

Asking the Right Question

Why Issue Recognition Is the Foundation of Lawful Policing

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MUCH AVOIDABLE POLICING LIABILITY DOES NOT BEGIN WITH BAD INTENT. IT BEGINS WITH ANSWERING THE WRONG QUESTION.

Officers, supervisors, and chiefs are often asked after the fact to explain why a decision was lawful, reasonable, and necessary. That explanation becomes difficult when the decision was made before the governing legal issue was identified. They may have acted on real facts and in good faith but still missed the legal or strategic issue the situation required them to decide.

That pattern appears at every level of a policing organization. A patrol officer confronts an armed subject and focuses on the weapon before identifying whether the circumstances establish an immediate threat. A supervisor allows a vehicle pursuit to continue because the driver fled, without requiring a fresh assessment of whether the need for immediate apprehension justifies the risk the pursuit now creates. A chief responds to rising violent crime by increasing visible enforcement before determining what is actually driving the increase.

In each situation, the visible fact drives the response before the governing issue is identified. The subject has a gun. The driver fled. Crime is up. Each fact matters. However, none of them, standing alone, answers the legal or strategic question that must be decided.

This is not usually a failure of effort. It is a failure of analysis. In policing, errors in judgment often arise not because officers or leaders did not care, but because the organization never taught them to identify the question the law requires them to answer.

Training officers in law and tactics is essential. But knowing what the law says is not the same as identifying which legal question a specific set of circumstances presents. Nor is it the same as understanding why the law asks that question in the first place. The gap between legal knowledge and legal analysis is where many avoidable legal, operational, and public trust risks begin.

That gap has consequences for every officer who carries a badge, every supervisor who approves or reviews field decisions, and every chief who signs a policy, authorizes a strategy, or explains an agency's conduct to the public. Legal defensibility depends not only on authority. It depends on whether the decision was grounded in the right legal question.

FACTS ARE NOT THE SAME AS ISSUES

Consider one of the most familiar and consequential scenarios in policing: a person with a gun.

The visible fact is immediate and important. The person is armed. That fact demands caution, distance, communication, cover, time, and disciplined attention. But the presence of a weapon does not, by itself, answer the legal question the officer must resolve.

The governing question is not simply: Is the person armed?



The governing question is what the facts, viewed as a whole, reasonably support at that moment, including whether the person poses an immediate threat and what level of force, if any, is reasonable under the circumstances. That question is different in kind, not merely different in wording. It requires the officer to assess what the weapon means under the circumstances. Does the person have the ability to cause harm? Does the person have the opportunity to use the weapon? Do the person's actions, movement, words, positioning, distance, and pace indicate apparent intent to cause death or serious bodily injury? Is the threat immediate, developing, ambiguous, contained, or uncertain? What is known and what can reasonably be understood from those facts at the time?

Ability, opportunity, and apparent intent are not substitutes for the constitutional standard. They are practical tools that help officers organize facts relevant to the *Graham* inquiry. The legal standard remains objective reasonableness under the totality of the circumstances. But those tools help officers avoid treating the most visible fact as though it were the legal conclusion.

When officers identify the right question first, they are more likely to make legally grounded decisions. When they react directly to the most visible fact, they may act with speed and confidence but without the analytical foundation the law requires. The difference between those two outcomes often determines whether a decision can be defended in court, explained to the public, and learned from inside the organization.

Facts describe what is present. The issue defines what must be decided. They are not the same thing. Treating them as equivalent is where legal analysis begins to break down.

LEGAL KNOWLEDGE IS NOT THE SAME AS LEGAL ANALYSIS

Police officers are not without decision-making tools. Many academy and agency programs include structured decision-making models. The Critical Decision-Making Model (CDM), associated with the ICAT program developed by the Police Executive Research Forum, provides officers with a five-step process for managing critical incidents: collect information; assess the situation and risks; consider police powers and agency policy; identify options; and act, review, and reassess.¹

The model has real value. It gives officers a structure for slowing down when circumstances permit, gathering information, reassessing conditions, and avoiding reflexive action. It also names steps that experienced officers may perform intuitively but newer officers need to practice deliberately.

But the CDM is not, by itself, an issue recognition framework. It helps officers manage a situation. It does not always require them, at the outset, to recognize the governing issue the facts present. That distinction matters. When legal authority is treated as one step in a broader tactical process, there is a risk that officers first form a response orientation and only later ask whether the response is authorized. The stronger discipline is to identify the governing issue first and then build the response around the legal and operational problem the officer must solve.

This is not a criticism of the CDM's value. It is an argument for strengthening it. Tactical decision-making and legal issue recognition should reinforce each other. Officers need a way to manage dynamic incidents, but they also need a way to identify the legal issue before the incident management process hardens into action.

Lawyers face a comparable challenge: applying legal knowledge to specific facts under uncertainty. They are taught to do that through a structured analytical framework. They identify the issue, identify the rule, analyze the facts under that rule, and reach a conclusion. That framework is not magic. It is discipline. It forces the lawyer to separate facts from issues, rules from conclusions, and assumptions from analysis.

Policing needs an equivalent discipline adapted to the realities of the field. This does not mean officers must pause during a rapidly evolving incident to recite case law or perform a lawyer's analysis before making a tactical decision. Officers are not law students writing exam answers. They are often making time-sensitive decisions under pressure, with incomplete information, physical danger, and consequences that unfold in seconds. The point is trained recognition, not memorization. Policy, training, and supervision should translate legal standards into practical decision questions officers can use under pressure: What is the threat? What facts support action now? What level of force or intrusion is reasonable under the circumstances? The analysis cannot be exhaustive, but it must be structured enough to prevent the most visible fact from becoming the entire decision. The profession has invested heavily in teaching officers what the law says. It should invest with the same seriousness in teaching officers how to identify what legal question the law is asking before action is taken.

A POLICING FRAMEWORK FOR ISSUE RECOGNITION

A legal analytical framework for policing must be simple enough to use under pressure and strong enough to apply across levels of responsibility. It should help a patrol officer assess force, a supervisor assess a pursuit, and a chief assess a strategy. The facts and stakes will differ. The analytical structure should not.

A workable framework has four steps.

1. **Identify the issue.** What constitutional purpose is engaged—pursuing justice, protecting people from harm, or both?² What specific legal question does that purpose present? This step separates what is visible from what must be decided. A weapon, flight, disorder, crime data, public pressure, or media attention may identify the circumstance. It does not necessarily identify the issue.
2. **Identify the applicable legal standard.** What legal standard applies and what constitutional value does it protect? This requires more than reciting case names or policy language. Officers and supervisors need to understand why the standard exists. The Fourth Amendment does not ask whether an officer was busy, sincere, frustrated, or afraid in the abstract. It asks whether governmental force or intrusion was reasonable under the circumstances. Understanding that purpose helps officers apply the standard in situations that do not match a memorized scenario.
3. **Analyze the known facts under the governing legal standard.** In a use-of-force case, this means asking how the facts bear on the severity of the problem, the immediacy of the threat, the subject's conduct, resistance or flight, proportionality, timing, warnings where feasible, distance, risk to officers or others, and the totality of the circumstances. The question is not whether a less intrusive response can later be imagined. The question is whether the force actually used was objectively reasonable given the facts confronting

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the officer at the time. Proportionality and necessity are useful concepts when properly understood. Proportionality asks whether the level of response was commensurate with the threat or governmental interest at stake. Necessity asks whether there was a sufficient governmental need for the level of force used given the threat actually presented. Both concepts operate within the Fourth Amendment's objective reasonableness standard and must be evaluated under the totality of the circumstances.

4. **Make a decision grounded in the analysis.** What response follows from the issue identified, the applicable legal standard, and the facts known at the time? Legal authority without operational soundness may create unnecessary risk. Operational soundness without legal grounding creates liability. The point is not to justify the decision after the fact. It is to make the decision through facts, law, and the purpose of police authority before action is taken. Experienced officers often perform parts of this analysis intuitively when they are at their best. The point of a framework is not to replace judgment. It is to make good judgment teachable, repeatable, supervisable, and reviewable. It gives officers a structure before the moment of decision and gives supervisors and chiefs a structure after the fact to evaluate whether the decision was built on the right foundation.

This discipline matters because the same analytical error appears in different forms across the organization. In a use-of-force decision, the issue is not simply that a person is armed, but what level of force, if any, the facts viewed as a whole reasonably support at that moment, including whether the person poses an immediate threat to the officer or others. In a pursuit, the issue is not simply that the driver fled, but whether the need for immediate apprehension warrants the danger the pursuit now creates. In a crime strategy, the issue is not simply that crime is up, but what is driving the increase and what response will reduce harm without generating unnecessary enforcement risk. In each setting, the visible fact matters. But the visible fact is not the issue. The issue is the legal, operational, or strategic question the agency must answer before acting.

MAKING ISSUE RECOGNITION AN ORGANIZATIONAL DISCIPLINE

Issue recognition is often treated as something experienced officers develop over time. That is partly true, but it is not enough.

Experience can produce judgment. It can also produce habit. Officers can spend years in high-volume environments and still default to fact-triggered responses if the organization never required a disciplined analytical step before action. A veteran officer may respond quickly because experience has taught useful pattern recognition. But pattern recognition is not the same as legal issue recognition. Without structure, speed can become confidence without analysis.

Building issue recognition is therefore an organizational responsibility.

Training should require officers to identify the governing issue before selecting a response. Scenario-based instruction should ask not only, “What would you do?” but also, “What legal question must you answer first?” In a use-of-force scenario, the answer may involve immediate threat and objective reasonableness. In a pursuit scenario, it may involve the balance between apprehension need and danger to the public. In a search scenario, it may involve consent, reasonable suspicion, probable cause, exigency, or a warrant requirement. The point is not to turn officers into lawyers. The point is to teach officers to identify the legal structure of the decision they are making.

This training must also distinguish between constitutional minimums and agency expectations. A department may properly train officers to use time, distance, communication, tactical repositioning, or de-escalation when feasible. It may impose policy requirements that exceed the constitutional floor. But officers and supervisors should understand which part of the analysis is constitutional law, which part is agency policy, which part is state law, and which part is tactical judgment. Blurring those categories weakens legal understanding and can create confusion in litigation, discipline, and public explanation.

Supervisors should reinforce the same discipline in the field and in review. The first question in any review of a significant incident should be—What was the governing issue the officer or supervisor had to decide? Without that question, review becomes either hindsight criticism or superficial validation. It may identify whether policy language was satisfied, but it may miss whether the officer or supervisor analyzed the right problem.

Policy should also reflect issue recognition. Policies often describe procedures, permissions, and prohibitions. They should also clarify the legal and operational questions officers are expected to resolve. A pursuit policy should not merely state when a pursuit may begin or end. It should identify the ongoing risk-justification question. A force policy should not merely define force options. It should help officers understand the threat, proportionality, governmental need, and reasonableness questions those options present. A crime strategy directive should not merely order visibility or enforcement. It should define the problem the strategy is designed to solve and the constitutional boundaries within which it must operate.

Command staff must apply the same discipline to executive decisions. The problems that reach a chief's desk often arrive as demands for action: do something about crime, do something about homelessness, do something about disorder, do something about a controversial incident. Those demands are not yet issues. They are pressure. The chief's task is to convert pressure into a properly framed question before authorizing action.

Agencies get the quality of legal judgment they train, supervise, and review. If issue recognition is never required, it will occur

inconsistently. If it is built into training, supervision, policy, review, and executive decision-making, it becomes part of the agency's professional discipline.

THE FIRST OBLIGATION IS ANALYTICAL

The failure to identify the governing issue before acting is not a minor procedural gap. It affects field decisions, supervisory judgment, policy design, litigation defensibility, and public trust.

Officers are expected to know the law and apply it correctly. That expectation requires more than memorizing standards. It requires understanding what question the law is asking in a given situation, why it asks that question, and what the answer demands under the circumstances present.

The seminal cases governing police authority are not merely rules to recite. Cases such as *Graham*, *Garner*, *Scott*, and *Barnes* are expressions of legal reasoning about governmental power, public safety, individual liberty, and the limits of force. Officers and leaders who understand that reasoning are better equipped to apply the law when facts are uncertain, incomplete, fast-moving, or politically charged. Officers and leaders who know only the holdings may struggle when the next case does not look like the training scenario.

That responsibility belongs to every level of the organization. The patrol officer must identify the issue before acting. The supervisor must identify the issue before approving, directing, or reviewing. The chief must identify the issue before setting policy, deploying resources, or explaining the agency's conduct.

Policing is not judged only by the facts officers observe. It is judged by the decisions officers and leaders make in response to those facts. Those decisions are judged by whether they were lawful, reasonable, necessary, and grounded in the right question.

The first obligation before any significant policing decision is therefore not tactical. It is analytical.

The officer who asks the right question before acting is more likely to make a lawful decision. The supervisor who asks the right question before approving or reviewing is more likely to strengthen performance. The chief who asks the right question before setting direction is more likely to align authority with purpose.

A profession that exercises extraordinary public power must be disciplined enough to identify the issue before using that power. That discipline is not an academic exercise. It is the foundation of lawful policing. ♡

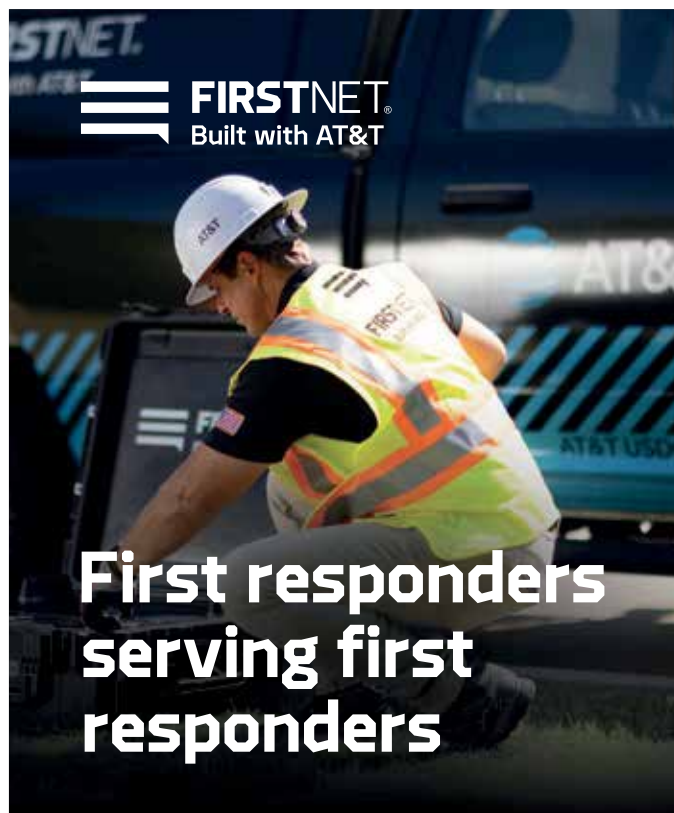


View an expanded version of this article on Police Chief Online, including examples of how this concept applies to decisions around use of force, pursuits, and crime reduction strategies.

NOTES:

¹Police Executive Research Forum, *Integrating Communications, Assessment, and Tactics (ICAT) Training Guide for Defusing Critical Incidents*, Module 2: Critical Decision-Making Model (Washington, DC: Police Executive Research Forum, 2016).

²Arif Alikhan, "The Constitutional Purpose of Policing," Chief's Counsel, *Police Chief* 91, no. 2 (2024): 16–18.



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