C19-040
Closing Report and Recommendations

OFFICE OF THE POLICE OMBUDSMAN

BART LOGUE | POLICE OMBUDSMAN

Table of Contents

Mission Statement 2

Staff Information 2

Authority and Purpose 3

Introduction 4

Summary of the Incident 5

Disputed Facts 6

Tactical Review 10

- Conducting High-Risk Stops 13
- Commands 14
- Opportunities to Comply 16
- K9 Deployment 17
- Update K9 Guidelines to a Policy 21
- Exceptional Techniques 22
- Other Tactical Considerations 23
  - Officer Safety 23
  - De-Escalation 24

Internal Review and Discipline 25

Improvements to IA Investigation Process 31

- Distinction Between a Use of Force Review Versus an Internal Affairs Complaint 32
- Misconduct Should Trigger an IA Investigation 35
- Investigators Should Automatically Initiate an IA Investigation on Potential Policy Violations 36
- Documenting All Investigatory Steps 37
- Standard Investigation Template 38
- Credibility assessments 39
- Conflict of Interest 40

Administrative Review Panel 41

Request for Release of Video Footage to City Council 43

  - Industry Standard for Disclosing Body Camera Footage 43

Release of Body Worn Camera Footage to the Public 45

  - The Public Records Act and Seattle v. Sargent 46

Summary of Recommendations 48

Mission Statement

The Office of Police Ombudsman exists to promote public confidence in the professionalism and accountability of the members of the Spokane Police Department by providing independent review of police actions, thoughtful policy recommendations, and ongoing community outreach.

Staff Information

Bart Logue, *Police Ombudsman*
Bart Logue began serving in this capacity in September 2016, after serving as the Interim Police Ombudsman. Bart is a Certified Practitioner of Oversight through the National Association for Civilian Oversight of Law Enforcement (NACOLE). Bart has a Master of Forensic Sciences from National University and a Master of National Security Affairs from the Naval Postgraduate School. Bart is a graduate of the Federal Bureau of Investigation National Academy, Session 239, and is also a certified Advanced Force Science Specialist.

Luvimae Omana, *Deputy Police Ombudsman*
Luvimae Omana has dual degrees in Business Administration and Political Science from the University of California, Riverside and a Juris Doctorate from Gonzaga University School of Law. Luvimae is licensed to practice law in Washington. Luvimae is also a certified Advanced Force Science Specialist.

Christina Coty, *Administrative Specialist*
Christina began working at the City of Spokane in 2015 for the ITSD department in contract procurement. Prior to her work at the City of Spokane she worked for Sony Electronics as a Regional Sales Manager managing the retail store operations in Southern California.

Tim Szambelan, *OPO Attorney*
Tim works in the Civil Division of the City Attorney's Office and currently represents the Ombudsman Office and other departments within the City of Spokane. Tim is licensed to practice law in Washington and Arizona.

Authority and Purpose

The goal of the Office of the Police Ombudsman (OPO) is to promote confidence and accountability in the members of the Spokane Police Department (SPD). The OPO does so through conducting independent and thorough oversight of matters that impact the community. We can help bridge the gap between the community and the SPD by writing closing reports in cases that are of public concern in order to increase accountability and transparency into the matter. By insisting on transparency, we hope to help eliminate similar incidents in the future and ensure that the practices contained herein are limited and/or never happen again.

Spokane Municipal Code (SMC) §04.32.030 provides authority for the OPO to publish closing reports on a case once it has been certified by the Police Ombudsman and the Chief of Police has made a final determination in the matter. The OPO is prohibited from disclosing any names of involved officers and witnesses. Accordingly, we have provided the same courtesy to the Subject in the incident.[1] The OPO's recommendations will not concern discipline in specific cases or officers. Further, this report shall not be used in disciplinary proceedings of bargaining unit employees, nor is it meant to challenge the Chief's findings. While our opinions differ from the Chief's findings, this report is solely meant to further discussion on aspects of this incident that could be improved upon for future applications of force.

The OPO used public records to conduct a review of officer reports, Body Worn Camera (BWC) video footage,[2] Chain of command reviews, the IA investigation, the Administrative Review Panel (ARP) memorandum, and the SPD Press Conference regarding this case to ensure that all information contained herein would be fully releasable to the public. There may be general information included in this report which is based upon the OPO's involvement in the review of this matter, but all specific information comes from public records.

This case also provides opportunities for policy and procedure recommendations that can result in improved police performance through their eventual implementation. Writing this report allows us to provide a more thorough review of what occurred in this case in order to offer recommendations for improving the quality of police investigations and practices, including the Internal Affairs (IA) investigative process, policies, and training or any other related matter.

[1] The OPO recognizes the restriction imposed by SMC §04.32 on identifying officers. However all the involved SPD officers and the Subject were male. As such, this report refers to them throughout using male pronouns.
[2] BWC refers to video footage from a Body Worn Camera throughout the remainder of this report.

Introduction

This report provides a summary of an incident that involved allegations of excessive force and the use of a K9[3] from early February 2019. It is based upon officer reports who were involved in the incident and SPD's subsequent review processes. We dispute some of the facts or principles that SPD used as a basis for its findings in this case after we viewed BWC footage from the involved officers and we analyzed the investigative process and various reviews. We will discuss the disputed facts and offer recommendations to the Department. It is our opinion that by overlooking disputed facts, the Department weakened its review process of this case. We will also highlight what we consider to be an inappropriate use of the review process instead of the policy mandated use of the investigative process. Finally, we highlight the aspects of this incident that could be improved upon for future encounters similar to this matter. To reiterate, this report is not meant to challenge the Chief's disciplinary findings or discipline imposed in this incident. While some of our opinions differ from the Chief's findings, this report solely intends to further discussion on aspects of this incident that could be improved.

In our review of this case, we concluded that the SPD chain of command did not properly follow policy in the review process and the investigators and reviewers either failed to analyze the disputed facts in this matter or insufficiently documented their analysis in their summaries or memos. Upon completing review of this case file, we believe there are multiple areas that could be improved by applying the lessons learned from this incident.

Officers employed tactics that greatly endangered themselves and unnecessarily escalated the situation; ultimately leading to questionable uses of force. Our office finds that officers unacceptably utilized tactics that put themselves at substantial unnecessary risk which deviated significantly from established Washington State Criminal Justice Training Commission (CJTC) training standards. We question the tactical choice to deploy the K9 inside of the vehicle at the moment it was deployed; as it appeared unnecessary to garner further compliance from the Subject to safely effect the arrest. We also question the multiple closed fist strikes to the head area of the Subject; given their punitive appearance, the lack of effectiveness of the tactic and its determination to be an exceptional technique, and the lack of commands or instructions for the Subject to follow prior to delivering the strikes.

From a criminal liability standpoint, the Supreme Court of the United States determined in *Graham v. Connor* that an objective reasonableness standard should apply to any claim that law enforcement officers used excessive force in the course of making an arrest. However, from an administrative standpoint, many progressive departments hold their officers to a standard higher than the minimum outlined in *Graham*. We note that the SPD's Use of Force policy in place during this incident was quite permissive. However, SPD recently updated its policy and added a de-escalation policy. Further, the Chief has maintained that his standard for using force involves necessity, which goes beyond the reasonable standard. He has maintained publicly and consistently stated in his remarks to all new hires, "We use force because we have to, not because we can."

[3] K9 and canine are used interchangeably throughout this report and refers to a police dog.

Summary of the Incident

In February, 2019, Officer A was assigned to the Patrol Anti-Crime Team when he responded to a location in Spokane in an attempt to locate the Subject. At the time, the Subject had several felony warrants for his arrest. Officer A also had recently developed probable cause to charge the Subject with Attempting to Elude a Police Vehicle. Further, Officer A had received information that the Subject was possibly armed with a gun and also had prior knowledge of the Subject as he had previously assisted in arresting the Subject for a Department of Corrections (DOC) warrant when the Subject was found to be in possession of numerous controlled substances and a loaded handgun.

Officer A received information that the Subject was at a specific address and requested assistance from patrol K9 teams. He then received additional information that the Subject had gotten into a silver truck and was leaving the area. Officer A, along with a passenger officer, began following the truck and requested a K9 Officer's, Officer B, assistance with a traffic stop. Officer A activated his emergency lights in an attempt to initiate a traffic stop on the truck. However, the driver failed to stop and began driving erratically. Once the vehicle was eventually stopped, Officer A appropriately conducted a High Risk Vehicle Stop (HRVS) and ordered the driver to exit the vehicle and move back towards him and his partner. Officer A's report mentioned calling the driver back to them at least four times before the driver eventually exited the vehicle. Then, Officer A noticed another male, believed to be and later identified as the Subject, slide over to the driver's side of the truck.

The Subject then quickly sped off in the truck. Officer A pursued and attempted a pursuit intervention technique (PIT) maneuver to try and stop the truck and end the pursuit. However, the Subject was able to drive out of the maneuver. Eventually, Officer B was able to pin the truck with his patrol vehicle to two other vehicles and a snowbank. Officer A then blocked the back of the truck with his patrol vehicle. The Subject continued to rev the engine in an attempt to escape and both officers had to apply continuous pressure with their patrol vehicles to keep the truck in place. This is where the BWC footage begins.

Officer B noted in his report that it was difficult to see inside of the truck because it had tinted windows. However, despite having prior knowledge of the Subject's history and information that the Subject was potentially armed, Officer B left his patrol vehicle and did not take up a position of cover in order to conduct an HRVS as trained. Instead, Officer B moved directly to the driver's side window, broke it out with his side handle baton and began to verbally engage the Subject:[4]

> Officer B: "I'm gonna fucking kill you! I'm gonna fucking kill you! Don't fucking move! You're gonna get bit by a fucking dog! Don't, don't, don't. I'm gonna fucking shoot you. I'm gonna fucking kill you. Don't reach. Don't fucking reach. I'm gonna fucking kill you. Don't reach. [To Officer A] Get on the other side [Officer A]. [To Subject] I will fucking kill you. Do you understand me? You're done."
>
> Subject: "I've got a pistol, I got a pistol." *The Subject places his hands in the air but clearly has a lighter in the right hand and a pack of cigarettes with a cigarette in the left hand.*

[4] The OPO transcribed the excerpt below from Officer B's BWC.

Officer B: "You're fucking done. He's got a gun. He's got a gun!"

Officer A breaks the passenger side window with a baton. The Subject sees this, looks over his shoulder toward the rear of the vehicle.

Subject: "Oh my god!" *Subject jumps back into the passenger cabin.*

Officer B: "He's got a gun on him he says. Don't fucking move."

Officer A & B: *At the same time*, "Get your fucking hands up."

Officer B: [To Officer A] "Get my dog. [To Subject] You're gonna get bit right now. Get the fuck out of here. I'm gonna put a bullet in your brain."

Subject: (unintelligible) "smoke this cigarette."

Officer B: "Get out here right now. I'm done fucking with you. Get out here or you're gonna get bit. "

Subject: "I'm coming, please don't. I'm coming! I'm coming!"

Officer B: "Right now. (Unintelligible).[5] *Then the K9 is deployed into the window and it makes contact with the Subject as he shrieks in pain.*

Officer B: "Show me your hands. " *As Officer A breaks the rear driver window.*

Subject: "Ok, I give up. I give up." *Subject reaches for the officers and they start pulling him out of the truck through the driver side window on to the ground.*

Subject: "Get your dog! Get your dog!"

As the Officers pulled the Subject from the truck, he can be seen reaching for his leg where the K9 was still making contact. During this time, Officer B was trying to contain both the K9 and the Subject. Officer B said, "Relax we got 'em." Officer A later said in his report the Subject continued with muscular resistance and he could feel him trying to reach under him toward his waistband. In response, Officer A reported that he gave him two to three closed fist strikes toward his head area in order to try and gain control of the Subject's arm that the officer said he could feel was reaching toward the waistband. It is only when Officer B removed the dog from the Subject and placed his knee on the Subject's backside that Officer A stopped striking the Subject and moved into handcuffing. The officers then handcuffed the Subject.

Disputed Facts

There are several instances during the incident where the facts are inconsistent with officer reports, are unintelligible, or are not visible on the BWC footage. During the incident, these disputed facts include whether:

[5] Whether Officer B said, "fuck that, fuck you" or "fass, fass, fass," is disputed. Disputed facts will be discussed further.

1. The Subject reached for his waistband;
2. The Subject was resisting as officers tried to handcuff him; and
3. Officer B said "fass, fass, fass" or "fuck that, fuck you" as he deployed his dog.

After the incident another officer and a US Marshal made contact with the Subject's sister. Other disputed facts include whether the officer and Marshal had an inappropriate interaction with the Subject's sister by making inappropriate statements about the Subject, using profanity when speaking with her, and threatening to have Child Protective Services take her children away.

Analysis

Subject reached for his waistband

In his report, Officer B said that the Subject was reaching for his waistband. We opine this goes to the reasonableness that Officer B believed that the Subject could be armed as well as the Subject's resistance to commands and his possible propensity to commit harm to the officer or the public. When the Subject is in the BWC's view,[6] he is not clearly seen reaching for his waistband. Officer B's BWC, from the 1:58-2:07 mark, is obstructed by his radio's cord. Even in a frame-by-frame analysis, the Subject's hand movements are difficult to make out. As such, we relied on the officer reports. Officer B reported this was one of the instances where the Subject reached for his waistband. SPD contends the Subject reached for his waistband between the 1:58-2:07 mark, justifying the force later used. However, the timing of when force is justified is key. Officer B decided to deploy his K9 at the 2:29 mark and then followed through with the deployment at the 2:49 mark. Between the time force was justified by the Department and when the K9 was deployed, 42 seconds had passed and the Subject had begun to display compliance, which dissipated any previously established justification for the force utilized. Thus, regardless of whether the Subject reached for his waistband earlier in the interaction in the truck is immaterial to whether force was justified in the moment it was used.

Later, while on the ground, the Subject is seen reaching for his leg as the K9 was still biting it. This occurred at the same time Officer A deployed closed fist strikes to the Subject's head/neck area and the Subject was yelling for the officers to remove the dog. This was not addressed in any of SPD's reviews. This is significant because subsequent reviewers relied on the statement that the Subject reached for his waistband as justification for Officer A's decision to employ an exceptional force technique, striking the Subject multiple times with a closed fist. There was no analysis or discussion regarding whether or not the Subject reached for his waistband actually occurred. Rather, Lieutenant A, in charge of Officer A, simply stated that the use of force was within policy.

Subject's non-compliant behavior

Officer B later reports that the Subject jumped into the back seat of the vehicle. We do not dispute this as the Subject is seen on the BWC footage clearly jumping into the back seat. However, reviewers determined this to be indicative of the Subject's non-compliant behavior and did not consider other reasons for his actions. Captain B[7] explains that this is an example of non-compliant behavior because Officer B was giving the Subject commands and that even though the Subject said he was

[6] It is important to note that the BWC is on the officer's chest area, not at eye level, so the images are different from the officer's viewpoint.

[7] Members of the officer's chain of command are referred to by their rank followed by the corresponding officer, e.g. Lieutenant A is in Officer A's chain of command and Lieutenant B is in Officer B's chain of command.

coming out, he jumped into the back seat.[8] However, Captain B and later, the ARP, did not consider the possibility and likelihood that the Subject jumped into the back seat as a reflexive reaction after Officer A broke in the window directly behind him. The Subject is clearly visible on the BWC at this time, yelling "Oh my God!" as Officer A approached and struck the window before recoiling away from the window before jumping between the seats. It is reasonable for a person in a similar situation to react the same way, given that Officer B was yelling that he was going to kill the Subject and another officer came up behind him and broke out the window.

Regardless of the reasons why the Subject moved into the back seat, whether by non-compliance or reflexively, the Subject's actions at that point elevated the likelihood of a lethal force encounter. It very clearly placed the officer at a significant disadvantage if the Subject was armed as he had previously claimed. In this portion of the incident, the Subject's hands are not visible at all on the BWC.

Number of closed fist strikes

After the Subject was pulled out of the truck on to the ground, Officer A struck the Subject at least three times in the back of the head before the Subject attempted to shield his head from the strikes. Officer A continued to strike the Subject in the head area with a closed fist. Officer A then ordered him to stop fighting and the Subject responded that he was not. Officer A delivered at least 6 closed fist strikes that are visible on the BWC footage.[9] There were a few seconds where the camera's view was blocked and where strikes were not visible. Yet, the ARP simply sided with Officer A's report where he said he delivered 2-3 closed fist strikes to the Subject's head/neck area to gain compliance in their memo. They also did not address the disparity in number, nor why the officer continued to believe that further strikes were reasonable to effect the arrest. There are legitimate reasons why an officer's memory may not recall the clarity that BWC footage provides,[10] but these were also not addressed.

Officer B's commands

There were instances during the IA investigation where facts were in dispute. In those instances, the investigation did not attempt to resolve or explain differing interpretations of what occurred. For example, the IA Lieutenant's transcript says Officer B said, "Fass, fass, fass," as he deployed the K9 into the truck. However, during the course of the investigation, we raised the issue that audio from the BWC sounded like an officer said, "Fuck that, fuck you," immediately prior to deploying the dog into the vehicle.[11] In fact, the primary IA investigator said he also heard that statement and properly asked about it during the IA interviews. While he asked Officer B about this, the investigation did not document whether the officer's response was reasonable, the fact that this issue was a point of discussion, or the potential different words in its transcript of the incident. The IA investigator only mentioned it as part of a question he asked the officer. In discussion of this omission with the IA Lieutenant, he said the ARP would look at all aspects and address the disputed "facts" when

[8] The Subject did not actually say he was coming out until after he was in the back seat. Captain B's analysis that the Subject jumped into the backseat after this statement is not accurate.
[9] According to Sergeant A's Use of Force Supervisor Review.
[10] The Force Science Institute provides significant research in the area of memory and stress, and reasons why an officer's memory may differ from BWC footage.
[11] Outside of the significant demeanor concerns, this in combination with the Subject's compliance in the moment that raised concerns on the reasonableness of the use of force. This statement prompted the Police Ombudsman to formally inquire into the matter as it indicated punitive force.

they came to their conclusion. However, this statement, which would address any motive issues that may have rendered the force unreasonable was not addressed by the ARP, nor any of the chain of command reviews. Unfavorable "facts" are very important to address in any finalized report so that the Chief can make fully informed decisions.

Interaction with the Subject's sister

IA also interviewed the Subject's sister after she alleged that the police came to her home, threatened her, called her names in front of her children, and told her they had beaten her brother and wished they had shot him. By contrast, officers and the US Marshal recounted the event differently in their IA interviews. Each one painted the Subject's sister to be foul-mouthed and aggressive. The officer failed to activate his BWC during this part of the incident and also failed to document the contact with the Subject's sister in a report. When interviewed, both the officer and the US Marshal were vague in their responses to specific questions about the incident. They responded with answers like, "honestly, I don't recall," or "I can't remember exactly, it's been a couple of months." The officer's responses also appeared to summarize what he recalled or tried to convey, rather than providing straightforward responses, while the US Marshal recalled hostility on both sides, but was unable to recall any specific statements by the officer involved. Neither the IA investigator nor the ARP analyzed these differences or recognized the potential significance of the veracity of the sister's allegations. IA again pointed out that the ARP would evaluate any discrepancies and it was not up to IA to come up with findings.[12]

We understand that BWC footage is a two-dimensional view of a three-dimensional world and the BWC is not at the officer's eye level so the view is not exactly the same. As such, BWC footage is not a perfect record, and it should not be solely relied upon to determine reasonableness of officer actions. We also understand that stressful situations can narrow an officer's focus on a threat they encounter and can affect what an officer is able to recall from an incident.

However, BWC footage is the best available tool to review the incident from the officer's perspective after the fact. As for perception narrowing, SPD officers have several opportunities to view, process, and revise their position. Officers can view BWC footage when they write reports and before they attend IA interviews, which occurred in this investigation. In order to maintain objectivity and avoid appearing biased, disputed facts should be clearly outlined as part of the IA investigation or the ARP review. Further, an investigator should attempt to resolve disputed facts, or present them in a manner that subsequent reviewers will be fully aware of them, ensuring fully informed determinations of facts to arrive at proper findings.

***RECOMMENDATION #1**: I RECOMMEND IA INVESTIGATORS, AS A MATTER OF PRACTICE, IDENTIFY DISPUTED FACTS IN AN INVESTIGATION PROVIDE THE AVAILABLE EVIDENCE FOR BOTH SIDES OF THE DISPUTE, AND DOCUMENT THEM CLEARLY SO THAT THE DESIGNATED PERSON CAN MAKE FULLY INFORMED DETERMINATIONS ON HOW TO VIEW THE FACTS.*

[12] SPD's IA summaries typically include facts of incidents; whereas the chain of command evaluates and determines findings.

Tactical Review

The officers' tactical decisions greatly endangered themselves, escalated an already tense situation, and limited their available choices. The officers were working with a relatively large team comprising SPD officers, US Marshals, and DOC officers during this incident. With a small delay, additional resources would have been available, possibly preventing or lessening the use of force required to effect the arrest.

Under well-settled case law, whether an officer used excessive force is judged from a reasonable officer standard at the moment force is used.[13] However, effective practices provide that law enforcement agencies should expand the scope of its review, to include not just the decision making at the moment an officer used force, but also tactics, communications, and supervision of all personnel involved.[14] The review should also consider officer conduct leading up to the use of force.[15] Thorough tactical reviews are important to help ensure officer safety, to reduce the use of unnecessary force, and prevent harm to the community.

A tactical review is intended to critically evaluate an officer's actions leading up to a use of force. This includes the tactics used, an assessment of the officer's communications, as well as the supervision of all involved officers. A critical review could ask questions such as:[16]

- Did the officers have opportunities for time, distance, and cover?
- Was there a risk of imminent danger?
- What was the need to arrest the Subject at that particular point?
- Was there indication the Subject was trying to be shot by the police?
- Was the Subject exhibiting possible mental illness or emotional instability that may be contributing to the pressurization of the situation?

For example, the Las Vegas Metropolitan Police Department (LVMPD) found its accountability mechanisms were extremely limited.[17] Their Use of Force Review Board focused its review on the moment an officer discharged his firearm.[18] The narrow scope produced judgements where the officer's actions were almost always found to be justified, even in questionable circumstances.[19] LVMPD

---

[13] *Graham v. Connor*, 490 U.S. 386 (1989). (The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation.)

[14] *See* U.S. DOJ Community Oriented Policing Services, *Collaborative Reform Model: Final Assessment Report of the Las Vegas Metropolitan Police Department* (May 2014).

[15] *Guide to Critical Issues in Policing*, at 2.

[16] Glennon, Jim, *Legally Justified Shooting...But was it Avoidable?*, Calibre Press (January 22, 2020).

[17] *See Collaborative Reform Model* (May 2014).

[18] *Id.*

[19] *Id.*

determined that in order to be more critical and provide greater accountability of officers, they had to increase the finding categories of reviewed cases.[20] The additional categories include:

1) Administrative approval
2) Tactics/decision making
3) Policy violation not directly related to use of force
4) Policy/training failure
5) Administrative disapproval

The Los Angeles Police Department (LAPD) employs a similar review process of tactics through its Use of Force Review Division. Categorical uses of force include officer-involved shootings, any death of a person in custody, any use of force that results in the subject being admitted to the hospital, deliberate strikes to the head with an impact weapon, and neck restraints.[21] LAPD factors an officer's tactical conduct and decisions leading up to a use of force in determining the reasonableness of the officer's use of force.[22] In every case, the Los Angeles Board of Police Commissioners (BOPC), the Chief's designee to make tactical conduct findings, make specific findings in three adjudicative categories:

1) Tactics of the involved officer(s);
2) Drawing/Exhibiting of a firearm by any involved officer(s); and
3) The Use of Force by any involved officer(s) [e.g. less-lethal
4) and lethal use of force].

The BOPC's available findings in the tactics category are either a "Tactical Debrief" or "Administrative Disapproval."[23] An Administrative Disapproval is warranted when an officer's tactics unjustifiably and substantially deviate from approved Department tactical training.[24] The Chief has discretion in findings of Administrative Disapproval on whether to implement non-disciplinary remedies.[25] In adjudicating a categorical use of force in a particular case, BOPC examines whether an officer requested backup, issued a use of force warning, utilized cover, maintained supervisory command and control, and noted issues of officers giving simultaneous commands. [26]

Analysis

In Spokane, review boards are conducted after a case is closed and any disciplinary decision has been made and implemented. Their primary directive is to evaluate the use of force and determine what the Department could have done better. The review boards are more advisory rather than critical, although they do look for systemic issues that can be addressed in various avenues of department training or supervisory recommendations. Instead of it being a review board function, the normal

---

[20] *Id.*
[21] http://www.lapdonline.org/categorical_use_of_force/content_basic_view/47397; https://www.oig.lacity.org/use-of-force-section (accessed on February 25, 2020).
[22] Use of Force Policy, Los Angeles Police Department Manual.
[23] Los Angeles Police Commission Office of the Inspector General, *Ten-Year Overview of Categorical Use of Force Investigations, Policy, and Training* (March 10, 2016).
[24] *Id.*
[25] *Id.*
[26] Abridged Summary of Categorical Use of Force Incident and Findings by the Los Angeles Board of Police Commissioners, *Officer-Involved Shooting – 041-18* (June 20, 2018).

process of a chain of command review is meant to be the critical aspect of the review process. SPD initiates a chain of command review in each instance a supervisor is aware of a use of force that rises to the level of a reportable use of force.[27]

In this case, Lieutenant B, Captain B, and Major B all discuss a need to evaluate tactics in their reviews, specifically towards significant officer safety issues. They did not evaluate the chain of events that resulted from the tactic employed, even though the tactic deviated from training and normal procedures. While the chain of command review generally discussed tactics, any meaningful discussion was absent in any other review or investigation of this incident. Numerous agencies attribute improper tactics as reasoning behind findings of unreasonable force in an administrative sense. In this case, there were several opportunities for officers to use less force. In fact, officers engaged with the Subject contrary to SPD's HRVS training, despite successfully conducting one earlier in the incident to apprehend the truck's original driver, which improperly escalated the incident and the response required, while greatly endangered the safety of the officers involved.

Members of Officer B's chain of command were split on whether the facts preceding the K9 deployment were reasonable in justifying the use of force. The officers failed to attempt to de-escalate the situation, outside of threats to use lethal force and intimidation tactics. They did not use time, distance, and cover to call for more resources when there were lulls in activity, despite a full team of backup nearby. Although this incident did not end with significant injury to either officer involved, the tactics employed presented significant officer safety concerns and fell outside of normal training and procedures.

Admittedly, de-escalation was not part of policy at the time of this incident. The applicable policy did not require officers to retreat or give ground. SPD has since updated its Use of Force Policy with significant changes emphasizing training and tactics they have implemented in recent years as a department. We have had the opportunity to attend a lot of those trainings hosted by SPD. We note that we did not observe the tactics employed in this incident to be taught in any training scenario involving de-escalation.

***RECOMMENDATION #2**: I RECOMMEND SPD EITHER UPDATE THE FUNCTION OF THEIR REVIEW BOARDS TO CRITICALLY ANALYZE THE OFFICER'S TACTICAL CONDUCT AND MAKE FINDINGS SIMILAR TO LVMPD AND/OR ENHANCE THE CHAIN OF COMMAND REVIEW FUNCTION OF CATEGORICAL USES OF FORCE SIMILAR TO LAPD THAT EXAMINE AN OFFICER'S TACTICS AND USES OF FORCE THAT RESULT IN SPECIFIC FINDINGS. (SEE APPENDIX A FOR A SAMPLE CATEGORICAL USE OF FORCE REVIEW AND FINDINGS)*

[27] *See* Spokane Police Department Policy Manual, Policy 300.5.1 (updated January 4, 2019) for an enumerated listing of reportable uses of force.

Conducting High-Risk Stops

A HRVS is a tactical traffic stop of a vehicle; whose occupants the officer has reason to believe are armed and dangerous, are involved in a crime of violence, or who pose a significant threat of death or serious bodily injury to police officers and others.[28] An HRVS aims to safely extract potentially dangerous suspects from a vehicle while minimizing the risk to officers, civilians, and suspects. According to statistics compiled by LAPD, utilizing HRVS tactics gains compliance from dangerous subjects 90% of the time.[29]

The CJTC is responsible for the curriculum taught at the Basic Law Enforcement Academy (BLEA) statewide, including SPD. BLEA training materials emphasize planning a high-risk stop. When an officer is considering a HRVS, BLEA teaches six steps in planning for it. Excerpts of the relevant portion are listed below:

High Risk Vehicle Stop Plan
1. Prepare for the Stop • Identify the need to do a HRVS • Choose location of the stop • Back-up if available • Radio (dispatch /other officers)
2. Initiate the Stop • Crossfire & Backdrop
3. Secure the Scene • Control Suspect's Hands • Immobilize the Suspect Vehicle • Verbal Commands
4. Extract and Secure Suspects • Suspect Removal • Suspect Control • Movement to Contact • 100% Control
5. Clear the Suspect Vehicle
6. Conduct the Investigation

When an officer has initiated the stop, whenever possible, they should wait for back up units. Officers should maintain 30-40 feet distance, position their vehicle, and be prepared to fight. A vehicle must be immobilized prior to extracting the suspect. BLEA teaches officers not to reposition until the suspect has turned off the engine. The officer should order the driver to roll down the window, remove the ignition keys, and either throw them out the window or place them over the roof of the vehicle. Officers should immediately follow this up by challenging the occupants by announcing:

[28] Patrol Procedures: High Risk Vehicle Stops, Facilitator Guide. Washington State Criminal Justice Training Commission (last revised December 2015).
[29] *Id.* at 4.

- Authority – "This is the police"
- Intent – "You are suspects of [crime]."
- Directive – "Put your hands [as directed]."

When extracting and securing the suspect, officers should exert control over suspects by having them step out, expose their waistband, and conduct a 360-degree turn with head down. Suspects should then be directed to walk backwards toward officers.

Analysis

Here, the officers had enough information on the Subject that indicated the need for a HRVS. Officers had probable cause for Attempting to Elude a Police Vehicle and the Subject had other warrants for felony offences including Assault, Unlawful Possession of a Firearm, and Possession of a Controlled Substance. The officers believed the Subject was armed and dangerous but they did not conduct a HRVS. Instead, the officers pinned the Subject between parked cars in a residential driveway, ran up to a vehicle where they claimed poor visibility due to its heavily tinted windows, and engaged the Subject in close range without any cover. Officers did not stop to plan the HRVS prior to approaching the vehicle, which led to crossfire issues.

The commands the officers gave were not clear indications of what they expected from the Subject; rather, they were extremely emotional, full of profanity, and lacked clear instructions. Officers did not immobilize the vehicle prior to repositioning, even though they were concerned that the Subject might still be able to drive out of the stop. They missed an opportunity to direct the Subject to turn off the engine and place the keys on the roof or outside of the vehicle. Officer B did not state his authority or clearly articulate his intent. Officers A and B did provide directives to the Subject; however, the directives were often conflicting simultaneous commands.

The chain of command's Review did not evaluate this incident under an HRVS. In fact, part of the justification for the use of the K9 was because it would be unreasonable to expect the officer to enter the vehicle to get control of the subject. We completely agree that the officers should not have entered the vehicle, contrary to HRVS training. The officers should have ordered the Subject to come to the officers while they were in a position of cover. Had the Subject not complied, the officers would then have had numerous force options available to potentially employ, all while ensuring their own safety. The chain of command's analysis focused on imminence in conducting the stop and avoided including the tactics utilized as part of the totality of the circumstances. Rather, their reasonableness analysis focused upon the actions once Officer B had already approached the vehicle, which limited other options that may have been available.

Commands

BLEA teaches officers while securing the scene, to be cognizant of the verbal commands they are giving, maintain control of a suspect's hands, and immobilize the suspect's vehicle.[30] They should keep their voice clear, calm, and commanding.[31] They should speak slowly and use simple terms.[32] They

[30] CJTC Patrol Procedures (last revised December 2015).
[31] *Id.*
[32] *Id.*

should not issue additional commands until previous commands are obeyed.[33] Officers should never lose their cool.[34] Officers should always control hands.[35] They must clearly order occupants to raise their hands – in the air, out the window, or interlace their fingers on top of their head.[36] Officers should direct a suspect to remove keys and place them on top of the vehicle.[37]

When Officers A and B were engaged with the Subject at both side windows of the vehicle, they can be heard yelling conflicting commands at the Subject. At one point, Officer A ordered the Subject to get his hands up at least twice, at the same time Officer B was ordering the Subject not to move. Officer B told IA investigators that he intended to communicate the seriousness of what was occurring during his IA interview. However, when compared with what he actually said numerous times, "I'm going to fucking kill you!!" it is not unreasonable that the Subject did not know how to comply. At this point, the officers failed to communicate appropriately and properly. However, even had the officers given clear and concise commands, the Subject still appeared intent on smoking a cigarette prior to obeying any of the officers' commands, exhibited clear signs of non-compliance.

Analysis

The table below compares what the officer said and what he later told IA he intended by his comments. To SPD's credit, they took the language concerns seriously in this case. The chain of command recommended a Sustained Finding for Demeanor for Officer B. Officer B and the Police Guild both publicly apologized to the community for the unprofessional language used.

Actual Statement	Intended Statement
"You're fucking done"	Subject was going to be cuffed and sent to jail
"I'm gonna put a bullet in your brain."	Make it as clear as possible to the Subject, "You are done. You are under arrest. You need to give up. If you reach for anything. If you do anything that causes me to have concern that you are reaching for a gun, I'm going to shoot you….I'm trying to give him a warning telling him exactly what I am going to do."

Figure 1: Comparing Officer B's Actual and Intended Statements to the Subject

There are instances where pointed language is necessary to demonstrate authority and receive compliance. Officer B said his language choice was a tactical choice as to disrupt the Subject's OODA Loop.[38] By disrupting the Subject's mental process, Officer B reasoned that he hoped to distract the Subject from thinking about killing one of the officers. Disrupting an OODA Loop is something that is taught in a large variety of tactical training courses, including courses for the police. If an officer is

[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Id.*
[38] A 4-step approach to describe a decision making loop that stands for Observe, Orient, Decide, and Act. This is a part learning and part decision-making system that focuses on filtering available information, putting it into context, and quickly making the most appropriate decision while also understanding that changes can be made as more data becomes more available.

successful in disrupting a subject's OODA Loop, the officer can then gain a moment of tactical advantage requiring the subject to react to the officer instead of the officer reacting to the subject. As such, Officer B's thought process has some merit; as officers are taught that action beats reaction in use of force scenarios. However, the words he utilized to convey his intentions to the Subject would rarely, if ever, be considered appropriate or professional.

***RECOMMENDATION #3**: I RECOMMEND THAT SPD ENSURE OFFICER SAFETY IS AT THE FOREFRONT OF EVERY TACTICAL REVIEW AND ENSURE THAT EVERY OFFICER FOLLOWS ESTABLISHED TRAINING AND PROCEDURES, PARTICULARLY IN HIGH RISK EVENTS. OFFICERS WHO TAKE UNNECESSARY RISKS OR PUT OTHER OFFICERS OR THE PUBLIC IN UNNECESSARY DANGER SHOULD BE IMMEDIATELY REFERRED FOR ADDITIONAL TRAINING.*

Opportunities to Comply

Commands given by officers should allow subjects opportunities to demonstrate compliance to officers. In this case, the Subject received conflicting commands that did not clearly convey what the officers wanted him to do. Officer B listed the factors he considered in using his K9 in his police report. These included: active resistance, the crimes the Subject had committed, threats made, and the Subject possibly being armed with a gun.

Analysis

In this case, the officer and reviewing members of the chain of command were correct that the Subject was displaying non-compliant behavior while in the front seat of the vehicle. The Subject exacerbated the situation when he moved between the seats to the rear of the truck. At this point, there is very little doubt of the Subject's non-compliance. As such, Officer B requested that Officer A get his dog. However, an officer is required to constantly reassess a situation that is rapidly evolving. Part of this assessment is to test compliance. This is not meant to render the officer indecisive, but rather to ensure the reasonableness for any potential use of force.

After Officer B requested his dog, he told the Subject, "You're gonna get bit right now. Get the fuck out of here. I'm gonna put a bullet in your brain," to which the Subject says something unintelligible and then, "smoke this cigarette." This further indicates non-compliance even after the officer clearly stated his intent to use force. Officer B then states, "Get out here right now. I'm done fucking with you. Get out here or you're gonna get bit." The Subject then said, "I'm coming, please don't. I'm coming! I'm coming!" and began moving to the front seat of the vehicle towards the officer as commanded with his hands, again, in plain view in front of him.

The Subject was compliant once the officer saw the Subject's hands and saw him obey commands by moving toward the front of the vehicle. Any justification for force due to active resistance

or non-compliance dissipated and must be reestablished again.[39] An officer should be able to effect an arrest of a potentially armed subject with a significant criminal history without using physical force if the person is compliant. Further, it is essential to determine compliance at the moment force was used. Previous non-compliant behavior, even thirty seconds prior, does not justify a subsequent application of force unless there is further non-compliant behavior. Instead, Officer B did not provide the Subject an opportunity to finish complying, even though the Subject had verbally and physically shown a willingness to comply before the K9 was deployed.

***RECOMMENDATION #4**: I RECOMMEND REINFORCING IN TRAINING THAT WHEN OFFICERS TEST COMPLIANCE OF SUBJECTS, THEY GIVE THEM AN OPPORTUNITY TO RESPOND TO COMMANDS BEFORE MAKING THE DECISION TO USE FORCE, IF FEASIBLE. THIS OPPORTUNITY FOR COMPLIANCE SHOULD ALSO BE CRITICALLY LOOKED AT AS PART OF A TACTICAL REVIEW FOLLOWING ANY USE OF FORCE.*

K9 Deployment

SPD's Guidelines for the Use of Patrol Canines provides that a canine may be deployed to locate and apprehend a suspect when:[40]

a) Commits or threatens to commit a criminal offense; AND [emphasis added]
b) Imminent threat of violence or serious harm; or
c) Physically resisting arrest and a canine is necessary to overcome the resistance; or
d) Concealed in an area where entry by anyone/thing other than a canine is a threat to safety.

Sergeant B found the K9 application and subsequent use of force out of policy for the lack of an imminent threat. Sergeant B reasoned that it was reasonable for Officer B to believe the Subject *could* [emphasis added] pose an imminent threat. However, Sergeant B concluded that at the time of the application of force, the Subject's threat of violence was not imminent. Similarly, Lieutenant B's review focused on whether imminence factored in the timing of this case. He cited Officer B's statement on the pursuit that preceded the incident. Officer B said if the Subject was successful in navigating the intersection as he fled from the investigatory stop, "I was going to pull over to the curb and discontinue to try and stop [the Subject]." Given this information, the Lieutenant said that the Subject did not pose a serious enough threat to the community to continue the pursuit. Therefore, Officer B's subsequent use of a K9 did not meet the imminence criteria.

However, Captain B and Major B both agreed that Officer B's K9 deployment was reasonable under the imminence factor of the K9 guidelines, contrary to the previous reviewers' findings. Captain B's review focused on the totality of the circumstances. Captain B said the Subject was reaching towards his waistband, a disputed fact, and opined that the Subject's statement of surrender was incongruent to his behavior. He explained that the body language of the Subject indicated non-

[39] *Graham*, 490 U.S. 386 (1989).
[40] SPD Policy Manual, Policy 318.2 [Guidelines for the Use of Patrol Canines] (adopted July 21, 2017).

compliance. He reiterated that the Subject jumped into the back seat, placing officers in a position of tactical disadvantage which led to the decision to deploy the K9. Captain B acknowledged that the Subject yelled he is coming and began moving towards the front of the vehicle with his hands up in front of him before Officer B deployed the K9. Despite this, Captain B found, "[d]ue to the fact that he had showed signs of surrender just seconds before, then stated he had a pistol and finally reacted by diving into the backseat, a reasonable officer could still view [the Subject] as a threat justifying the use of force or K9 deployment."

Analysis

Consideration of Alternative Resources

Officer B's chain of command analyzed the facts preceding the use of force under the objectively reasonable standard to determine whether force was justified under the Use of Force Policy. Supervisors appropriately evaluated the uses of force against the proper standards. However, in order to critically review the incident, supervisors should also review the case with a tactical analysis lens, as Lieutenant B began to do with his consideration of imminence. Based on effective practices discussed above, a proper tactical analysis on K9 deployment would examine Officer B's conduct leading up to the use of force.

In his approach of the Subject, Officer B failed to consider additional resources available or other less-lethal techniques to get the Subject to come out to him. Officer B tried to reason that the only alternative to deploying his K9 was lethal force. Officer B said, "Again, there's been several court cases throughout the years that a use of a police K9 in non…non-lethal. In fact it even stops police officers from having to use lethal force, because a K9 is a tool that prevents that. So I felt it was safer based on the closed environment. There's no way I wanted to crawl…crawl in a front cab of a pickup and fight this guy hand to hand."

Under no circumstance would or should the Department expect or tolerate the officer to crawl into the vehicle to apprehend the Subject. However, the Department should expect an officer to consider tactics at their disposal to effect an arrest before resorting to impact weapons, if feasible. The availability of alternative methods of capturing or subduing a suspect may be a factor to consider in assessing the reasonableness of force.[41] As an instructor and with decades of experience, Officer B is well versed in alternative techniques he could have employed. [42] For instance, if a subject is armed in a confined space and officers were looking for a way to slow down the situation, add time and distance, they could have backed off and called SWAT for a barricaded subject.[43] Alternatively, he could have used OC spray to force the Subject out of the vehicle. They could have waited for the remainder of their team to arrive who were only moments away before escalating the situation.

Officer B should have also considered the well-being of his K9. Both he and the Department invested a lot of time and resources training the dog. Further, a trainer develops a close bond with his or her K9. If the situation was as dire or the threat was as imminent as he described, the deployment of the K9 could have been tragic if the Subject was in fact armed and had chosen to kill the dog. SPD has often employed OC canisters to effectively remove subjects safely who have barricaded themselves in

---

[41] *See* U.S. DOJ Civil Rights Division, *Investigation of Seattle Police Department* at 13 (December 6, 2011) *citing Smith v. City of Hemet*, 394 F.3d 689, 701 (9th Cir. 2005).
[42] Major B's IA Additional for K19-007.
[43] Spokane Police Department SWAT Policy and Procedure 2.040.

confined spaces. In this case, if the Subject had been armed and had hostile intent, the proper utilization of HRVS tactics would have greatly enhanced the safety of the officers as well as the K9. Instead, the K9 was endangered unnecessarily. Numerous police departments across the country do not have a K9 unit but are still able to effectively apprehend suspects. SPD's Guidelines for the use of K9s are quite permissive and allows officers to heavily rely on the tool without considering alternative, and possibly better, options.

Regardless, the crux of the issue is whether the Subject was compliant. While Captain B's justification of the Subject as a threat sounds logical, the justification of the force used is troubling. Captain B not only dismissed the compliant behaviors of the Subject, but he also failed to adequately explain why the Subject was still a threat as he moved towards exiting the vehicle with his hands in front of him. The Subject would have been required to leave the vehicle through a window as the vehicle door was pinned shut, significantly hampering his ability to escape or cause harm to the officers or the public. Officer B was in position to clearly see the Subject and his hands to monitor his actions, while continuing to apply force by continuing to intentionally point his firearm at the Subject, with Officer A and Officer B's K9 available as backup. At this point, Officer B was in control, the Subject was compliant, and all that remained to ensure safety and effect the arrest was to gain positive control of the Subject's hands.

As previously discussed, in high-risk encounters officers should give commands to ensure they control the hands of the subject. In this case, it would have sufficed for Officer B to direct the Subject to stick his hands out of the window as a final test of compliance. This would also give the officers an opportunity to gain positive control over the Subject's hands. Officer A stood ready as back-up with Officer B's K9 as an option, should the Subject had decided to again become non-compliant. All of this was in place before the Officers deployed the K9 inside of the vehicle.

***RECOMMENDATION #5**: I RECOMMEND SPD CONTINUE TO REINFORCE ITS NEW DE-ESCALATION POLICY THROUGH TRAINING, ENCOURAGING OFFICERS TO PROVIDE MANY OPPORTUNITIES FOR COMPLIANCE BEFORE RESORTING TO USING FORCE. OFFICERS SHOULD FULLY CONSIDER OTHER ALTERNATIVE MEANS BEFORE RESORTING TO USING FORCE, IF FEASIBLE.*

Accountability and Supervisors

SPD teaches its officers that they must be able to articulate justification for each use of force in their reports. In reality, each strike requires a separate justification, with a reassessment by the officer between each strike. Supervisors justified the force utilized in this case with factors that had already dissipated by the time force was used. While disputed, the circumstances supervisors used to justify the force occurred earlier in the incident: this portion of the incident was tense and rapidly evolving; the Subject was non-compliant as he dove into the back seat of the vehicle; the Subject's eyes darted to the back seat, which could have signaled he was looking for a weapon in the back seat or a last opportunity to escape. They failed to take into consideration that when the Subject came back into view of the BWC after he clearly said he was coming, the Subject's hands were clearly visible, held up, and in front of him.

The Subject jumped into the back seat, outside of Officer B's view; greatly exacerbating the perceived danger for the officers. However, Officer B chose not to use the lethal force he was threatening to use and we applaud his restraint in that moment. At the 2:29 mark of Officer B's BWC, he called for Officer A to get his K9 while continuing to order the Subject to come out. This appears effective because at the 2:43 mark the Subject began to comply both verbally and by moving forward, back into Officer B's view. At this point, the Subject had already established compliance and dissipated any previously established justification for force. Yet, as the Subject was making his way to the front of the vehicle obeying Officer B's "commands," Officer B deployed his K9 at the 2:49 mark.

This is problematic for several reasons. First, Officer B's failure to factor in the Subject's compliant behavior and choosing to deploy his K9 anyway could indicate punitive force, especially when combined with the statement, "fuck you," before deploying the K9. It took twenty seconds from the time Officer B called Officer A to get his K9 to when he deployed it. It took time for Officer A to disengage from the passenger side window, walk around the front of the truck in the snow, retrieve the dog, and get it to Officer B. Six seconds elapsed from when the Subject began to indicate compliance to when Officer B deployed his K9. At this point, the Subject began complying with commands and his words and actions were in sync. In his IA interview, when asked why he deployed his K9 after the Subject began complying, Officer B said, "I think at that point I'd already made a decision in my mind to already deploy my K9." This statement reduces the reasonableness of the use of force as the officer was relying on earlier information and did not articulate why force was needed at the moment it was utilized.

Second, while it is reasonable for an officer to use more force when they perceive a greater threat, any force that goes beyond the necessary amount needed to effect an arrest could easily be considered excessive, creating liability for the officer, the Department, and the City. Officer B's inflammatory and escalatory commands increase the likelihood of liability as it is difficult to separate the significance of the officer's verbal commands – which seem emotional and out of control – from what is then portrayed by the chain of command as a reasonable use of force. The chain of command's failure to critically evaluate all of the moments leading up to the use of force also shifts liability to themselves, the Department, and the City. The chain of command, and the ARP later agreed, called the Subject's behavior at the moment force was used as "non-compliant in an unconventional manner."[44] The chain of command discounted the Subject's compliant behavior and essentially endorses Officer B's use of force as acceptable by pointing to the Subject saying he was coming out, but then leaning back away from the window. There is no consideration in any of the reviews conducted of the likelihood the Subject was pulling back from the window was because the K9 was being lifted into the opening while the Subject was moving towards it.

Accountability occurs both on an indirect level through the chain of command, and on a more direct level with direct supervisors. First-line supervisors play an integral role in the success of an organization. They are tasked with communicating job expectations to personnel and providing feedback about their subordinate's activity directly. Most importantly, they are responsible for disseminating information and implementing operational protocols. Supervisors have the greatest interaction and ability to influence line level officers. As such, they should periodically review their officers' behavior to ensure compliance of policies and procedures.

---

[44] *Id.*

Officer B exhibited demeanor issues in this case that are undisputed. The officer's statements go beyond what should ever be expected from a public servant. Recognizing this, both the officer and the Police Guild apologized to the community for the demeanor issues. Supervisors have the ability to recognize problematic behaviors long before they rise to the level of concern that was displayed in this case. Because SPD utilizes BWCs for their officers, there is a wealth of information which could be available to supervisors regarding the conduct of their officers. As supervisors cannot be everywhere, effective practices include random audits of their assigned officers' BWC to ensure compliance with policies and procedures as well as providing unique opportunities for mentorship.

RECOMMENDATION #6 *I RECOMMEND SPD REEVALUATE ITS CULTURE OF ACCOUNTABILITY ON BOTH DIRECT AND INDIRECT LEVELS. SUPERVISORS SHOULD RANDOMLY AUDIT THE BWC VIDEOS OF THEIR OFFICERS TO SAFEGUARD AGAINST PROBLEMATIC BEHAVIORS, WORKING TO RECOGNIZE AND CHANGE PROBLEMATIC BEHAVIORS BEFORE THEY BECOME ISSUES THROUGH A STRONG MENTORING PROGRAM. ANY REVIEWING AUTHORITY, WHETHER IN AN ARP OR IN A CHAIN OF COMMAND REVIEW, SHOULD CRITICALLY EXAMINE INCIDENTS IN ORDER TO LIMIT LIABILITY.*

Update K9 Guidelines to a Policy

It is confusing whether SPD has a K9 policy or simply guidelines, which have differing implications. The section of SPD's policy addressing K9 use is called, "Guidelines for the Use of Patrol Canines." The distinction between a policy and a guideline is important. A guideline is a general, non-mandatory recommendation, while a policy is a collection of mandatory formal statements.

It appears that SPD treats its guidance on K9 use as a policy as defined above and not a guideline. In this case, Officer B's deployment of his K9 was evaluated as an alleged policy violation. However, K9 usage is an area of high potential liability and K9 uses of force have been on the rise in Spokane from 2013-2018. It is important to have a policy that makes it clear what the Department's expectations are and what it will and will not tolerate in the utilization of a K9. Having a guideline as a policy can create confusion in the future. The same consideration should be given for the other force options SPD Policy permits.[45]

RECOMMENDATION #7*: I RECOMMEND SPD RESEARCH BEST OR EFFECTIVE PRACTICES TO UPDATE ITS K9 GUIDELINES INTO A POLICY. THE OPO IS READY TO COLLABORATE WITH SPD TO RESEARCH DIFFERENT K9 MODELS (I.E. ON LEASH AND OFF LEASH) AND THEIR IMPLICATIONS FOR LIABILITY ON THE DEPARTMENT AND THE CITY.*

[45] *See* SPD Policy Manual, Policy 308 Control Techniques and Devices (adopted January 15, 2020).

Exceptional Techniques

Officer A delivered at least six closed fist strikes to the Subject's head/neck area. Both his Chain of command, including Sergeant A and Lieutenant A, and the ARP found Officer A's closed fist strikes reasonable under Level II tactics. The ARP went further to say the head strikes were also reasonable as an exceptional technique. Exceptional techniques are any use of force techniques or fundamentals that are applied or deployed by an officer that are not provided for in the Defensive Tactics (DT) Manual.[46]

Sergeant A relied on disputed facts that the Subject was trying to access his waistband for a possible weapon to arrive at his finding that Officer A's actions were reasonable. The ARP's reasoning, similar to Sergeant A, was also based on the disputed fact that the Subject was reaching for his waistband. The ARP goes on to provide additional justification of the head strikes as an exceptional technique under the Use of Force Policy.

Analysis

SPD's BLEA teaches Closed Fist and Hammer Fist Techniques – Assaultive, which consists of Positioning, Movement/Control, and Safety Concerns, as contained in the DT Manual.[47] Gaining compliance with Level II techniques is rare and they should not be considered as the primary use of force tool.[48] These techniques are utilized to cause a momentary disruption and allow a transition to other less intrusive and more effective control techniques.[49] With Closed Fist Techniques, "[e]very effort should be made to avoid hard skeletal targets."[50] The Manual further directs an officer to use verbal direction while applying this technique advising the subject what they need to do.[51] The Hard to Soft/Soft to Hard Principle provides, "An officer using a 'Soft' striking technique should apply the technique to a 'Hard' target, inversely when an officer is using a 'Hard' striking technique they should apply the technique to a 'Soft' target.[52] This reduces the likelihood of serious injuries to the officer as well as the subject.

Here, the reviewers of this case did not address any of the principles laid out in the DT Manual. Again, their basis for determining the force used was reasonable is disputed. The ARP found that Officer A's closed fist strikes to the head/neck area were reasonable and could be considered an exceptional technique to get the Subject into custody. An exceptional technique is something that the police department does not train, increasing the likelihood of individual liability on the officer. While exceptional techniques could make use of officers' specialty training and skills outside of basic law enforcement training, we caution SPD on the use of exceptional techniques.

SPD is quite permissive in the use of an exceptional technique. The only restriction is that an exceptional technique must be reasonable, which could include almost anything. In fact, SPD allows for an exceptional technique at every level of force. The Use of Force Policy provides, "[O]fficers may find it

---

[46] Spokane Police Department's Defensive Tactics Manual, at 6 (revised November 2019).
[47] *Id.* at 62-66.
[48] *Id*. at 62.
[49] *Id*.
[50] *Id*. at 65.
[51] *Id.* at 66.
[52] *Id.* at 62.

more effective or reasonable to improvise their response to rapidly unfolding conditions that they are confronting. In such circumstances, the use of any improvised device or exceptional technique must nonetheless be reasonable and utilized only to the degree that reasonably appears necessary to accomplish a legitimate law enforcement purpose.[53] The DT Manual provides that the reasonableness of an exceptional technique will be judged from the perspective of a reasonable officer on the scene at the time of the incident.

Effective practices eliminate exceptional techniques from police departments. For instance, one of the leading reasons the Department of Justice (DOJ) sued the Seattle Police Department was for its excessive uses of force.[54] Since undergoing a consent decree, Seattle has made efforts to lead reforms in use of force with progressive policies. Their Use of Force Policy does not allow for exceptional techniques.[55] To the contrary, they have a section that lists the only tools the Department allows an officer to use.[56] In this capacity, the Department is setting forth the expectations for how force may be used, rather than allowing situations and individual officers to set the standards. Exceptional techniques should be the exception rather than the rule. By not restricting the tools an officer is allowed to use and giving room for creative uses of force, SPD increases the potential of liability to the Department when the techniques used do not fall under clearly established policy or established police practices.

***RECOMMENDATION #8**: SPD SHOULD CONSIDER REDUCING OR REMOVING EXCEPTIONAL TECHNIQUES FROM ITS POLICIES, MANUALS, GUIDELINES, AND ANY OTHER GUIDING DOCUMENTS AND TRAINING TO REDUCE DEPARTMENT LIABILITY. SPD SHOULD ALSO CONSIDER LISTING EVERY DEVICE THAT AN OFFICER CAN USE IN UTILIZING FORCE. BY LIMITING THE FORCE OPTIONS AN OFFICER HAS, THE DEPARTMENT IS LIKELY TO REDUCE LIABILITY. (SEE APPENDIX B FOR SEATTLE PD'S USE OF FORCE TOOLS POLICY THAT LISTS EVERY FORCE OPTION ALLOWED BY THE DEPARTMENT)*

Other Tactical Considerations

Officer Safety

It is important to consider officer safety issues. Officer B approached the Suspect's truck without any cover. Captain B acknowledges this and addressed this in his review, "When he was in the process of breaking out the window he is completely vulnerable to an assault with a firearm as he has no immediate ability to respond with deadly force." Since this was a split-second decision, he did not recommend discipline nor did he recommend additional or remedial training. Subsequent reviewers did not address this issue again. According to officer reports, they feared the Subject could drive off and hurt bystanders; however, Officer A still crossed in front of the vehicle. Once Officer A crossed over to

[53] SPD Policy Manual, Policy 300.3 [Use of Force] (adopted July 21, 2017).
[54] *See* U.S. DOJ Civil Rights Division, *Investigation of Seattle Police Department*, at 12 (December 6, 2011).
[55] Seattle Police Department Manual, Title 8.300 (effective September 15, 2019).
[56] *Id.*

the passenger side he also instantly created crossfire issues. Officer B was already pointing his firearm at the Subject, directly in Officer A's direction. This issue was not discussed. Further, Officer B also exposed himself unnecessarily to danger by crossing in front of the vehicle and approaching the passenger side window had the Subject been armed and had hostile intent as officers said they believed. This was mitigated due to Officer A's own personal exposure which placed the Subject in his full vision and he was employing Intentional Pointing of a Firearm at the time. Officer B further placed himself in danger when he got on the hood of the patrol car and attempted to break out the driver's rear window, again exposing himself to potential harm from the Subject. This occurred while the subject had dove into the back seat, removing his hands from view; questionably the most dangerous moment of the encounter.

De-Escalation

We are concerned that SPD approved and endorsed an extremely liberal interpretation of de-escalation in their review process and reaffirmed that position during its press conference. SPD agreed with Officer B's assertion that his commands, no matter how coarse or inappropriate, were a form of de-escalation. In the press conference, Captain B said, "He [Officer B] was doing this with the intent to de-escalate and not have this subject provoke him into deploying force." This again shows a willingness to allow situations and an individual officer's tactics to set the tone for what is acceptable at the Department. This also underestimates the public's understanding for what de-escalation is or should be. While yes, in the truest sense of the tactic, an officer has de-escalated a situation if they use lesser force than necessary. However, it is not acceptable to use poor tactics to escalate a situation and then de-escalate it with extremely crude language, loss of demeanor, and poor professionalism.

At the time, SPD did not have a De-Escalation Policy, only a definition in their Use of Force Policy. SPD's previous definition of de-escalation was vague and could include almost anything. De-escalation was defined as, "the use of verbal communication, body language, and/or tactics to defuse a situation."[57] By contrast, the DOJ defines de-escalation as the strategic slowing down of an incident in a manner that allows officers more time, distance, space, and tactical flexibility during dynamic situations on the street.[58] Officer B's initial act of approaching the driver window and breaking it in while under the assumption the Suspect was armed with a firearm was escalatory in nature. Likewise, Officer B's statement, "I'm going to fucking kill you!" increased the aggression. Officer B said he was trying to get the Subject to think about not killing him and to think about giving up. Under the old definition, Officer B's response was a form of de-escalation. With SPD updating its policy, we hope to avoid future instances like this where disrespectful demeanor can be classified as a valid de-escalation technique by the Department. While SPD has endorsed this as an acceptable technique, we strongly disagree. In addition, the "de-escalation tactic" employed was contrary to the Law Enforcement Code of Ethics that requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and avoid the application of unnecessary force.[59]

---

[57] SPD Policy Manual, Policy 301.1 [Use of Force Purpose and Scope] (adopted January 15, 2020).
[58] U.S. DOJ Office of Public Affairs, *Justice Department Applauds Adoption of Police Department-Wide Tactical De-Escalation Training Program in Seattle* (April 16, 2015).
[59] SPD Policy Manual, Law Enforcement Code of Ethics (adopted July 21, 2017).

Internal Review and Discipline

Department policy requires that when an officer uses force, they shall promptly, completely, and accurately document it.[60] Some of the reasons that a Use of Force report is required are when force results in apparent injury to the subject or the subject is rendered unconscious; the officer intentionally points their firearm; or a canine is deployed.[61] This then automatically triggers a chain of command Review of the use of force. A supervisor must populate the file that subsequent supervisors will use as a basis for their review. IA ensures that available and relevant evidence are all attached to the report. After an IA investigator verifies all relevant materials are attached to the case, they forward it to the next person in the officer's chain of command to begin the review.[62] SPD has similar reporting requirements if an officer gets into a collision or a pursuit.[63]

This incident triggered numerous types of reviews, i.e. collision, pursuit, use of force, and K9. Officers A and B have different Chains of Command thus, separate reviews of their actions from the incident were reviewed by their respective Chains. Officer A's chain of command only documented their review on BlueTeam as comments by the supervisors, and did not provide separate documents with their analysis. [64]

Officer B's chain of command reviewed this incident for K9 utilization. Officer B's Chain provided their analysis in their IA Additionals[65] for K9 utilization. They also analyzed other uses of force including intentional pointing of a firearm in addition to BWC activation, and demeanor. We note, in the course of writing this report, the current IA Lieutenant said that he is requesting all reviews be written in an IA Additional format for consistency.

This case was reviewed by several members of the chain of command including Sergeants, Lieutenants, Captains, and Majors. The officers' respective chain of command findings are summarized in the tables below.

---

[60] SPD Policy Manual, Policy 300.5 Documenting Use of Force (adopted July 21, 2017).
[61] *Id.* at 300.7.1.
[62] *Id.* at 300.7.2(K).
[63] SPD Policy Manual, Policy 314.8 Administrative Review of Pursuits (adopted July 21, 2017).
[64] BlueTeam is the software SPD uses for routing incidents through to an officer's chain of command.
[65] Title of a report typically given to any analysis or investigative summary.

Review/Allegation	Sergeant	Lieutenant	Captain	Major
Pursuit Review	In Policy	In Policy	Not Approved/Sent to IA	Out of Policy[66]
Collision Review	In Policy	In Policy	Not Approved/Sent to IA for investigation	Out of Policy
Level II Tactics (Closed Fist Strikes)	In Policy	In Policy	Not Approved/Sent to IA	Approved

Figure 2: Chain of command Review of Officer A

Review/Allegation	Sergeant	Lieutenant	Captain	Major
K9 Utilization	Out of Policy	Out of Policy	In Policy but notes BWC and command issues	In Policy/Sent to IA
Intentional Pointing of a Firearm	In Policy	In Policy	In Policy	In Policy/Sent to IA
BWC Activation	Out of Policy	N/A	Document of Counseling	Document of Counseling/Sent to IA
Demeanor	N/A	N/A	Discussion	Document of Counseling/Sent to IA

Figure 3: Chain of command review of Officer B

During the course of review, a community member received information regarding this case and informed the OPO about his concerns. Once the Ombudsman viewed the BWC, he sent an email to the Director of Strategic Initiative inquiring why an Internal Affairs investigation had not been initiated in this case. He also informed the Director that he would be utilizing the information received from the community member as a complaint, and would subsequently inform the community member of that. This process caused the review process to be suspended. Officer B's chain of command completed their review of his actions and appeared to issue him discipline in the form of a Document of Counseling prior to sending the case to IA for investigation. Meanwhile, the Captain in Officer A's chain halted the review upon learning of the OPO complaint and sent the case to IA for investigation. Once the IA investigation was complete, they sent the case to the ARP for its recommendation of findings for the Chief.

The ARP's memo contained their recommended findings from their review and also included a summary of the officers' prior knowledge of the Subject, summary of the incident, and their determination. The ARP was comprised of two Captains and three Lieutenants. The ARP evaluated the allegations of Excessive Force, Body Camera Violations, and Misconduct for Demeanor. The table below summarizes the ARP's recommended findings pertinent to Officers A and B.

[66] After the IA was concluded, Officer A's chain of command resumed review of his actions and found both the pursuit and collision out of policy due to the fruit of the poisonous tree. In his review, Major A said Officer A was not allowed to initiate a pursuit for DOC warrants and the PC he had developed for Attempting to Elude a Police Vehicle alone was not sufficient to justify a pursuit under SPD policy. Thus, any subsequent collision was also out of policy. However, this analysis was not extended to the use of force analysis.

Policy	Officer A	Officer B
Uses of Force		
1) Intentional Pointing of a Firearm	In Policy; Exonerated	In Policy; Exonerated
2) K9 Utilization	N/A	In Policy; Exonerated
3) Level II Tactics	In Policy; Exonerated	N/A
Demeanor	N/A	Out of Policy; Sustained
BWC Activation	N/A	Out of Policy; Sustained

Figure 4: ARP Findings on Officers A and B

The City Administrator and the Police Chief issued Officer B the City's final determination on discipline in a letter. The table below summarizes the Chief's findings.

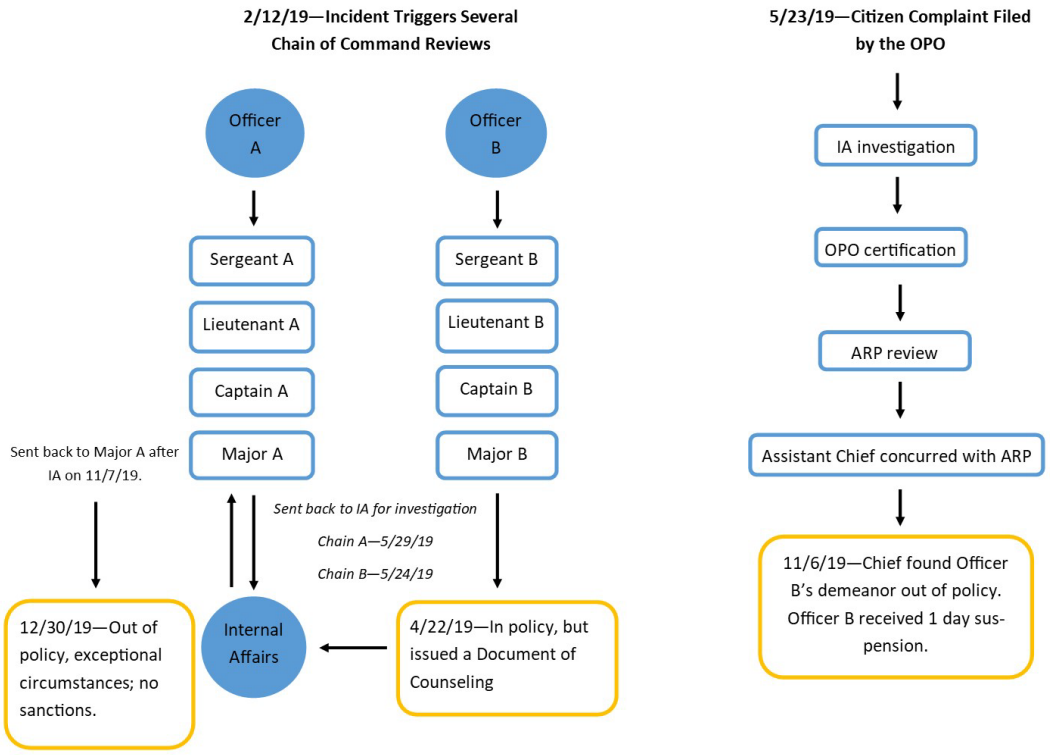
Review/Allegation	Officer A	Officer B
Excessive Force: Use of Force to Effect an Arrest	Exonerated	Exonerated
Policy Violation: Guidelines for the Use of Patrol Canines	N/A	Exonerated
Demeanor	N/A	Sustained
Sanction – one day suspension without pay		
Body Camera Violation	N/A	Sustained
Sanction – one day suspension; held in abeyance pending no further violations from 12 months of incident		

Figure 5: Police Chief's Final Disciplinary Determination

Analysis

The procedural history of this case is more complex than the average chain of command review or IA investigation and was fraught with inconsistencies. The image below summarizes the various avenues SPD utilized in their review of this incident.

A lack of a clear standard of the procedures for the reviews by the chain of command led to an inconsistent investigation with differing outcomes for the officers. Officers A and B's chain of command did not review this case at the same time, which led to one officer potentially having been disciplined more than once for the same infraction and one whose review was suspended and did not receive a final determination until after SPD had issued a final determination on the IA investigation and use of force in this case.



Officer A received his determination after heightened public attention and Officer B had already been issued discipline. On May 29, 2019, Major A stopped the review process and sent it to IA pending their investigation. Officer B's chain completed its review of his actions on May 24, 2019. Major B states that he issued Officer B discipline in his summary, a Document of Counseling for the language he used in the incident and for failing to activate his BWC.[67] The Chief of Police had not made any comments to endorse this discipline issued by his subordinate. It is worth noting that Major B's IA Additional summary is dated April 22, 2019 but he routed his findings back to IA on May 24, 2019. The OPO filed the community member's complaint on May 23, 2019. Additionally as mentioned above, Officer A's chain only provided a brief explanation of their recommended findings in BlueTeam, while in Officer B's chain, each completed an IA Additional.

Because SPD reviewed this case through numerous avenues, each review evaluated the officers' actions through differing policies/allegations. SPD's reporting requirements triggered a separate chain of command Review for the K9 Utilization Report, the Use of Force Report, the Forcible Stop/Intervention Report, and the Vehicle Pursuit Report. Officer A's actions were evaluated by his Chain for a Collision, Pursuit, and a Use of Force Review for a Level II Tactic. The ARP added an evaluation of Officer A for Intentional Pointing of a Firearm but did not factor in the Collision and Pursuit Reviews. Nor did the ARP evaluate the coarse language that was used by Officer A as a demeanor concern. The Police Chief only evaluated Officer A for his Use of Force to Effect an Arrest. Officer B's actions were consistently evaluated against the same policies by his chain of command and the ARP. However, similar to Officer A, the Chief evaluated his actions under Use of Force to Effect an Arrest. It is important to clearly define the allegations of misconduct against an officer at the beginning of any

[67] Whether this DOC was officially issued to the Officer B is unclear based upon the public record.

review or investigation. If circumstances arise where a subsequent reviewer deems it is necessary to add, remove, or change an allegation, he or she should document why they are modifying the given allegations.

***RECOMMENDATION #9**: I RECOMMEND SPD CLEARLY DEFINE THE ALLEGATIONS OF MISCONDUCT AGAINST AN OFFICER AT THE BEGINNING OF A REVIEW OR INVESTIGATION AND DOCUMENT IF THE ALLEGATIONS ARE LATER MODIFIED AND THE SUBSEQUENT REASONS FOR DOING SO.*

SPD's policy does not provide a clear standard on how to conduct a chain of command review, which resulted in reviews that vary greatly in depth and thoroughness. This is demonstrated in the differences between Officer A and B's review and findings. Sergeant A completed a thorough Use of Force Supervisor Report. However, Lieutenant A only provided justification for Officer A's actions with no further information given concerning his review. Officer B's chain provided a more thorough summary on the IA Additional form, despite it not being an IA investigation. Even though they used an IA form, they liberally modified the form. For instance, the titles of each report varied from "Use of Force Supervisor Review" to "Chain of Command IA Additional" to "IA Additional." Then some reviews deleted categories provided by the form and one review added categories.

A chain of command Review form should be standardized. Creating a standard review evaluation form would require supervisors to conduct a thorough review with the added benefit of simplifying the review process for subsequent reviewers. Each reviewer should thoroughly document their review process and whether they took further investigative steps, conducted interviews, and any new evidence that may have been added to the file.

***RECOMMENDATION #10**: I RECOMMEND SPD CREATE A STANDARD FORMAT AND PROCEDURES FOR SUPERVISORS TO UTILIZE WHEN CONDUCTING CHAIN OF COMMAND REVIEWS.*

Even though Officer B's actions were found to be in policy by the highest-ranking members of his Chain, their findings and the actions they took imply that Officer B received unofficial discipline before the Chief had made his final determination. This action has an immediate potential issue by undermining the Chief of Police's disciplinary decisions. If an officer has already received discipline on a matter, it would be within his/her rights to challenge any subsequent discipline that may be given regarding the same matter. Even something as simple as informal verbal counseling can be seen as disciplining an officer. This alone provides justification for SPD to forbid any informal interview by a

member of an officer's supervisory chain while the officer has a case under investigation or under review.

***RECOMMENDATION #11**: I RECOMMEND SPD SAFEGUARD THE DUE PROCESS RIGHTS FOR ITS OFFICERS BY FORBIDDING ALL INFORMAL AND FORMAL INTERACTIONS BY THE CHAIN OF COMMAND WITH AN OFFICER THAT IS CURRENTLY UNDERGOING AN IA INVESTIGATION AND/OR A CHAIN OF COMMAND REVIEW REGARDING THE MATTER WITH THE EXCEPTION OF FORMALLY RECORDED INTERVIEWS.*

Officer B's Captain found his K9 utilization in policy, but in his IA Additional, he shared that the chain of command had an off the record meeting with Officer B that resulted in his voluntary resignation from the K9 unit and subsequent reassignment to patrol. This meeting was not recorded. It was not documented as an official part of the case review or as part of his discipline, even by the ARP. Major B also issued Officer B a Document of Counseling for his language and failure to activate his BWC. However, this documentation of discipline was also not in the casefile, nor mentioned by the ARP. Later, the Chief issued Officer B a 1-day suspension for his demeanor and 1-day suspension for failure to activate his BWC that will only be imposed if he violates this policy again within 12 months. It is unclear whether Officer B received disciplined once, twice, or even three times for his language choice; once through the meeting, once through the Major's Document of Counseling, and then again through the Chief's 1-day suspension.

***RECOMMENDATION #12**: I RECOMMEND SPD CLEARLY DESIGNATE WHO MAINTAINS THE DISCIPLINARY AUTHORITY TO ENSURE AN OFFICER IS NOT DISCIPLINED MORE THAN ONCE FOR THE SAME OFFENSE. FURTHER, ALL DISCIPLINE ISSUED SHOULD BE IMMEDIATELY DOCUMENTED FOR THE RECORD AND ANY SUBSEQUENT DISCIPLINE ISSUED SHOULD EXPLAIN WHETHER IT IS IN ADDITION TO PREVIOUS DISCIPLINE OR IF THE PREVIOUS DISCIPLINE ISSUED HAS BEEN RESCINDED OR MODIFIED.*

IA Investigation Timeline

February 12, 2019 — Incident occurred

February 19, 2019 — Lieutenant A showed the IA investigator the video of the incident.

April 23, 2019 — Citizen contacted the Police Ombudsman about this case.

May 22, 2019 — Police Ombudsman urged Director of Strategic Initiatives to investigate the incident.

May 22, 2019 — OPO filed an official complaint on behalf of the citizen.

May 30, 2019 — IA assigned case to an IA Investigator.

July 31, 2019 — IA Lieutenant sent to Police Ombudsman for certification for the 1st time.

August 7, 2019 — Police Ombudsman returned to IA for additional information - he requested the file include the initial Chain of Command reviews.

August 13, 2019 — IA Lieutenant sent the case to the Police Ombudsman for certification for the 2nd time. Police Ombudsman returns to IA for additional information. Director of Strategic Initiatives and IA Lieutenant met with OPO to discuss ongoing concerns. IA Lieutenant agreed to add clarifying information in investigation summary and create a timeline of the incident.

September 3, 2019 — IA Lieutenant sent case to the Police Ombudsman for certification for the 3rd time.

September 11, 2019 — Police Ombudsman certified the investigation of the case with the belief that there was sufficient information for subsequent reviewers to arrive at a finding. He was satisfied with IA's follow through on issues and concerns presented to them, but would not certify the administrative handling of the complaint.

Improvements to IA Investigation Process

SPD handled the reviews and investigation of this incident in a manner that revealed gaps in the complaint initiation and investigation processes. First, this case began as normal reviews by the chain of command for the use of force, pursuit, collision, and K9 utilization submissions. These submissions were sent to IA for them to populate the files with the appropriate evidence and begin the chain of command review process. The IA Lieutenant assembling the case file failed to perceive any potential misconduct and/or initiate an investigation for potential violations of policy. This may have been because Internal Affairs has not been required to screen for misconduct before initiating the review.

Reviewing supervisors did not initiate an IA investigation, as required by policy,[68] when they identified a use of force that they considered to be out of policy. An IA investigator was also notified of issues from this case in February by Lieutenant B, but he also did not initiate a complaint.

Another gap that we have noticed is that an IA investigator is only required to produce an IA investigative summary, which includes a summary of the evidence reviewed, the investigative steps and the investigator's interviews. The investigation does not present both favorable and unfavorable information on both the Subject and involved officers. Nor does it does point out disputed evidence. In this case, investigators did not automatically document all investigatory steps they took. Lastly, any conflicts of interest issues were not disclosed at the onset of the investigation.

Distinction Between a Use of Force Review Versus an Internal Affairs Complaint

In its press conference, SPD addressed the issue of why it did not notify the Police Ombudsman on this incident. They explained that they would have eventually notified him through the Use of Force Review Board, of which he is a member. He, along with other subject matter experts, would then have the opportunity to review the case, look for any policy issues, training issues, etc. This is not disputed.

However, this explanation leaves out a signification point. SPD's policy on referring cases to IA mandated that when there is an allegation, complaint, or a supervisor is concerned that a violation may have occurred, the supervisor shall initiate an IA complaint in Blue Team.[69] In this case, two supervisors came to the conclusion that a policy violation had occurred. As such, there were two points of failure in the chain of command for initiating an IA complaint. If a complaint had been initiated as required by policy, IA has three business days to notify the Police Ombudsman of the matter.[70]

There are important distinctions between a chain of command review and an IA investigation as indicated in the following chart:

---

[68] SPD Policy Manual, Policy 300.7.3 [Referral to Internal Affairs] (adopted on July 21, 2017).
[69] *Id.*
[70] *See* SMC §04.32.030(C).

	IA Investigation	Chain of Command Review
Initiating a complaint	Filed by a citizen or an employee of SPD (internal complaint)	A reportable use of force from an incident triggers a use of force report
Scope of investigation	Any potential misconduct	Formally – the conduct that triggered the report Informally[73] – any concerns of potential misconduct
Investigation or review	Investigation	Review
OPO oversight of process	Yes, Ombudsman is included in interviews	No
OPO Certification	Yes, at the conclusion of the investigation but before routed to the chain of command	No

Procedure	• IA ensures all attachments to the file are included
	• Categorize the complaint
	• Notify the OPO within 3 business days
	• Assign to either IA or the Shift for follow up investigation
	• Notification to employee:
	  ○ Officer interviews – *Garrity* advisement
	  ○ Right to Guild Representation
	  ○ Administrative Investigations – Compelled Statements
	  ○ Response Request Form
	  ○ Rights/Responsibilities Form
	• Objection to release as public record advisement
	• Interviews at a reasonable hour
	• Reasonable breaks allowed
	• Ombudsman/Union representative may ask questions
	• Recorded interviews
	• Limitations in scope of interview
	• IA Lieutenant determines the complaint category; or if it will go through a chain of command review or to an ARP for disposition
	  ○ Cases of Inquiry or Closed are classified in consultation with the Director of Strategic initiatives and the OPO.
	• IA routes to the officer's chain of command for review or to an ARP for disposition.
	• Final disposition is made by the Chief's Office.
		• IA ensures all attachments to the file are included
		• IA routes to the officer's chain of command for investigation or to an ARP for disposition
		• In a chain of command review, each supervisor from Sergeant through Major conducts their own analysis and documents their recommended findings in their summary
		• Final disposition is made by the Chief's Office or his/her designee

Figure 6: How IA investigations differ from chain of command reviews

[73] The chain of command's general practice has been to informally investigate allegations of misconduct, rather than send them to IA for investigation, as was done in this case.

Analysis

Members of an officer's individual chain of command are not generally assigned investigative roles in serious cases involving their officers. This is largely due to the difficulty of a supervisor in maintaining impartiality and objectivity in the process. In SPD, IA's practice has been to refer minor complaints to an officer's supervisor to conduct an investigation. When this occurs, these investigations are also subject to OPO oversight. Outside of the minor complaint investigations, SPD also has the ability to Administratively Suspend a case involving a minor allegation and send it to the employee's supervisor for informal follow-up (i.e. driving, demeanor, response time, etc.).[74] Since 2015, SPD's review of uses of force have only found 8 of 444 use of force cases out of policy. The Department has found more than 98% of use of force cases within policy, despite identifying deficiencies in training in several of the cases.

In chain of command reviews, the officer's supervisors are the primary reviewers and they also recommend a finding in the matter. It is neither irregular nor inappropriate for a supervisor to advocate for their officers in the review process and it is often useful for the Chief to hear those opinions directly from the supervisors who know the officers best in these matters. Supervisors may also be able to provide context that may be missing. In preparing reviews, IA's involvement is limited to populating the case file with available evidence (i.e. pertinent reports, photos, and BWC). IA then sends the populated casefile to the officer's supervisors for review. There is no investigation, only review. The supervisor writes up a summary of his or her review and concludes with a recommended finding of in or out of policy. It is common for supervisors to advocate for leniency for their officers.

However, supervisory advocacy is inappropriate during an investigation when there are allegations of misconduct if the supervisor is conducting the investigation. Supervisors are still expected to make their recommendations for findings. The difference is that the alleged misconduct should be investigated by an impartial person; someone removed from the officer who will not be influenced in their investigation. This is a primary reason that IA reports directly to the Chief.

It is improper for any member of the officer's chain of command to unduly influence or even attempt to involve themselves in or with an investigator or investigation while it is ongoing. In SPD, IA investigates a matter and then provides it to the Police Ombudsman for certification. If the Police Ombudsman is not satisfied with the content of the investigation, the case will be returned to IA for further investigation. Once the case is determined to be complete and certified by the Police Ombudsman, IA then sends it through the Officer's chain of command for their recommended findings. SPD has made a policy choice that investigators of administrative matters will not arrive at findings; but rather focus their efforts on fact-finding. The Ombudsman also does not arrive at a finding on a case.

In this case, Captain B and Major B both had unrecorded conversations with Officer B during the review. In the IA setting, investigators must follow procedures in investigating administrative complaints.[75] These procedures ensure that an officer's right to due process will not be violated. These procedures provide for when an employee can be interviewed, the number of persons who may be present during the interview, an advance notice requirement, recorded interviews, the right to

[74] SPD Policy Manual, Policy 1020.1.1 [Personnel Complaint Defined] (adopted on July 21, 2017).
[75] *Id.* at Policy 1020.2 [Administrative Investigation of Complaint].

representation, and the requirement for an officer to provide truthful responses.[76] When senior members of the chain of command feel compelled to personally interact with an officer under review in an off the record setting, it gives the appearance of undue influence or partiality. In SPD, it is clear that not all officers subject to a review are afforded the same opportunity to speak with senior members of their chain of command to help the reviewer come to a determination, and it would be inappropriate for this to occur in administrative investigations.

The Police Ombudsman does not provide oversight of the chain of command Review process. The Police Ombudsman is notified of use of force cases at the end of the investigation in the Use of Force Review Board. The Use of Force Review Board's purpose is to review incidents for how the Department can improve its practices for the future through training or policy updates. While this is a key part to oversight, the Police Ombudsman is excised from the review process. There is no investigation to certify for timeliness, thoroughness, or objectivity; and the Police Ombudsman is also not involved in reviews of complaint investigations for findings. For instance, in an IA investigation, before supervisors can review the case for recommended findings, the Police Ombudsman must certify the case. The Police Ombudsman certifies cases where he finds the investigation was conducted in a timely, thorough, and objective manner. The Department and IA investigators have been committed to all cases receive certification. In the last five years, the OPO and SPD have only disagreed on certification over a few cases. This layer of oversight has vastly improved the quality of IA investigations from when there was no Ombudsman in 2015 to the present.

***RECOMMENDATION #13**: I RECOMMEND SPD PROMPTLY INITIATE AN IA INVESTIGATION UNDER THE REQUIREMENTS OF SPD POLICY 301.14.3 IN ALL CASES. THIS WILL ENSURE AN OFFICER'S RIGHT TO DUE PROCESS, PROPER NOTIFICATION OF THE POLICE OMBUDSMAN, AND AN IMPARTIALLY CONDUCTED INVESTIGATION BY IA.*

Misconduct Should Trigger an IA Investigation

This case had multiple opportunities to reach Internal Affairs for investigation, as required per policy, before the OPO became aware of it. When a use of force occurs, SPD policy requires all force be promptly, completely, and accurately documented and a supervisor notified.[77] SPD policy stipulated at the time of this incident that when a supervisor is concerned a violation may have occurred, the supervisor shall initiate an IA Complaint in Blue Team.[78]

Analysis

Sergeant B and Lieutenant B found Officer B's actions out of policy in the review process. However, neither initiated an IA investigation. Lieutenant B even conferred with an IA investigator and ultimately found Officer B's actions out of policy, but an IA investigation was still not initiated. SPD

[76] *See Garrity v. New Jersey* 385 U.S. 493 (1967).
[77] SPD Policy Manual, Policy 300.5 [Documenting Use of Force] (adopted July 21, 2017).
[78] *Id.* at 300.7.3 [Referral to Internal Affairs].

officials stated in their press conference for this incident that this case did not warrant a separate IA investigation. This statement is contradicted by their own policy that directs a complaint be filed. SPD further said that the chain of command was addressing demeanor concerns and discipline through the review process. However, this presents a double standard, even if it is only applied to the demeanor issue. Only minor demeanor issues have been investigated by an officer's immediate chain. Most demeanor issues of any significance are formally investigated by IA. The demeanor issue in this case could in no way be considered minor.

***RECOMMENDATION #14**: I RECOMMEND THE CHIEF INSIST UPON POLICY COMPLIANCE BY SENIOR MEMBERS OF HIS STAFF. IMPARTIAL IA INVESTIGATIONS SHOULD BE INITIATED FOR ANY MISCONDUCT THAT WOULD NOT BE CONSIDERED MINOR. SPD ALREADY HAD A POLICY THAT REQUIRED INITIATING AN IA INVESTIGATION, BUT IT WAS NOT ENFORCED. STRONG POLICIES SET THE STANDARDS OF ACCEPTABLE CONDUCT, BUT THOSE POLICIES ARE ONLY EFFECTIVE IF THEY ARE CLEARLY DEFINED AND ENFORCED.*

Investigators Should Automatically Initiate an IA Investigation on Potential Policy Violations

When Lieutenant B conferred with the IA investigator, this should have prompted the investigator to remind Lieutenant B of the requirement to initiate an IA complaint. The IA investigator documented in his report that he saw the BWC before it became an IA investigation, but he did not expand on why he took no action at the time. Further, the IA investigator neither recorded his consultation, nor did he provide a summary of that meeting in the case file. As such, it is unclear what advice the IA investigator provided Lieutenant B. Ultimately, Lieutenant B agreed with Sergeant B and found the use of force out of policy.

Analysis

Policy 1020.2.2 Source of Complaints
A. Department employees aware of alleged misconduct shall immediately notify a supervisor
B. Any source alleging misconduct of an SPD employee which, if true, could result in disciplinary action shall be directed to a supervisor or Internal Affairs.
C. Anyone may file a complaint directly with Internal Affairs or the Office of Police Ombudsman.
D. Anonymous complaints and third party complaints will be accepted and investigated to the extent that sufficient information is provided.

SPD policy 1020.2.2 should be interpreted so that IA investigators initiate internal investigations when they become aware of potential misconduct. However, SPD's interpretation is not explicitly clear. In this case, the chain of command did not feel they should have initiated an IA investigation under this

criteria or the criteria provided under the policy that requires supervisors to initiate an IA investigation for potential misconduct.[79] To uphold the professionalism and integrity of both the department and the Office of Professional Accountability, an investigator should be required to initiate an IA investigation when potential allegations of misconduct are brought to his or her attention, or he or she becomes aware of a potential issue based upon their own initiative.

***RECOMMENDATION #15**: I RECOMMEND SPD EXPLICITLY REQUIRE AN IA INVESTIGATOR TO INITIATE A COMPLAINT INVESTIGATION WHEN HE OR SHE IS MADE AWARE OF POTENTIAL ALLEGATIONS OF MISCONDUCT.*

Documenting All Investigatory Steps

Investigators must also document all steps in the investigation process as part of the record. In this case, the chain of command Review process revealed members of the chain had at least two off-the-record meetings with Officer B. One of these meetings resulted in Officer B's resignation from K9 and reassignment to Patrol. Captain B and Major B briefly mentioned these off-the-record meetings in their reports. Any off-the-record communication is inappropriate between a reviewer and an involved officer, especially the officer subject to the ongoing investigation or review. Mentioning an off-the-record meeting does not legitimize the unconventional steps in the review process, particularly if the details of the meeting are not on the record. Reviewing supervisors should document all investigative steps taken as part of the review and ensure proper evidence of them is attached to the file. Failing to do so undermines the disciplinary authority of the Chief as the officer could easily argue he had received discipline through informal counseling, reassignment, etc. IA should not consult with the chain of command outside of the Chief's office during an investigation as it creates an appearance of undue influence by the command staff. Proper documentation is important in instances where a loss in property rights can be interpreted as disciplinary action, despite the desire for meetings to be informal. This will mitigate any appearance of bias and partial treatment for some members of the Department.

***RECOMMENDATION #16**: I RECOMMEND DOCUMENTING ALL INVESTIGATORY STEPS TAKEN IN A REVIEW OR INVESTIGATION FOR CONSISTENCY ACROSS THE BOARD IN INVESTIGATIONS AND REVIEWS CONDUCTED.*

[79] *See* SPD Policy Manual, Policy 300.7.3 [Referral to Internal Affairs] (adopted July 21, 2017).

Standard Investigation Template

IA sent the investigation to the Police Ombudsman for certification three times. The Police Ombudsman returned it twice for additional information. While it is common to send an investigation back and forth for additional information, here the investigators seemed reluctant to address disputed evidence and information in the investigation; instead relinquishing that process to the ARP. The subsequent ARP review also did not discuss disputed evidence that was material to the incident. This issue could be avoided in future investigations if the report follows a template that requires IA Investigators to critically analyze evidence. At a minimum, this should have been completed by the ARP.

Analysis

SPD's Personnel Complaint Policy 1020.6.2, Administrative Investigation Format provides the format of an investigation. In 2017, investigations had to include:

2017 version – Personnel Complaint Policy
Introduction – identity of the employee(s), assigned investigator(s), initial date, and source of complaint.
Synopsis – Very brief summary of the facts giving rise to the investigation.
Summary of Allegations – List allegations separately with a very brief summary of the evidence related to each allegation. A separate recommended findings section should be provided for each allegation.
Evidence As to Each Allegation – Each allegation should be set forth with the details of the evidence applicable to each allegation provided, including comprehensive summaries of employee and witness statements. Other evidence related to each allegation should also be detailed in this section.
Conclusion – A recommendation of disposition will be provided during the chain of command review or by the ARP. IA investigators will not submit a recommendation of disposition.
Exhibits – A separate list of exhibits (recordings, photos, documents, etc.) should be attached to the report.

These policy requirements have become far less structured in recent years and do not communicate a standard of expectations of what must be included in an IA Summary. The applicable policy requirement in 2019 was modified to, "Investigations of personnel complaints shall be detailed, complete, and follow the IA additional format." The IA Additional format is a template IA uses for its investigations. The template has pre-filled section headers that an investigator can fill in. There are no longer an explanation of what can and should fit in each section. The sections include:

2019 version – Personnel Complaint Policy
IA number, incident number, date, and investigator;
Complaint being investigated;
Interview summaries;
Physical evidence; and
Investigative summary

Upon review of both the 2017 and the 2019 versions of the Administrative Investigation Format policy, they both require an investigator to provide a summary. The current policy asks investigators to gather information, but not analyze the evidence in any critical way. An effective investigation should do more than summarize evidence. A critical analysis includes evaluating the credibility of both the complainant(s) and the subject officer(s), identifying disputed facts, and providing other relevant information that helped an investigator with his or her analysis.

Credibility Assessments

Care should be taken for investigative summaries to remain objective. When an investigative summary consists solely of an investigator's recounting of the statements made by interviewees, the summary may not identify important information about an involved party or can easily paint a party in an unfavorable light. In this case, the portion of the IA summary involving the Subject's sister paints her in an extremely negative manner. However, officers' conduct or previous related conduct was not assessed in a similar manner.

Analysis

The Subject's sister alleged that officers came to her home and threatened to call Child Protective Services on her in front of her children. She said officers told her they beat her brother and wished they had shot him. She further said the officers who arrested the truck's original driver were making plans to assault her brother in front of him but were turning their BWC on and off so that it would not capture the audio.

While the investigator never directly impeached her character, the narrative is slanted against the sister by including multiple subjective negative quotes about her from officers' interviews, which effectively discredited her credibility by the end of the report. After Officers A and B apprehended the Subject, another officer[80] and a US Marshal visited the Subject's sister. When asked about the context of his contact with the sister in his IA interview, he said, "Yeah, she was out of control. Absolutely out of control. When we contacted her, her kids were there." When prompted to expand on how the sister was 'out of control,' the officer replied, "She was very much swearing at me. She was talking…I mean,

[80] This officer was also involved in the incident but was not material to apprehending the Subject.

she…it's like having a conversation with an out of control three year old. Right? You're trying to talk to somebody, but they're screaming at you. They're yelling past you. I mean it's not even yelling at you. It's yelling…it's past you. It's very…it's very out of control in demeanor." The Marshal who accompanied the officer called the sister "aggressive" and "nasty."

Meanwhile, the investigation did not address whether the officers responded truthfully in their statements regarding the allegations based on the evidence provided; whether their statements were consistent with physical evidence, reports, and witnesses; whether officers had prior complaints of untruthfulness; or whether they have displayed a pattern of similar misconduct. In this case, the primary officer and the witness officers were vague when asked about their involvement in the interaction which was also not captured on the BWC footage. The US Marshal acknowledged that the officer used profanity and indicated that the conversation was elevated from both sides. These points alone could indicate the sister's allegations had merit and was sufficient to probe deeper into the likelihood the actions occurred.

It is important for an investigator to be able to include their observations and opinions, since they spend the most time evaluating the evidence. However, in order to maintain objectivity, there must be a designated section in the IA Summary to disclose and discuss beneficial and detrimental information about each involved party. The Department should set this expectation through its Policy 1020.6.2 Administrative Investigation Format.

RECOMMENDATION #17**: I RECOMMEND SPD UPDATE ITS ADMINISTRATIVE INVESTIGATION FORMAT POLICY TO REQUIRE IA INVESTIGATORS TO CRITICALLY EVALUATE EVIDENCE BY CONDUCTING CREDIBILITY ASSESSMENTS, IDENTIFYING DISPUTED FACTS, AND PROVIDING OTHER RELEVANT INFORMATION TO THE INVESTIGATION. **(SEE APPENDIX C FOR A SAMPLE IA INVESTIGATION TEMPLATE)

Conflict of Interest

The primary investigator, who interviewed most, if not all, of the involved officers and US Marshals, was the same investigator who consulted previously with Lieutenant B. To the investigator's credit, he documented his previous review, although he did not provide any additional information on it. This information would have remained unknown otherwise, as SPD has restricted the OPO's access to the audit files on the BWC footage. However, to uphold the professionalism of IA and the Department, investigators must be cognizant of the appearance of bias. The investigator had previous knowledge of a use of force that two reviewing supervisors found out of policy, but did nothing about it. It is unclear whether this was because he did not feel he could report it or did not intend to.

At the onset, IA should require each investigator sign a Recusal form as part of the standard forms to complete in each investigation. If an investigator has any potential conflict of interest with a case assigned to him or her, they should disclose the conflict. Depending on the case, the investigator's supervisor should determine and articulate whether the investigator can continue as the case investigator or if the case should be assigned to someone else. Documenting any potential conflict and

the decision to have an investigator proceed or not preserves the objectivity of the investigation. This will force the investigator to identify any conflict before they begin the investigation.

***RECOMMENDATION #18**: I RECOMMEND SPD REQUIRE ITS IA INVESTIGATORS SIGN A RECUSAL FORM AS PART OF THEIR INVESTIGATION. (SEE APPENDIX D FOR A SAMPLE RECUSAL FORM)*

Administrative Review Panel

The ARP has review and recommendation authority as well as the authority to direct additional investigation by IA into specific facts of the case. Review/recommendation responsibilities include reviewing the investigation for thoroughness and objectivity.[81] The ARP consists of a rotating combination of Lieutenants and Captains. An objective, fact-based review should lay out the applicable policy that an officer allegedly violated and provide an analysis on how the facts of the case fit or do not fit the policy, resulting in a violation or not. They should clearly include in their analysis any discrepancies, missing facts, or any extenuating circumstances to preserve the integrity of the review.

The ARP laid out policies it reviewed regarding the officers' conduct; however, we are concerned with the substance of their analysis. Any review of force should begin with a strong *Graham v. Connor* statement and then proceed with its analysis. This defines the standard from which the officer's conduct is measured. For instance, the BOPC that oversees the LAPD includes a "Basis for Findings" section in its categorical use of force summaries. The "Basis for Findings" section includes boilerplate laws in addition to the department policies it will use as basis for its findings. While every officer understands the *Graham* standard provides the legal framework that underpins use of force, the Department should make every effort to be thorough in its evaluations of force. Here, the ARP did not discuss the *Graham* standard in its evaluation of the officers' uses of force.

RECOMMENDATION #19**: I RECOMMEND A STRONG GRAHAM STATEMENT TO BEGIN ANY REVIEW OF A USE OF FORCE. **(SEE APPENDIX A FOR A SAMPLE GRAHAM STATEMENT)

As discussed in the Tactical Review section above, uses of force were determined to be in policy at the point force was used. However, there was no discussion of the tactics the officers used leading up to the force. There was, however, significant discussion regarding the Subject's criminal history.

[81] SPD Policy Manual, Policy 1020.8.2 [Administrative Review Panel] (adopted July 21, 2017).

The ARP and SPD press conference discussed current and past knowledge regarding the Subject. Discussing all of the Subject's previous history immediately appears as bias. If the officer was unaware of the information while involved in the Use of Force event, it then has no bearing in the determination of reasonableness. In fact, knowledge about the Subject and the Subject's history are important for officers to know as they plan to make the arrest. It is useful to know if the Subject had been prone to fight with the police or not as it allows officers to properly mentally prepare for the encounter. Regardless it is the Subject's compliance in the moment force was utilized that is most important when evaluating force, not the Subject's history.

To remain objective in evaluating officers' actions, the discussion of the Subject's history should be limited to the information known to the officers at the time of the incident. Further, in order to maintain objectivity, the officer's applicable history should also be discussed similar to in a credibility assessment. In this case, neither Officer A nor Officer B's historical uses of force were discussed.

***RECOMMENDATION #20**: IF SPD USES A SUBJECT'S HISTORY AS PART OF ITS DETERMINATION, IT SHOULD LIMIT THE INFORMATION TO WHAT INVOLVED OFFICERS KNEW AT THE TIME OF THE INCIDENT, AND ALSO INCLUDE THE OFFICERS' APPLICABLE HISTORY IN ITS CONSIDERATION.*

The ARP's analysis relied on the reports of Officer A and B as the ultimate facts. The memo did not address disputed facts in the officer narratives, nor did it evaluate the officers' tactical conduct. The ARP should note discrepancies in the investigation, including officer narratives and the BWC, and make a determination on any disputed facts. The memo also incorporated some of the comments made in Captain B's review from the chain of command that was also based on disputed facts, giving the impression of undue influence in their findings.

For instance, where Captain B analyzed whether the use of K9 was appropriate, he dismissed the Subject's compliance completely. He said that the Subject was non-compliant because as he said he was coming and began moving forward, he stopped and leaned back slightly. Thus, Captain B determined that this was an instance of the Subject's actions not aligning with his statements. Neither the Captain nor subsequently the ARP considers other causes for this action; such as deploying the K9 towards the window. Captain B also concludes that it would have been a high risk for the officers to go inside of the small space to arrest him. He never discussed the inappropriateness of that tactical choice, which was not attempted, nor the proper procedures for conducting a HRVS, which the officer had been trained upon. The ARP similarly did not note the disparity between the number of strikes Officer A delivered and where the subject was reaching. They relied on the officer's statement to determine the number of strikes delivered and the rationale behind them before they concluded the officers' actions were justified.

Further, the ARP minimized its review of whether or not the K9 use was within policy. The chain of command reviews had a robust discussion on whether the danger presented was imminent and other parts of the policy upon which the use of force and K9 utilization could have been applied to. The ARP did not mention this discussion. In their review of the closed fist strikes, the ARP did not consider the

guidance from the Defensive Tactics manual on Level II strikes and on Closed Fist and Hammer Techniques - Assaultive. Thus, the ARP's analysis did not fully consider all the applicable policies or guiding documents.

Finally, the ARP report did not address all of the allegations made against each officer. Officer A was being investigated for allegations of Excessive Force and Demeanor according to the Internal Investigation response request form. However, the Demeanor allegation was not addressed by the ARP or in any subsequent review. This may be due to the fact Officer B's demeanor overshadowed Officer A's, and it seemed minor in comparison. If the ARP decides not to evaluate a particular allegation to arrive at a finding, the report should document the reasons why. Further, if the ARP evaluates any other allegation outside of what IA sends to them, the ARP should similarly document that.

***RECOMMENDATION #21**: I RECOMMEND THE ARP, OR IA IN ITS INVESTIGATION, NOTE ANY DISCREPANCY IN FACTS AND DISPUTED EVIDENCE AND MAKE A DETERMINATION OF EACH MATTER. THE ARP SHOULD ARRIVE AT A FINDING FOR EVERY ALLEGATION IN A CASE. THE ARP SHOULD ALSO CRITICALLY EVALUATE ANY OTHER ADDITIONAL POLICIES AND TRAINING GUIDELINES THAT MAY APPLY.*

Request for Release of Video Footage to City Council

In late May, the Spokane City Council received information regarding the BWC content and requested to see it. However, SPD refused to release it citing an ongoing Internal Affairs investigation. City Legal advised Council they would have to sign a non-disclosure agreement (NDA) to view the footage after a special negotiation with the Spokane Police Guild. Then Council President Stuckart told the *Inlander*, "I talked to every member of [C]ouncil today and nobody is in favor of signing an NDA. I'd like to just see it and be able to discuss it freely, whether that's with the public or the press and I've never heard of the [C]ouncil ever having to sign an NDA."[82]

Industry Standard for Disclosing Body Camera Footage

Law enforcement has a self-interest in maximizing disclosure to the public, even when disclosure is uncomfortable and the information is unflattering, because public legitimacy and trust are assets in safe and effective policing. When high-profile cases arise where the justification for police use of force on subjects come under scrutiny, the public's need for reassurances increases. The Policing Project, a non-profit based at the New York University School of Law, conducted a survey of nearly 3,200 people in the Los Angeles area. 84% said that the recordings of officer-involved shootings should become public.[83] Even 66% of the survey group who work in law enforcement agreed the public had the

[82] Kelety, Josh, *Spokane City Council Demands Unrestrained Access to Allegedly Violent Video of Recent Police Arrest*, Inlander (May 30, 2019).
[83] *See* The Policing Project, *Report to the Los Angeles Police Commission Summarizing Public Feedback on LAPD Video Release Policies, NYU School of Law* (September 2017).

right to see recordings.[84] However, law enforcement and the public significantly disagree on the time it should take to release the recordings to the public. Almost half of the public respondents said the videos should be released within 30 days of the incident. But nearly 66% of law enforcement officers said videos should not be released until after the prosecutor has decided to file charges or the investigation is complete, a process that could take years.[85]

The Associated Press analyzed officer involved shootings from 2016 in Tulsa, Oklahoma and Charlotte, North Carolina.[86] In Tulsa, the public was privy to videos from a helicopter feed and dashboard cameras of an officer fatally shooting an unarmed man whose car stalled in the center of the road. The officer's justification for shooting the suspect was the mistaken belief he had a weapon.[87] The videos were released within 30 days of the incident, and protests in the City remained calm despite the officer's mistaken belief.[88] In contrast, police in Charlotte shot and killed a man who police say emerged from his vehicle with a handgun and was non-compliant to verbal commands. The subject's family contended he was only carrying a book. Video footage was available, but the Police Chief refused to disclose it to the public, and in response violent protests erupted and wreaked havoc in the city. It was only after unyielding pressure that the department released videos and photos, which validated the officer's account.[89]

According to the Daigle Law Group, nationally recognized police consultants, the industry standards have moved towards disclosing BWC footage during an ongoing investigation.[90] A sample of law enforcement agencies across the country shows BWC footage from critical incidents are generally released within 45 days. In New York City, the police department must release BWC footage of critical incidents, which include community impact cases, within 30 calendar days from the incident.[91] Seattle PD's policy mandates release within 72 hours absent extenuating circumstances.[92] California recently enacted two laws, SB 1421 and AB 748, which require the release of video and/or audio evidence. SB 1421 requires video evidence be released within ten days from incidents involving discharge of a firearm or a use of force that results in death or great bodily injury. [93] This is subject to exceptions for delay in disclosure. AB 748 is modeled after LAPD's policy of releasing BWC of critical incidents within 45 days

---

[84] *Id.*
[85] *Id.*
[86] Pane, Lisa Marie, *The Tale of the Tape: When Should Police Videos be Released?* AP News (September 23, 2016).
[87] *Id.*
[88] *Id.*
[89] Renae Merle, Wesley Lowery & Peter Holley, *Amid Pressure, Charlotte Police Release Videos in Shooting of Keith Lamont Scott,* Wash. Post (September 25, 2016).
[90] Daigle Law Group, *Advanced Internal Affairs Training Program* (January 2020).
[91] https://assets.documentcloud.org/documents/6558633/Oo-46-19-Bodyworn-Camera-Footage.pdf (accessed on February 6, 2020).
[92] https://www.seattle.gov/police-manual/title-1---department-administration/1115---media-release-officer-involved-shooting (accessed on February 6, 2020).
[93] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421 (accessed on February 6, 2020).

from the incident.[94] AB 748 says video or audio recordings related to a critical incident may not be withheld for more than 45 calendar days, subject to exemptions. [95]

Release of Body Worn Camera Footage to the Public

Spokane PD has up to 180 days to conduct an administrative investigation.[96] Currently it will only release records and BWC footage after the conclusion of an investigation. This is well beyond the industry standard. SPD should look closely at Seattle PD's policy regarding release of BWC footage, as disclosure laws similarly effect both cities. In community impact cases, SPD should commit to prompt release of available BWC if it would not unduly contaminate the investigation.

SPD makes BWC footage available to the public through public records requests pursuant to the Public Records Act (PRA).[97] The PRA provides investigative information is exempt from public inspection and copying such as specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement.[98]

In SPD's press conference, they said they could not release BWC footage during the course of an investigation for fear of contaminating the investigation. The Captain said, "If we have an open and active investigation, and review going on, that is an open active investigation. It's not a public record we're gonna release." While the case was under review, the OPO filed a complaint which triggered an IA investigation and the Captain said because the case was under investigation, SPD would not release any of the records because doing so has the potential to contaminate the investigation. The OPO had previously filed a public records request to begin this reporting process, and SPD denied the request under the investigative records exemption under the PRA. Further, this case was of such great interest to the community that the City Council requested SPD show them the BWC footage of this incident. However, this was also met with restrictions and ultimately denial.

***RECOMMENDATION #22**: I RECOMMEND SPD CONSIDER SHORTENING THE TIMEFRAME FOR RELEASE OF BWC AND RECORDS RELATED TO BOTH CRITICAL INCIDENTS AND COMMUNITY IMPACT CASES TO BE IN LINE WITH INDUSTRY STANDARDS OF 45 DAYS OR LESS, SUBJECT TO APPLICABLE EXEMPTIONS.*

---

[94] http://www.lapdonline.org/home/news_view/63555 (LAPD's BWC of critical incidents) (accessed on February 6, 2020).
[95] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180AB748 (accessed on February 6, 2020).
[96] *See* Agreement between City of Spokane and Spokane Police Guild. Article 24, Section (E)(12) (2012-2016).
[97] Spokane Police Department Policy Manual, Policy 703.11(B) [Release of Body Camera Videos to the Public] (adopted July 21, 2017).
[98] *See* RCW 42.56.240(1).

The Public Records Act and *Seattle v. Sargent*

While the PRA categorically exempts the entire criminal investigation record of an open investigation from disclosure, the investigative records exemption does not extend to public records requests that involve records of administrative investigations. In 2013, the Washington Supreme Court declined to extend the exemption to categorically apply to internal investigations for three reasons in *Sargent v. Seattle Police* Department:[99]

1. Investigative records exemption is designed to protect the integrity of law enforcement investigations, and the investigative records exemption should only apply to an "open active investigation file," but an internal investigation is not an open active investigation in the same sense.
2. The plain language of the PRA separates law enforcement into two categories, "investigative, law enforcement, and penology agencies" and "state agencies vested with the responsibility to discipline members of any profession." Previously established law granting categorical exemption of investigative records applies to the first category. Internal investigations fall into the second category. Having separate categories under the exemption is supported by separate agency documents and functions.
3. In a criminal investigation, the public would be better served by keeping the requested information confidential so that the police could finish their investigation and find the perpetrator. However, in an internal investigation, the public would be better served by disclosure. The public has an interest in knowing about claimed misconduct at public agencies. In fact, this is the type of disclosure the PRA envisioned when it mandated broad public access to information to "maintain control over the instruments they have created."[100]

In that case, Sargent, the plaintiff, and Waters, an off-duty Seattle officer, had a confrontation in an alleyway. Waters encountered a car blocking his way and became irate when he could not locate the parked car. The two got into an altercation that resulted in Waters arresting Sargent for swinging his bat at him. Sargent filed a public records request on the incident hoping to mount a civil rights challenge. Seattle PD responded to Sargent's PRA request citing the RCW 42.56.240 exemption for effective law enforcement. After the prosecutor declined to file charges against Sargent, he renewed his public records request. Seattle PD released some information but withheld the internal investigation file.

The Seattle Police Department argued they could withhold the internal investigation under the categorical law enforcement exemption established in *Newman v. King County.*[101] However, the court reasoned the categorical exemption in *Newman* only applied in a small class of information where police have not yet referred the matter to a prosecutor for a charging decision and revelation to the defendant.[102] The court further said the Department could have segregated the information into sensitive and non-sensitive parts. The court held the agency has the burden of proving any withheld parts of internal files are essential to effective law enforcement.

---

[99] *Sargent v. Seattle Police Dept.*, 179 Wash.2d 376 (2013).
[100] *See* RCW 42.56.030.
[101] *Newman v. King County,* 133 Wash.2d 565, 571, 947 P.2d 712 (1997).
[102] *Sargent*, 179 Wash.2d 376 at 389.

This case never had a criminal component. In fact, the OPO submitted a public records request during the internal investigation but the request was denied based on the essential to effective law enforcement exemption. There is no indication the department reviewed each file to determine if the exemption was appropriately applied.

***RECOMMENDATION #23**: I RECOMMEND SPD UPDATE ITS POLICY 703.11, RELEASE OF BODY CAMERA VIDEOS TO MAINTAIN COMPLIANCE WITH CASE LAW ON PUBLIC RECORD REQUESTS THAT INVOLVE INTERNAL INVESTIGATION RECORDS.*

Summary of Recommendations

Recommendation #1: I recommend IA investigators, as a matter of practice, identify disputed facts in an investigation, provide the available evidence for both sides of the dispute, and document them clearly so that the designated person can make fully informed determinations on how to view the disputed facts.

Recommendation #2: I recommend SPD either update the function of their review boards to critically analyze officer's tactical conduct and make findings similar to LVMPD and/or enhance the chain of command review function of categorical uses of force similar to LAPD that examine officer's tactics and uses of force that result in specific findings. (See Appendix A for a sample Categorical Use of Force Review and Findings)

Recommendation #3: I recommend SPD ensure officer safety is at the forefront of every tactical review and ensure that every officer follows established training and procedures, particularly in high risk events. Officers who take unnecessary risks or put other officers or the public in unnecessary danger should be immediately referred for additional training.

Recommendation #4: I recommend reinforcing in training that when officers test compliance of subjects, they give them an opportunity to respond to commands before making the decision to use force, if feasible. This opportunity for compliance should also be critically looked at as part of a tactical review following any use of force.

Recommendation #5: I recommend SPD continue to reinforce its new De-escalation policy through training, encouraging officers provide many opportunities for compliance before resorting to using force. Officers should fully consider other alternative means before resorting to using force, if feasible.

Recommendation #6: I recommend SPD reevaluate its culture of accountability on both direct and indirect levels. Supervisors should randomly audit the BWC videos of their officers to safeguard against problematic behaviors, working to recognize and change problematic behaviors before they become issues through a strong mentoring program. Any reviewing authority, whether in an ARP or in a chain of command review, should critically examine incidents in order to limit liability.

Recommendation #7: I recommend SPD research best practices to update its K9 guidelines to a policy. The OPO is ready to collaborate with SPD to research different K9 models (i.e. on leash and off leash) and their implications for liability on the Department and the City.

Recommendation #8: SPD should consider reducing or removing exceptional techniques from its policies, manuals, guidelines, and any other guiding documents and training to reduce department liability. SPD should also consider listing every device that an officer can use in utilizing force. By limiting the force options an officer has, the Department is likely to reduce liability. (See Appendix B for Seattle PD's Use of Force Tools policy that lists every force option allowed by the department)

Recommendation #9: I recommend SPD clearly define the allegations of misconduct against an officer at the beginning of a review or investigation and document if the allegations are later modified and the subsequent reasons for doing so.

Recommendation #10: I recommend SPD create a standard format and procedures for supervisors to utilize when conducting chain of command reviews.

Recommendation #11: I recommend SPD safeguard the due process rights for its officers by forbidding all informal and formal interactions by the chain of command with an officer that is currently undergoing an IA Investigation and/or a chain of command review regarding the matter with the exception of formally recorded interviews.

Recommendation #12: I recommend SPD clearly designate who maintains the disciplinary authority to ensure an officer is not disciplined more than once for the same offense. Further, all discipline issued should be immediately documented for the record and any subsequent discipline issued should explain whether it is in addition to previous discipline or if the previous discipline issued has been rescinded or modified.

Recommendation #13: I recommend SPD promptly initiate an IA investigation under the requirements of SPD Policy 301.14.3 in all cases. This will ensure an officer's right to due process, proper notification of the Police Ombudsman, and an impartially conducted investigation by IA.

Recommendation #14: I recommend SPD's Chief insist upon policy compliance by senior members of his staff. Impartial IA Investigations should be initiated for any misconduct that would not be considered minor. SPD already had a policy that required initiating an IA investigation, but it was not enforced. Strong policies set the standards of acceptable conduct, but those policies are only effective if they are clearly defined and enforced.

Recommendation #15: I recommend SPD explicitly require an IA investigator to initiate a complaint investigation when he or she is made aware of potential allegations of misconduct.

Recommendation #16: I recommend documenting all investigatory steps taken in a review or investigation for consistency across the board in investigations and reviews conducted.

Recommendation #17: I recommend SPD update its Administrative Investigation Format policy to require IA Investigators to critically evaluate evidence by conducting credibility assessments, identifying disputed facts, and providing other relevant information to the investigation. (See Appendix C for a sample IA investigation template)

Recommendation #18: I recommend SPD require its IA investigators sign a Recusal Form as part of their investigation. (See Appendix D for a sample Recusal Form)

Recommendation #19: I recommend a strong Graham statement to begin any review of a use of force. (See Appendix A for a sample Graham statement)

Recommendation #20: If SPD uses a subject's history as part of its determination, it should limit the information to what involved officers knew at the time of the incident, and include the officers' applicable history in its consideration.

Recommendation #21: I recommend the ARP, or IA in its investigation, note any discrepancy in facts and disputed evidence and make a determination of each matter. The ARP should arrive at a finding for every allegation in a case. The ARP should also critically evaluate any other additional policies and training guidelines that may apply.

Recommendation #22: I recommend SPD consider shortening the timeframe for release of BWC and records related to both critical incidents and community impact cases to be in line with industry standards of 45 days or less, subject to applicable exemptions.

Recommendation #23: I recommend SPD update its Policy 703.11, Release of Body Camera Videos to maintain compliance with case law on public record requests that involve internal investigation records.

ABRIDGED SUMMARY OF CATEGORICAL USE OF FORCE INCIDENT AND FINDINGS BY THE LOS ANGELES BOARD OF POLICE COMMISSIONERS

K-9 CONTACT REQUIRING HOSPITALIZATION – 012-18

Division	Date	Duty-On (X) Off ( ) Uniform-Yes (X) No ( )
77th Street	2/25/18	

Officer(s) Involved in Use of Force	Length of Service
Officer D	26 years, 3 months

Reason for Police Contact

Officers were conducting a K-9 search to locate the Subject, who was hiding in the backyard of a residence, and a K-9 contact requiring hospitalization occurred.

Subject(s)	Deceased ( )	Wounded (X)	Non-Hit ( )

Subject: Male, 27 years of age.

Board of Police Commissioners' Review

This is a brief summary designed only to enumerate salient points regarding this Categorical Use of Force incident and does not reflect the entirety of the extensive investigation by the Los Angeles Police Department (Department) or the deliberations by the Board of Police Commissioners (BOPC). In evaluating this matter, the BOPC considered the following: the complete Force Investigation Division investigation (including all of the transcribed statements of witnesses, pertinent Subject criminal history, and addenda items); the relevant Training Evaluation and Management System materials of the involved officers; the Use of Force Review Board recommendations; the report and recommendations of the Chief of Police; and the report and recommendations of the Inspector General. The Department Command staff presented the matter to the BOPC and made itself available for any inquiries by the BOPC.

Because the Department is currently legally prohibited from divulging the identity of police officers in public reports, for ease of reference, the masculine pronouns (he, his, and him) will be used in this report to refer to male or female employees.

The following incident was adjudicated by the BOPC on January 29, 2019.

Incident Summary

Uniformed Police Officers A, B, and C, were in a marked black and white hybrid vehicle, equipped with Digital In-Car Video System (DICVS) and ballistic door panels. The officers were conducting crime suppression in the area, when they observed a vehicle by driven by the Subject. The officers observed that the vehicle did not display any plates, in violation of 5200(a) Vehicle Code (VC), and had tinted windows, in violation of 26708 (A) (1) VC.

Officer A activated his forward facing red light and conducted a vehicle stop. The officers opened their doors and exited their vehicle. Officer A instructed the driver to lower all the windows, due to the limited visibility from the tinted windows. As the windows were beginning to lower, the vehicle suddenly sped away at a high rate of speed. The officers entered their vehicle and followed.

The officers had a brief discussion and, based on their observations, determined there was a likelihood the vehicle was stolen. They premised their belief on the fact that the vehicle was a high-end vehicle, possessed paper plates, and the driver engaged in an overt action to flee. Officer C broadcast that they were in pursuit of a possible stolen vehicle and requested a backup unit and a police helicopter to respond. The pursuit culminated when the Subject was involved in a traffic collision and fled on foot. The officers were advised by residents, who had exited their homes, that the Subject had fled in between the residential homes.

A check of the Subject's vehicle determined that there were no other occupants inside. Meanwhile, Officer A provided an updated radio broadcast and began to establish a perimeter. Air Support Division (ASD) and several additional officers assisted. Witnesses identified a possible backyard where the Subject was hiding. Meanwhile, Officer A conducted an article search of the Subject's vehicle and located a loaded .45 caliber semiautomatic pistol on the driver's side floorboard. Officer A broadcast this information. Sergeant A arrived and assumed the role of Incident Commander (IC). Sergeant B set up the command post (CP). Sergeant A was briefed by the primary officers and believed the Subject was contained in the perimeter.

ASD communicated to the CP that the Metropolitan Division K-9 Unit had been notified and that they were responding. Uniformed Metropolitan Division K-9 Sergeant C responded to the incident, in addition to Metropolitan Division Police K-9 Officer D.

Sergeant C and Officer D were briefed by Sergeant A and the primary officers of the pursuit. Officer D was briefed that the primary officers attempted a vehicle stop, which resulted in a vehicle pursuit of a possible stolen vehicle. The Subject's vehicle collided, and the driver fled into the residential neighborhood. A firearm was discovered on the driver's side floorboard of the Subject's vehicle. The description of the Subject was provided. Officer D was additionally advised of two prowler complaint radio calls at residential homes and of a heat source located by the police helicopter at one of these locations.

Sergeant C determined that an outstanding felony suspect was possibly contained inside the perimeter and authorized the use of a K-9 dog to search. Officer D developed a systematic search plan of the perimeter. Sergeants A and C were advised of and approved the K-9 search plan. K-9 personnel conducted the mandated K-9 announcements and obtained confirmation that they were heard on various points of the perimeter.

Officers A, B, and E, were assigned to join K-9 Officer D's search team, along with K-9 Officer F. Officer D deployed his service dog to search for the Subject. Officer F provided Officers A, B, and E with a tactical briefing and advised them of their roles and responsibilities. Officer F would be the point officer, while Officers A, B, and E would be rear guards, and they would be responsible for issuing commands and handcuffing the Subject. Officers A, B, D, and E unholstered their service pistols, while Officer F deployed his Police Rifle. Officers A, B, and E donned their ballistic helmets.

Officer D can be heard on Officer G's Body Worn Video (BWV), advising of his intent to commence the search. Officer D facilitated initiating the search at the locations he was advised the Subject was potentially hidden. ASD directed Officer D to the location of a heat source. Officer D's team moved to search the property, which consisted of a single-family residence with a detached garage. The driveway ran along one side of the residence, from the street to the garage. There was a cemented area between the house and garage that connected an access way from the driveway to the rear yard, referred to as the middle yard.

Officer D's search team entered the property, and the K-9 dog cleared the driveway without any alerts. The search team moved forward and stopped at the middle yard. Officer D stated he directed his K-9 dog to the rear yard. Officer F remained as the point officer, while Officers A, B, and E remained in modified flanking positions behind him. According to Officer D, he observed his K-9 dog walk from the middle yard into the rear yard, in between the house and detached garage. The dog continued and then turned along the rear of the yard.

As the K-9 dog reached the bushes near the corner of the rear yard, Officer D advised he observed the Subject bolting out of the brush and falling onto the open grass. Officer D heard the Subject scream and observed his K-9 dog had a bite hold on him. Officer D advised that the rear yard was dark, and the lights along the side of the house, which illuminated toward Officer D's direction, made it difficult to properly view the contact the dog had with the Subject. The Subject had dark colored clothes that made it difficult to identify him in the dark. Officer D advised the search team to move forward and take cover.

According to Officer D, his K-9 dog did not bark or show any indication of locating the Subject. Officer D opined that the Subject was attempting to escape as he ran out of the bushes, causing his K-9 dog to go into apprehension mode.

Officer A's BWV established that the team moved forward together into the middle yard area. Officer F moved forward and took a position of cover at the corner of the detached garage. As the team moved, Officers B and E took positions to the right and behind of Officer F, while Officer A took a position to the left of Officer F in preparation to give the Subject commands.

Officer A's BWV depicted the Subject on his back, moving side to side, struggling with the K-9 dog, who had a bite hold on his left arm.

Due to Officer A, B, and E's positions, their BWV cameras did not depict the initial K-9 contact between the K-9 dog and the Subject.

Officer D made repeated commands to recall his K-9. Officer D believed the dog did not initially respond because his K-9 was engaged with the Subject and could not hear over the ambient noise caused by the Air Unit. Officer D believed he re-enforced his verbal commands with the use of the shock collar. Officer A's BWV captured the Subject yelling, "I'm Down!" The K-9 dog released his bite hold and returned to Officer D. Officer D holstered his firearm, leashed his K-9, and backed out of the immediate area.

Officer F confirmed that Officer D controlled his K-9 dog prior to instructing Officer A to begin issuing commands to the Subject. Officer A, at the direction of Officer F, ordered the Subject to roll onto his stomach, place his arms out to his sides, and to face away from the officers' direction. Officer F instructed the arrest team, consisting of Officers A and B, to move forward toward the Subject. Officer F instructed the Subject not to move. Officer B holstered his firearm and handcuffed the Subject. Officer B conducted a search of the Subject with negative results. According to Officers A and B, they each recognized the Subject to be the driver of the vehicle involved in the pursuit.

Officer D broadcast a request for the response of a Rescue Ambulance (RA) to treat the injury sustained by the Subject. The RA arrived and provided medical attention. The Subject was subsequently transported to a nearby hospital, treated in the emergency room for a K-9 contact bite to his left forearm, and then admitted to the hospital.

Los Angeles Board of Police Commissioners' Findings

The BOPC reviews each Categorical Use of Force incident based upon the totality of the circumstances, namely all of the facts, evidence, statements and all other pertinent material relating to the particular incident. In every case, the BOPC makes specific findings in three areas: Tactics of the involved officer(s); Drawing/Exhibiting of a firearm by any involved officer(s); and the Use of Force by any involved officer(s). Based on the BOPC's review of the instant case, the BOPC made the following findings:

A. Deployment of K-9

The BOPC found that the deployment of the K-9 was consistent with established criteria.

B. Contact of K-9

The BOPC found that the K-9 contact was consistent with established criteria.

C. Post K-9 Contact Procedures

The BOPC found that post K-9 contact procedures were consistent with established criteria.

Basis for Findings

In making its decision in this matter, the Commission is mindful that every "use of force by members of law enforcement is a matter of critical concern both to the public and the law enforcement community. It is recognized that some individuals will not comply with the law or submit to control unless compelled to do so by the use of force; therefore, law enforcement officers are sometimes called upon to use force in the performance of their duties. It is also recognized that members of law enforcement derive their authority from the public and therefore must be ever mindful that they are not only the guardians, but also the servants of the public. The Department's guiding value when using force shall be reverence for human life. Officers shall attempt to control an incident by using time, distance, communications, and available resources in an effort to de-escalate the situation, whenever it is safe and reasonable to do so. When warranted, Department personnel may objectively use reasonable force to carry out their duties. Officers who use unreasonable force degrade the confidence of the community we serve, expose the Department and fellow officers to legal and physical hazards, and violate the rights of individuals upon whom unreasonable force is used. Conversely, officers who fail to use force when warranted may endanger themselves, the community and fellow officers." (Use of Force Policy, Los Angeles Police Department Manual.)

The Commission is cognizant of the legal framework that exists in evaluating use of force cases, including the United States Supreme Court decision in Graham v. Connor, 490 U.S. 386 (1989), that:

> "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. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain and rapidly evolving – about the amount of force that is necessary in a particular situation."

The Commission is further mindful that it must evaluate the actions in this case in accordance with existing Department policies. Relevant to our review are Department policies that relate to the use of force:

Law enforcement officers are authorized to use deadly force to:

- Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or
- Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or
- Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force. (Use of Force Policy, Los Angeles Police Department Manual.)

An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief that there is a substantial risk that the situation may escalate to the point where deadly force may be justified. (Los Angeles Police Department Manual.)

Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation. Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so. (Tactical De-Escalation Techniques, October 2016.)

- In its analysis of this incident, the BOPC identified the following tactical considerations:

1. Tactical Communication

The investigation revealed that some miscommunication occurred between officers on the perimeter, ASD, and the CP regarding the exact location a citizen observed the Subject in the backyard. This miscommunication resulted in Officer D not being aware that the location of the undetermined heat source was the same location in which the citizen had observed the Subject. It is preferred that all pertinent information be relayed during an ongoing tactical situation to effectively plan and approach each incident in a safe manner. Furthermore, effective communication will allow a sound tactical plan to be implemented, which will minimize exposure to the officers and therefore enhance officer safety.

2. Utilization of K-9 electronic collar

The investigation revealed that Officer D believed he may have activated the K-9's electronic collar during the process of recalling his K-9 from contact with the Subject. The investigation was unable to determine if the electronic collar was activated. It is preferred that officers ensure consistent and appropriate utilization of the electronic collar.

The above issues were to be discussed during the Tactical Debrief.

- The BOPC also considered the following:

Ballistic Helmet – The investigation revealed that Officer D and F did not don their ballistic helmets during the K-9 search. Officers are reminded of the importance of donning their ballistic helmets while involved in a tactical situation involving a possibly armed Subject. This was brought to the attention of Captain A, who addressed the issue with divisional training.

Body Worn Video (BWV) Activation – The investigation revealed that Officers B, C, and E did not activate their BWV until the Subject was located. Captain B was notified and addressed the issue with divisional training. Captain B advised that he would ensure audits would be completed on the involved officers for a 60-day period to ensure the officers' BWV's were being properly activated.

A. Deployment of K-9

- The Subject was believed to have been driving a stolen vehicle and had fled from officers, resulting in a vehicle pursuit. At the termination of the vehicle pursuit, the Subject fled on foot and was believed to be contained inside the perimeter boundaries. A loaded handgun was then located inside of the Subject's vehicle. Due to the Subject being wanted for a felony crime, Officer D met with Sergeants A and C and confirmed that the situation met the criteria for K-9 deployment. Sergeant A authorized the K-9 search to assist in locating and apprehending the Subject.

  Officer D formulated a search plan that was reviewed and approved by Sergeants A and C. The search plan consisted of two K-9 search teams working in coordination with each other. Officer D was designated to lead one search team with his K-9 dog. Prior to initiating the K-9 search, a pre-recorded K-9 search announcement was played in both English and Spanish via the PA system of a police vehicle from multiple locations.

  Additionally, an Air Unit utilized its PA system to broadcast the K-9 announcement in English over the search location. Confirmation of the announcement was obtained from officers on the perimeter that they heard the K-9 announcements. The Subject failed to respond to the K-9 search announcements and remained hidden, refusing to surrender to officers.

Based on the totality of the circumstances, the BOPC determined that the deployment of the K-9 resources was consistent with established criteria.

B. Contact of K-9

- Multiple K-9 announcements were made via the PA systems; however, the Subject failed to respond to the K-9 announcements. The Subject remained hidden from sight and continued to evade detection and apprehension by officers.

  According to Officer D, his K-9 dog proceeded to the wall of the property and then west toward the bushes where the Air Unit had an unknown heat signature. As the K-9 dog entered the brush, Officer D observed what he believed to be a person bolting out of the brush. Officer D heard a scream and advised the search team that he believed the Subject had been located.

  According to Officer D, he directed the search team to move forward and take cover. Officer D illuminated the backyard with his flashlight and observed the Subject fall into the open yard with his K-9 dog engaged in a bite hold on the Subject's left arm. After Officer D ensured that the officers on the search team had cover and observed that Subject's hands were free of any weapons, he recalled his K-9 dog.

  According to Officer D, he gave several commands for his K-9 to release, and believed he activated the K-9 dog's shock collar to reinforce his commands. The K-9 dog released his hold and returned to Officer D, where he was placed on a leash.

  Based on the totality of the circumstances, the BOPC determined that the K-9 Contact was consistent with established criteria.

C. Post K-9 Contact Procedures

- After the Subject was taken into custody, Officer D broadcast, without delay, for an RA to respond to treat the Subject for the dog bite. LAFD personnel responded and transported Subject to a nearby hospital, where he was treated for a dog bite wound to his left forearm. The Subject was then admitted into the hospital for his injuries.

  Based on the totality of the circumstances, the BOPC determined that the post contact procedures were consistent with established criteria.

Seattle Police Department Manual
Carmen Best, Chief of Police

8.300 - Use of Force Tools

Effective Date: 09/15/2019

This policy addresses the use and deployment of all force tools that are available to sworn Department employees. The following force options are governed by this policy:

*** Patrol Canine**

*** TASER /Conducted Electrical Weapons (CEW)**

*** Firearms**

*** Impact Weapons**

*** Oleoresin Capsicum (OC) Spray**

*** Vehicle-Related Force Tactics**

*** Specialty Unit Weaponry**

*** Hobble Restraint**

*** Neck and Carotid Restraints**

*** Blast Balls**

*** 40 mm Less Lethal Launcher**

The Intended Purpose of Less-Lethal Tools

Less-lethal tools are used to interrupt a subject's threatening behavior so that officers may take physical control of the subject with less risk of injury to the subject or officer than posed by greater force applications. Less-lethal tools alone cannot be expected to render a subject harmless.

Support officers should be prepared to take immediate action to exploit the brief opportunity created by the less-lethal tool and take control of the subject if safe to do so.

1. Officers Will Only Carry and Use Tools That Have Been Approved by the Department and That the Officer has Been Properly Trained and Certified to Use; Use of Improvised Weapons May Be Permissible Under Exigent Circumstances

The use of Improvised Weapons, defined in **8.050**, will be subject to the same standards as approved tools set forth in **8.200**.

2. Uniformed Officers Are Required to Carry at Least One Less Lethal Tool

Uniformed officers who have been issued a TASER shall carry it.

3. Sergeants and Lieutenants Will Ensure That Each Officer in Their Command is Trained and Certified on the Tools They Carry, as Required

4. Officers Are Prohibited From Using Less-Lethal Tools as a Form of Punishment or for Retaliation

5. Officers Shall Not Use Less-Lethal Tools to Prod or Jab Individuals, to Awaken Unconscious or Intoxicated Individuals, or to Prevent the Destruction of Evidence

Reasonable efforts to awaken or assess unconscious/unresponsive individuals without Less-Lethal Tools, including trained pain stimuli, are considered a medical procedure, defined in **8.050**, and not force.

6. Officers Shall Consider Risks to the Subject and Third Parties When Determining Whether to Deploy any Less-Lethal Tools

Officers may only use less-lethal force on subjects who are visibly pregnant, elderly, apparently pre-adolescent, or visibly frail when there is an exigency or an immediate threat to any person.

7. Use of Less-Lethal Tools in the Following Circumstances is Only Permitted in Situations Where There is a Risk of Death or Great Bodily Harm to any Person

- When the subject is in an elevated position where a fall is likely to cause substantial bodily harm or death

- When the subject is in a location where the subject could drown

- When the subject is operating a motor vehicle or motorcycle and the engine is running or is on a bicycle or scooter in-motion

- When an individual is handcuffed or otherwise restrained

- When an individual is fully contained in a police vehicle

8.300 – POL –1 Use of Force – Use of Patrol Canines

1. The Prompt and Proper Utilization of a Trained Canine Team has Proven to be a Valuable Resource in Law Enforcement

- When properly used with strict handler control, a canine team increases the degree of safety to persons within a contained search area, enhances individual officer safety, increases the likelihood of subject apprehension, and may reduce the amount of time necessary to conduct a search.

- At the same time, handlers shall make all reasonable effort to avoid unnecessary and unnecessarily injurious bites.

- All canine uses of force shall be objectively reasonable, necessary, and proportional.

2. The Following Terms are Defined According to this Policy:

Apprehension: The arrest, capture, or taking into custody of a person.

Canine Bite: Physical contact, initiated by the canine, between the canine's teeth and a person or animal. This contact does not need to result in broken or punctured skin to be a bite.

Non-Tactical Use of Canine-: The non-aggressive work of a canine when used to find evidence or articles. See **Manual Section 16.300 Patrol Operations - Canines** for further guidance.

Canine Deployment: Use of a canine on- or off-lead to search for a subject, to apprehend a subject, or for officer safety.

Canine Handler: A sworn member of the Department who has been certified by the requirements of the Department's canine program.

Canine Team: The combination of a Canine Handler and that Handler's assigned working dog working in tandem.

Direct Apprehension: When a handler commands their dog to bite and hold an individual that the handler has in sight.

Canine Search—Use of a canine to search for a subject. There are two types of Canine Search:

> **- Tracking Search**: A handler deploys a dog to locate a subject who has fled a crime scene. Done on and off lead.
>
> **- Contained Search**: Search for a subject in a contained area, ie. Building or fenced lot, where a subject is reasonably expected to be hiding. Done on and off lead.

Canine Use of Force: Canine bite or injury caused by physical contact between a canine and a subject that occurs:

> - During a Canine Search, or
>
> - During a Direct Apprehension.

Accidental Canine Bite or Injury: Canine bite or injury caused by physical contact with a canine that occurs:

- When the handler has given no command to search or apprehend; or

- When the handler gives the command to search or apprehend a subject, but the canine engages the wrong person.

Containment—The establishment of a visual perimeter intended to curtail a subject's escape from a defined search area or structure. Containment requires at least two officers positioned at diagonally opposite corners of the search area but is far more effective with at least four officers.

3. Canine Deployments Shall Be Limited to the Following Situations:

Felony Crimes:

- Burglary, not including trespass with non-violent secondary crime

- Robbery, not including thefts that are accompanied by low level assaults

- Homicide

- Serious Assault

- Kidnapping

- Arson with threat of harm to people

- Domestic Violence felony crimes

- Serious Sexual Assault

- Drive by Shooting, not including unlawful discharge of a firearm

Misdemeanor Crimes:

- Domestic Violence Assault

- Domestic Violence Order Violations that are subject to mandatory arrest—violations shall involve the subject's physical presence at the victim's location or a threat of harm

For all other crimes where the subject is considered to be armed or there is a threat of harm to the public, approval by an on-scene supervisor with the rank of sergeant or above is needed.

Canine teams should not be used to apprehend anyone suspected to be under the influence of drugs or alcohol if no other serious crime is involved, nor anyone who is experiencing a behavioral crisis, if no other serious crime is involved.

4. Canine Handlers Shall Obtain a Briefing of the Incident Prior to Deploying Their Canine

Canine officers may gather information from on-scene officers in person or via radio or MDT while enroute to the call.

A briefing shall include, if applicable:

- A description of the facts and circumstances that establish probable cause to apprehend the subject or reasonable suspicion to detain the subject;

- A detailed description of the wanted subject, if available;

- The subject's actual or perceived age (i.e. whether the subject is or may be a juvenile). The subject's perceived age shall be determined by gathering as much information as possible from officers and/or witnesses who observed the subject's physical characteristics height, weight, etc.);

- Behavior or information indicating whether the subject poses imminent threat or violence to others;

- The severity of the crime;

- Whether the subject is armed;

- Whether there is reason to believe the subject may not speak or understand English or may have a hearing impairment;

- Known potential danger to the public and/or other officers at the scene if the canine is released;

- The degree of resistance or threatened resistance communicated or shown by the subject;

- The potential for escape or flight if the canine is not utilized;

- The level of pedestrian foot traffic; and

- Whether the area perimeter is secure.

Canine officers shall coordinate with on scene officers and develop a plan as to how they shall safely track (i.e. cover officer, shutting down vehicle traffic, etc.) as well as an arrest plan if a subject is located unless exigent circumstances exist.

5. Off-Lead Canine Searches May be Suitable Under Certain Circumstances:

- Off lead deployment may be appropriate for searches of commercial buildings where there is the possibility of subjects hiding inside, including attics, basements, and crawl spaces.

- Off-lead deployment may be appropriate for searches of shopping centers, malls or other large structures where staffing commitments and search time shall be extensive.

- Off-lead deployment at a school building may be appropriate if the subjects are adults and the incident involves significant theft, such as computers and other valuable equipment. -

- Canine searches of residences are discouraged whenever there is risk of a bite to innocent persons. Before conducting a search of a residence the handler shall make every effort to ensure the safety of any residents that might be present.

- Residential searches should be conducted on short lead unless the handler can determine that there are no residents at home. This can be done through contacts with victims, witnesses, neighbors, responsible parties, and officers on the scene.

- The presence of uncontained animals in a residence to be searched shall normally preclude the use of canines unless the animals can be removed or contained. In cases where it can be done safely, an on-lead search can be done in the presence of uncontained animals.

6. A Canine Unit is Viewed as a Single Officer Unit and Shall Perform Under that Premise When Making Decisions Regarding Contact of Subjects. A Canine Handler May Use a Canine for Officer Safety

Use of a canine is reasonable to provide additional safety for officers when needed (e.g., where an officer is contacting several individuals and there is a concern for flight or assault, the handler may have the canine at his or her side). The canine shall not be used solely for intimidation or coercion.

> The de-escalation policy (**8.100**) still applies and requires that handlers articulate the need to contact a larger group that necessitated the use of the canine for safety purposes.

7. Canine Officers May Use Direct Apprehension to Physically Apprehend a Subject

Direct apprehension shall be used only when the officer has probable cause or reasonable suspicion to believe that the subject has committed one of the crimes listed in 8.300-POL-1(3), and

-The canine handler reasonably believes that the subject poses an imminent threat of harm to the officers or others; or

- The subject is trying to escape, such as by immediate flight.

8. Canines Shall Not Be Used to Apprehend Subjects Perceived to Be Juveniles Except for the Crimes Listed in 8.300-POL-1(3)

In the case of known or possible juvenile subjects, special consideration should be given to the subject's age and propensity for violence, and officers should explore alternatives to the deployment of a canine.

9. Police Canines Shall Not Be Used as a Pain Compliance Technique

10. Canine Deployment Announcements

- Prior to a deploying a canine, a verbal announcement shall be made and repeated-attempts to notify persons within the area of the intent to utilize a canine team and to afford subjects the opportunity to surrender to the police. The announcement shall say that there are police officers in the area and that a trained police canine will be released and may bite individuals who do not surrender.

- When feasible, the announcement shall be given by patrol car PA system or amplified by other means.

- The announcement shall be clear, loud and audible to all individuals who may be affected by the operation**.** Where there is a reasonable belief that the subject speaks a language other than English, an officer or other individual fluent in that language shall be summoned to the scene if available and the exigency of the situation permits.

- A reasonable amount of time shall be allowed between announcement and deployment for the subject to respond and others to seek safety.

- Officers assigned to containment shall confirm hearing the canine announcements prior to initiating a search.

- A verbal warning shall be repeated as the search proceeds and the canine team reaches a different floor, or parts of the building or other area where the initial announcement may not have been heard.

- If feasible, other officers shall be in a location opposite from where the announcements are made to verify that it can be heard.

11. When Feasible, Canine Officers Shall Attempt Alternative Tactics Prior to a Direct Apprehension

When the location of a subject in hiding has been determined, handlers shall not command the canine to do a direct apprehension if alternative tactics are safe and feasible. Such alternatives may include: identifying as a police officer, ordering the subject to come out of hiding and warning that a police dog shall be released and they may be bitten if they do not voluntarily comply, and then waiting a reasonable amount of time for them to comply, or using a lower level of force.

12. When Safe and Feasible, Canine Handlers Should Make All Reasonable Efforts to Keep the Police Canine in Sight

Canine handlers should remain within a working distance of their police dog to ensure they can read their canine's body language and that the police canine obeys verbal commands.

13. Releasing the Bite

- Should a bite occur, the handler shall as rapidly as possible determine if the subject is armed and call off the dog at the "first possible moment" the canine can be safely released.

- When deciding to order the dog to release, particular attention shall be given to the perceived threat or actual resistance presented by the subject. Handlers will continue to factor into their call-off decision that the average person will struggle if being seized or confronted by a canine. This struggling, alone, shall not be cause for not calling off the canine.

14. After a Canine Use of Force or Accidental Canine Bite or Injury, Officers Shall Render Appropriate Medical Aid Within Their Training as Soon as Reasonably Possible

See 8.200 POL 7

15. The Canine Will Be Secured as Soon as it Becomes Safe and Feasible

At a minimum, the canine shall be secured once the subject has been apprehended and no longer reasonably presents a threat, or risk of escape.

Exception: Canines may remain unsecured if there are additional outstanding subjects, the canine is needed to find evidence or the canine presence assists in the protection of officers or others.

16. Whenever a Canine is Deployed, Whether Force is Used or Not, the Canine Handler Shall Document the Deployment

These records are kept in the Canine Unit.

17. A Canine Use of Force Shall Be Reported, Investigated, and Reviewed Consistent With Sections 8.400 and 8.500

See **8.400** and **8.500** for guidance.

- Each canine bite or injury shall be separately documented in the use of force report.

- The handler shall document, in their use of force report, the duration and reason for the duration of the canine's bite on the subject.

18. An Accidental Canine Bite or Injury is Not a Use of Force, But It Shall Be Reported Separately per 16.300 PRO - 1 Accidental Canine Bite or Injury

In the event of an accidental canine bite or injury, canine handlers shall follow accidental injury procedures, not use of force reporting procedures

8.300- POL 2– Use of Force – TASER / Conducted Electrical Weapons

A TASER in probe deployment is designed to stimulate a portion of the nervous system with sufficient pulsed electrical energy to bring about uncontrolled muscle contractions which override an individual's voluntary motor function. Drive stun mode occurs when the TASER makes direct contact with the subject's body and does not override an individual's motor responses. It is intended to cause significant pain. Use of the TASER in probe deployment is preferred in some circumstances over use in drive stun mode, which can only be used at close range and may cause marks and scarring.

1. Education & Training Section (ETS) Manages the TASER Program

ETS will maintain the TASER operator's manual.

2. ETS Will Train and Certify Operators Annually

Only officers who have been trained and certified are allowed to use TASERs.

3. Uniformed Officers Who Have Been Trained and Certified to Carry a TASER and Have Been Issued One Must Carry It During Their Shift

Officers must carry their TASER in a holster on their support side.

4. Officers May Use TASERs in the Following Circumstances:

- When a subject causes an immediate threat of harm to any person;

or

- When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is:

(1) likely to cause injury to the officer; or

(2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of TASER.

In either of the above circumstances, the force must be objectively reasonable, necessary and proportional.

When a TASER used against a subject, either in probe or drive stun mode, it shall be for one standard discharge cycle of five seconds or less and the officer using the TASER must reassess the situation. Only the minimum number of five second cycles necessary to place the subject in custody shall be used.

Officers should assume that if they have used a TASER three times against a subject but the subject continues to actively resist or aggress, the TASER may not be effective against that person; the officer shall reassess and consider other options, if feasible.

Officers shall not deploy multiple TASERs at the same subject, unless the first deployed device fails.

When using TASER in the drive stun mode, officers shall wait a reasonable amount of time between applications to discern if compliance has been gained.

5. TASERs Shall Not Be Used In any Environment Where an Officer Knows That a Potentially Flammable, Volatile, or Explosive Material is Present

Officers aware of environmental hazards shall alert fellow officers as soon as possible.

6. When Feasible, Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the TASER

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a TASER will be used and defer using the TASER a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

Exception: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, only the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.

7. Arcing a TASER, Creating an Audible Sound and Visual Spark Display When Conducting a Verbal Warning, is not Reportable Force

8. The Preferred Target for TASER is Below the Ribcage, Splitting the Beltline

Absent an immediate threat to any person's safety that cannot be reasonably dealt with in any other fashion, TASER users will not target a subject's head, neck, or genital area. The center mass of the back to the buttocks is a viable target. Targeting the chest and heart area should be avoided if possible. Officers shall target below the ribcage down to the upper thigh, splitting the beltline, if possible. When encountering subjects wearing heavy or loose clothing on the upper body, the legs should be considered as targets.

9. As With the Initial TASER Application, Each Subsequent Application of a TASER Must Be Individually Justified

Officers are required to report the use of a TASER, regardless of whether or not the use of the TASER was an effective application.

10. Officers Shall Summon Medical Aid as Soon as Feasible, Whenever a Subject Has Sustained a TASER Application

a. Officers Shall Not Remove TASER Probes and Barbs That are Embedded in Flesh

TASER probes and barbs that are embedded in flesh shall only be removed by fire department personnel or healthcare professionals, absent exigent circumstances. Probes embedded in clothing may be removed by an officer. Officers shall collect and submit into evidence all primary components of the TASER cartridge: probes, wires and cartridge.

11. Officers Shall Monitor All Subjects Who Have Sustained a TASER Application While They Are in Police Custody

12. When Restraining a Subject That Has Been Struck With a TASER, Officers Shall Use a Technique That Does Not Impair Respiration

Once a subject is under control, officers shall place him or her in a recovery position until such time as medical aid arrives.

13. TASERs May Be Used to Stop a Dangerous Animal

14. ETS Shall Conduct TASER Inspections on an Annual Basis to Ensure That All TASERs are Operable, to Conduct Information Downloads, and Perform Any Necessary Maintenance or Repairs

Consistent with TASER Training, it is recommended officers perform a spark test at the start of their shift, to determine the functionality of the TASER. When conducting a TASER park test, officers point the TASER in a safe direction (such as a loading barrel). While conducting the spark test, officers are reminded to check the battery capacity. If the battery is low, officers will get a new battery from a precinct stationmaster, a precinct sergeant, or the quartermaster.

Officers shall notify their chain of command about any operational concerns about their TASER.

15. Officers Deciding to No Longer Carry Their TASER Will Notify Their Chain of Command and Return Their TASER to the Quartermaster or Stationmaster

Officers will notify a supervisor, in person, that they have decided to no longer carry a TASER, and will specify which less lethal tool they will deploy with.

Additionally, officers shall notify their chain of command and the Department TASER coordinator, via email, prior to deployment without their TASER.

8.300 – POL -3 Use of Force - Firearms

1. Officers Shall Only Discharge Firearms in Situations Where Deadly Force is Permitted

See **8.000** and **8.050** definition of deadly force for further guidance.

Firearms May Be Used:

a. Against a dangerous animal to deter an attack or to prevent injury to persons present; or

b. To euthanize a critically injured animal.

2. Officers Shall Only Carry and Use Department-Approved Firearms, Except in Exigent Circumstances

3. Officers Shall Pass an Annual Firearms Qualification

All officers are required to qualify with their on-duty, back- up/off-duty firearms as directed by the Education & Training Section Captain. See **9.065**.

4. Officers Shall Not Use Firearms as Impact Weapons, Except When a Subject is Attempting to Take the Firearm or Lethal Force Is Permitted

5. An Officer May Draw their Firearm in the Line of Duty When the Officer Reasonably Believes It May Be Necessary for His or Her Own Safety or for the Safety of Others

When an officer determines that the threat is over, the officer shall holster his or her firearm, when feasible.

Unnecessarily or prematurely drawing their firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm.

Officers shall not draw their firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with policy on the use of

firearms.

6. Officers Shall Not Fire Warning Shots

7. When Feasible, Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Discharging a Firearm

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a firearm will be discharged and defer discharging the firearm a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

> **Exception**: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, only the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.

8. Officers Shall Not Fire at or From a Moving Vehicle

Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the life of the officer or another person with deadly force by means other than the vehicle. The moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force.

An officer threatened by an oncoming vehicle shall, if feasible, move out of its path instead of discharging a firearm at it or any of its occupants.

Officers shall not discharge a firearm from a moving vehicle unless a person is immediately threatening the officer or another person with deadly force.

Exception:-The Department acknowledges that this policy does not cover every situation that may arise. Any deviations from the provisions of this policy shall be examined rigorously and critically

reviewed on a case-by-case basis. The involved officers must be able to articulate clearly the reasons for the use of deadly force, including whether the officer's life or the lives of others were in immediate peril and if there was no reasonable alternative.

9. Pointing a Firearm at a Person is Type I Reportable Force

Officers shall document all incidents where they point a firearm at a person. See **8.400**.

Unholstering or displaying a firearm – including in a sul or low-ready position – without pointing it at a person is not reportable force.

10. All Firearms Discharges are Investigated and Reviewed

Intentional discharges (including discharges against people and against animals) and unintentional discharges are investigated by FIT and reviewed by the Force Review Board.

> **Exception**: This does not apply to discharges during legal recreational shooting, hunting, military activity, or on the range when the discharge is downrange and the range master or lead firearms instructor determines no investigation is required.

8.300 – POL –4 Use of Force – Impact Weapon

See **8.050** for definition of Impact Weapon.

This policy applies to the use of Department-approved impact weapons and improvised impact weapons, by all sworn Department employees.

Using a bicycle to forcefully strike a subject is a reportable use of force governed by this policy and **8.500-POL-6**.

Using a long baton as part of a coordinated crowd control movement during a crowd management event is governed by **8.500-POL-6**.

1. Education & Training Section (ETS) Will Train and Certify Officers on Department-Approved Impact Weapons Every Two Years

Officers will be trained and certified to use Department-approved impact weapons before being authorized to carry these weapons.

2. Officers Will Not Use Impact Weapons on Subjects Who Are Restrained and Under Control, or Complying With Police Direction

3. An Intentional Hard Strike to the Head With Any Impact Weapon Is Prohibited Unless Deadly Force is Justified

All hard strikes to the head must be screened with FIT, even if they were mistaken or unintentional.

4. Officers Will Not Target the Head, Throat, Neck, Spine, Genitals, or Kidneys with Any Impact Weapon, Except in Exigent Circumstances

All strikes to these areas must be screened with FIT, even if they were mistaken or unintentional.

5. Officers Shall Not Use Flashlights as Impact Weapons, Except in Exigent Circumstances

The use of improvised weapons, such as flashlights, may present a greater risk of injury than batons. Use of another object in place of the baton, including flashlights, is prohibited unless there is an immediate need to strike and an officer is precluded from using or cannot feasibly use the TASER, baton, or OC spray.

The failure to carry a baton, in and of itself, does not justify the regular use of a flashlight as an impact weapon. Routine reliance on flashlights as an impact weapon is prohibited.

6. Officers Must Justify Each Separate Impact Weapon Application in Their Use-of-Force Report

Officers are required to report the use of an impact weapon, regardless of whether a subject is struck.

8.300 – POL –5 Use of Force – Oleoresin Capsicum (OC) Spray

This policy applies to the use of OC spray by all sworn Department employees.

Oleoresin Capsicum spray (OC spray) is an inflammatory agent that causes an intense burning sensation of the skin, eyes, and mucous membranes. A one second burst applied directly to the face (direct exposure), even with glasses, will usually result in the immediate closing of the eyes. The individual's eyes will likely close, tear, and swell as a result. When inhaled (secondary exposure), the respiratory tract will likely become inflamed and temporarily restrict breathing to short, shallow breaths. The individual may experience choking, gagging, gasping for breath, or, on rare occasion, unconsciousness. The individual may experience nausea, lung pain, or temporarily impaired thought processes. The individual may become disoriented or lose his or her balance.

OC spray may reduce or eliminate the need for substantial physical force to make an arrest or gain custody. It may reduce the potential for injuries to officers and subjects.

1. Education & Training Section (ETS) Will Train and Certify Officers in the Use of OC Spray Every Two Years

The OC spray policy and training will incorporate the evolving guidance contained within the SPD Post-Basic Law Enforcement Academy course on less-lethal force as well as guidance from the medical community.

2. Officers Shall Only Use Department-Issued or Approved OC Spray

Officers will periodically check the manufacturer’s date on their issued OC Spray container and if beyond five years, exchange for a new container from the stationmaster or quartermaster.

3. Officers Will Use OC Spray, Including for Crowd Dispersal or Protection, Only When Such Force is Objectively Reasonable, Necessary, and Proportional

See **8.050** for definition and explanation of "**objectively reasonable**," "**necessary**," and "**proportional**" force.

For use and reporting of OC spray in the context of crowd management, see **14.090 (10).**

a. OC Spray May Be Used Against a Dangerous Animal to Deter an Attack or to Prevent Injury to Persons Present

b. OC Spray Shall Not Be Used Unless the Use of Physical Force Is Necessary

4. When Feasible, Officers Shall Issue a Verbal Warning to the Subject, Fellow Officers and Other Individuals Present Prior to Using OC Spray

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that OC spray will be used and defer using OC spray for a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

> **Exception**: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, only the deploying officer should document his/her reason for believing his/her safety would have been compromised in his/her use of force statement.
>
> A verbal warning is required if feasible and unless giving the warning would compromise the safety of the officer or others.

5. Officers Must Justify Each Separate Application of OC Spray

After the initial application of OC spray, each subsequent spray must also be reasonable and the employee should reevaluate the situation accordingly.

6. Officers are Required to Report the Use of OC Spray, Regardless of the Effect, as Well as the Decontamination Procedures That Followed

7. The Application of OC Spray on Persons in Restraints Such As Handcuffs Must Be to Protect an Officer or Member of the Public from Physical Injury

8. Officers Shall Direct OC Spray at the Specific Subject(s) Who are Posing a Threat

Officers deploying OC will attempt to minimize exposure to non-targeted parties.

9. Officers Shall Assist Exposed Subjects with Decontamination and Medical Aid, As Soon as Reasonably Possible

If the subject was exposed in a confined space, officers will remove the subject as soon as feasible from the contaminated area and expose the individual to fresh air.

Officers shall request medical response or assistance for subjects exposed to OC spray when requested by the subject, when the subject complains of continued effects after having been decontaminated, or the subject indicates that they have a pre-existing condition (such as asthma, emphysema, bronchitis, or heart ailment) that may be aggravated by OC spray.

Officers shall monitor exposed subjects for changes in their condition while in police custody and request medical evaluation as needed or as requested.

10. The Department Shall Maintain Written Documentation of the Number of OC Spray Canisters Annually Distributed to Each Employee

8.300 – POL – 6 Use of Force – Vehicle-Related Force Tactics

See hyperlinks below for vehicle tactics definitions in 8.050:

PIT (Pursuit Intervention Technique)

Ramming

Roadblock

Vehicle-to-Vehicle Contact

1. Only Officers Trained and Certified in the Use of PIT and Stop Sticks are Permitted to Use Them

Officers who have completed training in the use of PIT and stop sticks are permitted to use these tactics, regardless of their unit of assignment.

Ramming is an untrained tactic permitted only in exigent circumstances.

2. Vehicle-Related Force Tactics May Be Considered Deadly Force, Depending on the Situation

See **8.200(5).**

3. Officers Shall Consider Secondary Risks to the Subject and Other Persons When Determining Whether to Deploy Vehicle-Related Force Tactics

Secondary risks to pedestrians and other vehicles include, but are not limited to, the dangers presented by a spun-out vehicle and loose tires on the road, as well as air bag deployment.

4. Officers Will Report the Use of PIT, Ramming, Stop Sticks, and Certain Roadblocks as a Use-of-Force

- Deployment of stop sticks at a vehicle but no contact is made, it is reported as a Type I.

- Deployment of stop sticks at a vehicle where contact is made with the vehicle, is reported as a Type II.

- Deployment of stop sticks causing injury greater than Type II, is reported as a Type III.

- The use of stop sticks against a motorcycle is considered deadly force.

-Using a police vehicle for containment is not reported as a use of force.

-Not all roadblocks are reported as force. See **8.050** for definition of roadblocks for further guidance.

5. See 8.300-POL-3 for Guidance on Discharging a Firearm at or From a Moving Vehicle

8.300 – POL –7 Use of Force – Specialty Unit Weaponry

1. The Assistant Chief for Special Operations Oversees all Specialty Unit Weaponry

2. Specialty Units That Utilize Unique Weaponry Will Maintain Unit Manuals and Training Records Which Contain an Inventory and Specific Guidance for Each Weapon

Per Manual Section **12.070**, unit manuals have the force of Department policy.

3. Officers in Specialty Units Shall Use Their Weaponry in a Manner That is Objectively Reasonable, Necessary, and Proportional

See **8.050** for definition and explanation of "**objectively reasonable**," "**necessary**," and "**proportional**" force.

The fact that a weapon is part of the specialty unit weaponry does not exempt it from the policy requirements of this Manual. The same principles stated in 8.000 and 8.200 apply fully.

4. ETS Will Maintain Specialty Unit Training Records

Specialty units will submit their training records to ETS when completed.

8.300 – POL – 8 Use of Force – Hobble Restraint

A hobble restraint is a strap designed to restrain a subject's feet.

1. Officers May Use the Hobble Restraint to Control Violently Combative Subjects

2. The Hobble Restraint May Not be Connected to Handcuffs or Other Restraints (i.e., "hog tie")

3. Once the Hobble is Applied, Officers Must Place Subjects in Either in an Upright Seated Position, or on Their Side and Not Face Down, Including During Transport

4. Officers Must Closely Monitor Subjects Who Have Been Placed in the Hobble Restraint

5. Officers Shall Report any Use of the Hobble Restraint as a Type I Use of Force

8.300 – POL- 9 Use of Force – Neck Holds and Carotid Restraints

See 8.050 for definitions:

Neck Restraint

Carotid Restraint

Head Control

Neck restraints and carotid restraints are strongly disfavored by the Department due to the create a high risk of injury or death when improperly applied. Any use of a neck or carotid restraint is a Type III use-of-force, will result in a FIT investigation, and will be subject to strict scrutiny by the Force Review Board.

Known inadvertent contact with a subject's neck during the application of a head control tactic, or other control technique which results in momentary contact with the neck of a subject without the risk or intention of restricting the flow of blood or oxygen is not a neck or carotid restraint, but must be screened with a supervisor. Any contact with the neck, causing or reasonably likely to cause injury or loss of consciousness will be screened with FIT.

1. Officers Are Prohibited From Using Neck and Carotid Restraints Except When Deadly Force is Justified

2. Officers Will Place the Subject in the Recovery Position and Summon Medical Aid Immediately Following the Application of Neck and Carotid Restraint, if Feasible

3. Officers Shall Monitor All Subjects Who Have Been Subjected to Neck and Carotid Restraints While They Are in Police Custody

8.300 – POL –10 Use of Force – Blast Balls

This policy applies to the use of blast balls by all sworn Department employees.

1. Only Officers Who Have Completed Department Blast Ball Training are Permitted to Deploy Blast Balls

2. Officers Shall Only Use Department-Issued Blast Balls

3. Officers May Use Blast Balls Only When Such Force is Objectively Reasonable, Necessary, and Proportional

When feasible, officers shall avoid deploying blast balls in the proximity of people who are not posing a risk to public safety or property.

4. When Feasible, Officers Will Not Deploy Blast Balls Until a Dispersal Order Has Been Issued to the Crowd, the Crowd Has Been Given a Reasonable Amount of Time to Comply, and a Supervisor Has Authorized the Deployment

> **Exception**: Officers may reasonably deploy blast balls to address an imminent risk of harm to a person or significant property damage.

The preferred method of blast ball deployment is low deployment ("bowling style"). Officers may use a high deployment ("overhand throw") when the need for a farther deployment or the need to get around an obstruction outweighs the risk created by the separating sub-munition. Officers must document their deployment method and the reasoning for using such in their use-of-force report.

5. Officers Must Justify Each Separate Blast Ball Deployment

After the initial blast ball deployment, each subsequent deployment must be reasonable and the employee should reevaluate the situation accordingly.

6. Officers Are Required to Report the Use of Blast Balls, Regardless of Whether a Subject is Struck

The deployment of blast balls away from people (i.e. a "bang out") that does not result in any injury or complaint of pain is reported and investigated as Type I force (See **8.400**).

The deployment of blast balls within close proximity to people is reported and investigated as Type II force, even if no injury or complaint of pain or injury is reported (See **8.400**).

> **Exception**: When the deployment of blast balls results in injury or complaint of injury that meets the criteria for a Type III investigation, the deployment is reported and investigated as Type III force (See **8.400**).

7. As Soon As Reasonably Possible, Officers Will Request and/or Render Medical Aid for Subjects Who Appear to Have Been Injured by a Blast Ball Deployment or Who Complain of Pain or Injury Resulting From a Blast Ball Deployment

8. The Department Shall Maintain Written Documentation of the Number of Blast Balls Annually Distributed to, and Utilized by, Each Employee

8.300 – POL-11 Use of Force– 40 mm Less Lethal Launcher

40 mm Less Lethal (LL) Launchers are designed to temporarily interrupt the behavior of a dangerous subject, so that officers can take enforcement action with less danger of injury or death to themselves and others. The extended standoff distance that the 40 mm LL Launcher may decrease officers' exposure and may provide additional time to bring the situation to a safe resolution.

1. Education and Training Section (ETS) Manages the 40 mm LL Launcher Program

ETS maintains the 40 mm LL Launcher operator's manual.

2. The Firearms Training Squad (FTS) Will Maintain Inventory Records for 40 mm LL Launchers

3. ETS Trains and Certifies 40 mm LL Launcher Operators Annually

Exception: SWAT officers will certify annually through annual specialized unit training. The SWAT commander will forward training rosters to ETS within seven days of completion.

Only officers who have been trained and certified with the Seattle Police Department are allowed to use the 40 mm Less Lethal Launcher.

Officers may only use 40 mm LL Impact Munitions (LLIM) in a manner consistent with the Seattle Police Use of Force Policy and training provided by the Department.

4. Officers Who Have Been Trained, Certified and Issued a 40 mm LL Launcher Will Deploy with It During Their Shift

Officers deploying with a 40 mm LL Launcher will deploy with a primary less lethal device in accordance with **8.300 (2)**

5. Officers Deciding to Withdraw from the 40 mm LL Launcher Program Will Notify their Chain of Command and Return the 40 mm LL Launcher to the Range Armorer as Soon as Practicable

Officers will notify a supervisor, in person, that they have decided to no longer carry their 40 mm LL Launcher.

Additionally, officers will document the decision to no longer carry a 40 mm LL Launcher by emailing their chain of command and the Department 40 mm LL Launcher coordinator prior to deployment without their assigned launcher.

6. If the 40 mm LL Launcher Requires Inspection and/or Repairs, the Officer Will Notify their Supervisor and take the 40 mm LL Launcher Out of Service

Officers will email their supervisor, the 40 MM LL Launcher coordinator and the 40MM LL Launcher Armorer prior to deployment without their 40 mm LL Launcher.

7. Officers Will Only Use a 40 mm LL Launcher When Objectively Reasonable, Necessary, and Proportional

See **8.050** for definition and explanation of "**objectively reasonable**," "**necessary**," and "**proportional**" force.

Officers may use a 40 mm LL Launcher in the following circumstances:

- When a subject poses an immediate threat of harm to any person; or

- When public safety interests dictate that a subject needs to be taken into custody and the level of resistance presented by the subject is

(1) likely to cause injury to the officer; or

(2) if hands-on control tactics or other force options would be likely to cause greater injury to the subject than the use of the 40 mm Less Lethal Impact Munition (LLIM).

Officers will consider Department training regarding deployment distances and target areas. Each situation must be evaluated on the totality of the circumstances at the time of the deployment.

8. When Feasible, Officers Shall Issue a Verbal Warning to the Subject and Fellow Officers Prior to Deploying the 40 mm LL Launcher

Officers shall issue a verbal warning to the subject, other officers, and other individuals present, that a 40 mm LL Launcher will be used. Absent exigent circumstances, officers shall defer using the 40 mm LL Launcher a reasonable amount of time to allow the subject to comply with the warning.

Verbal warnings may come from any officer involved in the incident when employing a team tactics approach.

Exception: A verbal warning is not required if giving the warning would compromise the safety of the officer or others. In such circumstances, the deploying officer should document his/her reason for believing his/her safety would have been compromised in their use of force statement.

9. Officers Shall Consider the Risk of the 40 mm LLIM Round Causing Serious Harm When Determining Whether to Deploy

10. Officers Will Not Intentionally Target a Subject's Head, Neck or Genitals

Officers will not target the head or neck unless deadly force is justified.

11. Preferred Target Areas for 40 mm LL Launchers Are:

- Buttocks

- Thigh area

- Calf

- Large muscle groups

Officers shall collect and submit into evidence all primary components of the expended 40mm round to include the sponge nose cone with the rifling ring, and the casing.

12. Only Munitions Purchased, Authorized and Issued by the Seattle Police Department May Be Used by Officers

Officers deploying 40 mm LL Launchers are responsible for ensuring the proper munitions are loaded. Officers will inspect each 40 mm LLIM round prior to loading it into the launcher to ensure munitions adhere with this policy.

13. Officers will Securely Store 40 mm LL Launchers

While on duty, 40 mm LL Launchers will be secured in patrol vehicles when not in use.

When not on duty, Officer's will store 40 mm LL Launchers in a secure Department locker.

14. Only SWAT Officers Will Deploy 40 mm LL Launchers During Crowd Management Events

15. Officers Must Justify Each Separate 40 mm LL Launcher Use in Their Use-of-Force Statement

16. Officers Are Required to Report the Use of 40 mm LL Launcher as Force, Regardless of Whether a Subject is Struck

See **8.400-POL-1(3)**

Officers should also be prepared to employ other means to control the individual — including, if necessary, other force options consistent with Department policy—if the individual does not respond sufficiently to the LLIM and cannot otherwise be subdued.

17. Officers Will Summon Medical Aid as Soon as Feasible, Whenever a Subject Has Been Struck by a 40mm LL Launcher Round

18. The Firearms Training Section (FTS) Will Inspect 40 mm LL Launchers on an Annual Basis to Ensure That All Are Operable and Perform any Necessary Maintenance or Repairs

Exception: SWAT officers will inspect the 40 mm LL Launchers assigned to their unit on an annual basis.

Police

Address: 610 5th Avenue, Seattle, WA, 98104-1900

Mailing Address: PO Box 34986, Seattle, WA, 98124-4986

Phone: 206-625-5011

City-Wide Information

Departments & Agencies List

Elected Officials

Open Data Portal

Public Information Requests

Services & Information

SPD Information

1. Find a Police Job
2. Contact SPD
3. Police Locations
4. Crime Information
5. SPD Manual

The Seattle Police Department (SPD) prevents crime, enforces laws, and supports quality public safety by delivering respectful, professional, and dependable police services. SPD operates within a framework that divides the city into five geographical areas called "precincts". These precincts define east, west, north, south, and southwest patrol areas, with a police station in each.

Site Disclaimer: The Seattle Police Department's website was developed to provide general information. Data contained at this location is generally not reviewed for legal sufficiency. SPD documents displayed are for reference purposes only. Their completeness or currency are not guaranteed. Links or references to other information or organizations are for reference only and do not constitute an endorsement.

© Copyright 1995-2020 City of Seattle

About Our Digital Properties

Privacy Policy

Notice of Nondiscrimination

ADA Notice

APPENDIX C

XYZ POLICE DEPARTMENT
INTERNAL AFFAIRS DIVISION
REPORT OF INTERNAL INVESTIGATION
FILE NO. 11-

*****Items in red are for information only and should be deleted before the report is submitted.*****

COMPLAINANT:

ABSTRACT OF ALLEGATION: The complainant alleged that Officer X and Officer Y hit him with a baton. He also alleged the officers were rude.

APPLICABLE RULE(S):
Include "-1" or "-2"
Policy 3-2: General Conduct
Policy 27-1: Use of Physical Force – Level 2

DISCOVERY OF ADDITIONAL RULE(S) VIOLATION(S): None

SUBJECT OF COMPLAINT: Officer X, 1234
Officer Y, 1235

DATE/TIME OF INCIDENT:

LOCATION OF INCIDENT:

DATE COMPLAINT RECEIVED:

ASSIGNED INVESTIGATOR: Sergeant

(CG Times or Times New Roman, 12 or 13 font)
(It is acceptable to write in first person)

BACKGROUND

Please include the following:

- ***General dates and circumstances (i.e. On 1 Jan 08, officers x, y, & z responded to…, officers observed…, officers were part of a buy/bust operation).***
- ***Name of the complainant. How and when the complaint was reported. (i.e. On 1 Jan 08, Smith made a complaint with Sergeant Jones…, On 8 Jan 08, Smith called the IAD…, On 1 Feb 08, Smith came into the IAD…)***
- ***Nature of complaint. (i.e. Smith alleged that the force used was excessive…, Smith alleged that the officers were rude…)***

(Two blank lines between sections)

COMPLAINANT STATEMENT(S)

John Smith (Recorded statement taken by phone by Officer J. Anderson, 7738A, on 22 Sep 06, 1429-1455 hours. No one else was present.)

Explain, in narrative format, what happened according to the complainant.

WITNESS STATEMENT(S)

Ima Witness (Recorded statement taken by Sgt. J. Smith on 15 Oct 01 from 1500-1600 hours. No one else was present.)

Explain, in narrative format, what happened according to the witness.

Officer John Jack 2222P (Recorded statement taken by Sgt. J. Smith on 4 Nov 01 from 1600-1700 hours. Smith was advised of his Acknowledgement of Rights and Obligations. No one else was present.)

Explain, in narrative format, what happened according to the witness.

SUBJECT STATEMENT(S)

PCD John Doe 0000CO (Recorded statement taken by Sgt. J. Smith on 10 Jul 02 from 1300-1600 hours. Also present was PCD Doe's representative, Judge Judy. PCD Doe was advised of his Acknowledgement of Rights and Obligations.)

Explain, in narrative format, what happened according to the subject.

Follow-up interview with PCD Doe *(Statement taken by Sgt. J. Smith on 25 Aug 02 from 0900-0930 hours. Also present was PCD Doe's representative, Judge Judy. PCD Doe was advised of his Acknowledgement of Rights and Obligations.)*

Doe added that he…

DISPUTED FACTS

- Did Officer X and Officer Y hit the complainant with a baton?
- Were Officer X and Officer Y rude to the complainant?

EVIDENCE

- General Order X-0 pages 4-7
- Radio Purge
- Communications Division Memo date 5 Apr 01
- XYZ Special Order XXXX dated 22 Dec 00
- Cassette tape of the 911 call and radio transmissions
- CD containing
    - Digital recordings of statements taken
    - Photographs of complainant and scene

OTHER RELEVANT INFORMATION

Provide any important information regarding the investigation that helped you with the analysis and conclusion. Some examples include:

- ***Results of a canvass. Canvasses are required except when the alleged complaints occurred inside an enclosed location (i.e. house, business).***
- ***Inability to obtain evidence, i.e., There was no recording because the computer system was not working; the complainant refused to sign a medical release, etc.***
- ***Attempts to identify unknown witnesses, i.e., I was unable to locate the complainant's friend, "Joe." The complainant had no contact information for him and I did not locate him during the canvass.***
- ***Inability to contact known complainants. The following attempts shall be made:***
    - ***Phone call***
    - ***In-person visit to residence (within XYZ)***
    - ***Certified contact letter (letters can be left with the IAD Administrative sections for mailing)***
    - ***If contact is made, but the person is unresponsive (i.e. misses an interview appointment or does not return phone calls) the above steps are not required.***
- ***Inability to contact known witnesses. The following attempts shall be made:***
    - ***Phone call***
    - ***Contact letter***
    - ***If contact is made, but the person is unresponsive (i.e. misses an interview appointment or does not return phone calls) the above steps are not required.***

DISCUSSION & CONCLUSION

Credibility assessments are required by policy

- ***An investigator may consider, in determining the credibility of a witness, any matter that has any tendency in reason to prove or disprove the truthfulness of a statement during an interview, including but not limited to any of the following:***

  (a) The demeanor of the witness while giving testimony and the manner in which he/she testifies;
  (b) The extent of the witness's capacity to perceive, to recollect, or to communicate details;
  (c) The extent of the witness's opportunity or location to perceive the incident;
  (d) His/her character for honesty or sincerity;
  (e) The existence of bias, interest, or other motive;
  (f) Consistency of statements given;
  (g) Verification of facts; and
  (h) Admission of untruthfulness.

Credibility Assessment – Complainant

Doe was found to be not credible. She gave contradictory statements, failed to provide video of the incident she claimed to have, and during her second recorded interview denied things she stated during her first recorded statement. Doe appeared to be using the IAD process to affect her criminal case when she said she would drop her complaint if charges were dropped against her.

Credibility Assessment – Subject Officers

Officer X and Officer Y appeared truthful when interviewed. Their statements were consistent with the physical evidence, reports, and witnesses. They have no prior complaints of untruthfulness. They do not have a pattern of similar misconduct.

Officer Z appeared truthful when interviewed. He had a vague recollection of events, but this was understandable considering he was interviewed over six months after the incident and had a minimal amount of involvement as a wagon officer.

Did Officer X and Officer Y hit the complainant with a baton?

This is the "heart" of your investigation. Do not simply recount the statements made by the principles in the investigation. Provide your analysis and conclusions. Did the employee violate the rule(s) cited? If so, how? It not, how did you reach this conclusion? What conclusions do you draw from your investigation?

For any sustained findings, add the following paragraph for each sustained MOR violation:

By his actions, Doe violated Manual of Rules Section 314.39; Performance of Duty. This section states in part, "Members or employees shall… "

Were Officer X and Officer Y rude to the complainant?

Repeat for each allegation. These can be grouped together if appropriate. (i.e. Did Officer X hit the complainant with a baton? Did Officer X use OC on the complainant? Did Officer X use a takedown on the complainant?)

Member/Employee Accountability

No sustained allegations.

or

While investigating this case, I did not find instances where a member or employee of the Department should have reported the misconduct.

For Sustained allegations, an analysis must be conducted to determine if a member or employee knew about or should have known about and reported the misconduct discovered in the investigation. The analysis must include the subject member's/employee's immediate supervisor/commander. If additional rules violations are discovered during this analysis, add the member/employee as a subject and address the violations in the Report of Internal Investigation.

Training & Policy Recommendations

There were no training or policy issues identified in this case.

Discuss identified training issues and policy change recommendations.

RECOMMENDED FINDINGS

General Conduct **MOR 314.03-2** **SUSTAINED**
The investigation disclosed a preponderance of evidence to prove ***cite specific complaint (i.e. that the officer was rude to the complainant)*** in violation of law and/or XYZ rules, regulations, or policies.

(If more than one subject uses the following format)

As to Officer X:

Use of Physical Force – Level 4 **MOR 370.27-1** **UNFOUNDED**
The investigation disclosed sufficient evidence to determine that ***cite specific complaint (i.e. the officer hit the complainant with a baton).***

Not Sustained: The investigation did not disclose sufficient evidence to determine whether or

not the alleged conduct occurred.

Exonerated: The investigation disclosed sufficient evidence to determine that the alleged conduct did occur, but was in accord with law and with all XYZ rules, regulations, or policies.

Prepared by:
(4 lines)

John Doe
Sergeant of Police
Internal Affairs Division ***(or assigned division of investigator if DLI)***

Approved by:
(4 lines)

IIU Commander
(4 lines)

Chief of Police

APPENDIX D

Recusal Form

This recusal Form shall be completed and forwarded to IAD prior to the start of the Investigation

Investigator's Name (printed) ID No.	First-Level Supervisor (printed) ID No.
Case Number:	

Requirement:

In accordance with the provisions of Department General Order ____an investigator shall disclose any relationship where it is clear that the nature of the relationship could be perceived to compromise the investigative process and document the circumstances Upon completion of the Recusal Form, the appropriate first-level superior shall meet with the investigator to jointly review this form. The first-level superior shall determine whether it is clear that the nature of the relationship could be perceived to compromise the investigative process. Document the decision in the Declaration Narrative.

An investigation may be reassigned if any of the following conditions exist, such as:

- Family relationship;
- Outside business relationship;
- Romantic relationship;
- Personal friendship; or
- Close work relationship (to be determined on a case-by-case basis).

Declaration: I have checked the appropriate response.

- ○ I was directly involved in the incident. (Describe in Declaration Narrative)
- ○ I have a relationship with one or more of the involved parties which could be perceived to compromise the investigative process. (Describe in Declaration Narrative)
- ○ I am not directly involved in the incident and do not have any relationship with any of the involved parties which could be perceived to compromise the investigative process.

Investigator's Signature	Date:

Declaration Narrative:

First-Line Supervisor Review:

I have met with the investigator and made the following determination:

☐ Reassigned (Detail reason below) ☐ Not Reassigned

Reviewer Narrative:

First-Line Supervisor's Signature:	Date: