



FORCE SCIENCE[®] NEWS

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White paper cites dangerous myths of restrictive UOF policies

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I. White paper cites dangerous myths of restrictive UOF policies

A major new white paper from a leading risk-management organization vigorously rebuts reform advocates who are pushing for tighter restrictions on police use of force than the standard required by the US Supreme Court.

The 22-page paper, issued by the California-based group Lexipol, warns that some key arguments in favor of stricter force policies are, in fact, “myths” that can entangle officers and their agencies in unnecessary legal problems and safety risks .

“[N]o one disputes the need to continuously improve use-of-force policies,” the document states. But a policy more restrictive than the “reasonableness” guidelines established by the landmark *Graham v. Connor* decision of nearly 30 years ago “can easily confuse [juries] and lead to an incorrect standard being applied to [an] officer’s actions.... [A] policy that boxes officers in is likely to create—not solve—legal issues....”

Properly worded directives, on the other hand, “can support the dual goals of reducing risk *and* reducing unnecessary use of force,” the paper states.

Lexipol currently provides customized policies and related training, designed to minimize risk and avoid litigation, to more than 3,000 public safety agencies in 35 states.

Authors of the white paper are four attorneys with law enforcement backgrounds who are affiliated with Lexipol: Laura Scarry, a Force Science instructor who specializes in police litigation defense; Ken Wallentine,

director of the Utah Attorney General Training Center and an Advanced Force Science Specialist; Mike Ranalli, former chief of the Glenville (NY) PD and also an Advanced Force Science Specialist; and Bruce Praet, co-founder of the Lexipol organization and a practicing attorney with 32 years’ experience representing officers and law enforcement agencies.

The white paper, titled “Use of Force Policies: Dispelling the Myths,” can be accessed in full, free of charge, by **clicking** **here** <http://info.lexipol.com/use-of-force-policy-myths>.

CONTROVERSY & CONFUSION.

The stricter-policy controversy ignited months ago when the Police Executive Research Forum issued a position paper on 30 “Guiding Principles” for law enforcement. Among several controversial elements, PERF included a core recommendation that agencies nationwide adopt policies to hold officers to a more stringent standard for using force than the “objective reasonableness” test of *Graham*.

Supporters of this position push fundamental policy revisions to emphasize primary de-escalation, “proportional” use of force, a standard of minimum “necessary” force, directives that state what an officer “shall” do rather than “should” do, step-by-step progression along a force continuum, and so on.

Currently, “confusion swirls around law enforcement use-of-force policies,” the Lexipol paper says. Stoking the uncertainty, “After every high-profile officer-involved shooting, the media and members of the public are quick to critique the officer’s

actions and the agency's policies. Many large agencies have hastily made changes in their policies...as a result of such pressure."

Unwittingly, by doing so they may have set themselves up for "becoming victim to some of the myths that surround these [stricter] policies," says the white paper.

The authors cite three common mistaken beliefs that can prove to be treacherous pitfalls.

MYTH #1: Additional Force Restrictions in Policy Provide Legal Protection.

"On the surface, posing additional force restrictions in policy might seem to make a lot of sense," the authors concede. Stringent policies can "appease advocacy groups" and potentially "encourage officers to employ tactics that can prevent the need for force." But on the dark side, such policies can create "a slippery slope" legally.

The authors cite cases where well-intentioned but ill-conceived policies have tripped up agencies in court. One egregious example: a policy requiring that "all other means" shall be attempted—and fail—"before resorting to the use of a firearm."

"[M]any departments...use similar language in their use-of-force policies," the paper claims, exposing themselves to the risk of "extensive litigation."

Additionally, stipulating that the use of deadly force must be "necessary" to prevent death or serious injury can boomerang legally if an officer, for example, shoots a suspect who turns out to be unarmed or holding an innocuous item mistaken as a weapon, the authors contend.

Also, they suggest, "consider the effect a policy that prohibits officers from shooting at moving vehicles could have on an incident where a vehicle is used as a weapon of mass destruction."

For legal protection, the writers urge, "Agencies are much better off keeping their use of force policies aligned with the objective reasonableness standard outlined in *Graham v. Connor*."

This standard recognizes that "officers need to make split-second, life-or-death decisions that are not capable of precise definition or mechanical application.... [They] must make the best call they can with whatever information is available to them, and sometimes that call will turn out to be wrong."

In crafting policy, "use the 'reasonably believes' and 'reasonably appears necessary' language throughout," the authors advise. "Such an approach allows you to stress the need for de-escalation and cautious use of force through training, while maintaining a legally defensible policy that will not be misinterpreted by officers or courts."

MYTH #2: Additional Force Restrictions in Policy Change Officer Behavior.

Practically speaking, overly restrictive policy language is not likely to change the nature or frequency of force incidents, the authors claim.

"Well-meaning police executives may feel they can restrict officer use of force by listing situations where force should be prohibited," they write. But in the time-pressured, real-world stress of a life-threatening confrontation, an officer "will unlikely be able to retrieve that list from memory and make the appropriate decision

in the fraction of a second available. And the effects of environmental stress can prohibit an officer from processing clues that force may not be needed.”

That an officer’s decisions can have life-or-death consequences does not change the fact that immutable “basic principles of human perception and reaction time” can play a critical role beyond an officer’s voluntary control or the influence of policy, the authors explain.

Among the factors that can impact an officer’s decision-making and performance, the paper discusses several familiar to Force Science followers: action vs. reaction...inattentive blindness...cognitive overload...auditory exclusion...selective attention...loss of gross motor skills...the physiological effects of adrenaline and cortisol.

“In the bright light of hindsight, it’s easy for force to appear excessive,” the paper states. “But such discussions fail to acknowledge that police officers are human beings”—and thus subject to certain limitations of human psychology and physiology.

Thus “public discussion around use of force” is likely to continue to “focus on factors such as the number of shots fired, whether the suspect was turned toward or away from the officers, and whether the suspect was attempting to indicate surrender.”

The way to get officers more familiar with performance issues and how to better deal with them, as well as how to avoid force confrontations altogether where possible, is through scenario-based training, not through more restrictive policy, the authors argue.

MYTH #3: Use-of-Force Policies Should Require the Use of De-Escalation Tactics.

The public and advocacy groups, and some law enforcement organizations, “have latched onto the concept of de-escalation” in light of high-profile police shootings in recent years, the white paper notes. PERF, for example, recommends the adoption of de-escalation “as a formal policy,” clearly identifying it as “the preferred approach in many situations.”

This “sounds reasonable,” the authors write. Indeed, most police officers already “use de-escalation tactics—whether or not they realize it—almost daily”: slowing situations down, using distance and cover, speaking slowly and trying to negotiate, and responding proportionally from a range of options.

However, the paper states, “requiring the use of de-escalation techniques in policy is another thing altogether.” In reality, an over-emphasis or mandating of de-escalation constitutes “an area of high risk for law enforcement agencies,” potentially compromising officer safety and inadvertently creating problems in court.

Uncertainty about what “de-escalation” means and in what situations it applies is a “primary issue,” the authors say. “We do not want our officers to hesitate when facing a threat because they are not sure what is expected of them.”

The paper points out that case law from US courts rejects the notion of requiring de-escalation efforts in force encounters. Several major federal decisions are quoted, including one from the 9th Circuit (*Scott v. Henrich*) that says that the appropriate question when judging uses of force “is

whether officers acted reasonably, not whether they had less intrusive alternatives available to them....

“Officers thus need not avail themselves of the least intrusive means of responding to an exigent situation; they need only act within that range of conduct we identify as reasonable.”

The white paper “absolutely” supports thoroughly addressing de-escalation techniques in training. And on the street, it favors de-escalation efforts “when feasible,” particularly when dealing with people in crisis. But it cautions: “We must be careful [to] remind ourselves, the media, and the public that de-escalation *isn’t always possible*” in tense, uncertain, and rapidly evolving calls for service.

KEY TAKEAWAYS. Summarizing the thrust of the white paper, the authors offer these “key takeaways”:

- Ensure that your use-of-force policy “aligns with the *Graham v. Connor* standards [and] avoid additional standards.”
- “Don’t require officers to move along any kind of use-of-force continuum.”
- “Choose ‘shall’ and ‘should’ carefully throughout policies that govern use of force or address crisis intervention. ‘Should’ doesn’t mean that an officer can ignore the policy. But it provides room for those dynamic, unforeseeable situations officers may encounter.”
- “Craft policy carefully to ensure you’re not boxing officers in. Recognize what belongs in policy, and what’s a better fit for procedure or training.”

- “Provide realistic training that is consistent with and reinforces your policy content.”

In conclusion, the authors note: “Law enforcement leaders often face enormous pressure when it comes to use-of-force policies. By all means, agencies should make community engagement a cornerstone of their operations, seeking to incorporate the viewpoints of community members, advocacy groups, and elected officials.

“But they must be equally careful not to fall prey to the common myths surrounding use of force policies” as they work to craft “legally defensible, consistent, effective policy that supports constitutionally sound policing.”

Our thanks to Shannon Pieper, Lexipol’s director of marketing communications, for her help in facilitating this report. For more information on Lexipol’s services, see: www.lexipol.com.

II. New study: Do body cams lose their behavioral effect over time?

You may recall the world’s first study of the effect of body-worn cameras on officers’ use of force and on citizens’ complaints against police.

Conducted with the Rialto (CA) PD and published in 2014, this benchmark research showed that during a year that some officers were equipped with body cams, use-of-force incidents dropped about 50% and complaints plunged more than 90%, compared to the year before. In a dozen other jurisdictions, subsequent experiments discovered virtually identical trends.

But, some observers wondered, would this dramatic impact last over

time? Scientists are familiar with what's called the "Fade-out Effect." In some cases of experiments involving human behavior, initial outcomes tend to diminish after the test-focused "intervention" ends, and old patterns fall back into place.

Might this be the case with BWCs, as officers and the public alike become "desensitized" to the once-novel equipment?

FOLLOW-UP. As a rule, long-term follow-up is rare, but a team led by Dr. Alex Sutherland, a British criminologist, has looked at Rialto's experience across a three-year period since the experimental 12 months ended.

Their conclusion:—**spoiler alert!**—yes, the positive impact of BWCs on force frequency and citizen complaints *does* endure.

In a paper recently published in the *Journal of Criminal Justice*, Sutherland summarized various charts tabulating bare numbers and rates per 1,000 arrests:

"[I]n the 12 months prior to the body-worn cameras experiment starting, both complaints and use of force were higher. During the experimental period, both fell (complaints almost to zero)... What is clear and striking is that in the three years after the experiment *finished*, both complaints and use of force remained comparatively low," even though the number of officers on the street in Rialto, a city of about 100,000 population, increased significantly. (All now wear BWCs.)

NEW NORMAL. These findings of a "new normal," Sutherland writes, "carry a clear policy implication" for departments. "The findings suggest that police officers do not become habituated to the effect of the body-

worn cameras, and that persistence rather than fade-out effects may characterize this emerging technology."

Sutherland's paper, which includes an intriguing elaboration on the Fade-out Effect, is titled "Post-experimental follow-ups—Fade-out versus persistence effects: The Rialto police body-worn camera experiment four years on." It can be accessed for a fee by **clicking [here](https://www.sciencedirect.com/science/article/pii/S0047235217303653)** <https://www.sciencedirect.com/science/article/pii/S0047235217303653>. This will also take you to a free abstract.

"The final word on the impact of body cams is probably not yet in," says Dr. Bill Lewinski, Executive Director of the Force Science Institute.

At about the same time Sutherland's study was reported, results were issued showing a contrary outcome from research in Washington, D.C. A study there involving more than 2400 Washington Metro PD officers revealed "very small" effects in changing officer and civilian behavior, "none of which rose to statistical significance." (This study, "Evaluating the Effects of Police Body-Worn Cameras," can be accessed free of charge by **clicking here** http://bwc.thelab.dc.gov/TheLabDC_MPD_BWC_Working_Paper_10.20.17.pdf.)

In contrast to that, an internal report recently released to the public from the San Diego PD showed "a significant drop in allegations against officers for both misconduct and overall use of force" across a three-year accounting.

Thus, the march toward "settled science" on this issue continues.

[For a detailed report on the original Rialto experience, see *Force Science News* #230.]

Written by Force Science Institute
December 12th, 2017

Our thanks to Atty. Michael Brave, Director, CEW Legal for Axon Enterprise Inc., for alerting us to the Sutherland study.

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