

Posted 3/16/16

## MORE RULES, LESS FORCE?

***PERF promotes written guidelines to reduce the use of force. Cops aren't happy.***

By Julius (Jay) Wachtel. A few weeks ago the Police Executive Research Forum (PERF), an organization of progressively-minded police executives, released "[Use of Force: Taking Policing to a Higher Standard](#)." PERF's new monograph promotes thirty "principles" that, if wholeheartedly implemented by the nation's police departments, would supposedly restore public confidence in its law enforcers and enhance the safety of both citizens and cops.

Many of the principles seem self-evident. Principle 1 emphasizes the sanctity of life and stresses that police should treat everyone with respect. Principle 3 urges that force be proportional to the severity of a threat. Principle 6 urges officers to intervene when colleagues use excessive force. Principle 9 prohibits using deadly force against suspects who only pose a threat to themselves. Principles 10-13 set out various policies on use of force, including thoroughly documenting use of force incidents and insuring that each is carefully investigated. Principle 27 cautions that officers must not automatically turn to a gun just because an ECW (i.e., a Taser) proves ineffective. And principle 29 recommends that 911 operators be trained in various areas, including responses to situations involving the mentally ill.

However, some of PERF's suggestions are less straightforward. Here is an extract from principle 2, which has probably generated the most controversy:

Agency use-of-force policies should go beyond the legal standard of "objective reasonableness" outlined in the 1989 U.S. Supreme Court decision *Graham v. Connor*. This landmark decision should be seen as "necessary but not sufficient," because it does not provide police with sufficient guidance on use of force.

In [Graham v. Connor](#), the Supreme Court ruled that police use of force must be judged "in light of the facts and circumstances judged from the perspective of a reasonable officer on the scene." According to the Court, allowances are also necessary "for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."

PERF felt that the decision's "objectively reasonable" threshold and "split-second" wiggle room were far too permissive for everyday use. So it called on agencies to enact explicit rules that go well beyond *Graham*. Principle 17, "De-escalation," is an example of this approach:

De-escalation can be used in a range of situations, especially when confronting subjects who are combative and/or suffering a crisis because of mental illness, substance abuse, developmental disabilities, or other conditions that can cause them to behave erratically and dangerously. De-escalation strategies should be based on the following key principles [extracts below]:

- Effective communication is enough to resolve many situations; communications should be the first option.

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- Communications often are more effective when they begin at a “low level,” e.g., officers speaking calmly and in a normal tone of voice.
- Whenever possible, officers should be trained to use distance and cover to “slow the situation down” and create more time for them to continue communicating and developing options.
- If an encounter requires a use of force, officers should start at the lowest level of force that is possible and safe.
- As the situation and threats change, officers should re-evaluate them and respond proportionally.

PERF has clarified that its principles [aren't meant to be applied to persons with guns](#). Instead, they're about minimizing force when doing so is possible. But that won't happen unless cops “slow things down”:

It is important to emphasize that PERF's 30 Guiding Principles are about resolving situations in which subjects either have no weapons, or may have knives, rocks, or other weapons – but not firearms. It is these types of encounters in which officers may be able to “slow it down” and consider various options designed to prevent the situation from ever reaching the point where deadly force would be required.

“Slowing it down” is essential for implementing principle 22, which urges that supervisors be present whenever the use of force seems likely:

Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force (emphasis added.) Supervisors should immediately respond to any scene:

- Where a weapon (including firearm, edged weapon, rocks, or other improvised weapon) is reported,
- Where persons with mental health problems are reported, or
- Where a dispatcher or other member of the department believes there is potential for use of force.

Once on the scene and if circumstances permit, supervisors should attempt to “huddle” with officers before responding to develop a plan of action that focuses on de-escalation where possible. In the case of persons with mental health problems, supervisors who are not specially trained should consult and coordinate with officers on the scene who are specially trained.

Our nation's inner cities are suffused with guns, drugs and violence. Patrolling alone, or at most in pairs, officers regularly confront the consequences of poverty, ignorance and social disorganization. Cops peacefully resolve innumerable conflicts every day. Actually, many of PERF's principles (e.g., “communications should be the first option”; “officers should start at the lowest level of force”) reflect how most policing gets done.

In Los Angeles, where officers are trained in de-escalation, the Police Commission declined to adopt PERF's principles in full. Still, it called for [rules](#) that would compel the use of strategies such as “slowing it down.” That enraged a union official. His complaint, that “every second counts, and hesitation will kill you,” was a common reaction among the rank and file. Indeed, as some of the more demanding principles

make the rounds (e.g., “officers should never do anything to escalate a situation”), cops everywhere have started to balk (click [here](#) and [here](#).) Even the stodgy old IACP has [chimed in](#):

...the IACP is extremely concerned about calls to require law enforcement agencies to unilaterally, and haphazardly, establish use of force guidelines that exceed the “objectively reasonable” standard set forth by the U.S. Supreme Court nearly 30 years ago (*Graham v. Connor*). The creation of a multitude of differing policies and use of force standards throughout the United States would, undoubtedly, lead to both confusion and hesitation on behalf of law enforcement officers which in turn would threaten both their safety and that of the citizens they are sworn to protect.

Knowing from experience just how dangerous and impulsive citizens can be, cops are naturally wary of rules that would have them wait for a boss or a riot shield (as principle 28 requires) while an unpredictable someone holds their ground. Earlier this month two [NYPD officers cornered a deranged man](#) who had already stabbed a shopkeeper dead and set another person on fire. They ordered him to drop the knife in his hands. Instead, he doused them with chemicals from a bottle. Both officers suffered serious burns but managed to shoot and wound the suspect.

That’s not to say holding off is always inappropriate. But given the uncertainties of field encounters, the IACP, street cops, and, yes, this blogger are leery of requiring officers, on penalty of discipline, to come up with compelling justifications for not “slowing things down.” One can imagine all the creative, after-the-fact writing that would inspire! If nothing else, PERF’s implicit assumption that suspects will peacefully wait while cops deploy shields and huddle with supervisors and mental health professionals seems to convey a certain naiveté about the environment of American policing.

Well, mystery solved! PERF’s principles came from a visit to Scotland (click [here](#) and [here](#).) That’s right – Scotland – where violent crime is less than a quarter the U.S. rate, [all handguns and semi-automatic rifles](#) beyond .22 rimfire are illegal, fewer than one in ten homicides [are committed with guns](#), and only [two percent of cops](#) are armed. According to a recently retired chief constable, “you never see people with guns in this country. If you do, you’re in a rural area and it’s a bloke out shooting rabbits.”

Policing can and should be improved. Law enforcement practices must not be immune from analysis and criticism. As we’ve said before, cops who are loath to take personal risks should consider less dangerous occupations. We recently examined [de-escalation](#), and prior posts have looked into many instances of excessive force, including [firing at vehicles without clear justification](#). Still, instead of making more rules – believe us, American police have plenty of those – it might be wiser to examine, in depth, the craft of policing. That’s right – the *craft*. Some cops excel at peacefully defusing things. A systematic study of their working styles could generate ideas to make policing kinder and gentler. And we wouldn’t have to turn officers into liars.

Incidentally, if the notion of policing as a craft seems intriguing, your blogger delivered [a paper on that topic](#) during a visit to...Ukraine. But it’s all about America. Really. For the rest of the story, click [here](#).