

The Strength Of Graham

By Chad Lyman

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There has been a recent assault on the 1989 landmark US Supreme Court Use of Force case law, *Graham v Connor*. If you are a police officer, challenges to use of force are nothing new. What is unique to the latest challenges is that the Police Executive Research Forum (PERF) is leading them. PERF is a non-profit organization of Police Administrators, formed to research and develop policy.

PERF's Executive Director Chuck Wexler has been leading the charge against the "Graham Standard," stating many police shootings are "lawful but awful" (Governing.com, Public Safety and Justice, J.B. Wogan). Wexler goes on to postulate that Graham is the "floor" and not the "ceiling," and that law enforcement needs to do better. Wexler further states "We aspire to have a higher standard of preventing these unfortunate situations from happening at all. That's what this is all about. This is the difference between legal versus moral" (The Washington Post, Mark Berman 04-01-16).

Graham v Connor is not the "floor," it is the law and framework for nearly all police use of force policy, action, and American Jurisprudence. Wexler and PERF want a more stringent standard than the "objectively reasonable" standard defined in *Graham*. *Graham* established that officers are often placed in tense, uncertain, and rapidly evolving circumstances requiring quick decisions with out the benefit of hindsight. *Graham* further established that an officer's actions *must* be judged by what another officer with similar training and experience would do in a similar circumstance; thus setting a "reasonable" standard for officer performance. Officers are judged by this standard of *law*, not public opinion. In contrast, one of PERF's suggestions to lessen controversial uses of force is for the officer to consider what bystanders may think of the use of force.

At Progressive FORCE Concepts, we are committed to the idea that we should forever be seeking to master our craft and evolve as professionals. We also understand that the path to excellence is found in mastering the fundamentals, the concept of *less is more*, and that we should strive to do the common, uncommonly well. All police use of force should be reviewed and debriefed, especially officer-involved shootings. Weaknesses and training deficiencies should be identified and addressed. With these things in mind, I have several issues with the PERF use of force recommendations.

Wexler states that he wants to prevent "lawful but awful" police shootings. With over 18 years of active law enforcement experience, I can attest that for the officer's involved in deadly force shootings, they are ALL awful. Working along side and training with many thousands of officers throughout the country, I have never encountered a law enforcement professional who wanted to shoot someone as his or her daily goal. To make a tag line to

illustrate that any of these events are not awful is disconcerting. Our primary concern is that the shooting is lawful. We then look critically at these incidents to see if training could have affected outcome through different tactics, techniques and procedures. Upon further review of numerous incidents, the single biggest factor causing these scenarios to escalate is the suspect's failure to comply with *lawful* orders. While PERF, and everyone in the Law Enforcement profession, would like to prevent these situations from occurring, without suspect compliance they *will* continue to happen.

The suggestion that an officer should take any time to consider the *opinion* of someone with no training, no experience, no knowledge of case law and agency policy, and who is not formally on the call as a police officer is fatally flawed as a policy or practice. How could I possibly know what someone else might "think" is appropriate. What reference would they have to make any conclusions about my actions? Their relation to the suspect? The media? Am I considering what they might think to be mindful of their opinion, or do they know better than an experienced and trained police officer? What if the crowd is split and has a differing opinion on what I should do?

I find it arrogant for a Law Enforcement Executive to propose policy on such an important tactic as use of force that an officer should consider how someone with NO use of force training or experience would handle or "think" about the situation. If that were the policy, we could easily accomplish this goal by giving brand new officers NO use of force training in the academy. Then on calls they could just do whatever an untrained individual would do or base their actions on what they think someone's opinion might be. Of course this is nonsense and unethical. So is requiring officers on calls to consider what non-police personnel would do or what they "may think" in a use of force situation on a given call.

Wexler also stated he wants to establish "the difference between legal versus moral," when it comes to police use of deadly force. "Moral," according to whom? Some people feel it is immoral to take another life, no matter the circumstance, while others provide an allowance for specific circumstances. I place a very high value on life and believe all life is sacred. That same value is illustrated when police officers intervene with lethal force against a person whose actions can be reasonably expected to cause death or serious bodily injury to another. I believe it would be immoral to NOT respond to a lethal threat, which threatens human life. The reason that we use lethal force only under certain circumstances is that the suspect's life is valued. The reason we will use lethal force on suspects is that everyone else's life is valued as well. That is currently the legal and moral standard in Graham, and it is appropriate.

Many situations officers encounter throughout their career will be "awful." If I were not an officer, I would not encounter these situations over and over throughout my adult life. Having a "reasonable" standard governs what actions one should take as an officer when he or she uses force. It also helps to ensure actions are appropriate, within the law, and in response to the SUSPECT'S actions, not feelings or the feelings of onlookers. That reasonable standard places value on the suspect's life, and on the lives of all who may be affected by the suspect's actions. This standard and consideration of all life allows me to make hard decisions at work,

and then live with them after those events are over. To infuse emotion and opinion into such a critical decision will result in hesitation, in-action, undue risk, and the loss of police and civilian lives. In summary, it would be “awful” and “immoral” to create more risk and confusion around the topic of deadly force.

AUTHOR BIO:

Chad Lyman is the Director of Combatives for Progressive F.O.R.C.E. Concepts (www.PFCtraining.com) and the founder of the Code 4 Concepts training system. Chad has combined his years of operational law enforcement and Mixed Martial Arts experience to emerge as one of the nation’s leading defensive tactics trainers. He is the consummate professional, trainer, and street cop whose dedication to students and the advancement of officer safety through modern tactics is unparalleled. Chad’s career began with a Bachelor’s Degree from Portland State University in Administration of Justice and double minor in History and Terrorism Studies. Chad then entered into law enforcement as a full-time Police Officer with the Portland Bureau of Police. There he distinguished himself as a key trainer of police personnel in the areas of defensive tactics and subject control. Chad later moved to Southern Nevada to serve with a major metropolitan police department. His responsibilities have included patrol, Field Training Officer, gang detective, Mobile Crimes Saturation Team (anti-terrorism), and full-time SWAT operator. Chad is currently assigned to the training division as part of the Advanced Officer Skills Training (AOST) team. He also holds multiple law enforcement user and instructor certifications including FTO, firearms, active shooter, riot/civil unrest, and advanced defensive tactics instructor. Chad has trained in Mixed Martial Arts and Brazilian Jiu-Jitsu for over ten years. He currently serves as a coach for the Gracie Humita Las Vegas Competition Team-Team Mica and has taught Mixed Martial Arts in Las Vegas since 2006. Chad is a frequent grappling competitor and currently holds a Black Belt in Brazilian Jiu-Jitsu. Because of his exceptional skills, Chad is a personal ground fighting coach for several professional MMA competitors. In 2012, Chad was inducted in the Masters Martial Arts Hall of Fame for his work in the area of police and military defensive tactics.