

When the System Fails – A Call to the Government of Canada and to Police Officers Everywhere to Support Mike Ferguson in the Wake of a Grave Miscarriage of Justice

In 1999 in Pincher Creek, Alberta, RCMP Cst. Mike Ferguson struggled with an intoxicated prisoner. The prisoner gained control of Ferguson's sidearm. Ferguson regained his weapon and shot the prisoner twice. The prisoner died. Ferguson has since been convicted of manslaughter and is being sent to prison for four years.

I am a Canadian. In light of what has been permitted to happen to Mike Ferguson by his agency, his law enforcement fraternity, his government/judicial system and society in general, I believe it to be a sad day for Canada.

As the co-founder of SIMUNITION, I know the politics of force and firearms as well as most within the borders of Canada. We fought constantly against increasingly burdensome firearms regulation in an effort to develop a technology and training philosophy that would ultimately benefit military and law enforcement personnel worldwide through providing the means to participate in highly realistic simulations of violent encounters. In the past couple of decades, I have had a front row seat to observe the debunking of many myths of what is and is not likely or even possible during violent or deadly encounters. Public perception has been skewed by mythology and television shows. People tend to believe that police officers are martial artists, sociologists, expert communicators, and that they possess boundless patience and superhuman athletic abilities. People believe that police officers are expert marksmen who can shoot guns out of peoples' hands from the hip, and at a distance. Of course none of this is based in truth. The truth is not pretty, but most people don't know the truth, especially when it comes to the use of firearms.

With the exception of the military, law enforcement and certain tightly regulated security operations, firearms for civilian defensive use are a thing of the past in Canada. And now it seems that the snake of firearms prohibition has even begun to feed on itself.

The debate on personal firearms ownership and their lawful defensive use is, and will always be, extremely contentious and it is not the point of this writing to take on that issue. The lunacy to which this letter is addressed is the current trend toward fringe members of legislative bodies and ill-informed members of the public making ever-bolder attempts to regulate the lawful use of weapons to stop the violent actions of criminals – even if those weapons are in the hands of the police.

Take for example the outcry of various factions following the use of TASERs on certain criminals. We have lost count of the number of times TASERs have been used in instances where the person would have otherwise been shot, yet there are those who continue to decry its use as excessive. Those who are the biggest opponents are quick to point to the “deaths” that these devices have caused. None of these “death” claims have ever – EVER – been substantiated by medical fact. In fact at a recent National Tactical

Officer's Association conference I had occasion to discuss the concept of Excited Delirium with one of the leading experts in the field, Chris Lawrence from the Ontario Police College. His research is beginning to demonstrate that many of those who have died in custody following an ED episode might have died anyway. He points to data from various institutions that have had people die from ED after being left alone.

Although a struggle with the police might exacerbate the situation, does this mean that it is the wish of the public that police not interfere with the violent actions of drug crazed maniacs simply because fighting them into a jail cell might result in elevated levels of adrenaline in the bloodstream? Of course not. But that's what uneducated or self-righteously opinionated people are lobbying for. I live in a country that values spirited discourse very highly – in fact the First Amendment to the US Constitution protects it. But those who have no clue about the realities of confronting dangerous people should not be placed in a position where they can affect policies dealing with such violent individuals.

Sadly, as you are about to discover, this is not what is occurring in today's society.

I spend the bulk of my time lecturing police and military groups about the realities of police work. I have written books, seminars and papers on the subject. My writings have been referenced in other technical journals and in encyclopedias. My books have been adopted as required text in state, federal and local institutions and training academies. I'll leave it for you to decide whether or not to believe in my qualifications to discuss such things, but the response I constantly receive from those at the top of the military and law enforcement training communities seem to validate my teachings. The stark reality is that the police officers and soldiers of today are being, in many cases, held to an impossible standard. They are not provided the training, the tools or the time to do an increasingly dangerous job. Yet they are constantly in the crosshairs of unknowledgeable, weak-minded people who snipe from the sidelines at the actions police officers and military personnel take, while permitting men better than themselves to clash with the enemy.

By way of example, in a recent legislative proposal which was heavily opposed by rank and file law enforcement, a New York senator wanted to pass a "shoot to wound" law for police officers that would have held them criminally responsible unless they attempted to shoot a suspect in the arm or the leg. The New York Daily News wrote that a police officer, under this legislation, "would have to try to shoot a suspect in the arm or the leg." For anybody who has studied even the rudimentary aspects of gunfighting, this is an insane proposal.

At my most recent speaking engagement in Wisconsin I was discussing the erosion of society and the increase in propensity for violence by criminals against the police when somebody dropped that day's paper in front of me with the headline "Milwaukee Mayor states 'We are facing a societal crisis'" as he details the gang-raping of an eleven-year-old and the beating death of a Special Olympics athlete. The methamphetamine epidemic in the United States and the growing problem in Canada is supercharging criminals, making them nearly impervious to the common weapons carried by police. Even with improvements in technology, my mantra has and continues to be that police officers are

woefully unprepared for the increasing violence levels, and legislation/legislators such as “shoot to wound” are a danger to police officers and hence a danger to society.

General George Patton wrote, “combat is not a place to be changing your belief systems.” With all of the conflicting and politically correct information clogging the minds of today’s police officer, making clear decisions during life and death situations is increasingly difficult. Add to this toxic brew that many police administrators are actively recruiting smaller stature, less aggressive officers. There is a cautionary scene from the futuristic Sylvester Stallone movie “Demolition Man” where Wesley Snipes (a very bad person from earth’s past) has been thawed out from a cryo-containment facility and unleashed to wreak havoc on the pacifist earth of the future. Surrounded by six well uniformed police officers who are equipped with the latest in technology, Snipes’ character skillfully and calmly beats them all senseless, while back at the command center (where until this point smiling command staff have been observing) one of the observers states “Did you see that? We’re police officers ... we’re not trained to handle this kind of violence!”

Sadly, this is not as futuristic as the film would have us believe. There is a lot of data and emerging science to demonstrate that much of the training given today’s police officer will fail them in the street, while criminals are becoming increasingly violent and more capable – everybody is a cage fighter these days. The social sciences are teaching us of the danger of over socialization and gentrification of law enforcement. The people who are driving these programs in an attempt to soften the edge of the street cop have no concept of the damage that is truly being done on a societal basis. It isn’t a grand leap of the imagination to begin to grasp just what will happen when the police and military are unwilling or unable to check the unlawful actions of those who would otherwise prey on society.

During Hurricane Andrew in Florida, National Guardsmen were not allowed to carry ammunition for their weapons. Scores of M16s were taken from helpless ‘soldiers’ by thugs who knew they were unable to defend themselves.

And we need look no further than New Orleans in the wake of Hurricane Katrina when lawlessness ruled the city. It took the resources of a nation and the dedicated efforts of law *ENFORCEMENT* officers and military personnel to take back the city. Those who don’t understand that violent action must be met with violent action will never understand that concept. It is like trying to explain color to a blind man. Describe red? Well, it’s ... RED. Yet those who don’t understand have somehow seized the reins of policy-making and are attempting to lead society down a collapsing stairwell from which there may not be a way back up.

Not all legislators are so inept ... in fact with Florida (my home state, I am proud to say) leading the way yet again in the personal rights category against criminals, fifteen other states passed legislation this year that improves the rights of citizens to lawfully protect themselves by standing up against violent criminals, using the means and methods that might otherwise had them facing murder charges. Additional states are looking to pass similar legislation in 2007.

Given the fact that during times of crisis when the flock is fleeing the wolf, should not those who have sworn an oath to defend the flock be granted at bare minimum equal protection under the law to stop violence as that which is afforded the average citizen? Of course this should ostensibly be a rhetorical question since police officers seem to have traditionally been afforded greater latitude in these matters. There has never been a clear duty for police to retreat from violence prior to employing justifiable deadly force as

there has been for many citizens. And those who stand watch over society *should*, no, *MUST* be afforded the protection of law in such instances. But what if it is discovered to not be so?

If a police officer is too preoccupied with whether or not he is going to go to prison if he shoots somebody during a lawful discharge of his duties, does it not follow that society's safety is at stake? This is not a hypothetical question. Nor is it a question for the social scientists. The resultant danger to society is a virtual certainty in the wake of one of the most disturbing miscarriages of justice I have come to learn about.

In 1999, Mike Ferguson, an officer of the Royal Canadian Mounted Police, shot and killed Darren Varley. The only officer on duty for nearly 180 miles in a remote town in the prairies of Canada, Cst. Ferguson had fought with the intoxicated Varley prior to transporting him to the detention facility. During a subsequent struggle that ensued inside the holding cell, Varley is alleged to have pulled Ferguson's vest over his head and gained control of Ferguson's sidearm. Ferguson struggled to regain his firearm, and shot Varley twice – once in the abdomen and once in the head. In the court documents following Ferguson's THIRD trial for MURDER (there were two hung juries and he seems to have not been adequately represented at his third trial) the judge states that there was a finding that the first shot was justified. The court documents state, however, that the second shot was *not* justified. Both shots came within two seconds of each other – and the RCMP teaches, I daresay *conditions*, their officers to fire at least twice during shooting engagements.

Hold on ... it gets worse.

The prosecution called in experts, some of them from the RCMP to testify against Ferguson, who stated on the stand that not only was his second shot excessive, that it was impossible for Varley to have taken Ferguson's gun from his retention holster. A well-known expert in law enforcement training testified to the contrary but it seems that his testimony was largely ignored.

Other issues are that Ferguson was required to nearly *immediately* provide a statement to investigators and to return to the scene to provide a videotaped 'walk through' contrary to current science that suggests officers need time and isolation and should wait at least 48 hours prior to giving a comprehensive statement. One of the worst aspects of all of this is that he did all of this on advice of a departmentally provided lawyer! When details that conflicted with his initial statement percolated to his consciousness, he was treated as a liar – he was accused of "making things up."

During the lengthy investigation phase by the RCMP, Mike was required to check in at a detachment on a daily basis but was to otherwise have no contact with other members about the incident. The rank and file RCMP members were prohibited from discussing the matter among themselves or offering support to Ferguson. Not one single member of his organization was permitted to check on his welfare, support him or tell him he did a good job or the right thing. Memos were issued admonishing members not to get involved, as the matter was "being taken care of" by the organization. Another point of interest is that RCMP is prohibited by an act of Parliament from forming a union, so there was no organized representation for Ferguson.

Pincher Creek, Alberta, where the fight began is a small town with small town politics. Out of grass roots anger stirred up by the family and friends of the deceased, vengeance was sought against Ferguson, and there was definitely some pressure to see him convicted. The third jury found him not guilty of murder, but did find him guilty on the

lesser charge of manslaughter. It is evident from reading the sentencing documents that the judge was somewhat sympathetic, and imposed a sentence less than the mandatory provisions of four years in prison. He sentenced Mike Ferguson to two years less one day, and credited him for time he had served in a jail cell awaiting trial. The balance of his sentence would be served at his home under house arrest.

This was not enough for the community of Pincher Creek who continued to push for a full four-year prison term for Ferguson. On September 25, 2006 in a 2-1 split decision, the Alberta Court of Appeal said Ferguson should serve a four-year prison sentence and a warrant has been issued for his arrest and incarceration. Although this sentence will almost certainly will be reviewed by the Supreme Court of Canada, unless this matter gets the proper attention the decision will likely be unfavorable to Ferguson since the Supreme Court of Canada has refused (no reason given) to hear Ferguson's own appeal application on his conviction.

When I read the announcement of the Alberta Court of Appeal decision in an email on September 25, my heart sank – not just for Mike Ferguson but for every law enforcement officer who may someday face a similar fate; struggle for control of your gun against somebody trying to take it from you, and try to decide in that terrifying moment whether or not you will let him take and keep your gun (statistically you will be shot, and then the perpetrator will shoot somebody else) or face prison time for shooting your attacker as many times as necessary to stop the aggressive actions of your attacker. In Ferguson's case it was twice.

I applaud Mike Ferguson. I weep for Mike Ferguson. And I will fight for Mike Ferguson.

To the family of Darren Varley, I feel regret that the actions of your loved one forced the hand of Cst. Ferguson. But I do not feel regret that Cst. Ferguson acted in accordance with his training and fought relentlessly for his own survival. Had this turned out differently, there would have been a sea of RCMP members in red serge and proclamations of what a devoted officer Cst. Ferguson *was*. It would have been a spectacular funeral with all the pomp and circumstance the RCMP is famous for. In the wake of the killings of so many of their members recently at the hands of an increasingly violent society, it is truly unfortunate that Mike's organization that has abandoned their own in this instance, and has no doubt condemned others to the horrible choice of surrendering to a violent criminal or using justifiable lethal force and possibly facing prison time.

Mike Ferguson was not tried by a jury of his peers ... he was tried by a jury of men and women who know little to nothing of the horror of fighting over a loaded gun in a small room with a crazed and intoxicated individual. He was under-represented by attorneys who did not have the knowledge or connections to those studying the science of such encounters down and for whom there might have been concerns of being paid due to caps on Mike's legal fund. Offers of assistance from the "Dream Team" of use-of-force experts from the US who could have provided a forensic analysis of the encounter and an education to those men and women of the jury and the ever-watching public were declined. Further, Mike Ferguson's actions were mischaracterized by a series of "experts" whose information is seriously outdated given that they testified an officer's

gun could not be taken from him, and that Ferguson had the psychological and emotional capability to switch from being terrified of being killed, to being in full control of his cognitive faculties within a time frame of two seconds ... remember – the first shot was JUSTIFIABLE – the second was ruled unjustifiable, leading to his conviction.

As for the concept of “shoot once and assess before firing again” during a fight for your life, for those who have seen the dash camera footage of the Deputy Kyle Dinkheller murder, Andrew Brannan had been shot in the abdomen and was perfectly capable of continuing his fight up to and including the systematic murdering of Kyle Dinkheller. The infamous FBI shootout is another prime example of the necessity to continue to place rounds into a lethal threat until they are DOWN and OUT of the fight.

If those in the criminal justice community who sought the incarceration of Mike Ferguson truly believe that to which they testified, then they are sadly behind the times in the realities of dynamic encounters, and the training philosophies and techniques that have colored their thinking are in dire need of an overhaul. I do not believe these people to be vindictive in the case of Mike Ferguson ... they are however uneducated as to the realities of combat. Justice Minister of Canada, take notice.

This is a call to action for officers of all nations. I call upon the law enforcement community to voice their support for Cst. Ferguson at this time in his horrible ordeal. I have set space aside on the Reality Based Training Association site to contribute email addresses in an effort to mount a campaign to have this matter reviewed by the Justice Minister of Canada and the Prime Minister of Canada. This matter requires that the full measures of science be accessed in order to discover the truth in this matter – the truth of what happens in the blink of an eye during a life and death struggle. We have gone to amazing lengths and reopened cases based on new science (i.e. DNA evidence) to exonerate prisoners on death row. Surely this matter, with the far-reaching consequences for public safety, deserves the same measure of attention. If there is no such review, then justice has not been served.

This is by all means a public safety issue, since the public is much less safe as a result of this decision. This isn't just about Mike Ferguson, although I can't begin to fathom how his life has been destroyed by those terrible moments inside that cell. It is about the necessity of all officers to know that during such moments of terror, lethal force is not only justified, it is the correct action.

It is also a cautionary tale - a tale of precedence. We cannot let this decision stand unchallenged. Edmund Burke said, “the only thing necessary for evil to triumph is for good men to stand by and do nothing.” This decision is a flat out victory for evil. And why there is not a sea of red and blue taking to the streets in support of the actions of Mike Ferguson or a flurry of letters to the Minister of Justice and the Prime Minister calling for action is a mystery to me.

The bigger issue is that of seeing justice done – not just for Mike Ferguson – but for every other officer whose moment of terror should not be clouded by the dilemma of

doing the right thing, or by choosing between a jail cell or a coffin. Oliver Wendell Holmes imbedded into North American jurisprudence the concept that “detached reflection cannot be expected in the presence of an uplifted knife.” Those who have taken exception to the actions of Cst. Mike Ferguson might feel that they are motivated by what *they* believe is right, but they have no concept of facing that dreaded moment when you realize “Oh my god ... he’s got my gun” nor do they have any concept of the correct action for how to respond ... which is, shoot the person who is trying to take your gun. Shoot fast. Shoot frequently. Shoot until they are down. Mike Ferguson shot Darren Varley twice. That was sufficient to put him down. No more, no less. Had Varley not tried to take that gun, he would not have been shot.

Good job, Mike ... the story of your survival is inspirational. It will be told. You will be vindicated. Justice will be done. Hang in there.

Kenneth R. Murray

FOR FURTHER INFORMATION AND TO OFFER ASSISTANCE, PLEASE GO TO:

www.armiger.net/ferguson.html