

Reliance on expert in B.C. police shooting under scrutiny

'It just makes the whole thing laughable,' victim's dad says

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99

The father of a man shot by Vancouver police while he crawled on his hands and knees is asking investigators re-examining the case to question the use of an expert who cleared the officer involved in the shooting.

David Boyd says he believes the Vancouver Police Department and B.C.'s Office of the Police Complaint Commissioner should never have relied on the opinions of police psychologist Bill Lewinski.

"It seems like he was the kind of witness you call in if you want to have the police exonerated," Boyd said.

[Boyd's son, Paul, was shot eight times following an altercation with police in 2007.](#) But it was a final shot to the head while Boyd was on the ground and disarmed that killed the mentally ill animator.

Stan Lowe, the police complaints commissioner, retained Lewinski as an expert and devoted some detail to his opinions in his final report into the shooting. The report was released in March.

Lowe wrote that Lewinski "reasonably explained" why Const. Lee Chipperfield fired on an unarmed man by concluding the "intense emotional reaction to the events, coupled with a restricted focus," had, "rendered him inattentionally blind."

Although Boyd was on the ground some distance away, Lowe says Lewinski's analysis was that the emotional intensity of the event left him "shooting to save his life rather than being focused on shooting to stop Mr. Boyd."

David Boyd says when he learned Lewinski's opinion was involved in clearing Chipperfield, he was upset.

"There's no point in asking someone when you know what the answer's going to be," he says. "And I think it just makes the whole thing laughable [that] they would go to someone like this."

Lewinski is a behavioural scientist and executive director of a private, for-profit police training business in Minnesota called Force Science Institute Ltd. He's also a professor emeritus of Law Enforcement at Minnesota State University, Mankato.

The former Canadian social worker and school teacher is frequently sought after by U.S. police forces that are facing civil or criminal cases following lethal shootings. Lewinski has been recognized as an expert in reaction, perception and memory by a number of state and federal courts in the U.S.

Credentials attacked

But his credentials and research have also been attacked by lawyers for plaintiffs suing the police. A few have successfully had Lewinski barred from testifying.

Three years ago, Pasadena, Calif., civil rights lawyer John Burton represented the family of a man who was shot while he was obeying police to get on the ground. Burton argued that Lewinski's opinions explaining what happened were "nonsense," "bogus" and "pseudo-scientific gloss."

The judge agreed, barring Lewinski from testifying because his testimony lacked "scientific foundation."

Burton is unequivocal: "My advice would be to treat Lewinski for what he is; he's partisan, he's paid for, he always testifies for the police officer and he will always justify a shooting," he says. "If that's what you want, is some pseudo-scientist with a PhD after his name to get up there ... let a cop off the hook for a bad shooting, he's your go-to guy."



Paul Boyd was shot by police in August 2007. (Boyd family photo)

Two years ago, Lewinski was quoted that although his research could be used to prosecute police, he doesn't have time for that and with the size of his organization, he focuses on police.

Oakland, Calif., lawyer Michael Haddad sees it differently.

"When someone hires Bill Lewinski, they're not hiring an impartial expert," Haddad told CBC News.

Haddad is president of the The National Police Accountability project, an organization of civil rights lawyers in the U.S. In 2006, Haddad represented the family of an undercover cop who was shot by two rookie officers.

The city hired Lewinski to testify in a civil suit, and Haddad says the psychologist was ready to give evidence that other officers who heard their colleague reveal his identity before he was gunned down could have been mistaken because of the stress of what happened.

The city eventually settled out of court, but not before Haddad spent seven hours taking Lewinski's deposition.

"He's a very charming guy," Haddad says. "But ultimately what I learned about him was that he went to a correspondence school of psychology."

Internet studies criticized

Lewinski received his PhD from Union Institute and University in Ohio in 1988.

"He did his courses over the internet," Haddad says. "At the end of it, they gave him a degree of a PhD. He called himself a police psychologist. I believe at the time I took his deposition, there was nobody else in the United States with that title. He made it up."

Two years ago, Chicago lawyer Melvin Brooks questioned Lewinski prior to this testimony in a case in which a police officer shot an armed teenager who was running away from him.

In a motion filed with the court, Brooks argued Lewinski's degree "is not worth the paper it is written on," and that Lewinski had conceded he is not an expert in biomechanics, use of force, ballistics, or any of the "hard sciences" like anatomy or physics.

Brooks lost his motion to bar the psychologist from testifying.

He also lost the civil suit against the police. In allowing Lewinski to give evidence, the judge cited his "extensive 40 years of experience domestically and abroad," noting his explanations "were helpful to the jury."

"You know the courts are buying into it for the most part," Brooks says. "Which is somewhat unbelievable to me, because it's really not based on science."

In analyzing the shooting of Paul Boyd, Lewinski's opinion was that the stress of the incident rendered the officer who did the shooting, "inattentionally blind."

"Inattentional blindness" is a subject University of Illinois psychology professor Dan Simons knows well. While at Harvard, he and a colleague conducted experiments which demonstrated people can fail to notice things in front of them if they're focused on something else. They co-authored a popular book on the subject in 2010.

Simons found that when asked to concentrate on a video of people passing basketballs around, they frequently failed to see a person wearing gorilla suit walk right through the scene.

Simons, who's studied the phenomenon for 15 years, says he's asked nearly every week to testify in court for one case or another. He says always declines, because while inattentional blindness may be an explanation for errors in judgement, you can never be certain. As for the Boyd case, Simons is reluctant to weigh in.

"It sounds like a case of misperception as opposed to inattentional blindness," he offers tentatively.

Simons says years ago, Lewinski asked him to come and talk at one of the many training seminars he offers to law enforcement. Simons declined.

"Within the scientific world, he doesn't really do anything on inattentional blindness that I know of. So would he count as an expert in the scientific world? No."

Commissioner stands firm

Lewinski declined repeated requests for interviews over the past several weeks. A spokesperson for his Force Science Institute indicated Lewinski was busy conducting training and in court. CBC News

was provided with a two-page biography that notes Lewinski's, "groundbreaking findings have been presented at peer-reviewed conferences," and have been, "published in peer-reviewed journals."

Following a request for details of the peer-reviewed research, CBC News was referred to Lewinski's website, which lists a number of articles he's written. One he co-authored was published in *Psychological Science*, a top science journal. Many others appeared in a law enforcement publication and a police trade magazine called *The Police Marksman*.

Rollie Woods, B.C.'s deputy Police Complaint Commissioner says Commissioner Stan Lowe was, "aware of Dr. Lewinski's background, what his expertise was, what his C.V. was, and also that there was some controversy around his opinions and research."

But Woods told CBC News, "Dr. Lewinski does offer a reasonable explanation as to what may have occurred."

Woods says Lewinski was retained because he'd already provided his opinions to the Vancouver Police Department and the Commissioner wanted to see if new evidence would change Lewinski's mind about what happened. It didn't.

"I am certain that the commissioner would have weighed all the evidence", Woods said. "There are 6,000 pages of documentation in this file. Dr. Lewinski's report is only a few pages long and the commissioner told me...he only put a small amount of weight in this piece of evidence."

Woods says Lewinski billed the commission \$3,000 US to essentially repeat his earlier findings.

Woods suggested it was a bargain, considering the cost of some expert opinions. Lewinski's 2008 fee schedule obtained by CBC News, shows he charged \$475 an hour to read or write reports, \$950 an hour to testify in court, and \$3,800 dollars to be retained as an expert.

ASIRT combing through evidence

David Boyd believes B.C.'s police complaint commissioner undermined its own investigation by enlisting Lewinski to look at the shooting that killed his son.

"The Office of the Police Complaint Commissioner had not done an independent assessment, really," he said. "They'd just gone back to the same — I will use the word 'expert.'"

Boyd now wants to the civilian-led investigators who are re-examining the entire case to pay special attention to the use of Lewinski.

It would appear they are. The Alberta Serious Incident Response Team (ASIRT) is slowly combing through the boxes of evidence and past reports that led B.C.'s Criminal Justice Branch to decide against laying charges against the police.

Gary Creasser, team commander for the southern region office of ASIRT, told CBC News that the agency is, "looking at not only Mr. Lewinski's opinion, but we're looking at all the evidence that's before us now. We are looking at everything."