



FORCE SCIENCE[®] NEWS

Chuck Remsberg
Editor-in-Chief

In This Edition:

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From our inbox: Readers react to proposed change in UOF standard

Editor's note: FREE WEBINAR REMINDER

Don't forget to register now for the FREE upcoming webinar:

"De-Escalation: When & How to Make It Work."

At 1 PM Eastern Time on MAY 10, **Dr. Bill Lewinski**, executive director of the Force Science Institute, and **former chief Mike Ranalli**, an Advanced Force Science Specialist and program manager at the policy advisory group Lexipol, will engage in a lively and practical one-hour discussion of one of the hottest topics in law enforcement.

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FROM OUR INBOX:

Readers react to proposed change in UOF standard

In *Force Science News* #363 [4/17/18], we featured the reactions of five prominent police attorneys to the proposal by a California legislator to introduce a bill that would change the state's legal standard for law enforcement's use of deadly force from "objectively reasonable" to "necessary."

That is, officers would be legally allowed to use deadly force only if "there were no other reasonable alternatives to prevent serious injury or death," and prosecutors would be "encouraged" to consider whether officers attempted verbal de-escalation before resorting to gunfire, according to supporters of the proposal.

Overwhelmingly, *FSN* readers agreed with the attorneys: Such a change would have a significant negative impact on LEOs and their agencies. And one writer, Force Science Analyst Robert Willis, raises a new concern.

Here's a representative sampling of reader opinions that hit our in-box, edited in some cases for brevity and clarity.

"Train wreck is likely"

Replacing the "objectively reasonable" standard established by the US Supreme Court in *Graham v. Connor* invites all manner of after-the-fact, speculative second-guessing about whether the force option chosen by the officer in the face of life-threatening circumstances was really necessary.

The second guessers will descend upon the situation and critique the officer in the cauldron. These Monday-morning

quarterbacks will sit in their armchairs and offer their opinions, absent any fear for personal safety. They will include the media, community activists, police administrators, plaintiffs' lawyers, and state and federal prosecutors.

If this "necessary" standard becomes law more officers will be injured and killed from hesitation; more will be administratively punished; more will be successfully sued and criminally prosecuted. A train wreck is likely. Do what you can to stop it.

John Michael Callahan

FBI Supervisory Spcl. Agt./Chief Division Counsel (ret.)

Author, Lethal Force and the Objectively Reasonable Officer

Boston, MA

"Outrage" from one who's been there

As a former cop, military Judge Advocate, and US Army War College instructor who has used deadly force, I am outraged that any jurisdiction would wish to make their use of force policy more restrictive than what the Supreme Court allows. Doing so proves that such politicians (I dare not call them leaders) fundamentally do not understand that bad people are most often the authors of their own misfortune.

No matter how crazy or high on drugs, one does not have a right to fight with an armed LEO. And officers should not be expected to gamble with their lives if so confronted. As Winston Churchill so eloquently stated, "I refuse to remain neutral between the fire and the fire brigade."

Atty. David Bolgiano

Co-author, Fighting Today's Wars: How America's Leaders Have Failed Our

Warriors
Wilmington, DE

California dreamin'

Whenever I hear a politician say they "will propose legislation," I know they are pandering to some segment of the public. More often than not, those promises aren't kept. We can hope that's the case here.

But if such legislation *is* actually introduced then before casting their vote every California legislator should participate in reality-based UOF scenario training. Their actions/reactions should then be made public for their constituents to analyze.

That won't happen of course but we can dream, can't we?

*Spcl. Agt. Bob Hunt (ret.)
Illinois State Police*

No more worries about being "tried by 12"

In an era where law enforcement is expected to respond to serious, emotion-driven incidents without delay and sometimes without backup for several minutes to an hour, the proposal for restricting police officers and then telling them to go out and do their jobs day in and day out with sometimes minimal hours of sleep is irresponsible and negligent. We've all heard the saying, "I'd rather be tried by 12 than carried by 6." If this bill were to pass, we won't have to be worried about being tried by 12 but rather be concerned about being carried by 6. For the sake of all LEOs and the citizens we serve, I hope this proposed bill lacks the "necessary" votes, because lives will be at stake due to "unnecessary" hesitation by our nation's law enforcement officers.

*Ofcr. Sheldon Moot 10x2028
Alexandria Bay (NY) PD*

"Will only make recruitment worse"

This proposal will undoubtedly put citizens at risk because LEOs will stop being proactive, show up after it is all over to throw up crime scene tape, etc. Our industry is having a hard enough time filling slots; this will only make it worse. Then I guess the ACLU and others will get what they want: less police. But we know how that will turn out.

*Det. John Catts
UOF instructor
San Antonio (TX) Independent School
District PD*

Fine-tuning what's "necessary"

I can see the possibility of the "necessary" standard being used to question how deadly force was used. Ok, the officer had to use his/her firearm--but, the question might be raised, was it really "necessary" to shoot the suspect center mass and kill him? Couldn't the officer have shot the person in the leg?

*Det. Tom Grutzius
Joliet (IL) PD*

Exposure to reality may not matter

Some observers believe the California legislators should attend "realistic scenario training." Please realize that they already have formed an opinion of what is "realistic," and would likely only scoff at the "theatrics" used in the training.

Years ago I was highly criticized by an assistant chief because in my training scenarios bad guys didn't just give up when an officer pulled a gun on them. He refused to believe anyone would be uncooperative

in the face of threatened deadly force. Bringing up events that documented the opposite would not alter his perception of "reality."

The worst mistake anyone in this profession can make is to assume that others think the same way we do.

*Lt. Kevin Oberlin
Alachua County (FL) SO*

"Maybe the mind-set needs to be changed"
I don't see how a change from "objectively reasonable" to "reasonable and necessary" would really put officers' lives at risk. The job is inherently dangerous and officers will still be required to use lethal force at times. Police must try to ensure that the sanctity of life is respected in all encounters, regardless of outcome.

If an officer is involved in an OIS and can explain why it was necessary (which it should be) then nothing truly changes. I believe this change would be a good move for California as it has worked very well in Canada for many, many years.

If the current mind-set is that force doesn't need to be deemed as "necessary" then maybe the mind-set needs to be changed.

*PC Lyle Mason, UOF instructor
Training and Education Bureau
York Regional Police
Newmarket, Ont., Canada*

California is not the first
California is not the first state to do this. Minnesota law has required the use of deadly force to be "necessary" for a long time. This is still interpreted to be from the perspective of a reasonable officer at the moment the deadly force is used.

I understand the concern that it could be leveraged to mean "actual" or "real" necessity but that simply has not been an issue prosecutors have presented to juries\0x2026at least so far!

*Dpty. Chief Mark Bruley
Brooklyn Park (MN) PD*

"Why the hell did I even get involved?"

With 38 years under my belt, I have never known an officer involved in a deadly shoot to plan his tour to include killing someone. In every investigation I was involved with, the "shooter" was both physically and emotionally distressed, partly stemming from the intense scrutiny given these incidents and the known emotional trauma he and his family will face at the hands of the media, not to mention the self-introspection and continuous replay of the event in his mind.

As an officer, you will face prosecutors who will determine if your account parallels the recorded evidence--and God help you if you deviate one iota from the video's perspective. Your career, financial future, and the probability of civil (if not criminal) litigation will occupy the next five years of your life. Often, even if there is no real evidence to support a sustainable judicial finding, the city will give the bad guy a payday settlement to avoid a court case. This leaves you asking yourself, "Why the hell did I even get involved in this nonsense?"

Most officers answer a "calling" where putting on the badge and gun is not just a job. They're good, wholesome individuals whose sense of duty and conscience directs them to go into harm's way to help total strangers. I fear if you take away the ability

to use your training to assess danger in a fluid and agitated environment, the politicians and advocates for UOF constraints are looking for a law enforcement robot and not a fallible human presence.

Had I not been able to retire, the current state of affairs would have caused me to seek alternative employment. When the stuff hits the fan, it's not justice\0x2026it's just us!

*Homicide Det. Don McGrath (ret.)
Chicago PD*

Surprising ruling in criminal case a harbinger of things to come?

Excellent update on the erosion of "standards" and possible pending political legislation to tighten restrictions on the use of force. I have experienced first hand, yet another assault on officer safety and the ability to defend officer actions.

In a case I was recently involved in as an expert witness, a judge in a criminal case against an officer (becoming more common these days) made a ruling from the bench which astounded me. This judge reminded everyone, especially the defense, that *Graham v. Connor* was a *civil* case and *not* a criminal case.

He stated that at no time would the defense attorney or myself as a defense expert be allowed to inform the jury that *Graham v. Connor* was a "standard" for use-of-force assessment, especially in a criminal case. He also stated that he alone was responsible for educating the jury concerning statutes and/or case law. He chose to use the state statute on "self-defense" rather than "*Graham*" factors or

law enforcement "privilege" language in his jury instructions.

He also stated that if testimony discussed things like "quick decisions," seriousness of the crime, and all the other "*Graham* factors," it had to be based on the actual circumstances of this particular case and not some theoretical discussion of force standards. He advised that if those "factors" did not have their foundation in the officer's report and subsequent statements, then they could not be introduced in the abstract.

I am still digesting this turn of events and its possible ramification on future cases involving officers. So far, the take-aways I offer from this case is that officers **MUST** write better reports, supervisors cannot allow poor and incomplete reports, and reports must absolutely include the pertinent "*Graham*" factors in their articulation. Otherwise, these factors might not come to his/her aid later on.

I hope this is a fluke but fear it is not. I am interested whether others have experienced this attack on *Graham* and what some possible solutions might be. Are we headed for United Nation-style standards and back to the "least amount of force" and "second-guessing" of the past?

*Robert Willis
Certified Force Science Analyst
Green Bay, WI*

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At the end of each of the train-the-trainer classes I teach, I like to provide names and websites for professional resources, such as Force Science.

I'm asking permission to reprint your *Force Science News* bulletins so I can give students a sample hardcopy. Since they include your email address, the students

then can subscribe to get their own bulletins on an ongoing basis.

*Instructor Bob Tokarchic
Northern Virginia CJ Training Academy
Ashburn, VA*

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