



FORCE SCIENCE[®] NEWS

Chuck Remsberg
Editor-in-Chief

In This Edition:

In Force Science News #336 [4/24/17], we asked your professional opinion on warning shots. This, after the IACP and a collective of other leadership law enforcement organizations recommended in a National Consensus Policy on Use of Force that policing agencies officially permit these long-discouraged firearm discharges under certain guidelines.

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Our in-box overflows with pros and cons of warning shots

You responded with the highest volume of email we have ever received. It flooded in from as far away as South Africa and represented agencies large and small of every description.

About 90% strongly condemned the idea of permitting warning shots. Others agreed with the IACP group that a change of thinking is appropriate.

Here's a representative sampling of this lively conflict, edited for brevity and clarity.



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FIRST, THE MAJORITY VIEW...

Beware of creating “the very damage we intend to diminish”

Warning shots lessen the significance of discharging a weapon, opening the door for officers to consider the use of their firearm as an intimidation tool or variable force option. We already have a variety of less-lethal tools and intermediate weapons to bridge the gap between officer presence and deadly force. None carries the inherent collateral risks of warning shots.

The argument that a warning shot will result in “not having to use deadly force” belies the fact that firing a warning shot is using deadly force on its face. The round, once fired, cannot be recalled, and the officer, agency, and municipality will be held accountable for any damage, injury, or death that results from the officer intentionally discharging his or her weapon without a distinct target.

The officer can only shoot into the ground or into the air. Both options are ripe with dangerous foreseeable consequences to the officer, the suspect, and any innocent civilians in the area.

Shooting into the ground will not necessarily trap the bullet. Deflections and ricochet rounds resulting from impacting a latent object in the topsoil or on pavement will spit that round out in uncontrollable directions. Any round fired into the air must come down eventually. Not only will this result in reduced ability to account for the whereabouts of the point of impact, but it increases considerably the likelihood of injury to innocent civilians within range.

Warning shots potentially can escalate the use of force. The suspect, believing he is

being fired upon, will either return fire, forcing the deadly force the warning shot was intended to avoid, or experience a heightened fight-or-flight dump that then requires arresting officers to use more force to overcome it. Also, other officers hearing a warning shot could reasonably mistake the shot as coming from the suspect, and respond with gunfire.

We so need to continuously examine our practices and find areas within the use-of-force spectrum that could benefit from new techniques or technology. But we also have the responsibility to ensure that the new techniques or technology do not inadvertently cause the very damage we intend to diminish.

Capt. Jon Williams, MSM, JD
Deputy Chief, Patrol Division
Noblesville (IN) PD

Creating expectations

If you create in policy the possibility of a warning shot, then there will be an EXPECTATION of a warning shot. So attorneys representing the estates of deceased will now have this argument when someone is shot by the police: “Did you fire a warning shot before you shot the deceased to death? If not, WHY?”

Sgt. Richard Aztian (ret.)
Certified Force Science Analyst
Chicago PD

Warning shots may violate case law

When deadly force is authorized under the Supreme Court’s standards, officers need not use lesser alternatives to combat a threat, nor does case law require officers to use a less intrusive means before employing deadly force. In fact, an argument could be made

that, under existing case law, the firing of a warning shot is not a reasonable use of deadly force.

A warning shot places the officer and unknown third persons at greater risk of injury since the officer has not quickly and decisively neutralized the threat, which is the goal of employing deadly force.

Atty. Steven Surowitz
FBI field division legal counsel (ret.)
President, SHS Solutions, LLC
Hazlet, NJ

Dire projection of the future
With a change of policy, the warning shot will become an alternative to deadly force in the eyes of the media, segments of the public, and, more important, plaintiffs in civil court.

It will be assumed the warning shot would have definitively prevented the need to shoot the suspect and will become a “clear and reasonable alternative to deadly force.” Officers will be forced to argue why they chose one option (shooting the suspect) over the other (saving the suspect’s life by firing a warning shot). Eventually plaintiffs will succeed in convincing a jury that a warning shot is a reasonable “first step” in deadly force. Case law will be changed, warning shots will become mandatory prior to shooting a suspect, and officers and the public will be imperiled.

Training Dir. George Williams
Cutting Edge Training, LLC
Bellingham, WA

1 more element to cloud decision-making
In a post-Ferguson operational environment, there is already a “culture of hesitancy”

emerging among younger officers. As a generation, they are already a bit more insecure and reluctant to use force, even when justified. In a recent Pew Research Center report entitled Behind the Badge (page 65), 76% of respondents indicated a reluctance to use force.

That is exactly why we should not take years of conventional wisdom, training, and common sense and abandon it under the guise of “another option.” Warning shots are just one more avenue that clouds those fractions of a second when a concrete decision to shoot or not shoot is necessary. They will cause officers to make bad decisions for both themselves and the public more often than good decisions.

Capt. Rex Scism,
Missouri State Highway Patrol
Research & Development Division
Jefferson City, MO

“Going backward in time”
If there is time for a warning shot then there is no deadly force situation going on. So that shot is for what? To scare someone into submission? We are not in the business of scaring people. We are in the business of keeping the peace and enforcing societal laws. This is going backward in time to before Tennessee v. Garner.

Ptl. Tony Regnier, firearms instructor
Wickliffe (OH) PD

No time for more training
An officer who is skilled enough to make a decision to fire a warning shot, when warranted, will do so—when appropriate and when he or she has the time, presence of mind, and opportunity without undue

danger to others. But an averaged-trained officer is not prepared to do this.

When do we have time to train officers to fire warning shots? We barely have time to teach the basics of the tools they have, let alone make them highly proficient.

If skilled officers use the technique to save a life, without putting themselves or others in undue danger, great. But warning shots should not be taught generally. We have enough to learn already, with too little time to train.

Master Dpty. Justin Morris
Johnson County (KS) SO

Training challenges, questions about adding a new force option

We are now adding another entire use-of-force option, along with the required skill set to and the skill set necessary to make a "safe, timely and appropriate warning shot" to de-escalate or stop the action must be instilled through quality, consistent training in not only the officer who would employ such a tactic but in all officers at any scene so they can effectively communicate the intent of the warning shot to each other, prepare tactically for the outcome, and not over react to a shot that goes off during a dynamic critical incident.

Would "friendly/sympathetic fire" become more of an issue at a scene?

This does not even begin to take into consideration what the suspect's interpretation of the warning shot would be. "Are they shooting at me?"

And what about third parties at the scene and their witness interpretations of what they

see or hear? Would they now feel the officer has "shot first," when the suspect was not a threat?

Chief Dpty. J.D. Spain
Lemhi County (ID) SO

"Yet another way to legally Monday-morning quarterback"

This is advocating grossly irresponsible misuse of a firearm. There is no way, unless we start carrying around bullet traps to fire into, to safely "reasonably" use warning shots. You cannot train an officer to predict ricochets, penetration, or fragmenting projectiles.

The VERY first time one sliver of a bullet, much less a whole projectile, hits a person or property, this policy will get somebody sued....and droves of experts will be more than happy to testify against them.

This politically motivated policy undermines years of common sense for yet another way to "legally" Monday-morning quarterback an officer's use of deadly force from the comfort of a jury box, rather than while you're facing a split-second decision that can result in the end of your life.

(My personal opinion as a firearms instructor and an officer who has been in a deadly force confrontation.)

Sgt. Brent Barbee
Amarillo (TX) PD

Asking officers to divide their attention in threat circumstances

By returning warning shots to the tool box we are asking officers to further divide their attention in high-stress circumstances where

psychology and physiology are working against such division.

An officer in a deadly force encounter would have to be: evaluating the threat, while issuing commands, while seeking cover or moving out of the danger zone, while drawing and getting a firearm on target (while ideally confirming a safe backstop), while identifying a harmless direction to shoot while getting the firearm away from the threat target and on to the “harmless” target.

Many agencies that would add the option of warning shots in policy would not actually incorporate warning shots into each and every firearms training scenario, even though firm training would be the only way in which this policy option could possibly end up with a more positive than negative outcome.

Considering that officers already hit unintended targets when shooting at the threat, the inevitable mistakes made by undertrained officers trying to fire rounds NOT at the threat will lead to additional tragedies that will appear to the public even less justifiable than shooting and killing the threat.

I wonder what research exists showing that warning shots would be substantially more effective—and worth the risk—in stopping the subject’s threat behavior than the presence of an armed police officer issuing commands?

Capt. J. Peter Hoerr
 Cmdr., Patrol Operations Bureau
 Certified Force Science Analyst
 Belmont (MA) PD

Handing the bad guy a great time advantage
 Look at this from a specific tactical viewpoint. I decide to fire a warning shot in a use-of-force situation that has escalated to the point where I have to draw my weapon.

I look to my left and right in order to find the safest place to put the round. This is going to take about two seconds. Then I get my sights on the new target and squeeze off the round. That’s another two seconds. Next I get my attention back on the threat and re-evaluate to see if he is still a threat, another two seconds.

That’s a total of six seconds that my attention isn’t on Mr. Bad Guy. In six seconds, Mr. he could draw, fire three-plus rounds at me or a victim, and be three steps into his get-a-way.

I would never call someone’s idea stupid, but I would note that even Einstein had some bad ideas.

Scott Potter
 K-9 handler
 Seattle, WA

Protective legislation needed

Think of this in the context of all the hungry lawyers or district attorneys with a totally political agenda out there.

Unless federal and state laws are amended to completely absolve any police officer from any liability whatsoever for using a warning shot and that the use of a warning shot by an officer cannot be used against him in any deadly force court hearing, there is no way this is a good idea for the officers on the street.

Police chiefs fall into one of two categories: Warrior chiefs and Corporate chiefs. Decide

on your own which category would advocate for warning shots.

Chief of Police Kenny Jenks
Deputy City Manager
Anna, TX

Unanswered questions

The risk of OKing warning shots in policy is not worth the gain. We don't have any evidence to tell us it works, no evidence to tell us best practices, and no evidence to tell us just how much training it would take to ensure proficiency.

David Blake, M.Sc.
Certified Force Science Analyst
Police Practices consultant/expert
Brentwood, CA

NOW, SOME DISSENTING OPINIONS...

More beneficial than not

With over 30 years as a firearms instructor, I feel allowing warning shots would more often than not benefit the officer in a field situation.

Recently an off-duty officer became involved in an event where his verbal warnings were going unheeded and a physical altercation with several male subjects seemed imminent. I personally feel the officer acted reasonably when he fired a "warning shot" into the grass yard. Had he not, I feel he may have been overrun by the subjects and the situation would only have escalated, possibly to the point of using deadly force.

Lt. Todd Heywood
Redondo Beach (CA) PD

"Outright prohibitions are not helpful"

I have long been opposed to outright prohibitions on anything in a policing context. The warning shots prohibition is not dissimilar to prohibitive policy that many police agencies enacted regarding shooting at or from moving vehicles in a somewhat knee-jerk response to public pressure after several questionable shootings.

This is extremely short-sighted, for one can never account for the myriad situations that officers might find themselves in. While I am supportive of restrictive policy in both areas, outright prohibitions are not helpful, and may in fact place agencies in an unnecessary liability position even if acting in accordance with law.

Sgt. Joel Johnston (ret.)
Vancouver PD
Certified Force Science Analyst
Joel Johnston Consulting, Inc.
Vancouver, BC, Canada

Available option builds confidence

We've had "Warning Shots" in our Use of Force policy for over 25 years, the only agency in Connecticut to do so. Although every officer knows that she or he have that capability, not once has anyone ever had to resort to using a warning shot. Knowing the option is available, officers have more confidence in their decision-making.

Training Sgt. Peter Alix
Operations Division
South Windsor (CT) Police Services

"It's about time!"

As a 47-year retired cop, including 26 years as a chief of police, all I can say is, "It's about time" we allowed warning shots. If I'm chasing Ted Bundy or some other punk, pervert, or predator who may harm others if

he gets away, and I have the opportunity and justification to fire a safe warning shot or two, I will do it in a heartbeat. Why are some of us being so namby-pamby on this issue?

Dan Montgomery
Professional Police & Public Safety
Consulting, LLC
Arvada, CO

Ask yourself...
Teach officers to be accountable for every shot fired, then trust them to make the right decisions without taking options away from them.

Ask yourself this: Do you want to put an officer in the position where they have to say, "I believe I could have avoided the use of deadly force if I could have fired a warning shot. However, policy prohibits it, so I shot and kill him."

Todd Bahensky
Hall County Corrections Dir.
Grand Island, NE

Written by Force Science Institute
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