

# Should We Trust Cops?

November 28, 2014

Still fresh are the news reports and images of the recent unrest in Ferguson where masked thugs took over the streets, smashing store windows, looting businesses, randomly shooting guns and engaging in a myriad of other anti-social behavior. Notably, cops were at various times hunkered in defensive formations or belatedly responding in a limited manner to the street thugs' conduct. This is not unique to Ferguson. Even now the unrest from Ferguson is spilling into other communities, and we've seen this happen before in other parts of our country: thugs taking over the streets, burning and looting, and cops belatedly taking action only after the thugs have inflicted significant damage to the community. Sociologists, ideologues and pundits continue to argue about root causes for this kind of unrest. Meanwhile, average middleclass community members, small business owners, factory workers, clerks, salespeople, mothers and fathers, and the like, are left to replace broken windows, restock looted merchandise, rebuild their burned-out businesses, and try to put their lives back into some state of order. Putting aside for a moment the discussion about 'root causes' of our current state of affairs, one thing is for sure: either cops or thugs will control the streets.

So who should we trust? Most would agree that in American society we want to encourage and reinforce certain qualities, such as integrity, honesty, maturity, and emotional stability. It seems that fostering these qualities in society would create the best conditions for each of us in our individual "pursuit of happiness" as envisioned by our founding fathers.

Certainly, trusting thugs (rapists, murders, thieves, vandals, looters, etc.) doesn't seem to make much sense. By their very conduct thugs demonstrate a lack of integrity, honesty, maturity and emotional stability. Thugs pay little respect to the person or property of others. Thugs take what they want, whenever they want it, regardless of the expense to others. Thugs do whatever makes them feel good regardless how their conduct affects others. Allowing thug conduct to proliferate would seem to interfere with our individual "pursuit of happiness". The unrest in Ferguson is a recent example of the result when thug conduct goes unchecked for a period of time. Trusting thugs is not a good idea.

Well, how about trusting cops? Let's start with a brief American "PoliSci" refresher. Uniform law enforcement is the most conspicuous form of government. Police officers stand as ubiquitous symbols of societal peace, order and safety within our communities. As an important component of its basic structure society seeks out those with character qualities such as integrity, honesty, maturity and emotional stability when selecting its police officers. Society then trains those selected as officers for the express purpose of dealing with the criminal element, fully expecting that these trained officers will not ignore societal problems or run away when confronted with violence in the field. Society then sends these trained officers out into its communities to maintain order, necessarily requiring officers to ferret-out societal malfeasants under less than ideal conditions. Compared to Joe or Jane Citizen, and in doing what society expects, officers are far more likely to encounter violent confrontations with thugs who fight, resist or try to flee. Those who attack or resist officers attack or resist not only the officers personally, but also what the officers stand for, namely societal law and order, societal "status quo". This is the reason for laws that define society's expectations not just of officers, but of everyone in

society regarding police use of force. In addition to the broader defenses to criminal homicide (justifiable, etc.), states also have statutes defining when an officer may use force. Generally, officers may use force to overcome resistance, prevent escape, and to protect life. Such laws are not necessarily intended to give officers "greater rights" than Joe or Jane Citizen. Rather, these laws validate society's expectations it lays upon police officers while engaged in the discharge of their duties as society's agents. The laws also provide notice of possible consequences to those who do not want to play by society's rules, those who may resist officers, attempt to escape from officers, or hurt other people.

Selected by society, cops are quantities known to society. It makes perfect sense to trust cops...but should we trust them blindly? No rational person would disagree that all police uses of force, and shootings in particular be fully and impartially investigated in a manner transparent to the community, and that any officer who violates the law should be vigorously prosecuted. However, we need to remember that an officer being investigated is entitled to due process, just like anyone else in America. Due process means that any investigation and prosecutorial review must be devoid of agenda, politics and ideology. Not only is due process the investigated officer's constitutionally protected personal right, society has a vested interest to ensure due process is honored so that all officers see the system as fair. Failing to afford due process to an officer investigated would have severe negative consequences not just to the officer, but to society as a whole. Such failure would tend to chill officers' willingness to fully engage in policing activities, which is necessary to keeping our communities safe. Officers would see the system as imbalanced and unfair. Officers, as human beings, would reevaluate the risks and benefits of their professional activities and adjust accordingly. Why would officers go out to enforce the law when the law won't be applied evenly to the very same officers during the discharge of their law enforcement duties as society expects? Therefore due process must be applied based upon objective facts and evidence, and without regard to agenda, race, or ideology. Protecting an officer's right to due process consistent with the rule of law protects society. Rule of law must apply always. Justice must remain blind.

But who watches the watchers? Much has been said recently suggesting that cops have greater latitude when it comes to using lethal force. What is largely ignored is that an on-duty cop who kills another person is subject to two layers of criminal prosecutorial review: state and federal. Let's briefly compare a homicide caused by a non-cop with one caused by a cop. Where non-cop Joe or Jane Citizen kills another person the state-level prosecutor, usually the local district attorney (DA), evaluates the circumstances. If the DA declines to prosecute, non-cop Joe or Jane Citizen - as one who is not a "government actor" - cannot be subject to criminal prosecution by the federal government. Where a cop kills another person and the DA declines to prosecute, as was the case in Ferguson, the federal government, namely United States Department of Justice (US DOJ), can evaluate the circumstances for criminal prosecution of the cop for violation of civil rights. In fact, even if the DA opts to prosecute a cop for a crime and the cop is found to be "not guilty" in the state court, US DOJ can still criminally prosecute for the same conduct for a violation of civil rights, which was the case for the Los Angeles police officers in the highly-publicized Rodney King matter. To suggest there is insufficient oversight of police officers in America is absurd.

When we strip away rhetoric, ideology, politics, and look at the Ferguson tragedy we see a young man who was killed by an officer. A Grand Jury reviewed the facts and evidence. The facts and evidence revealed that shortly before being killed Mr. Brown violently robbed a local business. Mr. Brown then failed to comply with Officer Wilson's lawful directions, ultimately attacking Officer Wilson. Officer

Wilson responded first to protect his own life, and then to protect the community at large by attempting to apprehend Mr. Brown. We cannot undo the tragic loss of Mr. Brown's life.

So where do we go from here? We can turn our attention to our collective future together in society to avoid future similar tragedies using objective, thoughtful, rational dialogue in the pursuit of objective truth. As a society we need to rediscover the significant value of objective truth devoid of rhetoric, ideology, and politics. We have to have respectful dialogue. Certainly, police officers can learn from the past and do their work better. But that can be said of any profession. (Doctors and lawyers call their respective professions a "practice" for that very reason!) Each police department uses its internal review process to evaluate its training, policies and procedures: how to do things better as cops. Subjecting officers involved in high-profile incidents like Ferguson to a lynch-mob mentality will only interfere with this process. And the lynch-mob approach is just wrong...it is contrary to the rule of law and it will hurt society as a whole. Again...justice must remain blind.

God Bless,

Greg Yacoubian

[greg@gregyacoubianlaw.com](mailto:greg@gregyacoubianlaw.com)

Greg Yacoubian is a retired police lieutenant and litigation lawyer in Westlake Village, California. Greg's law practice focuses on police issues. Greg also consults and teaches on police practices, use of force investigations, interrogation, and leadership.

\*\*\*\*\*