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POLICE EXECUTIVES PROPOSE DANGEROUS NEW USE OF FORCE RULES FOR LINE OFFICERS

A REPLY FROM THE RANK AND FILE PERSPECTIVE NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS

This past Friday, the Police Executive Research Forum (PERF), a management think-tank located in Washington D.C., issued a paper entitled “Use of Force: Taking Policing to a Higher Standard. 30 Guiding Principles.” While the paper pays lip service to improving officer safety, the actual recommendations are more likely to result in increased officer injuries and death. Not surprisingly, PERF, which receives substantial funding each year from the federal Department of Justice, toes the company line in urging local departments across the United States to become more like what the Obama administration would like them to be. This includes changes in training, equipment, reporting, assignment of personnel, even officers’ thought processes. Significantly, there does not appear to be any policy language at all directed to changing criminal behavior, for PERF and groups like them, it seems like it’s always the rank and file officer who must change. Here are some of the more egregious examples of fuzzy thinking about the realities of law enforcement from PERF: (All language quoted is from the actual paper.)

“Departments should adopt policies that hold themselves to a higher standard than the legal requirements of *Graham v. Connor*. 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. As a result, prosecutors and grand juries often find that a fatal shooting by an officer is not a crime, even though they may not consider the use of force proportional or necessary. Agencies should adopt policies and training to hold themselves to a higher standard, based on sound tactics, consideration of whether the use of force was proportional to the threat, and the sanctity of human life. “

Let’s try to unpack that paragraph which is just crammed full of half-truth, flawed assumptions, and dangerous suggestions. First, the *Graham v. Connor* decision is not merely an optional “legal standard,” it’s the Supreme Court’s explanation of what the Constitution requires. Far from failing to “provide police with sufficient guidance” the case, if you bother to read it, instructs courts how to analyze the actions of law enforcement officers after the fact. And these cases are usually civil, not criminal in nature. Also, it’s extremely misleading to lament that “prosecutors and grand juries often find that a fatal shooting by an officer is not a crime, even though they may not consider the use of force proportional or necessary.” Well, thank goodness. That’s actually what the Constitution requires. As the Supreme Court points out again and again, *it doesn’t matter what the prosecutor or grand juror feels*, it’s what *the officer* who was actually in the situation believed. And the officer didn’t even have to be 100% right, only reasonable given what he or she perceived to be the threat.

That's the law of the land, period. If PERF wants to change the Constitution, go right ahead, but don't mislead readers into thinking that Constitutional law has suddenly become optional for police chiefs, prosecutors and jurors.

And what about this suggestion that agencies should "go beyond" the Constitution? Really? Where would that road take American policing? Should we disregard Fourth Amendment law on warrants? Throw out First Amendment law on protests? Decide that if PERF disagreed with other Supreme Court decisions like, say, *Miranda v. Arizona* or *Brown v. Board of Education*, then we should just issue our own suggested policies instead? "But wait," PERF would say. "We're only arguing that the *Graham* case is a minimum, and that agencies should adopt an even broader, more protective set of policies to safeguard the constitutional rights that *Graham* seeks to protect." No, that's not what PERF is doing. What PERF is doing is imposing a political viewpoint in the guise of legal need. Can you imagine the same, generally politically liberal, PERF managers recommending that local police departments "go beyond the legal standard" of the Second Amendment, and dispense with any requirement for firearms background checks, permits, or possession limits? Of course not, it would never happen. But the reason why it would never happen is a political one, not a legal one. The PERF chiefs and managers either tend to be liberal themselves, or of necessity have to follow the whims of the big city mayors who employ them, or dance to the tune of the Department of Justice. Legally, there is no distinction.

"Police use of force must meet the test of proportionality. In assessing whether a response is proportional, officers must ask themselves, "How would the general public view the action we took? Would they think it was appropriate to the entire situation and to the severity of the threat posed to me or to the public?"

Well, no. Police use of force must meet the test of Constitutionality, not proportionality. Sometimes proportionality, or more accurately, disproportionality, is a factor in finding excessive force liability, but the test always remains what the Constitution requires. And how about this gem: "Officers must ask themselves, 'How would the general public view the action we took?'" Really? Remember that this whole set of recommendations is focused largely on use of deadly force, and that such incidents are typically over in seconds, from first perception of threat to end of use of force. Read that sentence out loud. By the time an officer even formulated that thought, the situation is likely over. And if the officer was paralyzed from acting due to being trained to think in a certain way, while the criminal is not, you've likely just added one more name to the Memorial in Washington. Criminals, by definition, will not think and act the way society expects them to.

And who is the "general public" whose views should control what the officer does? Chances are, PERF doesn't want to come right out and say so, but the "public" they have in mind are the riotous, destructive mobs marching under Black Lives Matter flags and egged on by Quentin Tarantino. In reality, the far more common (that is, far more "general") public view is that the killer/rapist/kidnapper/armed robber is getting what he should have expected (and probably deserved) in attacking a police officer.

"The Critical Decision-Making Model provides a new way to approach critical incidents. Policy on use of force should be based on the concept of officers using a decision-making framework during critical incidents and other tactical situations. Departments should consider adopting the Critical Decision-Making Model (CDM), which PERF has adapted from the United Kingdom's National Decision Model. The CDM provides officers with a logical, easy-to-use thought process for quickly analyzing and responding appropriately to a range of incidents. The CDM guides officers through a process of:

- Collecting information,
- Assessing the situation, threats, and risks,
- Considering police powers and agency policy,

- Identifying options and determining the best course of action, and
- Acting, reviewing, and re-assessing the situation.

The CDM is a constructive process that provides a framework for going beyond the minimum legal standard of objective reasonableness.”

Here’s a beauty. In this one, PERF combines the imposition of another time-consuming, unrealistic and paralyzing thought process for officers under threat, with another plea to disregard the Constitutional legal standard, and tops it off with “that’s how they do it in Europe” as an attempt at justification.

“Shooting at vehicles must be strictly prohibited. Agencies should adopt a strict prohibition against shooting at or from a moving vehicle unless someone in the vehicle is using or threatening deadly force by means other than the vehicle itself.”

This proposal is one of the most likely to get officers injured or killed if it is adopted. The National Law Enforcement Officers Memorial in Washington, D.C. contains the names carved in stone of American officers who were killed in the line of duty by *no* “means other than the vehicle itself.” Police officers are deliberately run down in this country, and that’s a fact. The recent example of a deranged woman mowing down pedestrians on the crowded sidewalks of the Las Vegas Strip is only one of the more noted cases. Vehicular homicide statutes are on the books for a reason. What of cases where an officer or Trooper is being dragged by a vehicle? Or situations where a narrow alley or highway ramp precludes any escape route from an oncoming vehicle? Or a terrorist scenario. The officer can’t shoot at the driver of the gas tanker or dump truck that is headed towards the orphanage or military recruiting center because the only threat is the “vehicle itself.” How about the Boston Marathon bombers? Should officers have stopped shooting at the killers in their stolen SUV once the bombers stopped throwing bombs? Is that really what the “general public” wants and expects?

“De-escalation starts with effective communications. To effectively carry out the agency’s de-escalation strategies, all officers should receive rigorous and ongoing training on communications skills. Officers should be trained to effectively communicate in a range of situations, including everyday interactions while on duty, public speaking and meeting facilitation, interacting with victims and witnesses, handling critical incidents, and dealing with people with mental health and/or substance abuse problems. All officers should also receive training on basic negotiations techniques.”

I guess if you come from a world, like PERF’s members, where public speaking and meeting facilitation is part of your job description, then it’s understandable that you’d want line officers to have to know how to act like that, too. After all, PERF tends to study law enforcement officers as objects and interchangeable parts, not individual men and women doing a job that most PERF members either have never done, or have not done in years. But while many offenders and despairing persons can certainly be helped with effective communications and negotiation techniques, it is equally certain that many offenders and desperate persons cannot. Policies need to recognize that. An unrealistic policy is worse than no policy at all. When there is no policy at all, human beings can at least be expected to fall back on common sense. When there is a foolish policy that requires obedience to it, not only common sense but safety and officers’ lives will go out the window.

“Provide a prompt supervisory response to critical incidents to reduce the likelihood of unnecessary force. 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.”

This is another example of how out of touch with the real world the authors of these policy recommendations are. Do they really expect Officer Doe to radio “Dispatch, I need a Lieutenant at the scene ASAP, I’ve got a guy with a stick.” Or how about requiring a supervisor any time “a dispatcher or other member of the department believes there is a potential for use of force.” Is there *any* situation in police work that *doesn’t* carry with it the potential for the use of force? If this recommendation is to be taken seriously, you’d have a supervisor wanting to call a “huddle” not only on every crime in progress call, but every traffic stop, every service of a restraining order, and every guy who’s upset his car got towed.

The other “guiding principles” aren’t much better. A link to the full paper is appended below.

Given the level of funding and political buy-in from officials who don’t particularly care for police that will be thrown behind these recommendations, it is important for the actual rank and file officer to know what is being proposed. The men and women who actually do this difficult and often dangerous job deserve to have their own lives, and the ability to protect themselves, defended. Associations and chiefs and sheriffs with common sense must stand up and be heard. Fortunately, despite what groups like PERF want to believe, or are paid to promote, the actual “general public” out there still overwhelmingly supports law enforcement both as the fundamental safeguard of civilized society, and as personified in the individual man or woman who, while imperfect, still usually gets it right.

The full PERF paper can be found here: <http://www.policeforum.org/assets/30%20guiding%20principles.pdf>