

February 27, 2016

TO: Marty Halloran, President-Executive Board, San Francisco Police Officer's Association
Michael Nevin, Secretary-Executive Board, San Francisco Police Officer's Association

Re: Review Suggested Changes to SFPD Use of Force General Orders

I. BACKGROUND:

A. The Assignment:

You have asked me to give you my evaluation of purposed policy changes to SFPD's polices 5.01 - 5.02 and Special Operation Bureau Order 2/10/16 (CED).

B. My Qualifications:

I was police officer with the Berkeley Police Department from 1966 through 1972 and the B.A.R.T. Police Department from 1972 through 1981 approximately 15 years of police experience as a patrol officer, a senior patrol officer, a Police Sergeant and a police trainer. I was one of the first trainers that was qualified by P.O.S.T. (California Commission on Peace Officers Training and Standards) to present P.O.S.T. courses in the 1960's. I was the only presenter of physical courses to be accepted by the Federal Mandated Consent Decree Committee for the San Francisco Police Department to present Physical Courses to SFPD in the 1980's.

For the last 48 years, I have been training Police Officers, Sheriff's, State Agents, Federal Agents and Correctional Officers and am still currently training officers at The Sacramento Public Safety Training Center where I teach Instructor courses in arrest and control, use of impact weapons and ground control techniques, The Napa Valley Police and Correctional Academy where I teach in the basic police academy, the correctional core academy the 832 course and the recertification course and the Contra Costa County Law Enforcement Training Center where I teach in the basic academy and in instructor level courses in arrest and control techniques and use of impact weapons. I also provide contractual physical and classroom training to various law enforcement agencies and sheriff departments throughout California and other States. I have trained and certified arrest and control instructors and impact weapon instructors in Hawaii and Nevada; firearms instructors in Georgia and Nevada; S.W.A.T. courses in Idaho, Hawaii and Nevada and citizen self defense courses in California and New York. During my 48 years of training officers I have trained approximately 45,000 law enforcement personnel

I have testified as an expert witness in use of force cases since 1978 and have testified in well over 600 cases regarding use of force, including use of deadly force, laws of arrest, search and

seizure and general police practices. I have testified for both defense and plaintiffs in civil cases, prosecution and defense in criminal cases and both sides in arbitrations. I am certified as a F.B.I. firearms instructor, chemical agents instructor and S.W.A.T. instructor. I am a P.O.S.T. approved Arrest and Control Instructor Trainer, Impact Weapons Instructor Trainer, Firearms Instructor Trainer, Crowd Control Instructor Trainer and Ground Control Instructor Trainer. I have trained San Francisco Officers since 1978. I have trained instructors in arrest and control, impact weapons, firearms, ground control and plain clothes officers in the use of the yawara stick for San Francisco. I have given lectures on use of force, the ADA and use of force, Title II of the ADA, Title 15 of the California Code of Regulations on the use of force, for PORAC, PARMA, ABOTA, law firms, attorney groups and individual agencies.

C. My Experience with P.O.S.T:

P.O.S.T. is the regulatory, certifying and overseer of all police training in the state of California, if an agency does not adhere to P.O.S.T. training standards their academy can be decertified by P.O.S.T. and their officers would not be peace officers recognized by the State of California. A P.O.S.T. Learning Domain is a functional area of law enforcement identified by P.O.S.T. as a requirement that a basic officer must be trained on and reviewed on in In-service courses and emphasized in instructor courses. There are 42 active Learning Domains. These Learning Domains are presented to basic officers over a 5 to 6 month period or a longer amount of time for eight hours a day and tested by paper and pencil or physical application. If an officer fails one test, he/she is remediated, and if they fail again they fail the academy and cannot be a peace officer. All active Learning Domains are reviewed and written by subject matter experts and then a team of attorneys designated by P.O.S.T. check on their accuracy according to current case law at the State and Federal level, in the 9th District, other Districts and the United States Supreme Court.

I am a P.O.S.T. subject matter expert, designated by P.O.S.T. to review, accept, correct or rewrite Learning Domains for the P.O.S.T. Basic Course. I have been one of the subject matter expert writer members of L.D. 20 (use of force) - L.D. 24 (handling disputes/crowd control) - L.D. 33 (arrest and control) - L.D. 35 (firearms) and L.D. 37 (people with disabilities) for over 34 years. In the past three years I have participated in rewriting L.D. 37 - L.D. 33 and L.D. 20.

II. EVALUATION OF SFPD'S PROPOSED CHANGES TO USE OF FORCE GENERAL ORDERS:

A. OVERVIEW:

1. Need For A More Careful Approach:

I applaud San Francisco's attempt to take swift action to correct what the SFPD apparently perceives as deficiencies in its current general orders regarding use of force. But, I must caution the SFPD that acting too quickly, without careful and thoughtful deliberation, can have disastrous, and unintended consequence. Clear and purposeful force guidelines are critically important to officers and the public. A revised policy should not be jumped into haphazardly, as a knee-jerk reaction to criticism from a relatively small, but vocal segment of the total population

of San Francisco. There should be meetings with give and take feedback from that vocal group, members of the overall population, command staff, representatives from the POA, OCC staff, legal counsel, force experts and P.O.S.T. A thorough examination of P.O.S.T. standards, current case law from the 9th circuit, the other circuits, State and Federal standards and the United States Supreme Court should be given to each member or group attending any meetings. Every word within a policy is subject to scrutiny and can be used against the agency and the officers in civil litigation.

When P.O.S.T. considers changing its guidelines, it does so only after careful consideration, taking in a variety of viewpoints to make sure there are no unintended consequences through the words it uses. Any re-write or creation of a P.O.S.T. Learning Domain takes several months over numerous 3 and 4 day sessions to complete and sometimes 1 to 2 years to go into effect, after a review by legal, The P.O.S.T. Commission and a recheck of the domain, because the ramifications of getting it wrong are too high risk for officer and public safety. I do not see any reason why San Francisco would not want to be just as careful.

The changes that San Francisco is proposing are massive and may have a profound effect if adopted. Some of those effect are probably unintended, as I will attempt to outline below. I have been informed that San Francisco is suggesting that these new general orders go into effect without first forming appropriate committees comprised of individuals with diverse backgrounds and experience to provide advice on the proposed changes. Regardless of what policy San Francisco decides to adopt, doing so hastily without taking the time to consider the possible effects of the changes could be disastrous. Force policies, and in particular, lethal force policies, are extremely important to civilians and officers. It would be unfortunate if San Francisco adopts these policies first and then only later takes the time to consider how they can be improved (or unintended consequences removed). Civilian and police lives could be lost by hastily enacting these policies. This policy advises that to avoid hasty decisions that are not based on the best information, officers should “engage in thoughtful communication . . . without time constraint.” In my view, the SFPD should apply that same approach to this policy.

2. General, Unintended Consequences Of Enacting This Proposed Policy As Written:

As written, this policy will drastically change an officer’s approach to every potential encounter in which the use of force might be an option. While that might be what is intended, making changes this drastic through a General Order, will likely have several unintended consequence. First, these policies seem to change the basic ground rules for when officers may use force. For the last 30 years, since at least the Supreme Court’s decision in *Graham v. Connor*, 490 U.S. 386 (U.S. 1989), officers have been trained through P.O.S.T – and every police academy in California, that they may use force when it is objectively reasonable based on the totality of circumstances known to the officer at time – without the benefit of 20/20 hindsight. All use of force training, all force options classes, all P.O.S.T. training has that core principle in mind.

This policy seems to change that basic concept. Although the previous policy provided that 20/20 hindsight cannot be used to evaluate an officer’s decision to use force, this policy has taken that language out. Furthermore, and perhaps more drastic, this policy seems to require that

the use of force be “proportional to the severity of the offense.” In my 48 years of providing training to peace officers on use of force, I have never been asked to train an officer to use force “proportional to the severity of the offense.” In fact, I am not even sure what that means or how an officer is to make that determination. I attempted to look to case law for guidance, but I was unable to find any published cases that discuss this concept. Therefore, I consulted the dictionary. The dictionary defines proportionality as 1. having due proportion; corresponding. 2. being in or characterized by proportion. 3. of, relating to, or based on proportion; relative. Therefore, proportionality seems to indicate that officers should match force with force, fists to fists, intermediate weapons (knife, brick, bottle, etc.) to baton, helmet, shield. Presumably then, officers would have to be armed with bladed weapons, because they would no longer be allowed to use their firearm against someone threatening them or a civilian with a knife. This policy would also seem to indicate that only officers of the same size can physically engage a suspect. (See advisement that officers consider the size and physical skills of a suspect III.A.1). This also suggests that, essentially, it needs to be a “fair fight” -- that officer can no longer present a show of force sufficient for the suspect to know that resistance is pointless. For example, instead of multiple officers attempting to subdue a resistant individual, under this policy only an officer of similar size and physical skills can intervene.

Alternatively, it could be that the department is merely attempting to state the *Graham* factors in different terms. Under *Graham*, officers are supposed to use that force which is objectively reasonable, based on the totality of circumstances. In *Graham*, the United States Supreme Court held that some of the circumstances that an officer may consider include: (1) the severity of the crime at issue; (2) whether the suspect poses an immediate threat to the safety of the officers or others, and (3) whether he is actively resisting arrest or attempting to evade arrest by flight. If by “proportionality to the severity of the offense,” the new San Francisco general orders merely means that these *Graham* factors continue to apply, then there is no reason for the change, as it will only lead to confusion.

If, however, is what is intended, that is contrary to *Graham*, and contrary to how officers in California have been trained for at least the last 48 years. P.O.S.T. identifies force options for general contacts and situation in L.D. 20, Chapter 2, force options, page 2-6 and 2-7 which is far different than saying - ***“It is critical officers apply the principles of proportionality when encountering a subject who is armed with a weapon other than a firearm, such as an edged weapon, improvised weapon, baseball bat, brick, bottle, or other object.”*** This is the L.D. 20 chart: See Attached chart.

If San Francisco adopts this novel approach to defining the appropriate use of force – even assuming this is a better approach – I foresee numerous unintended consequences. First, none of the officers in San Francisco will be adequately trained in this new policy. Changing the basic concept of when force can be used, and why, cannot be accomplished by simply changing the general orders. Much of academy training is designed to help officers develop physical skills “muscle memory” (being able to carry out a physical technique without having to think through it). For this new policy to be effective, all Officers would have to be untrained in the things they learned in the academy and throughout their in-service training and re-trained to meet the requirement of the new policy. In a time for time scenario it would require the same amount of time to re-train skills as it did to initially train the skills or 6 to 8 months in an academy setting.

Another unintended consequence is that San Francisco would likely lose its P.O.S.T. accreditation. Although P.O.S.T. allows for departments to develop their own guidelines, this new proposal, which appears throughout the 20/20 hindsight prohibition, replace “objectively reasonable”, with just “reasonable,” and adopt “proportionality” (whatever that means), would be so different from what is trained, that P.O.S.T. certification would no longer have any application for San Francisco officers. In fact, because P.O.S.T. would continue to teach concepts not just different, but contrary to the new, core San Francisco approaches to uses of force, it might even be counter-productive for San Francisco to require its officers to be P.O.S.T. certified.

A third unintended consequence is that because of this novel approach, (no case law, no other policies, previous training) officer, citizens and lawyers will all be guessing as to what it means. This, of course, is problematic for officers being able to figure out in the field what they can or cannot do, and it will be even more problematic when their actions are second guessed in disciplinary proceedings and civil lawsuits.

B. QUESTIONABLE UNDEFINED TERMS THROUGHOUT THE PROPOSED GENERAL ORDERS:

1. Thoughtful Communication

There are several references in the new proposed orders to require “thoughtful communication.” :While that sounds good to say in theory, I am unsure what it means, or whether any officer in the field would know. For example, Is it thoughtful communication to say ”drop the gun” or “you’re under arrest put your hands up” or should the officer enter into a discussion as to why the individual needs to drop the gun or why they should put their hands up and would an officer be subject to disciplinary actions if his/her communication was not thoughtful? If officers should no longer say “drop the gun,” or “You are under arrest, put your hand up,” they will need significant new re-training, as discussed above

2. Exceptional Circumstances Not Contemplated By This Order

In the last paragraph, on page 7 of the proposed general orders, there appears to be a catch-all, which allows for officers to use force in “exceptional circumstances” not contemplated by this order. Although I realize that was in San Francisco’s previous general orders, it takes on new problems by being repeated here, because San Francisco appears to be changing so much of what has been previously trained. For example, years ago an individual was driving through San Francisco running over dozens of pedestrians as if he were a participant in a sick video game. This new policy would prevent an officer from shooting that individual to stop him from running down a family of four in a cross-walk, even if the officer had a clean shot, and there was little risk of anyone else being injured. Would that be an “exceptional circumstance”, not contemplated by this order? It does seem exceptional, in that it does not happen often – but neither do officer involved shootings. But, how could it be said to have not been contemplated,

when I am raising the issue now? And, how would anyone know what was contemplated and what was not? And, whose contemplation matters? It is difficult to know what concept is sought to be expressed with this provision, but with a careful and deliberate approach to changing these important orders, perhaps the intent of this language can be achieved, without the difficulties of the language that is currently being proposed, only some of which I have outlined above.

C. USE OF FORCE, Proposed GO 5.01

1. Proposed policy:

“The San Francisco Police Department’s highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using thoughtful communication, and de- escalation principles before resorting to the use of force, whenever practical. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public’s trust.”

2. Suggested Revision

I believe it would be more instructive and a better fit to move a portion of the last paragraph on page 7 to the end of this opening statement and take out the arbitrary and unclear language :

The opening statement would now read:

“The San Francisco Police Department’s highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using communication, and de- escalation principles before resorting to the use of force, whenever practical. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unnecessary force. These are key factors in maintaining legitimacy with the community and safeguarding the public’s trust.

The purpose of the policy is not to restrict officers from using sufficient force to protect themselves or others but to provide general guidelines that may assist the Department in achieving its highest priority.” DE-ESCALATION.

1. Proposed Policy:

"In situations where a subject is not actively endangering the safety of the public or an officer, fleeing or destroying evidence, officers should employ de- escalation techniques to decrease the likelihood of the need to use force during an incident and to increase the likelihood of voluntary compliance.

Officers should consider the possible reasons why a subject may be noncompliant or resisting arrest. A subject may not be capable of understanding the situation because of a medical condition; mental, physical, or hearing impairment; language barrier; drug interaction; or emotional crisis, and have no criminal intent. These situations may not make the subject any less dangerous, but understanding a subject's situation may enable officers to use de-escalation techniques while maintaining public safety and officer safety."

2. Proposed Revision:

These potential ADA issues are covered in L.D. 37 [people with disabilities], but the caveat should be as it is in Learning Domain 37 Chapter 1 - Disability Laws, page 1-7 and Chapter 4 - Persons with mental illness, page 4-14). I suggest revising this language to add the P.O.S.T. language.

"People with disabilities are capable of committing crimes. They are not relieved from their obligation to obey the law.

Officers should treat a person who has a disability with the same caution that they would use with any other suspect regarding judgments about enforcement of the law and personal safety. Although the individual may have a disability, that individual may still be capable of injuring the officer.

Once the scene is stabilized and there is no threat to life then the officer has a duty to reasonably accommodate the person's disability, but not before. (Hainze v Richards, No. 99-50222, 207 F 3d 795 [5th Cir. 2000])

People affected by mental illness can be unpredictable and sometimes violent. Officers should never compromise or jeopardize their own safety or the safety of others when dealing with individuals who display symptoms of a mental illness.

Once the scene is stabilized and there is no threat to life then the officer has a duty to reasonably accommodate the person's disability, but not before."

E. ANALYSIS OF CONSIDERATIONS GOVERNING ALL USES OF FORCE (II A B.).

1. Conform To Penal Code Section 835(a) And Federal Law.

This portion of the policy appears to attempt to re-state federal and California law regarding the use of force. It is unclear if by this statement this policy intends for this to also be the policy in San Francisco or not. If it does, this is confusing because this statement of the law is inconsistent with the undefined idea of "proportional to the severity of the offense committed," found nowhere, that I could tell, in federal or California law. And, as a restatement of the law – the purposes of which are unclear – it does not re-state the law accurately. For example, Penal Code Section 835(a) requires that

“Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance.”

That language is not found in this proposed order. Also, California and federal law require that use of force not be judged by 20/20 hindsight, and this section is missing that language as well. Also, the policy is inconsistent in its use of the phrase “objectively reasonable” (found at II.B.) or “reasonable and necessary” (found at I.D.). Inconsistent language describing the analysis of when force can be used can serve no useful purpose.

F. DUTY TO RENDER FIRST AID.

Under the proposed general orders, Officers shall render first aid when a subject is injured or claims injury caused by an officer’s use of force unless first aid is declined, the scene is unsafe, or emergency medical personnel are available to render first aid.

Under current case law, an officer has fulfilled his/her obligation to render first aid if they call for medical aid to respond to the scene (**Maddox v. City of Los Angeles**, 792 F.2d 1408, 1415 (9th Cir. 1986); **Tatum v. City and County of San Francisco** 441 F. 3d 1090 (9th Cir. 2006)).

This proposed order appears to seek to change the requirement, forcing officers to provide first aid even where they lack sufficient medical training. For example, if after a use of force, the suspect claims he has a severe neck injury. Is the officer, who is not trained in how to provide medical care for a severe neck injury – and who has no tools at his disposal for doing so -- now obligated to provide such aid, rather than to just secure the scene and call for emergency medical aid? If officers are not to assume this duty, they will need significant additional medical training and medical resources at their disposal.

F. SUPERVISOR’S RESPONSIBILITY WITH ARMED SUSPECTS:

1. Proposed policy:

Under Section II. F. 2. [Supervisor’s Responsibility] : “When officers are dispatched to an on-view a subject with a weapon, a supervisor shall immediately remind responding officers, while en route, to protect life, isolate and contain the subject, maintain distance, find cover, engage in thoughtful communication without time constraint, and call for appropriate resources.”

2. Concerns with this policy:

If an officer is responding to a suspect with a weapon, the last thing responding officers need to hear is a supervisor coming over the air with a lengthy admonishment as to what officers need to

do, tying up the air at a critical time could jeopardize officer and public safety. If this is just repeating a portion of the new general order, it is a waste of time because presumably the officer will already know the order. Also, as often as officers on-view or are responding to weapons calls, there is a high-likelihood that this type of admonition would just be tuned out, because, by design, it has not particular application to the nature of the particular call. And, the supervisor giving the admonition is not on the scene.

Therefore, this type of admonition would be dangerous, because it would take-up critical air-time and it would be useless because the officers should already know this policy and, reminding them of general orders in this manner will not serve to educate them further. I have advised 100's of different departments over my 48 years and have never heard of any department requiring anything remotely like this. If the department would simply apply this idea to a few real world scenarios, it would see how disastrous it could be. For example, in a case that was litigated a few years ago involving an active shooter driving through San Francisco, if this admonition were given it is very possible that lives would have been lost because during the time it would take to give this admonition – after the officer already called Code 33 – other officers would have missed critical information being relayed by the following officer. Code 33 exists for a reason – to clear the air and allow for critical transmissions. To allow this non-critical transition to plug up 30 seconds of life-or-death air time, will endanger officers and citizens for no useful purpose.

G. Carotid Restraint / Chock Holds

1. Proposed policy:

Section III. A. 3. [Prohibited Use Of Control Holds] Officers are prohibited from using the following control holds: a. Carotid restraint; and b. Choke hold

2. Concerns regarding proposed policy

P.O.S.T. mandates that the carotid restraint control hold be taught in all P.O.S.T. basic academies under L.D. 33, testing and training specifications 33-9 E. An exercise test that requires the student to demonstrate competency in the carotid restraint control hold.

The student will demonstrate competency in the following performance dimensions:

1. Safety
2. Awareness
3. Balance
4. Control
5. Controlling Force
6. Proper Techniques
7. Verbal Commands/Instructions
8. First Aid Assessment

Presenters must use the POST-developed Arrest and Control Competency Exercise Test Form or a presenter-developed form approved by POST, which minimally includes the performance dimensions used for this exercise test.

The carotid restraint control hold should not be confused with the bar-arm choke hold or any other form of choke hold where pressure is applied to restrict the flow of air into the body by compression of the airway at the front of the throat.

Choke holds create the potential for a subject to panic and react with greater resistance when pressure is applied in this manner by a peace officer. Also, there is greater risk of serious injury to the subject.

The carotid restraint control hold has been challenged in the court system as a hold that is equal to deadly force, but that challenge has been overturned by the 9th Circuit.

(*Nava-Bennett v. California Highway Patrol*, No. C 93-01309 CW, U.S. Dist. Ct., N.D. Calif., December 21, 1994 - injunction placed on the CHP to only use the carotid restraint control hold in situations that threaten death or serious injury.

Nava v. City of Dublin, 121 F.3d 453 (9th Cir. 1997). Overturned the injunction against CHP from only using the carotid in situations that threaten death or serious injury.

The CHP thought that they did not have to teach the carotid restraint control hold based on this original injunction, but during a P.O.S.T. audit, when the auditor discovered that they were not teaching the carotid restraint control hold, the CPD had to arrange to teach all the officers that had previously not been trained on the hold or be de-certified.

H. SECTION III. C. 3. [IMPACT WEAPONS-PROHIBITED USES] .

1. Proposed policy

“Officers shall not (B.) Strike a handcuffed prisoner with an impact weapon. (C.) Raise an impact weapon above the head to strike a subject.”

2. Concerns regarding proposed policy

A categorical restriction on striking a handcuffed individual with an impact weapon is a mistake. Handcuffed individual can pose a significant risk to the safety of officers and civilians (See attached article “Handcuffed suspect breaks officer’s leg.”

There is no reason that I can imagine why the general force analysis would apply any less to a handcuffed individual. If they pose no threat, then use of force is inappropriate. If they pose a threat, then why take away one of the officer’s tools for stopping that threat. To do so only makes the use of lethal force more likely. For example, if a handcuffed individual is attempting to grab an officer’s gun, and the officer can stop the individual with his baton, wouldn’t that be a preferable outcome to the officer using his firearm?

In addition, there is no reason that I can see to categorically prevent over-head strikes with a baton. The location of the strike is what matters, not the type of arm-movement that caused the strike.

I have trained the SFPD impact weapon instructors since 1978 to strike to zone 1 (waist to shoulders) and zone 2 (waist to feet). The angle of the strike, side to side, high to low or low to high has no bearing on the target. The zones are what the officers and instructors are taught. Diagonal strikes are taught to strike to the hands or kicking feet, which may appear to an onlooker as an overhead strike.

I. THE USE OF THE TERMS “IMMEDIATE” AND “IMMINENT” INTERCHANGEABLY IS A PROBLEM.

The terms immediate and imminent must be used in their proper contexts: As listed by Lexapol in their policies there is a difference.

Imminent does not mean immediate or instantaneous. An imminent danger may exist even if the suspect is not at that very moment pointing a weapon at someone. For example, an imminent danger may exist if an officer reasonably believes any of the following:

1. The person has a weapon or is attempting to access one and it is reasonable to believe the person intends to use it against the officer or another.
2. The person is capable of causing serious bodily injury or death without a weapon and it is reasonable to believe the person intends to do so.

J. PRIOR TO THE DISCHARGE OF FIREARM OR LETHAL FORCE.

1. Proposed language

When safe and practical under the totality of circumstances, officers shall consider other force options before discharging a firearm or using other lethal force.

2. Concerns regarding this language

By case law officers are not required to use lesser force options, only objectively reasonable force (*Forrester v. San Diego*, 25 F. 3d 804 (9th Cir. 1994) whether less painful, less injurious, or more effect force is available is not an issue as long as the force used is objectively reasonable); *Scott v. Henrich* 39 F. 3d 912 (9th Cir. 1994) Officers are not required to use the “least intrusive alternative” when confronted with a deadly force threat. Appropriate inquiry is whether officers “acted reasonably, not whether they had less intrusive alternatives available to them.” so the section should read:

When safe and practical under the totality of circumstances, officers shall consider, but are not required to use other force options before discharging a firearm or using other lethal force.

K. SHOOTING AT DRIVERS OF MOVING VEHICLES:

1. Proposed policy

Section I. D. 5. [Moving Vehicles] “An officer shall not discharge at the operator or occupant of a moving vehicle unless the operator or occupant poses an immediate threat of death or serious bodily injury to the public or an officer by means other than the vehicle. Officers shall not discharge a firearm from his or her moving vehicle.”

2. Concerns I have with this policy

A motor vehicle generates approximately 750+ ft/lbs energy at 3 MPH - 2,000 + ft/lbs energy at 5 MPH - 4,200+ ft/lbs energy at 7 MPH and 8,50+ ft/lbs energy at 10 MPH. A 9 mm bullet generates between 280 and 400 ft/lbs energy. A motor vehicle driven at a person is equal to the use of deadly force. (“Selective Ammunition Tests”) - Article “Selective Ammunition Tests” by Patrick N. Dowden in “The Tactical Edge” - Summer 1992

P.O.S.T. defines times when an officer may use deadly force in L.D. 20, Chapter 3, page 3-14 - Considerations before using deadly force. In some instances, peace officers may have time to evaluate and assess all aspects of a situation. In most situations, split-second decisions must be made. As part of the mental process for preparing to use deadly force, peace officers should consider several important factors before a situation requiring the use of deadly force arises. The following chart suggests, but is not limited to, a few of the circumstances that should be considered.

Circumstances:

Considerations:

Threat to life

Does the subject present a credible threat to the officer or others?

NOTE: Peace officers may use reasonable force to defend their lives or the lives of others.

Imminent threat

Does the subject present an imminent threat to life?

Is the subject threatening the officer or others with a weapon?

Subject's access to weapons or potential weapons

Proximity of subject to the officer

Type of crime/subjects

Is the nature of the crime violent or non-violent?

Is there a large number of subjects to be confronted?

Type of weapon

Can it cause serious bodily injury or death?

Subject's capabilities

Does the subject demonstrate superior physical skill over the officer?

**** A motor vehicle is a weapon that can cause serious bodily injury or death.***

The Revised Policy defines lethal force as:

Lethal force is any use of force designed to and likely to cause death or serious physical injury, including but not limited to the discharge of a firearm, the use of impact weapons under some circumstances (see DGO 5.01, Use of Force), and certain interventions to stop a subject's vehicle (see DGO 5.05, Response and Pursuit Driving). ***By this definition a motor vehicle driven at an officer or civilian is lethal and should be dealt with like any other lethal force threat.***

A better policy on shooting at a vehicle would be the Lexapol model:

“SHOOTING AT OR FROM MOVING VEHICLES.

Shots fired at or from a moving vehicle are rarely effective. Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants. ***An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle,*** or if deadly force other than the vehicle is directed at the officer or others. Officers should not shoot at any part of a vehicle in an attempt to disable the vehicle.

This phrase from the United States Supreme Court seems to have been left out of this reviewed policy: The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.

III. CONCLUSION

These are my recommendations for revisions to the revised SFPD Use of Force Policy based on my training and experience as stated in this correspondence.

I would be more than happy to answer any question regarding these recommendations or participant in any meetings or ongoing discussions.

Sincerely:



D.S. Cameron;
Cameron Consultants

Resistance

[20.02.EO3]

Introduction

Subjects' resistance/actions to an arrest will determine the type of force used by peace officers.

Subjects actions

The following chart illustrates how a subject's resistance/actions can correlate to the force applied by an officer:

Subject's Actions	Description	Possible Force Option
Cooperative	Subject offers no resistance	<ul style="list-style-type: none">- Mere professional appearance- Nonverbal actions- Verbal requests and commands
Passive non-compliance	Does not respond to verbal commands but also offers no physical form of resistance	<ul style="list-style-type: none">- Officer's strength to take physical control, including lifting/carrying- Control holds and techniques to direct movement or immobilize a subject
Active resistance	Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, or verbally signaling an intention to avoid or prevent being taken into or retained in custody	<ul style="list-style-type: none">- Control holds and techniques to control the subject and situation- Use of personal weapons in self-defense and to gain advantage over the subject- Use of devices to secure compliance and ultimately gain control of the situation

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Resistance, Continued

Subjects
actions
(continued)

Subject's Actions	Description	Possible Force Option
Assaultive	Aggressive or combative; attempting or threatening to assault the officer or another person	<ul style="list-style-type: none">- Use of devices and/or techniques to secure compliance and ultimately gain control of the situation- Use of personal body weapons in self-defense and to gain advantage over the subject
Life-threatening	Any action likely to result in serious injury or possibly the death of the officer or another person	<ul style="list-style-type: none">- Utilizing firearms or any other available weapon or action in defense of self and others

NOTE: Officers must take into account the *totality of the circumstances* when selecting a reasonable force option. It is not the intent of this chart to imply that an officer's force options are limited based on any single factor.

NOTE: Officers must be aware of and comply with their specific agency policies regarding appropriate force options.

Constant
reevaluation

Peace officers must use the force option appropriate for the situation as conditions may change rapidly. Officers must continually reevaluate the subject's action and must be prepared to transition as needed to the appropriate force options.

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