

The use of deadly force: Why you should know it

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The use of deadly force: Why one colonel thinks you should know it better



Lt. Col. David

Bolgiano, student, reads a book in the Root Hall library Feb. 25. While at the Army War College, Bolgiano pursued the topic of the use of deadly force for his Strategy Research Project and formally published articles in military magazines. Photo by Thomas Zimmerman.

Feb. 25, 2009 -- It was 1 a.m. on a cold December night in 1985 when David Bolgiano, Maryland police officer and University of Baltimore law student, received a call while on a routine patrol assignment. The local McDonald's had set off its silent alarm, indicating a robbery. As an experienced police officer, Bolgiano was expecting it to be a false alarm, as they always had been in the past. Nevertheless, he immediately responded, not knowing that this ordinary patrol at the fast-food chain would threaten his life and inspire a career mission.

Less than five minutes later, Bolgiano had a gun pointed at his head. Still, Bolgiano found it hard to believe.

"Despite the fact that I was responding to an armed hold-up silent alarm, I was still surprised by the

fact that there was an armed hold-up in progress," said Bolgiano.

The young assailant turned to run and the officer chased after him.

"While chasing him, I incorrectly believed that I could not shoot him in the back, despite the fact that tactically and legally that would have been appropriate," said Bolgiano.

"As I caught up with the robber, he turned and refused to drop his weapon. I shot him center mass and won the gun fight. I was lucky."

This incident was Bolgiano's first experience with the use of deadly force; an experience that would later inspire his studies and future publications.

Fast forward 17 years, as the Staff Judge Advocate for the Maryland Air National Guard, Lt. Col. Bolgiano deployed to Afghanistan and Iraq from 2002-2004. Serving as the legal advisor to the Commander, Special Operations Command Central, Bolgiano witnessed similar life and death incidents. Only instead of a fast-food restaurant the deadly situations occurred in bustling, war-torn villages halfway around the world.

The special operations Soldiers continuously faced lethal situations often including an indistinguishable enemy, and it was Bolgiano's job to insure their safety by teaching them the appropriate use of deadly force.

Well-versed in the subject both in the civilian and defense world, Bolgiano spent five years as a law enforcement officer as a civilian, served as a senior attorney for the U.S. Drug Enforcement Administration, and helped draft the rules of engagement for Operation Noble Eagle following Sept. 11.

As a legal advisor in Operations Iraqi and Enduring Freedom, he once again reviewed military and civilian law. He weighed the safety of Soldier's as well as the safety of the civilians around them. Ultimately, Bolgiano came to one conclusion.

"The military has a desperate need to increase the ability and authority of the American Soldier to use their judgment and increase their decision-making skills in order to make the right choice in any combat situation," said Bolgiano.

Bolgiano described numerous situations in which our Soldiers and Marines sustained unnecessary injuries and casualties because they were too cautious in using self-defense, afraid of being reprimanded by commanders and formally investigated.

While at the Army War College, Bolgiano pursued this topic as his Strategy Research Project and

formally published articles in military magazines.

"The Department of Defense should develop and sustain a use-of-deadly force instructor certification program that would ensure joint training standards. This would educate and prepare student not only in the law, but also in the tactical realities pertaining to deadly force encounters and small arms proficiency," wrote Bolgiano in "Under Fire," published in Proceedings magazine.

Bolgiano explained that the overwhelming fear of being investigated for any act during our wars in Iraq and Afghanistan has our Soldiers and Marines not acting in self-defense when they should. Still, Bolgiano insists the laws are not the problem.

"It's knowing the laws better," said Bolgiano.

By doing so, Bolgiano argues that the better trained Soldiers and Marines will make proper decisions about the use of deadly force and would increase the likelihood of killing the enemy and saving civilian lives.

Bolgiano also notes it's not just Soldiers that need to understand the rules of engagement better.

"We can do a much better job preparing our forces to make better decisions, both pre-shooting and post-shooting (i.e. explaining their decisions). We can better educate commanders, judge advocates, and investigators," wrote Bolgiano.

Bolgiano advocates the Judgment-Based Engagement Training Seminar, a pre-deployment course which offers a combination of classroom and tactical instruction. JET, however, has not been implemented across the entire joint force, something Bolgiano would like to see done very soon. Currently, it is only presented as a unit-funded training opportunity

At a Baltimore McDonald's 23 years ago, Bolgiano said he was lucky.

"I did not understand my authority to use deadly force."

But with two wars and the majority of troops facing combat, luck is just not good enough he said.

"We can't rely on good luck or the stupidity of our adversaries to win gun fights."

Lt. Col. David Bolgiano is a student at the U.S. Army War College in Carlisle, Pennsylvania. He serves as the Staff Judge Advocate, Headquarters, Maryland Air National Guard. Additionally, Bolgiano is the author of *Combat Self-Defense: Saving America's Warriors from Risk-Averse Commanders and their Lawyers*, he has also been published in the *FBI Law Enforcement Bulletin*;

Naval Institute Proceedings, Infantry Magazine, University of Baltimore Law Review; The Washington Times; and, The Baltimore Sun.

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