical test for determining whether a particular use of force is unreasonable.³³ Instead, *Graham* sets forth certain factors that should be considered when determining whether an officer's use of force is "objectively reasonable" under the circumstances. These so-called *Graham* factors include "the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight."³⁴ Other factors the USPP are trained to consider include the number of suspects and officers at the scene; the duration of the action; the size, age, and condition of the officer and suspect; whether the force applied may result in injury to the suspect; the presence of innocent bystanders who could be harmed by the officer's use of or failure to use force; and the availability of weapons, such as batons, spray, or tasers.³⁵ USPP officers are trained to use these factors when considering what level of force to use in a given situation.³⁶

Taken together, the USPP's policy incorporated the standard set forth in *Graham*: namely, that the officers' actions must be viewed "in light of the facts and circumstances confronting them at the time" in determining whether an officer's use of force is objectively reasonable while imposing the additional requirement that USPP officers use only the "minimum level" of reasonable force necessary to control the situation. The USPP's use of force policy does not define "minimum level" when describing what constitutes reasonable force.³⁷ Rather, USPP policy identifies various potentially permissible subject control tactics that range from a low-level use of force (such as officer presence and verbal commands) to the highest level (deadly force), depending on the circumstances confronting the officers. The policy further provides, however, that "officers shall escalate and de-escalate their level of response in accordance with the actions of a subject" and that "[o]nce the subject is under control, an officer shall de-escalate the amount of force to the *lowest level* necessary to maintain control."³⁸ Based on these various provisions, we concluded that *minimum level of reasonable force* means the force option chosen must be the least amount of reasonable force necessary to accomplish the law enforcement purpose the officer is seeking to effect given the circumstances he or she faces.

³² USPP, General Order No. 3615, *Use of Force*, § 3615.02 (citing *Graham v. Connor*, 490 U.S. 386, 396–397 (1989)).

³³ *Graham*, 490 U.S. at 396.

³⁴ *Id.*

³⁵ These other factors have been developed through cases decided after *Graham v. Connor*. See, e.g., *Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008) (setting forth factors to be considered in assessing whether the suspect posed an immediate threat to the safety of the officer or others); *Gravelet-Blondin v. Shelton*, 728 F.3d 1086, 1092 (9th Cir. 2013) (stating that in evaluating objective reasonableness, courts must often look beyond the factors enumerated in *Graham* and consider other elements relevant to the totality of the circumstances). See *Westfahl v. District of Columbia*, 75 F. Supp 365, 372 (D.D.C. 2014) (finding baton strikes delivered before the individual was clearly restrained by the officers, coupled with a lack of serious injury from the strikes, suggests reasonable use of force).

³⁶ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

³⁷ We found no caselaw or other authority interpreting "minimum level" in this context. The Merriam-Webster dictionary defines minimum as "the least quantity assignable, admissible, or possible." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://merriam-webster.com/dictionary/minimum> (last accessed Apr. 19, 2023).

³⁸ USPP, General Order No. 3615, *Use of Force*, § 3615.04 (emphasis added).

2. USPP General Order Number 3605 – Defensive Equipment Policy

USPP General Order No. 3605 governs the use of defensive equipment by USPP officers. This policy provides that “defensive equipment shall be used to gain control of an individual or group of individuals, or to effect an arrest to ensure the protection of the public, the officer, and any arrestees.”³⁹ The policy also states that “an officer shall use only Force-approved methods and only that force necessary to subdue an individual.”⁴⁰

Under the policy, defensive equipment includes “oleoresin capsicum agent, tear gas dispensers, batons, Electronic Control Devices (ECDs), and other such equipment.”⁴¹ Although not specifically mentioned in the policy, a shield qualifies as defensive equipment because it is USPP-issued equipment officers may use to defend themselves and others.

The policy contains a separate section on an officer’s use of a USPP-issued or approved baton.⁴² It states that, when an officer is carrying a baton, it must remain in the officer’s baton holder and “shall not be removed while in public view except in an emergency or for defensive use.”⁴³ The policy further provides that the baton may be used in the following situations:

1. A subject resists arrest.
2. The officer is physically assaulted by an assailant.
3. It is necessary for crowd control.
4. An emergency situation.⁴⁴

To provide officers with further guidance, the USPP’s use of force policy sets forth “Levels of Behavior/Resistance” and “Levels of Response,” which connect the type of resistance an individual may present to an officer with corresponding levels of force an officer may use to gain control or compliance of the subject.⁴⁵ Pursuant to the policy, an officer is authorized to use “striking and blocking techniques” and “any defensive equipment,” including a baton, to respond to an individual assaulting or attempting to assault an officer or another person.⁴⁶

³⁹ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.01.

⁴⁰ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.02 E.

⁴¹ USPP, General Order No. 3605, *Defensive Equipment*, §§ 3605.02 A, E.

⁴² USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

⁴³ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05 A.

⁴⁴ USPP, General Order No. 3605, *Defensive Equipment* § 3605.05 B.

⁴⁵ USPP, General Order No. 3615, *Use of Force*, §§ 3615.03, 3615.04.

⁴⁶ USPP, General Order No. 3615, *Use of Force*, § 3615.04 D.

b. Segmentation of the Uses of Force

In addition to analyzing the relevant USPP policies, a key question with respect to Officer 1 was whether we should analyze his conduct as one use of force (i.e., a continuous course of conduct) or two uses of force.⁴⁷ Based on our review of relevant case law, we determined that a segmented approach treating Officer 1's conduct as two separate uses of force was most appropriate. We drew this conclusion because the evidence showed that Officer 1 first employed a shield strike to address what he perceived as a threatening situation and then paused before grabbing and pushing the Cinematographer's camera in what he described as an effort to move the Cinematographer out of the area. Based on our review of the evidence, it appeared to us that Officer 1 had a reasonable opportunity to reassess the circumstances after the shield strike but before he grabbed and pushed the Cinematographer's camera and that he did in fact do so. As the opportunity to reassess the circumstances before continuing to use force is a significant factor in the various cases we reviewed, we determined that it was appropriate to analyze these uses of force separately.⁴⁸

c. USPP Use of Force Training

USPP officers receive use of force training at FLETC as part of their basic training and annually thereafter through the USPP. The USPP training instructor told us past annual inservice use of force trainings reinforced the law (*Graham v. Connor*) and the officers' prior FLETC training. The USPP training instructor said the annual use of force training "review[ed] quickly" the USPP's use of force policy and highlighted that the policy "differs from the law itself and that it can be more restrictive than the law." Before June 1, 2020, Officer 1 and Officer 2 most recently received use of force training in 2019. The 2019 training reviewed the factors courts use to assess the reasonableness of an officer's use of force set forth in *Graham v. Connor*.⁴⁹ In particular, as noted above, these "*Graham* factors" include the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether the suspect is actively resisting arrest or attempting to evade arrest by flight.⁵⁰

The 2019 training discussed additional factors officers should consider when using force, including the number of suspects versus the officers; the duration of the law enforcement action; the size, age, and condition of the officer versus the size, age, and condition of the suspect; whether the force applied resulted in injury to the suspect; whether the officer knew the suspect

⁴⁷ Compare *Lachance v. Town of Charlton*, 990 F.3d 14, 20–28 (1st Cir. 2021) (applying a segmented approach to two uses of force where there was a change in circumstances between them that was relevant to the reasonableness inquiry), with *Yates v. Terry*, 817 F.3d 877, 883 (4th Cir. 2016) (declining to use a segmented approach involving three deployments of tasers and stating that "the better approach . . . is to view the reasonableness of force 'in full context with an eye toward the proportionality of the force in light of the totality of the circumstances'").

⁴⁸ See *Jones v. Treubig*, 963 F.3d 214, 236 (2nd Cir. 2020) (using a segmented approach where the court found the officer had a reasonable opportunity to reassess the circumstances before utilizing additional force). See also *Brockington v. Baykins*, 637 F.3d 503, 507 (4th Cir. 2011) (analyzing uses of force separately where there was a clear break in the sequence of events); *Waterman v. Batton*, 393 F.3d 471, 481 (4th Cir. 2005) (finding that the court could "separately consider non-continuous uses of force during a single incident to determine if all were constitutionally reasonable").

⁴⁹ As noted previously, the Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386 (1989), provides the legal standard for evaluating whether an officer's use of force in certain circumstances is reasonable under the Fourth Amendment of the U.S. Constitution and is referenced in the USPP's use of force policy at General Order No. 3615, *Use of Force*, § 3615.02.

⁵⁰ *Graham*, 490 U.S. at 396.

had a violent history; whether the officer knew the suspect’s mental or psychiatric history; and whether innocent bystanders could be harmed by the suspect if the officer did not use force.⁵¹ The 2019 training also instructed officers to “[a]nticipate likely attacks,” recognize body language and nonverbal signals that may indicate an aggressive intent, and “[not to] wait to get hurt before you act.”⁵² The USPP training instructor told us that the 2019 training focused on the constitutional standard of reasonable force under *Graham v. Connor* rather than the USPP policy.⁵³ However, during the 2019 training, officers were provided with a copy of the USPP’s use of force policy containing the “minimum level” of reasonable force necessary language, which officers were required to know.⁵⁴

The 2019 training also addressed escalation and de-escalation of force using the FLETC use of force model as a training tool. The FLETC use of force model described “subject action” and “officer response,” which correlates the type of resistance the subject may present to an officer and a corresponding level of appropriate force that the officer may use in response.⁵⁵ The 2019 training reinforced a “balanced use of force” using proportional force and professionalism. Officers were advised that “professionalism is the key,” to “remember the goal: (control, arrest, etc.),” and to use “proportional force.” Officers were also instructed that “all police use of force is illegal, unless or until it is ‘objectively reasonable’ from the perspective of a reasonable police officer.”⁵⁶

The 2019 training also included use of force involving a baton and advised officers that “when striking with a baton you must: start from a good fighting stance, develop and apply power effectively, maintain your mobility, move tactically.” The training also reminded officers that “FLETC baton control techniques training . . . rely upon the officer’s ability to use only that level of force which he/she can articulate as ‘reasonable.’”

In addition, in 2016 and 2019, both officers attended CDU training, which included practical exercises showing officers how to use the face of the shield to push a noncompliant individual and, if necessary, to escalate the officer’s level of force by using the rounded edge of the shield to strike the noncompliant individual. The CDU vendor explained that the CDU training instructed officers on different baton striking techniques that could be used by officers when carrying a shield. The CDU vendor said that, when he gives this training, he instructs officers to strike with purpose and enough force to stop or disrupt an immediate threat. The CDU vendor’s training materials also instruct officers that they must be able to articulate why “any force used

⁵¹ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

⁵² *Id.*

⁵³ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B. The use of force training conducted in 2020 after the June 1, 2020 clearing of Lafayette Park reviewed the USPP’s use of force policy and specifically noted that the USPP’s use of force policy is more restrictive than the constitutional standard. See USPP 2020 Use of Force General Order Quiz, USPP-LAW-0087A. Officers 1 and 2 completed this training in fall 2020.

⁵⁴ See USPP General Order Nos. 31.01 and 32.03.

⁵⁵ The USPP’s use of force policy refers to “Levels of Behavior” and “Levels of Response” to correlate the type of resistance an individual may present to an officer with the officer’s appropriate level of force. USPP, General Order No. 3615, *Use of Force*, § 3615.03.

⁵⁶ See USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

was necessary and reasonable on the basis of their honest held belief of the information or intelligence available to them” at the time.

2. *Analysis of the Uses of Force*

a. *Officer 1’s Shield Strike Against the Cinematographer Complied With USPP Policy*

We concluded that Officer 1’s shield strike was permissible under USPP policy because it was both objectively reasonable and did not exceed the minimal level of reasonable force necessary to control the situation given the facts and circumstances confronting Officer 1 at the time. In reaching this conclusion, we considered the relevant case law on objective reasonableness and that Officer 1’s shield strike was authorized under the USPP’s defensive equipment policy and consistent with the training Officer 1 received.

As described in our June 2021 report, as the USPP began clearing Lafayette Park and the surrounding areas on the evening of June 1, 2020, protesters appeared surprised and confused; while many ran from the area as the officers advanced, some protesters fought with the officers by grabbing their shields, punching them, and throwing water bottles and other objects at them. Given the acts of violence and the failure of some protesters to clear the area voluntarily, the use of some level of force to disperse the protesters and ensure the safety of fellow officers may have appeared necessary to a reasonable law enforcement officer on the scene.⁵⁷

In this case, Officer 1 told us he was surprised by the presence of the Cinematographer as he passed the comfort station because he could not see the Cinematographer standing there, describing the area as a “blind corner.” We found Officer 1’s statements credible for several reasons. First, the evidence showed that Officer 1 could not see the Cinematographer as he approached the corner of the comfort station. At that time, the Cinematographer was standing on a raised curb several inches behind the wall of the comfort station holding his video camera on his right shoulder. In this position, the Cinematographer and his video camera were above Officer 1’s line of sight. In addition, Officer 1’s line of sight was further limited by the helmet he was wearing (see Figure 2). The Cinematographer was also not wearing visible media credentials. In addition, our visit to the site and the video evidence we reviewed supported Officer 1’s statement that he could not see behind the corner of the comfort station wall where the Cinematographer was standing as Officer 1 moved west along H Street. Finally, the Cinematographer himself told us he did not believe Officer 1 could see him as Officer 1 approached the comfort station.

Officer 1 also told us he viewed this individual as a threat because the person had failed to follow USPP officers’ warnings and verbal commands to leave the area and appeared to be purposely

⁵⁷ As noted above, our June 2021 report found that not everyone could hear the initial warnings given by the USPP. However, officers understood warnings had been given to the protesters prior to the clearing operation, and officers continued to give verbal commands of “move” or “move back” as they progressed down H Street.

concealing himself behind the comfort station wall waiting to ambush the officers.⁵⁸ Additionally, Officer 1 told us he could not see the individual's hands as he rounded the corner of the comfort station and was concerned about being hit or attacked by the individual he perceived to be hiding there. Officer 1 told us that not being able to see an individual's hands heightens an officer's concern during a police encounter. Officer 1 also stated that he knew the comfort station had been a "flashpoint" for violence on prior nights of the protest and had been warned that protesters might use the comfort station to conceal themselves or throw things at officers.

Given these circumstances, we determined that a reasonable officer on the scene could have concluded that a defensive use of force, such as a shield strike, against an unknown individual who appeared to be hiding and whose hands the officer could not see, may have been necessary to defend himself or other officers against a possible attack. Having less than a second to assess the situation, a reasonable officer on the scene could not know the full extent of the threat, if any, the situation presented, and we cannot conclude that a reasonable officer would have believed his actions to defend himself against a perceived threat were unauthorized.⁵⁹ Moreover, law enforcement officers are not required to risk being assaulted to make a more definitive assessment of the perceived threat, nor are they required to retreat under these circumstances.⁶⁰ This is consistent with the USPP's 2019 use of force training wherein officers were instructed to "[a]nticipate likely attacks," "[r]ecognize 'pre-fight indicators,'" and not to wait to get hurt before acting.⁶¹

Considering all the facts and circumstances from the perspective of a reasonable officer on the scene—coming upon an unidentified person hidden behind a corner who was not complying with the USPP's lawful orders to leave the area, the officer's knowledge of the assaults of the previous days, and the resistance of some of the protesters during the clearing operation—we found that, in the second or less the officer had to think before acting, a reasonable officer could have objectively concluded that this individual presented a threat requiring the use of a shield strike to protect the officer and others from bodily injury or harm.⁶²

⁵⁸ Our findings set forth the factual record and analyze the actions of the USPP officers involved in this incident. In making these findings, we recognize that the Cinematographer and the Reporter stated they did not hear the USPP's dispersal warnings and were not aware they were required to leave H Street and therefore may not have intentionally failed to comply with the orders to disperse. We note, however, that the touchstone for our analysis is not what the Cinematographer and the Reporter actually heard but rather what a reasonable officer would have concluded under the circumstances.

⁵⁹ See e.g., *Wardlaw v. Pickett*, 1 F.3d 1297, 1303–04 (D.C. Cir. 1993). In *Wardlaw*, the court found the force used by a United States Marshals Service officer was not so excessive that no reasonable officer could have believed in the lawfulness of his actions. The court based its finding on factors including that the officer, having been warned of a demonstration, reasonably could have anticipated a confrontation, especially while removing an uncooperative spectator from the courthouse who shouted at him while they were in a vulnerable position.

⁶⁰ See *Reed v. Hoy*, 909 F.2d 324, 331 (9th Cir. 1989) (concluding duty to retreat would "be inconsistent with police officers' duty to the public"), overruled on other grounds by *Virginia v. Moore*, 553 U.S. 164, 175 (2008); see also *Tucker v. Las Vegas Metro. Police Dept.*, 470 Fed. Appx 627, 630 (9th Cir. 2012) (Tallan, J. concurring) (citing *Reed*, 909 F.2d at 331) (noting "police officers have no duty to retreat when threatened with physical assault").

⁶¹ USPP 2019 In Service Use of Force Review, USPP-LAW-0031B.

⁶² See *Etheredge v. District of Columbia*, 635 A.2d 908, 916 (D.C. 1993) (stating "any person, including an officer, is 'justified in using reasonable force to repel an actual assault, or if he reasonably believes he is in danger of bodily harm'") (quoting *Johnson v. Jackson*, 178 A.2d 327, 328 (D.C. 1962)).

Having determined that Officer 1's shield strike was objectively reasonable, we next analyzed whether it complied with the USPP's policy to use the minimum level of reasonable force necessary to control the situation. We determined that it did because it complied with the use of force policy's level of response, was consistent with USPP training, did not cause serious injury to the Cinematographer, and was de-escalated once the situation was under control.

The USPP's use of force policy requires that officers employ the minimum level of reasonable force necessary to control the situation and allows officers to use defensive equipment and tactics such as "striking and blocking techniques" when a subject is attempting to assault an officer. We looked to the USPP's defensive equipment policy to further inform our analysis of what constitutes the minimum level of reasonable force where an officer uses defensive equipment like a shield or a baton. This policy provides defensive equipment may be used "to gain control of an individual or group of individuals" using "only Force-approved methods and only that force necessary to subdue an individual."⁶³ We also looked to the training Officer 1 received on advanced civil disturbance tactics and response, which involved practical exercises using the shield for protection and to move a crowd ordered to disperse in situations involving civil unrest, to assist us in determining whether the officer's use of his shield was objectively reasonable and constituted a "Force-approved method." During this training, officers were taught to strike with the round edge of the shield as it would be unlikely to cause significant injury. The USPP's use of force policy also requires that once a subject is under control, officers decrease or discontinue their level of force to the lowest level necessary to maintain control.

We determined that Officer 1's shield strike against the Cinematographer complied with USPP policy. That is, all the factors above that permitted the officer to employ striking and blocking techniques using defensive equipment in the first place applied to the question of whether the officer's use of force was at a minimal level.

In making this determination, we considered that Officer 1's use of his shield was consistent with his use of force training, which instructed him to "anticipate likely attacks" and "not wait to get hurt before you act." The CDU vendor told us that the strike used by Officer 1 was within the "framework" of the methods the CDU vendor teaches during his CDU training seminars, and that Officer 1's body position as he came upon the Cinematographer limited his ability to respond with a push rather than a strike.⁶⁴ Moreover, Officer 1 told us he used his shield to strike the concealed individual because it was the "only thing [he had] defensively." Officer 1 also told us he knew from his training that a shield was unlikely to cause serious injury to an individual he was striking.⁶⁵ Indeed, the evidence showed that Officer 1 struck the Cinematographer with his USPP-issued shield once in the torso, using the round edge of his shield with enough force that the Cinematographer dropped into a sitting position on a milk crate but was not incapacitated. Officer 1's use of force lasted less than a second, and we identified no evidence suggesting that it resulted in serious injury to the Cinematographer, who continued filming the protest after the

⁶³ USPP, General Order No. 3605, *Defensive Equipment*, §§ 3605.01, 3605.02 E.

⁶⁴ In addition to the CDU vendor, we interviewed several other individuals experienced in instructing and assessing the use of force by the USPP and other law enforcement officers. These witnesses primarily discussed the officers' actions in relation to *Graham's* objectively reasonable standard. We considered these opinions as relevant evidence but did not treat them as dispositive on the issue of whether the use of force was at a minimum level as required by the USPP's use of force policy.

⁶⁵ Officer 1 told us he did not carry a baton on June 1, 2020, and the video evidence corroborated his statement.

strike. In addition, the Cinematographer did not seek medical attention until approximately 6 days later and described his injuries as “nothing too significant.”⁶⁶ A lack of a serious injury, while not dispositive, is one factor deemed relevant in determining whether an officer’s use of force was reasonable.⁶⁷ Upon considering all of these circumstances, we concluded that Officer 1’s shield strike was authorized by USPP policy and consistent with Officer 1’s training.

Finally, the evidence showed that Officer 1 de-escalated his use of force by discontinuing the use of his shield once the Cinematographer had dropped onto the milk crate and no longer appeared to be an imminent threat to Officer 1 or others. Officer 1’s de-escalation complied with USPP policy, which—as set forth above—provides that an officer may use a shield strike during an attempted assault or to gain control of an individual but requires that when an individual is under control that an officer de-escalate his or her use of force to the lowest level necessary to maintain control.

Taken together, we therefore concluded that Officer 1’s shield strike complied with USPP policy to use the minimum level of reasonable force necessary to control the situation.

b. Officer 1’s Subsequent Grabbing and Pushing of the Cinematographer’s Camera Did Not Comply With USPP Policy

As noted previously, we analyzed Officer 1’s conduct as two separate uses of force because we concluded that he had the opportunity to pause and consider whether the subsequent grabbing and pushing of the camera was appropriate under the circumstances and did in fact do so. Having made that determination, though, we acknowledge that whether Officer 1’s second use of force against the Cinematographer complied with USPP policy is a more difficult question.⁶⁸

As also discussed above, the USPP’s use of force policy states that officers are “expected to employ only the minimum level of reasonable force necessary to control a situation” and “shall escalate and de-escalate their level of response in accordance with the actions of a subject.”⁶⁹ In addition, “[o]nce the subject is under control, an officer shall de-escalate the amount of force to the lowest level necessary to maintain control.”⁷⁰

With respect to this second use of force, after Officer 1’s shield strike, the Cinematographer dropped to a sitting position onto a milk crate while still holding his camera. Officer 1 then grabbed the Cinematographer’s camera and pushed it off the Cinematographer’s shoulder before pointing and using verbal commands to direct the Cinematographer where to go. Officer 1 told us that after passing the comfort station and striking the individual with his shield, he could see

⁶⁶ As noted above, the Cinematographer filed an administrative claim for damages with the DOI seeking compensation for physical injuries and property damage arising from this incident. We do not take a position as to the validity of the tort claim.

⁶⁷ See *Wasserman v. Rodacker*, 557 F.3d 365 (D.C. Cir. 2009) (finding that a lack of injury tended to confirm that the officer did not use more force than reasonably necessary to gain compliance).

⁶⁸ As discussed above, we determined that it was most appropriate to address each distinct use of force separately in light of the case law we reviewed. Here, the three distinct uses of force we address include (1) Officer 1’s shield strike; (2) Officer 1’s subsequent grab and push of the Cinematographer’s camera; and (3) Officer 2’s baton strike.

⁶⁹ USPP, General Order No. 3615, *Use of Force*, §§ 3615.02, 3615.04.

⁷⁰ USPP, General Order No. 3615, *Use of Force*, § 3615.04 (emphasis added).

that the individual was holding a video camera on his shoulder and had fallen backward onto a milk crate. Officer 1 told us that, at that point, he no longer viewed the individual as a physical threat to himself or other officers. The evidence also showed that Officer 1's second use of force did not result in serious injury to the Cinematographer; however, it did cause the camera to press into the Cinematographer's face, pushing the Cinematographer's head back with some force. According to the Cinematographer, this caused him to "see" stars and suffer "a bit of whiplash" and resulted in damage to his camera equipment.

Although Officer 1's initial subjective assessment of the threat posed by the Cinematographer was objectively reasonable and his use of force at a minimum level, we cannot draw the same conclusions as to the officer's assessment after he realized the person in question held a video camera. Officer 1 stated that after rounding the corner and striking the Cinematographer with his shield, Officer 1 could now see the Cinematographer's hands, which were holding a large video camera, not a weapon. In addition, the Cinematographer was no longer standing several inches above Officer 1's line of sight but had instead dropped backward and was sitting on a milk crate. At this point, the threat of assault that justified Officer 1's shield strike—the blind corner and the inability to see the Cinematographer's hands, among other factors—had been eliminated. Thus, under USPP policy, Officer 1 was required to de-escalate any further use of force "to the lowest level necessary to maintain control." Maintaining control would include taking actions to ensure the Cinematographer left the area. However, Officer 1 gave the Cinematographer no time to do so before engaging in a second use of physical force against the Cinematographer.

Based on this evidence, we cannot conclude that Officer 1's continued use of physical force against the Cinematographer once the Cinematographer was sitting on the milk crate after Officer 1's shield strike and—by Officer 1's own statements—was under control and no longer appeared to be a threat, complied with USPP policy that officers are "expected to employ only the minimal level of reasonable force necessary to control a situation" and shall "de-escalate the amount of force *to the lowest level necessary to maintain control.*"⁷¹ In this situation, an objective review of the evidence showed that Officer 1 did not appear to use the lowest level of force necessary to control the Cinematographer to get him to leave the area; Officer 1 had alternatives to his use of physical force including "cooperative controls,"⁷² such as verbal commands and gestures, and "contact controls,"⁷³ such as strong verbal persuasion, escorting, and strategic positioning, which would have given the Cinematographer an opportunity to comply with the officer's commands without the use of physical force. We note that this is the approach that Officer 3, who was standing directly behind Officer 1, and other officers on the scene took. And while Officer 1's use of force did not appear to result in serious injury to the Cinematographer, the Cinematographer alleged that it did result in some physical harm and

⁷¹ USPP, General Order No. 3615, *Use of Force*, § 3615.04.

⁷² USPP, General Order No. 3615, *Use of Force*, § 3615.04 A (describing "Cooperative Controls" as "Measures used to maintain control over a compliant subject" to include "a wide range of communication skills and non-verbal actions such as volume and tone control, gestures, stance, and facial expressions").

⁷³ USPP, General Order No. 3615, *Use of Force*, § 3615.04 B (describing "Contact Controls" as "Low-level physical and psychological measures used to gain control and compliance when a subject is demonstrating resistant behavior," to include "strong verbal persuasion, strategic positioning, escorting, and soft empty hand control").

damage to his camera equipment.⁷⁴

While we recognize that “we must avoid substituting our personal notions of proper police procedure for the instantaneous decision of the officer at the scene,”⁷⁵ in light of the facts and circumstances confronting Officer 1, Officer 1’s second use of physical force against the Cinematographer did not comply with USPP policy because it was not the minimum level of reasonable force necessary to gain the compliance of the Cinematographer to leave the scene and because Officer 1 did not de-escalate his use of force to the lowest level necessary to control the situation. We acknowledge that the USPP training focuses primarily on the “objective reasonableness” standard set forth under constitutional jurisprudence and does not extensively address what it means to use the “minimum level” of reasonable force. While the DOI may wish to refine its training on this point, we nonetheless conclude that the policy is sufficiently clear that we are able to determine that the conduct at issue here did not comply with USPP policy.

c. Officer 2’s Baton Strike Did Not Comply With USPP Policy

We determined that Officer 2’s use of force against the Reporter did not comply with USPP policy. As discussed above, the USPP’s use of force policy requires that officers “employ only the minimum level of reasonable force necessary to control the situation” and allows for the use of defensive equipment and tactics such as “striking and blocking techniques” when a subject is attempting to assault an officer.⁷⁶ The defensive equipment policy further instructs that an officer may use a baton in situations where an officer is physically assaulted, a subject resists arrest, for crowd control, or in an emergency situation.⁷⁷

Officer 2’s baton strike violated USPP policy because Officer 2’s baton strike was not the minimum level of reasonable force necessary, he did not “de-escalate the amount of force to the lowest level necessary to maintain control,” and none of the four situations listed under the defensive equipment policy were present.⁷⁸ In this case, even if some level of physical force was initially necessary to clear protesters from the area, it was no longer necessary at the time Officer 2 struck the Reporter with his baton because the Reporter was already following the verbal commands of the officers and running away from the area. For example, the video evidence showed that Officer 2 reached over another officer to strike the Reporter as the Reporter’s back was turned to Officer 2 and the Reporter was running away. While Officer 2 initially told us he struck the Reporter with his baton because he believed the Reporter assaulted Officer 1, the evidence showed that Officer 2 did not see the Reporter assault Officer 1, and the video evidence confirmed the Reporter did not in fact assault Officer 1. Rather, as Officer 2 later explained

⁷⁴ See *Headwaters Forest Defense v. County of Humboldt*, 240 F.3d 1185, 1199 (9th Cir. 2001) (stating that whether the use of force poses a risk of permanent or significant injury is a factor to be considered in evaluating the need for the force used in a particular case); see also *Wardlaw v. Pickett*, 1 F.3d 1297, 1304 & n.7 (D.C. Cir. 1993) (noting that while the absence of a severe injury “is not by itself the basis for deciding whether the force used was excessive, it does provide some indication” that the degree of force was reasonable).

⁷⁵ See *Smith v. Freland*, 954 F.2d at 343, 347 (6th Cir. 1992).

⁷⁶ USPP, General Order No. 3615, *Use of Force*, § 3615.02, 3615.04.

⁷⁷ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

⁷⁸ USPP, General Order No. 3615, *Use of Force*, § 3615.02, 3615.04 and USPP, General Order No. 3605, *Defensive Equipment*, § 3605.05.

during his interview, he saw the Reporter as part of a group of people standing near or around Officer 1 and stated the Reporter “looked like someone that was part of the confrontation,” but he could not definitively say the Reporter had assaulted Officer 1.

Furthermore, Officer 2’s explanation that he struck the Reporter with his baton because he believed the Reporter might attempt to run behind the advancing police line to “penetrate” it and assault another officer was not credible or reasonable. The Reporter was fleeing the area *away from the police line* at the time Officer 2 struck him. Officer 2 provided no information, and we found no other supporting evidence, to suggest that the Reporter, who was among many other protesters running away from the area, would turn back around and seek to penetrate the police line. Thus, the evidence did not support a finding that Officer 2’s baton strike was authorized under USPP policy.

Similarly, the evidence does not support a finding that Officer 2’s baton strike was authorized because the Reporter was resisting arrest, it was necessary for crowd control, or it was in response to an emergency. Officer 2 did not contend he was attempting to arrest the Reporter, and he offered no further facts to explain why it was necessary for crowd control for him to strike a fleeing protester, who was following law enforcement officers’ commands to leave the area, or what “emergency situation” his use of force was meant to address.⁷⁹ We therefore determined that the evidence did not support a finding that Officer 2’s baton strike was authorized under USPP policy.

Our findings are supported by the opinions of three different use of force instructors, who all told us that Officer 2’s baton strike was not consistent with the training he received. According to a USPP physical techniques instructor we spoke with, Officer 2’s baton strike was not consistent with FLETC or CDU training because the training does not “incorporate backhanded strikes to somebody running away.” The CDU vendor also told us that the technique Officer 2 used in striking the Reporter was not consistent with the methods the CDU vendor teaches during the CDU training seminars given to USPP officers.⁸⁰ Similarly, the USPP training instructor stated that Officer 2’s baton strike was not “specifically how we train” USPP officers to use their batons, explaining that Officer 2’s use of the baton was a “strike” and “we’re not striking somebody who’s moving away in order to push them further away or get them to move faster.” Thus, Officer 2’s baton strike did not comply with his training or with USPP policy requiring that officers “use only Force-approved methods.”⁸¹

In finding that Officer 2’s use of force did not comply with USPP policy, we recognize that Officer 2 was acting under chaotic, tense, and sometimes violent circumstances and had to make a “split-second” decision “about the amount of force necessary” in this situation.⁸² Like Officer 1, Officer 2 told us he observed protesters fighting with officers and throwing projectiles as the

⁷⁹ The USPP’s defensive equipment policy does not define “emergency situation,” but the facts at issue here do not reasonably appear to rise to the level of “an emergency situation,” which we believe would be a situation presenting an imminent risk of death, bodily harm, or destruction of property. Officer 2 described the “emergency situation” as clearing the street to erect a fence.

⁸⁰ As noted above, Officer 2 attended advanced civil disturbance training given by the CDU vendor in 2016 and 2019.

⁸¹ USPP, General Order No. 3605, *Defensive Equipment*, § 3605.02 E.

⁸² USPP, General Order No. 3615, *Use of Force*, § 3615.02 (quoting *Graham v. Connor*, 490 U.S. at 396–397).

officers cleared H Street. However, even assuming the resistance from the crowd placed Officer 2 in a heightened state of awareness, we cannot find that a reasonable officer on the scene would have responded as he did under the circumstances.⁸³

In sum, we determined that Officer 2's baton strike on the Reporter did not comply with USPP policy because it exceeded the minimum level of reasonable force necessary to control the situation and was not used to address a situation authorized under USPP policy.

IV. CONCLUSION

Officer 1's first use of force (shield strike) against the Cinematographer complied with USPP policy, but we could not make the same finding with respect to Officer 1's second use of force (camera push) because it did not appear that Officer 1 employed the "minimum level of reasonable force necessary to control [the] situation." Officer 2's baton strike against the Reporter did not comply with USPP policy because the policy does not permit an officer to use his baton to strike a retreating individual who is following officers' orders to leave the area, an individual who no longer poses a threat to the officer or others, and where no situation authorizing the use of a baton strike otherwise exists.

V. SUBJECTS

Officer 1, USPP.

Officer 2, USPP.

VI. DISPOSITION

We provided this report to the National Park Service Director for any action deemed appropriate.

⁸³ See *Ciminillo v. Streicher*, 434 F.3d 461, 468 (6th Cir. 2006) (holding it was objectively unreasonable for an officer to shoot an individual with a beanbag propellant during a riot as the individual attempted to leave the scene of the riot and was not displaying aggression).



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