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San Francisco Police Officers Association Proposed General Order

Use of Force
Rev. 4/6/16

USE OF FORCE¹

The San Francisco Police Department's highest priority is the safety of the residents and visitors to San Francisco and the men and women who protect them. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to using communication and de-escalation principles before resorting to the use of force, whenever appropriate. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism, and to never employ unreasonable force. These are key factors in keeping the public safe and safeguarding the public's trust. The purpose of the policy is not to restrict officers from using reasonable force to protect themselves or others but to provide general guidelines that may assist the Department in achieving its highest priority.²

I. GENERAL USE OF FORCE POLICY

Peace officers are authorized by the U.S. Constitution and the laws of the State of California to use **reasonable force** to effect an arrest, to prevent escape, to overcome resistance, in self-defense, or in defense of others while acting in the lawful performance of their duties.

Reasonable force is a legal term for how much and what kind of force a peace officer may use in a given circumstance. The proper objective for the use of force by a peace officer in any enforcement situation is to ultimately gain and maintain control of the situation or individual(s) encountered.

¹ The following policy proposal includes language from the Peace Officer Standards and Training (P.O.S.T.) learning domain (LD) #20 (Use of Force) that was last revised in October 2015. It includes SFPD (both current and draft policy) and POA proposed language. Unless footnoted, all material derives from P.O.S.T. LD #20.

² POA

1. Fourth Amendment “objective reasonableness” standard

The United States Supreme Court decided *Graham v. Connor*, 490 U.S. 386 (1989), which established that a peace officer’s use of force would be judged under the Fourth Amendment using an “objective reasonableness” standard.

The Supreme Court balanced a subject’s Fourth Amendment right to remain free from unreasonable seizure against the government’s interest in maintaining order through effective law enforcement.

The Court’s determination of the objective reasonableness of a use of force is fact specific and based on the totality of circumstances confronting the officer at the time force was used. The determination of reasonableness recognizes that peace officers are often forced to make split-second judgments in circumstances that are tense, uncertain, and rapidly evolving. The reasonableness of a particular use of force is judged from the perspective of a reasonable officer on the scene, not with 20/20 hindsight, and without regard to the officer’s underlying intent or motivation.

When a use of force intrudes upon an individual’s liberty interest, it is measured by the type and amount of force employed. The type of force used and foreseeable injury resulting from it must be **objectively reasonable** in light of the facts and circumstances confronting the officer.

An officer is not required to choose the “best” or “most” reasonable action as long as the officer’s conduct falls within the range of conduct that is reasonable under the circumstances.

Officers may use the degree of force reasonable and necessary to protect others or themselves, but no more. If exceptional circumstances occur which are not contemplated by this order, officers should use any force reasonably necessary to protect themselves or others; however, they must be able to articulate the reasons for employing such force.³

A. Graham Factors

When balanced against the type and amount of force used, the Graham factors used to determine whether an officer’s use of force is objectively reasonable are:

- the severity of the crime at issue
- whether the suspect posed an immediate threat to the safety of the officers or others
- whether the suspect was actively resisting arrest
- whether the suspect was attempting to evade arrest by flight

Of these factors, the most important is whether the individual poses an immediate threat to the officer or public.

³ This last paragraph is SFPD current policy

B. Other Factors to be Considered

The reasonableness inquiry is not limited to the consideration of those factors alone. Other factors which may determine reasonableness in a use of force incident may include:

- availability of other reasonable force options⁴
- number of officers/subjects
- age, size, gender, and relative strength of officers/subjects
- specialized knowledge, skills, or abilities of subjects
- prior contact
- injury or exhaustion of officers
- access to potential weapons
- environmental factors, including but not limited to lighting, footing, sound conditions, crowds, traffic, and other hazards
- whether the officer has reason to believe that the subject is mentally ill, emotionally disturbed, or under the influence of alcohol or drugs
- whether there was an opportunity to warn about the use of force prior to force being used, and, if so, was such a warning given
- whether there was any assessment by the officer of the subject's ability to cease resistance and/or comply with the officer's commands

C. Reasonable Officer Standard asks:

- would another officer
- with like or similar training and experience,
- facing like or similar circumstance,
- act in the same way or use similar judgment?

2. Sufficiency of Fear

An officer's subjective fear alone does not justify the use of force. A simple statement of fear for your safety is not enough; there must be objective factors to justify your concern.

- It must be objectively reasonable.
- It must be based on the facts and circumstances known to the officer at the time.

3. The Use of Force Should Be Proportional

The level of force applied must reflect the totality of circumstances known or perceived by the officer at the time force is applied, including imminent danger to officers or others.

⁴ Not in same listed order as POST. This was moved to the top of list. *See Bryan v McPherson*, 608 F.3d 614 (9th Cir. 2010)

Proportional force, however, does not require officers to use the same type or amount of force as the subject. The more immediate the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be objectively reasonable and necessary to counter it.⁵

4. California Law Regarding Use of Force

California Penal Code section 835a states that: “Any officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect an arrest, to prevent escape or to overcome resistance.

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

II. IMPORTANCE OF EFFECTIVE COMMUNICATION AND DE-ESCALATION

1. EFFECTIVE COMMUNICATION⁶

A major goal of law enforcement is to gain voluntary compliance without resorting to physical force, and effective communication can be the key to gaining voluntary compliance. Communication involves both command presence and words resulting in improved safety and professionalism. In fact, vast majority of law enforcement responsibilities involve effective communication. Effective communication is the most basic element of the use of force. In particular, effective communication may enable a peace officer to gain cooperation and voluntary compliance in stressful situations (e.g., confronting a hostile subject). Communication with non-compliant subjects can be very effective when officers are able to establish a rapport, use the proper voice intonation, ask questions and /or provide advice to defuse conflict and achieve voluntary compliance before resorting to force options.

2. DE-ESCALATION⁷

If a subject is not endangering the safety of the public or an officer, fleeing, or destroying evidence, officers should, when feasible, employ de-escalation techniques to decrease the likelihood of the need to use force during an incident and to increase

⁵ Edited are based on Seattle’s Use of Force Policy.

⁶ This section is a combination of POST and SF proposed revisions.

⁷ This section is a combination of POST and SF proposed revisions.

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

III. COMMUNITY POLICING

Community members want police officers to possess the skills necessary to subdue violent and dangerous subjects. Officers should use these skills to apply only the amount of force that is objectively reasonable under the totality of circumstances known to the officer. Force should never be used to punish subjects. In the American criminal justice system, punishment in the form of judgment is the sole responsibility of the courts.

IV. DUTY TO RENDER FIRST AID/NOTIFICATION OF EMERGENCY MEDICAL PERSONNEL⁸

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

Officers shall arrange for a medical *assessment* by emergency medical personnel when a subject is injured or complains of injury caused by an officer's use of force, or complains of pain that persists beyond the use of a physical control hold, and the scene is safe. If the subject requires medical *evaluation*, the subject shall be transported to a medical facility.

V. PERMISSIBLE CIRCUMSTANCES FOR USE OF FORCE

- 1. Officers May Use Reasonable Force Options In The Performance Of Their Duties In The Following Circumstances:⁹**
 - A. To prevent the commission of a public offense.
 - B. To effect a lawful arrest or detention and/or to prevent escape.
 - C. In self-defense or in the defense of another person.

⁸ SFPD draft language

⁹ POA and SFPD language

- D. To prevent a person from injuring himself/herself. However, an officer is prohibited from using deadly force against a person who presents only a danger to himself/herself and does not pose an imminent threat of death or serious bodily injury to another person or officer.

2. An Officer's Force Options Are Largely Dictated by The Subject's Actions

Force options are choices available to a peace officer to overcome resistance, to effect arrest, to prevent escape, to defend self or others, and to gain control of a particular situation. What constitutes reasonable force is in large part dependent on the subject's actions.

A. Categories of Subject's Actions

Situations confronting peace officers may change rapidly. Therefore, officers must continually reevaluate the subject's action and must be prepared to escalate or deescalate as needed. But, in general, as subject's actions can be broken down into five categories:

- **Compliant:** Subject offers no resistance.
- **Passive Non-Compliance:** Does not respond to verbal commands but also offers no physical form of resistance.
- **Active Resistance:** Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody.
- **Assaultive:** Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person.
- **Life-Threatening:** Any action likely to result in serious bodily injury or death of the officer or another person.

B. Types of Force:

Types of force include: non-deadly force; non-deadly intermediate force; and deadly force.

- **Non-deadly force:** force that poses a minimal risk of injury or harm.
- **Intermediate force:** force that poses a foreseeable risk of significant injury or harm.

Case law decisions have specifically identified and established that certain force options such as pepper spray, probe deployment with a TASER, impact projectiles, canine bites and baton strikes are classified as intermediate force likely to result in significant injury. Intermediate force will typically only be acceptable when officers are confronted with active resistance and a threat to the safety of officers or others.

- **Deadly force:** force with a substantial risk of causing serious bodily injury or death.

The circumstances in which deadly force may be used is discussed in detail below. The following force options, including but not limited to vehicle intervention (Deflection)¹⁰ and the use of firearms, are considered deadly force.

C. Tools and Techniques for Force Options

The following tools and techniques are not in a particular order nor are they all inclusive.

- Verbal Commands/Instructions/Command Presence
- Control Holds/Takedowns
- Impact Weapons
- Electronic Weapons (Tasers, Stun Guns, etc.)
- Chemical Agents (Pepper Spray, OC, etc.)
- Police Canine
- Vehicle Intervention (Deflection)
- Firearms
- Personal Body Weapons
- Impact Projectile
- Carotid Restraint Control Hold

D. Force Options Chart

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

| Subject's Actions | Description | Possible Force Option |
|--------------------------|------------------------------|---|
| Compliance | Subject offers no resistance | <ul style="list-style-type: none">• Mere professional appearance• Nonverbal actions• Verbal requests and commands• Handcuffing and control |

¹⁰ SFPD, not POST. Specifically, DGO 5.05

| Subject's Actions | Description | Possible Force Option |
|--------------------------|--|--|
| | | holds |
| Passive non-compliance | Does not respond to verbal commands but also offers no physical form of resistance | <ul style="list-style-type: none"> • Officer's strength to take physical control, including lifting/carrying • Pain compliance control holds, takedowns and techniques to direct movement or immobilize |
| Active resistance | Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away, verbally, or physically signaling an intention to avoid or prevent being taken into or retained in custody | <ul style="list-style-type: none"> • Use of personal body weapons to gain advantage over the subject • Pain compliance control holds, takedowns and techniques to direct movement or immobilize a subject |
| Assaultive | Aggressive or combative; attempting to assault the officer or another person, verbally or physically displays an intention to assault the officer or another person | <ul style="list-style-type: none"> • Use of devices and/or techniques to ultimately gain control of the situation • Use of personal body weapons to gain advantage over the subject • Carotid restraint |
| Life-threatening | Any action likely to result in serious bodily injury or death of the officer or another person | <ul style="list-style-type: none"> • Utilizing firearms or any other available weapon or action in defense of self and others to stop the threat • Vehicle intervention (Deflection) |

3. Verbal Warning

If feasible, and if doing so would not increase the danger to the officer or others, an officer shall give a verbal warning to submit to the authority of the officer before using any intermediate or deadly force option.¹¹

VI. DEADLY FORCE

The use of deadly force is the most serious decision a peace officer may ever make. Such a decision should be guided by reverence for human life (including the officer's life and others that may be in imminent danger) and used only when other means of control are unreasonable or have been exhausted.

Deadly force is force applied by a peace officer that poses a substantial risk of serious bodily injury or death.

Reverence for all life is the foundation on which the use of deadly force rests. The authority to use deadly force is a serious responsibility given to peace officers by the people who expect them to exercise that authority judiciously.

1. When an Officer May Use Deadly Force

A. To Protect Self or Life

An officer may use deadly force when the officer has the objective and reasonable belief that the subject's actions pose an **imminent threat** of death or **serious bodily injury** to the officer or another person, based upon the totality of the facts and circumstances known to the officer at the time.

Imminent threat: means a significant threat that peace officers reasonably believe will result in death or serious bodily injury to themselves or to other persons. Imminent danger is not limited to "immediate" or "instantaneous." A person may pose an imminent danger even if they are not at the very moment pointing a weapon at another person.

Serious bodily injury: means a serious impairment of physical condition, including, but not limited to, the following: loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, and serious disfigurement. (California Penal Code section 243(f)(4).)

B. Use of Deadly Force on Fleeing Subject

Deadly force may be used on a fleeing subject only where:

¹¹ POA

- 1) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force;
- 2) The suspect poses a threat of serious physical harm to the officer or to others if the subject's apprehension is delayed
- 3) The use of deadly force is reasonably necessary to prevent escape;
- 4) Where feasible, some warning should be given before deadly force is used under these circumstances.

VII. DISCHARGE OF FIREARMS: PERMISSIBLE CIRCUMSTANCES¹²

1. When An Officer May Discharge A Firearm:

An officer may discharge a firearm in any of the following circumstances:

- A. In self-defense when the officer has reasonable cause to believe that he or she is in imminent danger of death or serious bodily injury.
- B. In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury. However, an officer may not discharge a firearm at a person who presents a danger only to him or herself, and there is no reasonable cause to believe that the person poses an imminent danger of death or serious bodily injury to the officer or any other person.
- C. To apprehend a person when both of the following circumstances exist:
 - (1) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND
 - (2) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.
- D. To kill a dangerous animal. To kill an animal that is so badly injured that humanity requires its removal from further suffering where other alternatives are impractical and the owner, if present, gives permission.

¹² This entire section is current SFPD policy

- E. To signal for help for an urgent purpose when no other reasonable means can be used.

An officer may generally not discharge a firearm as a warning.

2. Reasonable Care

To the extent practical, an officer shall take reasonable care when discharging his or her firearm so as not to jeopardize the safety of innocent members of the public.

3. Moving Vehicles

The following policies shall govern the discharge of firearms at or from a moving vehicle or at the operator or occupant of a moving vehicle:

- A. At a Moving Vehicle. An officer shall not discharge a firearm at a moving vehicle with the intent to disable the vehicle.
- B. From a Moving Vehicle. An officer shall not discharge a firearm from a moving vehicle unless the officer has reasonable cause to believe there is an imminent danger of death or serious bodily injury to the officer or to others.
- C. At the Operator or Occupant of a Moving Vehicle. Discharging a firearm at the operator or occupant of a moving vehicle is inherently dangerous to officers and the public. Disabling the operator will not necessarily eliminate an imminent danger of death or serious bodily injury. Further, a moving vehicle with a disabled operator may crash and cause injury to innocent members of the public or officers. Accordingly, it is the policy of the Department that **officers are prohibited from discharging their firearm at the operator or occupant of a moving vehicle except in the narrow circumstances set in this subsection.** An officer shall not discharge a firearm at the operator or occupant of a moving vehicle except under the following circumstances:
 - (a) If the operator or occupant of a moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means other than the vehicle itself.
 - (b) If the operator of the moving vehicle is threatening the officer with imminent danger of death or serious bodily injury by means of the vehicle, and the officer has no reasonable and apparent way to retreat or otherwise move to a place of safety.

- (c) In defense of another person when the officer has reasonable cause to believe that the person is in imminent danger of death or serious bodily injury.
- (d) To apprehend a person when both of the following circumstances exist:
 - (i) The officer has reasonable cause to believe that the person has committed or has attempted to commit a violent felony involving the use or threatened use of deadly force; AND
 - (ii) The officer has reasonable cause to believe that a substantial risk exists that the person will cause death or serious bodily injury to officers or others if the person's apprehension is delayed.

In reviewing incidents involving the discharge of firearms from a moving vehicle or at an operator or occupant of a moving vehicle, the Department will consider the totality of the circumstances, including but not limited to whether the officer or others were in imminent danger of death or serious bodily injury and whether the officers who were present employed tactics consistent with Department approved training.

VIII. UNREASONABLE FORCE

Unreasonable force occurs when the type, degree, or duration of force employed was not objectively reasonable under the totality of the circumstances as evaluated using the standards and authorities described in the previous chapters.

Malicious assaults and batteries committed by peace officers constitute unlawful conduct. (California Penal Code section 149.) When the force used is objectively unreasonable, the officer can face criminal and civil liability, and disciplinary action.

IX. DUTY TO INTERVENE¹³

Where an officers have a reasonable opportunity to do so, officers shall intercede when they know, or have reason to know, that another officer is about to use, or is using, unreasonable force under color of state law. Officers shall promptly report any use of unreasonable force and the efforts made to intercede to a supervisor.

¹³ SFPD draft language

OFFICE OF CITIZEN COMPLAINTS

CITY AND COUNTY OF SAN FRANCISCO



Joyce M. Hicks
Executive Director

April 6, 2016

Hon. Suzy Loftus, President
Members, San Francisco Police Commission

Re: OCC Recommendations and Research Concerning Three Use Of Force Principles

Dear President Loftus and Commissioners:

Below I have provide our agency's recommendations and research concerning three Use of Force provisions in the San Francisco Police Department's proposed Use of Force policies. These recommendations and research supplement the written materials that my designee, Policy Attorney Samara Marion, provided to the Department throughout her participation in the Use of Force stakeholder meetings in February and March 2016.

I. Introduction

Several law enforcement agencies across the nation have Use of Force policies that include a commitment to rely upon minimal force whenever practical, require (rather than simply recommend) officers to use whenever feasible de-escalation and other tactics before resorting to force, and prohibit officers from pointing a gun at an individual unless the officer or another is in danger of serious bodily injury or death. During the meetings with the San Francisco Police Department on its proposed revisions to its Use of Force policies, the Office of Citizen Complaints, the San Francisco Bar Association, the Coalition on Homelessness, the Northern California American Civil Liberties Union, and other stakeholders recommended incorporating similar provisions to SFPD's Use of Force policies. This memo summarizes Use of Force policies from several law enforcement agencies that address these three Use of Force principles.

A. LAW ENFORCEMENT AGENCIES AND OTHER SOURCES THAT EMPHASIZE A MINIMAL RELIANCE ON FORCE IN THEIR USE OF FORCE POLICIES.

SFPD's current Use of Force Department General Order instructs officers to accomplish its mission with minimal reliance on force (see #10 below). SFPD's proposed Use of Force policy does not include any reference to a minimal reliance on force.

1. New Orleans Police Department

The New Orleans Police Department's Use of Force policy includes a commitment to use the minimum amount of force and states that the Department restricts its officers' use of force beyond the limitations set forth under the Constitution and state law. The New Orleans Police Department's Use of Force policy provides:

The policy of the New Orleans Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the New Orleans Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the members or others. Members are advised that the Department places restrictions on officer use of force that go beyond the restrictions set forth under the Constitution or state law. (New Orleans Police Department Operations Manual, Use of Force, Chapter: 1.3, December 6, 2015, emphasis added.).¹

2. Las Vegas Metropolitan Police Department

The Las Vegas Metropolitan Police Department's Use of Force policy states in its introduction, "[i]t is the policy of the department that officers hold the highest regard for the dignity and liberty of all persons, and place minimal reliance upon the use of force."

¹ The New Orleans Police Department Regulation's Manual (3/15/16) that includes its Use of Force policy is available at <http://www.nola.gov/nopd/publications/>). The New Orleans Police Department's Use of Force policy resulted from the United States Department of Justice (DOJ)'s investigation into an alleged pattern of civil rights violations and other misconduct pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (Section 1414). Section 14141 makes it unlawful for law enforcement officers to engage in a pattern or practice of conduct that deprives individuals of rights protected by the Constitution or laws of the United States. Conduct covered by Section 14141 includes excessive force, discriminatory harassment, false arrests, coercive sexual conduct, and unlawful stops, searches or arrests. For more information about DOJ's work with the New Orleans Police Department, see <http://www.nola.gov/nopd/nopd-consent-decree>. For information about the DOJ's pattern and practice investigations involving law enforcement agencies throughout the United States, see <https://www.justice.gov/crt/special-litigation-section-cases-and-matters0#police>.

(Use of Force, Directive GO-008-15, June 18, 2015, emphasis added.).²

3. Washington, D.C., Metropolitan Police Department

The Use of Force policy for the District of Columbia's law enforcement agency, the Metropolitan Police Department, states in pertinent part:

The policy of the Metropolitan Police Department is to value and preserve human life when using lawful authority to use force. Therefore, officers of the Metropolitan Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others. (Washington, D.C. Metropolitan Police Department, Use of Force, GO-RAR-901.07, October 7, 2002³).

4. Chicago Police Department

The Chicago Police Department's Use of Force policy instruct officers to use the least amount of appropriate force. Chicago Police Department's Use of Force policy statement provides:

A. The goal of a Department member's response to all incidents is to resolve the incident with the foremost regard for the preservation of human life and the safety of all persons involved.

B. The Department expects members to develop and display the skills and abilities that allow them to regularly resolve confrontations without resorting to force (i.e. anything other than an officer's physical presence or use of verbal commands) or by using the least amount of appropriate force.

²The Las Vegas Metropolitan Police Department partnered with the Community Oriented Policing Services (COPS) Office and requested COPS to provide an independent investigation of its Use of Force policies and procedures. In July 2012, the Las Vegas Police Metropolitan Police Department announced an updated Use of Force policy. (See <http://www.lvmpd.com/Portals/0/OIO/GO-008-15 UseofForce.pdf>.) For more information about the ten police departments, include SFPD, that are engaged in COPS' Collaborative Reform program, see <http://cops.usdoj.gov/Default.asp?Item=2807>.

³The Metropolitan Police Department's Use of Force policy is available at <http://mpdc.dc.gov/page/written-directives-general-orders>. In 2001, the Department of Justice initiated a pattern and practice investigation into the Washington, D.C. Metropolitan Police Department; the memorandum of agreement (or consent decree) concluded in 2008. See, "Civil Rights Investigations of Local Police: Lessons Learned," Critical Issues in Policing Series, Police Executive Research Forum, July 2013, page 2.

C. Officers will de-escalate and use Force Mitigation principles whenever possible and appropriate, before resorting to force and to reduce the need for force. (Chicago Police Department, Force Options, General Order G03-02-02, January 1, 2016.)⁴

5. Portland Police Department

The Portland Police Department's Use of Force policy includes a minimal reliance on force. Its policy statements provides, "It is the intention of the Bureau to accomplish its mission as effectively as possible with as little reliance on force as practical." (See Portland Police Department's Use of Force, Policy 1010.00, emphasis added.) It also states, [m]embers should be aware the Bureau's force policy is more restrictive than the constitutional standard and state law." (*Ibid.*)⁵

6. Albuquerque Police Department

Albuquerque Police Department's Use of Force policy incorporates de-escalation and the minimum amount of force necessary to effect lawful objectives. Albuquerque Police Department's Use of Force policy provides:

The Albuquerque Police Department (APD) is committed to protecting people, their property and their rights. It is the policy of the APD to de-escalate situations without using force when possible. Force will not be used against any person except as necessary to protect the sanctity of human life, and to effect lawful objectives. With the use of force is necessary, force will be used in a way that preserves and protects individual liberties. Under current legal standards, APD officers may only use force that is objectively reasonable, based on a totality of the circumstances the officer is on confronted with, to effect an arrest or protect the safety of the officer or another person. APD's policy and training requires that officers not only follow the legal standard, but also, where feasible, identify a range of objectively reasonable alternatives, and whenever feasible, to use the minimum amount of force necessary within that range to effect lawful objectives. This policy is not intended to limit the lawful authority of APD officers to use objectively reasonable force or otherwise to fulfill their law enforcement obligations under the Constitution and laws of the United States and the state of New Mexico. Officer must remain mindful that they

⁴ In December 2015, the Department of Justice initiated a pattern and practice investigation into the Chicago Police Department. For more information about DOJ's work with the Chicago Police Department, see <https://www.justice.gov/opa/pr/justice-department-opens-pattern-or-practice-investigation-chicago-police-department>.

⁵For Portland Police Bureau's Use of Force policy, see <https://www.portlandoregon.gov/police/29867>

Portland Police Bureau's Use of Force policy was revised as a result of the DOJ's pattern and practice investigation. For more information about DOJ's work with the Portland Police Bureau, see <https://www.portlandoregon.gov/police/62044>.

derive their authority from the United States Constitution, Federal and State laws, and the community. Unreasonable force degrades the legitimacy of that authority. (Albuquerque Police Department, Procedural Orders, Use of Force, SOP 2-52, Page 1, January 21, 2016, emphasis added.)

Included among the factors to determine objectively reasonable force is “[i]f feasible, opportunities to deescalate or limit the amount of force used. (See Albuquerque Police Department, Procedural Orders, Use of Force, SOP 2-52-3, January 21, 2016, Page 5, emphasis added)”⁶

7. Seattle Police Department

The Seattle Police Department’s “Use of Force Core Principles” states that its policy is to “accomplish the police mission with the cooperation of the public and as effectively as possible, and with minimal reliance upon the use of physical force.” (See Seattle Police Department’s Use of Force Core Principles, section 8.000, September 1, 2015, emphasis added.)⁷

8. Oakland Police Department

Oakland Police Department’s Use of Force policy statement states that in addition to valuing the protection and sanctity of human life, the Department “is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force.” (Oakland Police Department’s Department General Order K-3, October 14, 2016, emphasis added.)⁸

⁶ For Albuquerque Police Department’s Use of Force policy, see <http://www.cabq.gov/police/our-department/standard-operating-procedures>. Albuquerque Police Department’s Use of Force policy was revised as a result of the DOJ’s pattern and practice investigation. For more information about DOJ’s work with Albuquerque Police Department, see <http://www.cabq.gov/police/departments-of-justice-doj-reports>.

⁷ For Seattle Police Department’s Use of Force policy, see <http://www.seattle.gov/police-manual>. Seattle’s Police Department’s Use of Force policy was revised as a result of the DOJ’s pattern and practice investigation. For more information about DOJ’s work with Seattle Police Department, see <http://www.seattle.gov/police-manual>.

⁸ For Oakland’s Use of Force policy see <http://www2.oaklandnet.com/Government/o/OPD/s/DepartmentalPublications/OAK034257>. Oakland Police Department’s Use of Force policy was revised as a result of the DOJ’s pattern and practice investigation initiated in 2003. For more information about DOJ’s work with Oakland Police Department, see <http://www2.oaklandnet.com/Government/o/OPD/a/PublicReports/DOWD004998>.

9. Milwaukee Police Department

One of the Milwaukee Police Department's Code of Conduct's core values and guiding principles is "Restraint: We use the minimum force and authority necessary to accomplish a proper police purpose. We demonstrate self-discipline even when no one is listening or watching." (Milwaukee Police Department Code of Conduct, section 6.00, emphasis added.). The Code of Conduct also states, "Police members shall exercise restraint in the use of force and act in proportion to the seriousness of the offense and the legitimate law enforcement objective to be achieved." (Section 6.01).⁹

10. San Francisco Police Department

For over two decades, SFPD has instructed officers to accomplish its mission with minimal reliance on the use of physical force. DGO 5.01 provides:

It is the policy of the San Francisco Police Department to accomplish the police mission as effectively as possible with the highest regard for the dignity of all persons and with minimal reliance upon the use of physical force. The use of physical force shall be restricted to circumstances authorized by law and to the degree minimally necessary to accomplish a lawful police task. (San Francisco Police Department, Department General Order 5.01, October 4, 1995, emphasis added.)¹⁰

SFPD's proposed revisions to DGO 5.01 do not include a minimal reliance on force.

⁹ For the Milwaukee Police Department's Code of Conduct, see <http://city.milwaukee.gov/Directory/police/About-MPD/Code-of-Conduct.htm#.Vv1suFKP8vU>.

The Milwaukee Police Department has recently partnered with the Community Oriented Policing Services (COPS) Office and COPS is in the midst of the assessment phase. For more information about the ten police departments, including the Milwaukee Police Department, that are engaged in COPS' Collaborative Reform program, see <http://cops.usdoj.gov/Default.asp?Item=2807>.

¹⁰San Francisco Police Department General Orders are available on its website. To see the current version of DGO 5.01, see <http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14790-DGO5.01.pdf>.

11. Police Executive Research Forum (PERF)

Minimizing the use of force is at the center of Police Executive Research Forum's (PERF) report on "Re-Engineering Training on Police Use of Force." The PERF report explains, "We need to rethink how we are training officers to handle use of force, and we must recognize that current training is not providing officers with state-of-the-art techniques to minimize use of force." (PERF's "Re-Engineering Training on Police Use of Force," August 2015, page 4). In January 2016, PERF issued another report entitled, "Use of Force: Taking Policing to a Higher Standard" in which it identified 30 guiding principles. Following its number one guiding principle that the sanctity of human life be central to everything a law enforcement does, PERF's second guiding principle is that "Departments should adopt policies that hold themselves to a higher standard than the legal requirements of Graham v. Connor." (See "Use of Force: Taking Policing to a Higher Standard, 30 Guiding Principles, Police Executive Research Forum, January 29, 2016, page 2.)

B. LAW ENFORCEMENT AGENCIES THAT USE MANDATORY LANGUAGE CONCERNING OFFICERS' DUTY TO USE DE-ESCALATION AND OTHER TACTICS BEFORE USING FORCE.

As defined by San Francisco Police Department General Order 3.02, mandatory police procedures use the terms "shall" or "will" or "must" to signify that officers are required to follow the procedure. DGO 3.02 defines "should" as "permissive, but recommended" and "may" as "permissive."¹¹

As summarized below, several law enforcement agencies require officers to use de-escalation and other tactics before using force and also recognize that rapidly developing circumstances may preclude or not warrant de-escalation and other tactics before using force. Thus, these agencies qualify the mandatory duty to de-escalate by phrases such as "when feasible" or "when practical" or "when possible."

SFPD's proposed use of force policy predominantly uses the term "should" rather than "shall" in describing officers' duties, especially pertaining to de-escalation and other tactics before using force. Similar to the law enforcement agencies below, the OCC, the Office of Citizen Complaints, the San Francisco Bar Association, the Coalition on Homelessness, the Northern California American Civil Liberties Union, and other stakeholders recommend that the duty to use de-escalation and other tactics before using force be a mandatory duty that permits exceptions by including a qualifying phrase such as "when feasible" or "when practical" or "when possible."

¹¹See San Francisco Police Department Order 3.02
<http://sanfranciscopolice.org/sites/default/files/FileCenter/Documents/14810-DGO3.02.pdf>

1. New Orleans Police Department

The New Orleans Police Department's (NOPD) Use of Force policy uses mandatory language when describing officers' responsibilities to use de-escalation and other techniques before resorting to force. NOPD's policy recognizes that there will be times when an officer cannot use de-escalation and other techniques and thus, qualifies the duty by stating "when feasible" and "when possible."

For example, NOPD's Use of Force policy statement explains,

When feasible based on the circumstances, officer will use de-escalation techniques, disengagement; area containment; surveillance, waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases. (New Orleans Police Department Operations Manual, Use of Force, Chapter: 1.3, December 6, 2015, emphasis added.)

Concerning the duty to communicate, NOPD's Use of Force policy states,

NOPD officers, regardless of the type of force or weapon used, shall abide by the following requirements:

- Officers shall use verbal advisements, warnings, and persuasion, when possible, before resorting to force. (New Orleans Police Department Operations Manual, Use of Force, Chapter: 1.3, December 6, 2015, emphasis added.)

2. Albuquerque Police Department

The Albuquerque Police Department (APD) uses mandatory language concerning an officer's duty to use de-escalation techniques. APD's Use of Force policy states, "[t]he officer shall consider and use, where appropriate, de-escalation techniques." (See Albuquerque Police Department, Procedural Orders, Use of Force, SOP 2-52-3, January 21, 2016, Page 5.)

APD's policy also states that "officers shall use advisements, warnings, verbal persuasion, and other tactics and alternatives to higher levels of force, if feasible." (*Id.* at p.7.) Additionally, APD's policy instructs officers that "[w]hen use of force is needed, and if feasible, officers will assess each incident to determine, based on policy, training and experience, which use of force option will de-escalate the situation and bring it under control in a safe and prudent manner." (*Id.* at p. 7.)

3. Chicago Police Department

The Chicago Police Department requires officers to de-escalate use "Force Mitigation" principles whenever possible. Chicago Police Department's Use of Force policy statement provides:

Officers will de-escalate and use Force Mitigation principles whenever possible and appropriate, before resorting to force and to reduce the need for force.
(Chicago Police Department, Force Options, General Order GO3-02-02, January 1, 2016.)

Officers have a mandatory duty to adhere to the Chicago Police Department's "force mitigation" principles. Officers are required to de-escalate, use verbal control techniques, request for a CIT officer, and employ other principles of Force Mitigation whenever it is possible and appropriate. The Chicago Police Department's Use of Force policy provides:

During all use of force incidents, Department members will strive to use the principles of Force Mitigation to ensure effective police-public encounters based on the totality of the circumstances. The concepts of Force Mitigation include:

A. When involved in a potential use of force incident or taking police action requiring the use of force, Department members will determine if the seriousness of the situation requires an immediate response or whether the member can employ other force options, including creating more time and distance between the subject and others.

B. Department members shall de-escalate and use Force Mitigation principles at the earliest possible moment.

C. If the Department member is responding to an incident involving persons in need of mental health treatment, the member will act in accordance with the Department directive entitled "Responding to Incidents Involving Persons In Need Of Mental Health Treatment," including using every possible means to verbally de-escalate the situation before resorting to the use of equipment, physical restraints, or other use of force options.

D. Continual Communication

1. Members will use de-escalation and verbal control techniques in an attempt to reduce confrontations prior to, during, and after the use of physical force.

2. Whenever reasonable, members will exercise persuasion, advice, and warning prior to the use of physical force.

3. The goal of continual communication is to establish and maintain verbal communication in all police-public encounters where the member continually evaluates the effectiveness of that communication. Members will

a. when practical, establish and maintain one-on-one communication where only one member speaks at a time.

b. vary the level of assertiveness of their communication depending on the type of police-public encounter. This may range from:

(1) respectful queries in a preliminary investigation where there is not yet determination a crime has occurred; through

(2) forceful commands where a serious crime has been committed or life or property is at risk.

4. When encountering non-compliance to lawful verbal direction, members

are not compelled to take immediate police action through the use of force. Except in the case of preservation of life or property, members will consider:

- a. changing their verbal communication techniques to discover a more effective method.
- b. requesting additional personnel to respond or making use of the specialized units and equipment available through a notification to OEMC.

NOTE: Members will, when practical, request assistance from specialized units, including a Crisis Intervention Team (CIT) trained officer in accordance with the Department directive entitled " Responding to Incidents Involving Persons In Need Of Mental Health Treatment."

- c. if available, allowing a different member to initiate verbal communications. (Chicago Police Department, Force Options, General Order GO3-02-02, January 1, 2016, emphasis added.)

4. Cleveland Police Department

The Cleveland Police Department (CPD) also uses mandatory language concerning an officer's responsibility to use de-escalation and other tactics before using force.

CPD's Use of Force policy states,

Members shall first attempt verbal persuasion tactics and warnings to gain *the person's* cooperation.Members shall consider alternative tactics to the use of force, which include, but are not limited to:

1. Concealment and/or cover.
2. Voice commands and other verbal attempts to deescalate the situation.
3. *Use of Crisis Intervention Team (CIT) officer, if available.*
4. Show of force (i.e. multiple officers, display of weapons).
5. *Judiciously allow time and/or opportunity for a person to regain self-control or cease struggling/resisting; when their actions do not immediately threaten the safety of themselves or others.* (Cleveland Division of Police, Use of Force, General Police Order 2.1.01, August 8, 2014, italics in original.¹²)

¹²For Cleveland Police Department's Use of Force policy, http://city.cleveland.oh.us/sites/default/files/forms_publications/GPO_Book11-24-15.pdf?id=6778

Cleveland Police Bureau's Use of Force policy was revised as a result of the DOJ's pattern and practice investigation initiated in 2013. For more information about DOJ's work with the Cleveland Police Department, see http://city.cleveland.oh.us/sites/default/files/forms_publications/ClevelandDOJFindings.pdf?id=3451.

C. LAW ENFORCEMENT AGENCIES THAT PERMIT AN OFFICER TO POINT A FIREARM AT AN INDIVIDUAL ONLY WHEN THE OFFICER OR ANOTHER IS IN DANGER OF DEATH OR GREAT BODILY INJURY.

SFPD'S Use of Force policy permits officers to point a gun at an individual when the officer believes it may be necessary for the safety of the officer or others. Several law enforcement agencies require a reasonable belief that the situation may escalate to a point where deadly force may be justified.

1. New Orleans Police Department

The New Orleans Police Department's Use of Force policy restricts officers from drawing or exhibiting a firearm unless circumstances create an objectively reasonable belief that the situation may escalate to the point that would authorize lethal force. NOPD's Use of Force policy states,

Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create an objectively reasonable belief that a situation may escalate to the point at which lethal force would be authorized. Once an officer determines that the use of deadly force is no longer likely, the officer shall re-holster the weapon. (New Orleans Police Department Operations Manual, Use of Force, Chapter: 1.3, December 6, 2015, emphasis added.)

2. Washington, D.C. Metropolitan Police Force

The Washington, D.C. Metropolitan Police Force also restricts when officers can point a firearm at an individual. The D.C. Metropolitan Police Department's Use of Force policy states,

No member shall draw and point a firearm at or in the direction of a person unless there is a reasonable perception of a substantial risk that the situation may escalate to the point where lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practical, firearms shall be secured or holstered. (Washington, D.C. Metropolitan Police Department, Use of Force, GO-RAR-901.07, October 7, 2002).

3. Los Angeles Police Department

Los Angeles Police Department's policy on drawing and pointing a firearm states:

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. Officers shall not draw or exhibit a firearm unless the circumstances surrounding the incident create a reasonable belief that it may be necessary to use the firearm in conformance with this policy on the use of firearms (Los Angeles Police

Department's Drawing or Exhibiting Firearms Policy, section 556.80 (2007).)

The Los Angeles Board of Police Commissioners on September 29, 1977 adopted the following interpretation of LAPD's policy:

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer shall, as soon as practical, secure or holster the firearm. (Emphasis added.)

4. Denver Police Department

The Denver Police Department uses the same standard as the LAPD's for drawing and exhibiting a firearm. DPD's Use of Force policy provides:

Unnecessarily or prematurely drawing or exhibiting a firearm limits an officer's alternatives in controlling a situation, creates unnecessary anxiety on the part of citizens, and may result in an unwarranted or accidental discharge of the firearm. An officer's decision to draw or exhibit a firearm should be based on the tactical situation and the officer's reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified. When an officer has determined that the use of deadly force is not necessary, the officer should, as soon as practicable, secure or holster the firearm. (Denver Police Department, Operations Manual, Use of Force Policy 105.01, emphasis added.).

5. Oakland Police Department

Oakland Police Department's Use of Force policy specifically addresses the pointing of a firearm at an individual. Its policy provides:

The pointing of a firearm at a person is a seizure and requires legal justification. No member shall draw and point a firearm at or in the direction of a person unless there is a substantial risk that the situation may escalate to the point that lethal force would be permitted. When it is determined that the use of lethal force is not necessary, as soon as practical, firearms shall be secured or holstered. (Oakland Police Department, Use of Force, October 14, 2015, emphasis added.)

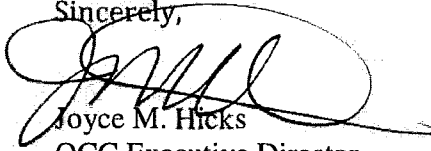
6. San Francisco Police Department's Field Training Manual

San Francisco Police Department's Field Training Manual includes the standard that the aforementioned law enforcement agencies have adopted. SFPD's Field Training

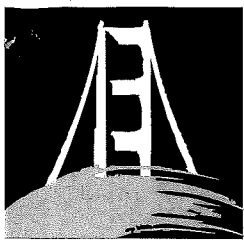
Manual states:

Officers may draw and be ready to use their firearms anytime they have reasonable cause to believe that they or another person is in danger of death or great bodily injury. (SFPD's Peace Officer Field Training Manual, June 2013 Edition, Firearms Use, Week 1, Page 65, emphasis added.)

Thank you for considering our recommendations.

Sincerely,

Joyce M. Hicks
OCC Executive Director

Attorney assigned: Samara Marion
Policy Analyst



THE BAR ASSOCIATION OF SAN FRANCISCO

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April 6, 2016

Memorandum to San Francisco Police Commission (Hand Delivered)

From: Julie Traun, Chair, Subcommittee on Data Collection and Analysis, and Stakeholder Representative on Use of Force Working Group. Bar Association of San Francisco's (BASF) Task Force on Criminal Justice

As time is limited for public comment at tonight's Commission meeting, it is prudent to circulate a number of documents and highlight broad and important concerns in writing.

1. Proposed Bureau Order on Conducted Energy Devices:

The BASF Criminal Justice Task Force, now commencing its second year, is a diverse and dedicated group, gathered to consider many aspects of the criminal justice system, focusing primarily on policing. Members represent law enforcement, academia, prosecutors, defense and civil rights attorneys, the judiciary and members of the community. (The second attachment to this Memorandum is an article recently published in BASF's magazine which describes the membership and work of the BASF Criminal Justice Task Force.)

As outlined in our letter to the Commission and DGO Stakeholder Working Group dated February 29, 2016, the voting members of the **BASF Criminal Justice Task Force voted unanimously (with one abstention) that any discussion of Conducted Energy Devices (CEDs) should be tabled** for the following reason: It is beneficial to table further discussion or review of CEDs until a later date, to give the new DGOs an opportunity to work.

Nonetheless, on Friday, April 1, 2016, the Steering Committee of the BASF Criminal Justice Task Force agreed to form a subcommittee to thoroughly analyze the proposed Bureau Order and the use of CEDs. Therefore, **we reiterate our request to table further discussion and we include an additional reason to wait: to permit sufficient time for the Task Force to undertake this work and report out to the Commission at a later date.**

BASF is not alone in this recommendation to WAIT on CED discussion. At the final meeting of your DGO Stakeholder Working Group, all community stakeholders agreed. (See page 2 of the first attachment to this letter.) In fact, **none of your community stakeholders** (with the exception of COH) **have weighed in on CEDs.**



Only police representatives participated in the discussion and recommendations if any, on the proposed Bureau Order on CEDs. Therefore to act on this Bureau Order means you have done so without the benefit of most of your community stakeholders.

In the interim, there is very important work to be undertaken on the proposed Use of Force DGOs and the (1) training and (2) data collection and analysis that we believe should accompany the new DGOs (See BASF's Memorandum to this Commission dated February 29, 2016).

2. The Inclusion of Language which is Consistent with 21st Century Policing is Important and Provides Clear Direction to Officers and the Community.

This memorandum's first attachment (2 pages) is, in part, included in the packet of supporting documents on the Commission's website. However, the commentary is not only very difficult to read, some of the comments are cut off. Therefore, language proposed, by all community stakeholders, to be included in the introductory paragraphs for ALL Use of Force DGOs is attached, with edits highlighted, and it includes the supporting commentary in full. Note: **This proposed language, the edits, and the commentary have been vetted and are jointly proposed by all community stakeholders. The commentary and edits appearing in the current version of DGOs do NOT include the finalized language and commentary from the community stakeholders.** Instead the attached was submitted separately, as agreed at the final meeting of the working group, to be included for your consideration.

3. Upcoming Reports from BASF's Task Force.

Lastly, we wish to alert the Commission about upcoming reports important to your work. The Data Collection and Analysis Subcommittee has undertaken considerable work and investigation during the last year. It is nearing completion and please look forward to our report which will be based upon our interviews with a number of police departments and experts as well as our research on best practices implemented elsewhere, and therefore tested, in 21st Century policing. Our report will include detailed recommendations on how best to collect and analyze data and integrate data with risk management and training. Of particular interest to our subcommittee is the role of body cameras in training. We hope to be of significant help to the San Francisco Police Department, about which we care deeply, and this Commission. Transitioning culture in police departments is a difficult undertaking. We trust we will be of assistance to you.

Respectfully submitted,

JULIE A. TRAUN

Chair, Data Collection & Analysis Subcommittee

BASF Criminal Justice Task Force

Director of Court Programs

Lawyer Referral and Information Service

1. Introductory Paragraphs to all USE OF FORCE DGOs.

Following the last meeting, stakeholders BASF, OCC, ACLU, PD, BRP and COH submitted these edits to the Introductory Paragraphs of all Use of Force DGOs with these comments:

The San Francisco Police Department's highest priority is safeguarding the sanctity of all human life. Officers shall demonstrate this principle in their daily interactions with the community they are sworn to serve. The Department is committed to accomplishing the police mission with respect and minimal reliance on the use of physical force by using rapport-building communication, crisis intervention and de-escalation principles using thoughtful communication, crisis intervention and de-escalation principle before resorting to the use of force, whenever feasible. The Law Enforcement Code of Ethics requires all sworn law enforcement officers to carry out their duties with courtesy, respect, professionalism and to never employ unnecessary unreasonable force. These are key factors in maintaining the legitimacy with the community and safeguarding the public's trust.

Comment [JT1]: See Comment A

Comment [JT2]: See Comment B

Comment [JT3]: See Comment C

Comment [JT4]: See Comment D

Comment A:

Stakeholders (BASF, OCC, ACLU, COH, BRP [Blue Ribbon Panel] and PD) feel **strongly** that this sentence needs to be included in the introductory paragraphs of all Use of Force DGOs. This language, committing to **minimal force**, is consistent with 21st Century policing, PERF's Re-engineering Use of Force, and mirrors/tracks the language of several departments including Oakland, Seattle, and Milwaukee. (It is also consistent with SFPD's **current** use of force policy (DGO 5.01 which states, "[i]t is the policy of the SFPD to accomplish the police mission as effectively as possible with the highest regard for the dignity of all persons and with **minimal reliance on the use of physical force**.")) The above referenced stakeholders strongly urge that deleting reference to minimal reliance on use of physical force is both a step backwards and inconsistent with current practices being urged nationally.

Comment B:

Other possible adjectives include:

"Effective," "Appropriate".

"Positive" was ruled out when Stakeholders concluded: "Drop the weapon or I'll shoot!" could be construed as either negative or positive. Given the Department's initial inclusion of the adjective "thoughtful" (which some stakeholders felt was lacking definition), those recommending the inclusion of an adjective, agreed "rapport-building" best identified the goal. All stakeholders (ACLU, OCC, SFPD, BRP, PD and COH) concur with this adjective and commentary.

Comment C:

Stakeholders (BASF, OCC, ACLU, COH, BRP and PD) urge the inclusion of "crisis intervention." Since the adoption of San Francisco Police Commission Resolution No.11-18, mental health, homeless, and disability advocates, the OCC, and other city departments have

worked in collaboration with SFPD to train officers and establish a crisis intervention team program to respond to behavioral health crisis calls. The Chief is currently reviewing a CIT DGO that the working group proposed in February 2016. The above named stakeholders agree that the Commission need not await the new CIT DGO to include the principle: crisis intervention.

Comment D:

ACLU wants to use the word “unnecessary” instead of “unreasonable”. ACLU states that the two terms are different. SFPD is using the term “unreasonable” to be consistent throughout the policies – reasonable and unreasonable.

Stakeholders (BASF, OCC, COH, BRP and PD) join in the recommendation of the ACLU. “Unnecessary” is more consistent with the goals of the new DGOs than “unreasonable.” Therefore for consistency, when “unreasonable is used in the DGOs, the above named stakeholders urge that the word “unnecessary” replace it.

2. CEDs and Stakeholders:

And the same stakeholders enumerated above, submitted these comments regarding CEDs to be included for the Commission's and DOJ's review.

“Finally, with respect to the CED Bureau Bulletin, I trust you have heard from Jeff Adachi, who consulted with Rebecca Young. He informed me yesterday that "our office's position is that we do not support the inclusion of Tasers in the Use of Force Policy. While we do not generally support tasers, we believe that any policy allowing use of tasers should be taken up independently from the use of force policy that is before the Police Commission.”

Please be certain to advise the Police Commission that SFBAR, ACLU and OCC did not in any way participate in any commentary to the proposed Bureau Bulletin for each stakeholder has taken the strong position, like that of the Public Defender, that any policy allowing use of CEDs should be taken up independently from the use of force policy and at a later time. We do not want the Commission misled by our lack of commentary. We have not commented because we hope to see how the new DGO's roll out first and some of us need additional time to study CEDs.

COH, the only stakeholder which offered commentary on Friday (unless you hear from the BRP) opposes the use of CEDs. Therefore the only other comments on Friday were provided by law enforcement, not any other stakeholders. We trust you are able to communicate this to the Commission as stated herein.”

CRIMINAL JUSTICE TASK FORCE

Addressing Community-Relationship Issues in Policing

Sharon Woo and Tom Meyer

The Bar Association of San Francisco's (BASF) Criminal Justice Task Force began work in April 2015, in the wake of Ferguson-like police and community confrontations, to address shortcomings and the role of race in the criminal justice system. The goal was to approach these issues utilizing skills that are unique to lawyers. The task force is composed of representatives (thirty-two in all) from the San Francisco prosecutor's office, the public defender's office, the criminal defense bar, the bench, law enforcement, the mayor's office, and academia, with early input from Judge LaDoris Cordell (Ret.) and Stanford psychology Associate Professor Jennifer Eberhardt, two preeminent scholars in the field of race in the criminal justice context.

The initial focus for 2015 was threefold: (1) assisting the California state legislature pass a law prohibiting the use of criminal grand juries in cases where it is alleged that the use of excessive force by the police resulted in the death of a citizen (Senate Bill 227); (2) helping establish a data collection system in San Francisco that would serve as a model for tracking and analyzing police-citizen interactions that have racial implications; and (3) making recommendations to address implicit bias in policing.

To address these three areas, the task force members organized themselves into working subcommittees, the Grand Jury Reform Subcommittee, the Data Collection Subcommittee, and the Bias in Policing Subcommittee. To these we later added a Body Camera Subcommittee, on the need for and use of body cameras, and a Civilian Oversight Subcommittee, to address civilian review of complaints against officers.

To date, we have had two notable successes. Functioning as the northern California collaborator to SB 227's southern California backers, the Grand Jury Reform Subcommittee was instrumental in getting the bill through both houses of the legislature during the summer and

CRIMINAL JUSTICE TASK FORCE

signed into law by Governor Jerry Brown in September, taking effect on January 1, 2016. This earned the task force a thoughtful letter of appreciation from the bill's author, State Senator Holly Mitchell of Los Angeles.

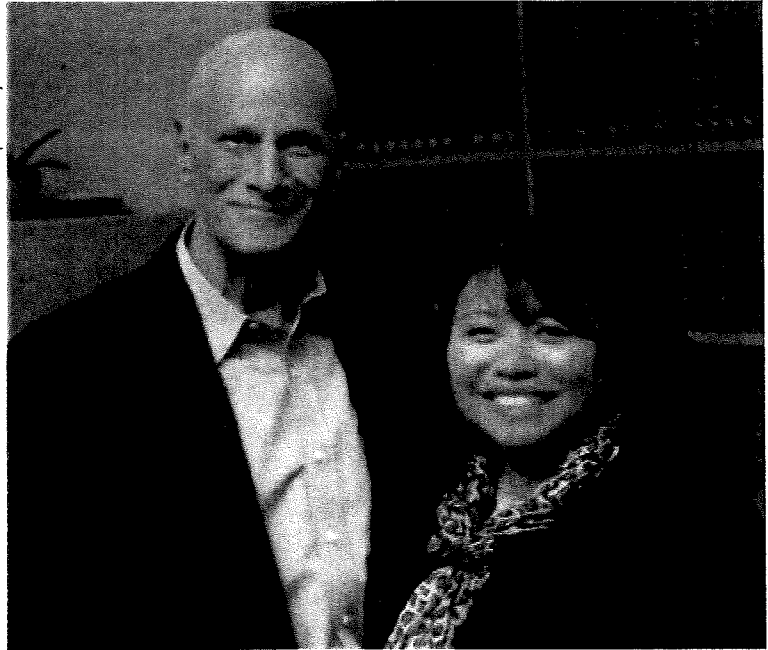
The second success was attributable to the work of the Body Camera Subcommittee, which worked in conjunction with the ACLU of Northern California and the San Francisco Public Defender's Office. The San Francisco Police Commission's initial orientation was that "police should be able to view body camera footage anytime before writing their police report." This was in stark contrast to that of task force members who disapproved of such previewing by the police in instances that resulted in "a shooting, in-custody death, or criminal investigation that involves the officer in question."

A last minute compromise, felt to be a victory by most of the task force membership, includes language that prohibits officers from previewing the video in three specific instances: (1) in an officer-involved shooting or in-custody death, (2) when an officer is the subject of a criminal investigation, and (3) at the discretion of the chief of police.

Looking toward the future, the Data Collection Subcommittee is making considerable strides in summarizing the best practices available prior to reconsidering a protocol that will be an improvement over what San Francisco has been able to accomplish to date.

Another major challenge is faced by the Civilian Oversight Subcommittee, which works on the efficacy of civilian oversight of the police. It is facing a difficult to resolve situation between the police officer's union, which pits its interest in keeping police disciplinary records from public access, over rights of the citizenry under the California Public Records Act. Since the San Francisco Police Officers Association relies on language in a decision of the California Supreme Court, *Copley Press Inc. v. Superior Court of San Diego* (2006) 39 Cal.4th 1272, that it maintains frees them from such

photo by Jim Block



From left, Tom Meyer and Sharon Woo

disclosure obligations, it appears that this impasse is headed for battle in next summer's state legislature.

Finally, the Bias in Policing Subcommittee has been focusing on ongoing training that helps officers become aware of their implicit biases and work to not allow biases to negatively affect their police work. One aspect of bias that the subcommittee has looked at is the role that minimal police hiring requirements might play as a vehicle to achieve a greater number of culturally competent recruits.

Sharon Woo and Tom Meyer are cochairs of BASF's Criminal Justice Task Force. Tom Meyer is a retired defense and civil rights attorney and a national expert on grand juries who has authored textbook chapters and articles on the subject.

Sharon Woo is the chief assistant of the San Francisco District Attorney's Office. She oversees the Operations Department, which includes the Criminal Division, White Collar Crime Division, and District Attorney Investigators Division.



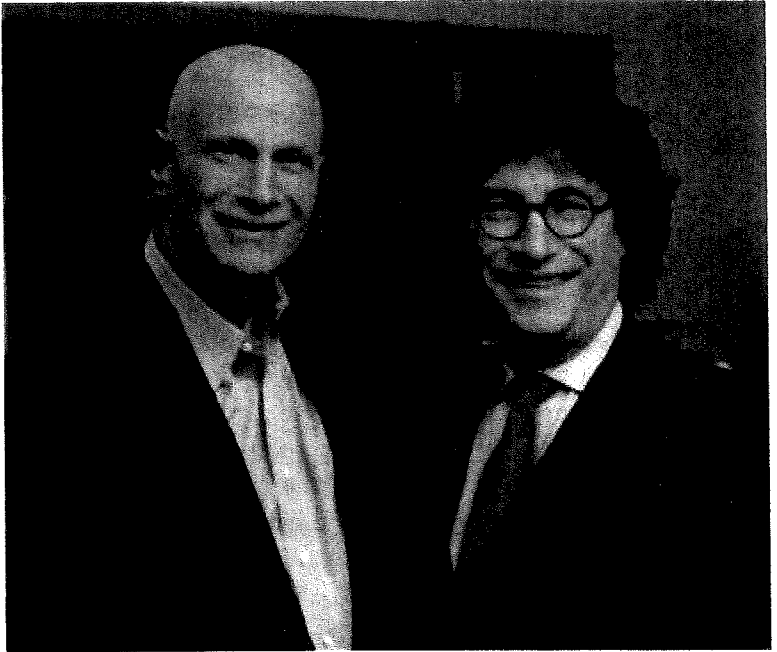
CRIMINAL JUSTICE TASK FORCE

GRAND JURY REFORM SUBCOMMITTEE

SB 227 Passes
with Help from BASF

Tom Meyer and Frank Z. Leidman

photo by Jim Block



Back in March 2015, after the grand juries in Ferguson, Missouri, and Staten Island, New York, did not indict white police officers in the fatal shootings of unarmed black men during confrontations, protests sprouted up nationwide calling for grand jury reform. At issue were the lack of transparency and oversight in grand jury deliberations, which did not involve judges, defense attorneys, or the cross examination of witnesses, but were controlled exclusively by prosecutors who often work closely on a day-to-day basis with the very officers they were called upon to indict.

To address this fundamental flaw in California's grand jury system, State Senator Holly Mitchell of Los Angeles introduced a bill (Senate Bill 227), which prohibited the use of a criminal grand jury in cases involving the fatal use of force by police officers in California. No

CRIMINAL JUSTICE TASK FORCE



sooner had the bill been submitted, than the California District Attorneys Association (CDAА) submitted its unequivocal opposition.

This was the context in which the Grand Jury Reform Subcommittee was formed. As it turned out, the timing could not have been better as far as the prospect of the bill's passage was concerned. Subcommittee members sprang into action just as the bill needed The Bar Association of San Francisco (BASF) and its ability to mobilize its resources effectively to support SB 227.

After receiving approval from the BASF Board of Directors to support SB 227, over the next several months, the subcommittee prepared a pro-SB 227 tool kit that consisted of separate written pieces on, among other matters, the exact wording of SB 227; a list of California legislators, by district, party, and contact information (including the name of the aide in charge of staffing the bill); a synopsis of the arguments in favor of passage of the bill; a proposed op-ed piece designed for the public and nonlawyer legislators; a question and answer preparation sheet on the need for the bill; and copies of letters of support from the Criminal Trial Lawyers Association of Northern California, the California Attorneys for Criminal Justice, and concerned academics and scholars, as well as a copy of the CDAА opposition letter.

These written pieces were eventually followed up by face-to-face meetings in Sacramento with leading California Senate and Assembly members, including each member of the Assembly Public Safety Committee, the Senate Committee on Public Safety, and key legislators in the Senate and Assembly and their aides. Later, the subcommittee worked closely with Senator Holly Mitchell's chief of staff to remain abreast of developments.

In preparation for the floor votes in the Senate and Assembly, the subcommittee contacted bar association officials throughout the state to inform them of upcoming votes

and the need for each of them to reach out to their respective state legislators and let them know how important it was to have their support on this access to justice issue.

After the bill cleared both houses of the legislature, subcommittee members turned their attention to Governor Jerry Brown's staff, making sure that they met with the key advisors, bringing them, particularly those who would be making recommendations to the governor, up to date on the arguments. Governor Brown signed SB 227 into law effective January 1, 2016.

Whether or not there will be a need at some point in the future for an expansion of the crime categories a grand jury is prohibited from considering remains to be seen.

Tom Meyer and Frank Z. Leidman are coauthors of the Grand Jury Reform Subcommittee. Tom Meyer is a retired defense and civil rights attorney and a national expert on grand juries who has authored textbook chapters and articles on the subject.

Frank Z. Leidman, Law Offices of Frank Z. Leidman, specializes in civil law, criminal justice, and taxation. He can be reached at frank@leidmanlaw.com.

BODY CAMERA SUBCOMMITTEE

Making Recommendations for Body Camera Protocols

Sharon Woo

The Body Camera Subcommittee discussed the potential policies and protocols that should be included in a Body Camera policy for the San Francisco Police Department (SFPD). The subcommittee included Teresa Caffese (private criminal defense), Paul Henderson (San Francisco Mayor's Office), Judge Christopher Hite (San Francisco Superior Court), Erin Katayama (Justice & Diversity Center), Freya Horne (San Francisco Sheriff's Department), Sharon Woo (San Francisco District Attorney's Office), and Judge Laurel Beeler (U.S. Magistrate Judge).

In April 2015, San Francisco Mayor Ed Lee announced that SFPD officers would be equipped with body cameras in 2016. San Francisco Police Commission President Suzy Loftus headed the Police Commission's Working Group on Body Cameras and invited a diverse group to the table to discuss policies and the implementation of a body camera protocol. The Police Commission's Working Group on Body Cameras included members of the SFPD, police officer affinity groups, community members, the ACLU of Northern California, the San Francisco Public Defender's Office, and the Office of Citizen Complaints. Teresa Caffese was The Bar Association of San Francisco (BASF) representative on the Police Commission's Working Group.

While there was consensus on many issues, there were several issues for which divergent positions were taken. The two main issues on which the Criminal Justice Task Force subcommittee focused included (1) whether body cameras should be operating at all times or should the camera be initiated under specific circumstances, and (2) whether officers may review body camera footage prior to authoring police reports.

The Criminal Justice Task Force recommended addressing one particular issue—namely whether officers may review footage prior to authoring reports. Even within the subcommittee there was lively debate. Following a vote, the task force recommended that officers not be allowed to review footage prior to writing a report in two specific circumstances: (1) in any case where there is any use of force by the officer, and (2) when the officer is the subject or any criminal or administrative investigation. Members of the BASF Board of Directors approved sending a letter urging the Police Commission to adopt this position. BASF then held a press conference to announce its position.

On December 2, the Police Commission voted and passed a tentative body camera protocol. The protocol contained language, some of which BASF supported. The passed protocol is that an officer may not review footage in specific circumstances: (1) in an officer involved shooting or in-custody death, (2) when an officer is the subject of a criminal investigation, and (3) at the discretion of the chief of police. This language limits the officer's ability to review footage in certain circumstances, a major point for BASF, as the Police Commission began its discussions by leaning toward "review in all circumstances."

Sharon Woo is the chief assistant of the San Francisco District Attorney's Office. She oversees the Operations Department, which includes the Criminal Division, White Collar Crime Division, and District Attorney Investigators Division.

The Civilian Oversight Subcommittee originally focused on both making recommendations aimed toward developing better connections between the general San Francisco community and the Office of Citizen Complaints (OCC) and improving transparency in the OCC's interactions with citizens who make complaints against San Francisco police officers. As a result of this subcommittee's early work, the OCC has adopted several of the Civilian Oversight Subcommittee's suggestions for improving OCC's website and providing complainants the ability to easily follow the progress of their complaint and to access needed information.

While the subcommittee began with the idea of working at the local level by continuing to make recommendations to the OCC or recommending a citywide audit of the agency, it became apparent to the subcommittee that the issues confronting the OCC and San Francisco citizens could best be addressed statewide with a legislative approach aimed at changing the parameters of civilian oversight to provide greater transparency to the public. The committee has shifted its focus to possible amendments and revisions to the Police Officers Bill of Rights (POBR) and to encourage a different interpretation of the California Supreme Court decision in *Copley Press Inc. v. Superior Court of San Diego* (2006) 39 Cal.4th 1272. Subcommittee members believe this is the best way to develop further transparency regarding civilian complaints and officer discipline and to inspire public confidence in the process.

The subcommittee will be working with grassroots organizations to develop a plan to address reasonable and effective changes to *Copley* and the POBR that balance the privacy of law enforcement officers with the right of citizens to have access to information about their police department. Such changes to create greater transparency are essential to improving relationships between complainants and the OCC and developing trust between San

CIVILIAN

OVERSIGHT

SUBCOMMITTEE

Improving Connections
and Transparency When
Citizens Make Complaints

Judge Christopher Hite

photo by Jim Block



CRIMINAL JUSTICE TASK FORCE

Francisco citizens and the San Francisco Police Department (SFPD).

In addition to improving relationships between the community and the OCC, members of the subcommittee in their “day jobs” litigated Supplemental *Pitchess* Motions in the criminal courts in San Francisco to ensure that complaints made against officers were fully disclosed within the bounds of the law. Criminal defense attorneys bring Supplemental *Pitchess* Motions when litigating several types of criminal cases but use them most often in relationship to defending resisting arrest charges. Defense attorneys use Supplemental *Pitchess* Motions to secure information about OCC’s complaints, investigations, findings, and decisions with respect to prior complaints made against the subject police personnel involved in the case. Such disclosure holds officers accountable for their prior actions and shines a light on the work done by OCC that had not been disclosed previously. Favorable rulings on Supplemental

Pitchess Motions are a significant step toward officer accountability and transparency.

In addition to focusing on the SFPD, the Civilian Oversight Subcommittee met with incumbent Sheriff Ross Mirkarimi and candidate for sheriff Vicki Hennessy prior to the election (Hennessy was elected sheriff in 2015) to begin discussions on developing civilian oversight of the San Francisco Sheriff’s Department (SFSD). The subcommittee discussion ranged from improving the current system of oversight in the SFSD, which is completely internal, to the potential of a new citywide oversight agency that would have jurisdiction over SFPD and SFSD.

Judge Christopher Hite was nominated to San Francisco Superior Court by Governor Jerry Brown in December 2015. Before ascending to the bench, Hite was a deputy public defender for the San Francisco Public Defender’s Office.

DATA COLLECTION SUBCOMMITTEE

Addressing Data and the
Driving Forces to Change
Police Departments

Julie Traun

The Data Collection Subcommittee includes a deputy chief in the San Francisco Police Department (SFPD), a federal magistrate judge, a senior attorney from the ACLU of Northern California, a community activist, an attorney with the San Francisco Office of Citizen Complaints, and a criminal defense attorney. The members’ considerable expertise stems from both the breadth of their experiences and their apparent differences, yet this subcommittee has become very efficient, with members leaving all their differences at the door, galvanized to learn all there is to learn about twenty-first century policing, data collection, and analysis.

The subcommittee first examined what the SFPD is able to collect electronically and, prior to undertaking any work or offering a single recommendation to SFPD,

CRIMINAL JUSTICE TASK FORCE



photo by Jim Block



Julie Traun (center), chair of the Data Collection Subcommittee, with, from left, subcommittee members Edwin Lindo and SFPD Deputy Chief Toney Chaplin

consulted extensively with Judge LaDoris Cordell (Ret.), former independent police auditor for the San Jose Police Department, Chief Robert Warshaw, appointed federal monitor for the Oakland Police Department (OPD), and John M. Klofas, a professor of criminal justice and founder and director of the Center for Public Safety Initiatives at the Rochester Institute of Technology. Thereafter, the subcommittee met with three members of the San Jose Police Department. Recently it concluded two meetings with Assistant Chief Paul Figueroa, Deputy Chief Danielle Outlaw, and Sergeant Tam Dinh of the Oakland Police Department.

This subcommittee is far from concluding its work, but clearly, every police department in the country, including San Francisco's, can prioritize data collection. And the timing of this subcommittee's work could not be better, for unlike any other time in history, there is the political will, the

technology, and the academic research to get it right.

It's clear to this subcommittee that a political mandate to gather data means very little without a concomitant plan to analyze the data thoroughly and tie it to risk management and training within police departments. Since Ferguson, departments have reacted either defensively or proactively, but few have been doing this work for as long or with as much professional outside help as OPD. For years, OPD has been working closely with an independent monitor to ensure stop data is utilized in a manner that promotes constitutional and effective policing practices, and the monitor continues to examine search recovery rates and other stop data categories closely. As the subcommittee learned, the stop data is presented and reviewed regularly for all patrol areas at monthly risk management meetings, and from top to bottom the department takes ownership of using, analyzing, and then implementing



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data-driven information. Performance indicators such as use of force, vehicle pursuits, sick leave, and personal digital recording devices (body cameras) are analyzed, and when deficiencies are identified, the captains and lieutenants are responsible for implementing intervention plans. Perhaps most importantly, OPD developed a close yet formal research partnership and technical assistance engagement with Associate Professor Jennifer Eberhardt and Stanford University. Eberhardt and her staff are currently conducting an in-depth analysis of stop data body camera footage using a variety of different benchmarks and variables; the results are anticipated in spring 2016.

While it is politically expedient to implement a plan for data collection/analysis for every police department, this subcommittee believes there are lessons to be learned about the methodology, technology, and analysis tied to

data collection, particularly from OPD. Changing a police culture takes considerable time. Change for its own sake will get us nowhere. Changes that are thoughtful, comprehensive, and designed with the help of those who truly understand twenty-first century policing are likely to be effective; we need to get it right.

This subcommittee will soon have concluded sufficient research to make significant recommendations to the SFPD in 2016.

Julie Traun, chair of the Data Collection Subcommittee, is a criminal defense attorney and the director of BASF's Lawyer Referral and Information Service's Court Program. She can be reached at jtraun@sfbay.org.

BIAS IN POLICING SUBCOMMITTEE

Making Recommendations
to Address Bias in Policing

Kate Chatfield

In 2002, the ACLU of Northern California released a report, *A Department in Denial—The San Francisco Police Department's Failure to Address Racial Profiling*. Although this report addressed only traffic stops and subsequent searches, it painted a disturbing picture of an organization that engaged in racial policing and that refused to address the issue of race in any meaningful way.

In the following decade, we have seen the magnitude of the problem. We have read about racist texts sent by San Francisco police officers. We have seen video of a group of police officers conducting illegal searches in hotel rooms and read their conflicting testimony about these searches. We have read declarations of African American defendants filed in federal court that suggest a persistent level of racial and sexual abuse by members of the San Francisco Police Department (SFPD). We have read of officers shooting the mentally ill and we

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have seen video of an African American man with a knife being shot at least fifteen times and killed by officers in the Bayview.

In order to address these serious issues, the Bias in Policing Subcommittee first spent months researching the solutions offered in consent decrees, settlement agreements, the U.S. President's Task Force on 21st Century Policing, and other research studies and reports issued by both governmental agencies and independent researchers. Subcommittee members also met with SFPD Chief Greg Suhr and discussed many ideas intended to address the issue of bias in policing.

The subcommittee worked on a list of draft recommendations related to (1) officer training, including training on ways to understand and limit the impact of subconscious associations and perceptions that compromise the ability to accurately and safely assess individuals, situations, and the threats that they present; (2) updating the policy and practices of police officers regarding use of force and reporting requirements related to the use of force; (3) transparency in disciplinary proceedings; and (4) employment and recruitment reform.

As with the Civilian Oversight Subcommittee, the Bias in Policing Subcommittee has begun to shift its focus to a statewide approach to curtailing abuses by police officers in our community. At the same time, we will continue to work with various organizations, including representatives of SFPD, to reach solutions to particular policing problems in San Francisco.

Kate L. Chatfield is a partner with the Law Office of Chatfield and Reisman. She represents clients facing criminal accusations in state and federal court. She worked with the poor and homeless for many years, cofounding a homeless shelter, dining room, and supportive housing program in San Bruno. She can be reached at katechatfield@gmail.com.

photo by Jim Block

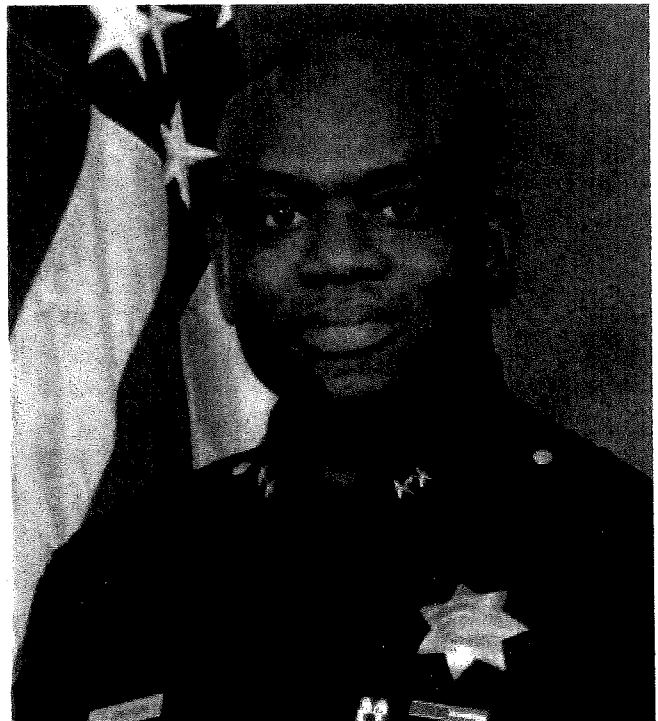


Kate Chatfield

TONEY CHAPLIN NAMED DEPUTY CHIEF TO LEAD NEW BUREAU WITHIN SFPD

In the wake of Ferguson, San Francisco Police Department's (SFPD) racist texting, the death of Mario Woods, and the recent announcement of the Department of Justice's two-year comprehensive review of SFPD's policies and procedures, on February 13, 2016, BASF Criminal Justice Task Force member Commander Toney Chaplin was promoted to deputy chief and will lead Professional Standards and Principled Policing, a new bureau in SFPD. This historical development is significant, because since the formation of the Department of Homeland Security after September 11, 2001, no bureaus have been created. Chaplin's bureau will work directly with the Department of Justice (DOJ) in an effort to be proactive, rather than reactive to the DOJ's recommendations. Chaplin and Chief Greg Suhr believe changes should be initiated immediately and on an ongoing basis; waiting for final DOJ recommendations is not an option. The bureau will include the following units: behavioral science, hostage negotiation, bulletins and directives, and community youth and engagement.

Deputy Chief Chaplin is a twenty-six-year veteran of SFPD. Community engagement is not new to Chaplin; he explains he's always served communities of color and was one of the originators of TNT (Taraval Neighborhood Team), a group of police officers who developed a program to engage youth in the Oceanview neighborhood. The officers found that mentoring, along with fishing and camping trips, did more to curtail violent crime than prior police efforts that focused exclusively on law enforcement. Chaplin has since served in narcotics, gangs, and as a lieutenant with Northern Station and the homicide division. He was named commander of investigations one year ago, and part of his work included a very active role



Deputy Chief Toney Chaplin

on BASF's Criminal Justice Task Force. His commitment to and involvement with the data collection and analysis work has been essential to the work of the task force as a whole. He explains that his work with the task force "has been life altering and career defining. This task force comprises a wide array of talent; in one room and over a short time period the forward-thinking and fast-moving work has made for a fantastic experience." He will continue and expand on his work with the task force, knowing that the thoughtful and thorough work of this diverse group will play a very important role in criminal justice reform and the direction of the new bureau.

CRIMINAL JUSTICE TASK FORCE



photo by Jim Block



Chairs

Tom Meyer, Attorney at Law

Sharon Woo, San Francisco District Attorney's Office

Task Force Members

Yonina Alexander, Sanford Heisler Kimpel

Hon. Laurel Beeler, United States District Court

Teresa Caffese, Law Offices of Teresa Caffese

Deputy Chief Toney Chaplin, San Francisco Police Department

Kate Chatfield, Law Offices of Chatfield and Reisman

Susan Christian, San Francisco District Attorney's Office

Nanci Clarence, Clarence Dyer & Cohen

Eric Fleming, San Francisco District Attorney's Office

Manuel Fortes, San Francisco Office of Citizen Complaints

Matt Gonzalez, San Francisco Public Defender's Office

Stuart Hanlon, Law Offices of Stuart Hanlon

Paul Henderson, San Francisco Mayor's Office

Joyce Hicks, San Francisco Office of Citizen Complaints

Freya Horne, San Francisco Sheriff's Department

Hon. Teri Jackson, San Francisco Superior Court

Yolanda Jackson, The Bar Association of San Francisco and

Justice & Diversity Center (JDC)

Erin Katayama, JDC's Homeless Advocacy Project

Frank Z. Leidman, Law Offices of Frank Z. Leidman

Whitney Leigh, Gonzalez & Leigh

Edwin Lindo, Community Activist

Suzy Loftus, Office of the Attorney General

Sharon Meadows, University of San Francisco School of Law

Felicia Medina, Sanford Heisler Kimpel

Timothy Moppin, Bassi Edlin Huie & Blum

Alan Schlosser, ACLU of Northern California

Brian Stretch, U.S. Attorney's Office

John Trasviña, University of San Francisco School of Law

Michael Tubach, O'Melveny & Myers

Advisory Members

Clothilde Hewlett, Cal Alumni Association

Hon. Chris Hite, San Francisco Superior Court

Experts/Consultants/Presenters

Jeff Adachi, San Francisco Public Defender's Office

Jennifer Eberhardt, Stanford University

Hon. LaDoris Cordell (Ret.)

George Gascón, San Francisco District Attorney's Office

BASF Liaisons

Raquel Cabading, The Bar Association of San Francisco

Julie Traun, The Bar Association of San Francisco

Betsy Wolkin, The Bar Association of San Francisco



April 6, 2016

Chief Greg Suhr
President Loftus
Vice President Turman
Commissioner DeJesus
Commissioner Mazzucco
Commissioner Hwang
Commissioner Melara
Commissioner Marshall

Police Commission Office
San Francisco Police Headquarters
1245 3rd Street
San Francisco, CA 94158

Dearest Chief and Commissioners,

Thank you for the opportunity for the Coalition on Homelessness to participate on the Use of Force working group. Often times, the voices of homeless people are left out of policy debates, and as a community that by virtue of living outdoors encounter law enforcement regularly, use of force policy is a great importance to the homeless community we work to represent. We see this conversation as a great opportunity for San Francisco to pave the way in reimagining use of force practices and build an even greater department, and commend the Departments efforts in this direction. We recognize how difficult this kind of systemic change is to take on, in SF and across the country, and we are hoping the Commission takes the courageous leadership necessary to forge this change.

As an organization that works in collaboration with many city departments, stakeholders and members of the homeless community, we were dismayed at the hard line the large number of representatives from various police officers associations took, and the lack of acknowledgement for the need for change in our embattled police department that has lost the trust of great parts of the community. Police depend on solid relationships with the community to do good work, as trust is a critical component of solving and addressing criminal activity. There was clearly a large chasm between what is acceptable in terms of use of force from the community perspective, and what police officers were advocating for.

We have four general points we would like the Police Commission to adopt throughout the Use of Force policies.

1) Retract references to “reasonable” force

As outdated as it is, the two-decade-old 1995 standing Use of Force DGO was a model in its own right in moving away from the use of “reasonable” force. The language states “with minimal reliance upon the use of physical force” and “to the degree minimally necessary to accomplish a lawful police task”.

The Police Executive Research Forum (PERF), in their report “Re-Engineering Training of Police Use of Force”, recommends “minimal use of force” and in another January, 2015 report, “Use of Force: Taking Policing to a Higher Standard” states that police departments should hold themselves to a higher standard than the legal requirements of *Graham vs. Connor*. Many cities have done just that, and used language of “minimal force” instead of the *Graham vs. Connor* reasonable force, including but not limited to New Orleans, Las Vegas, Washington DC, Chicago, Portland, Albuquerque, Seattle, Milwaukee, and Oakland, to name a few.

COH believes that using the word “reasonable” with regards to force indicates a huge step backwards over two decades. It indicates the very lowest possible bar, and centers on officer safety and what is “reasonable” for a police officer and does not embrace sanctity of life with regards to the public. We believe that the spirit of this effort is to move towards “community acceptable” standards, which would suggest the use of the word “minimal force”, in the introductory sentence and throughout.

2) Mandatory Language for De-Escalation

Throughout the document, the language around using de-escalation must be mandatory. The language in the proposed DGO allows for contingencies, “when feasible and safe” to use verbal de-escalation. We strongly recommend that language should state “shall” use verbal de-escalation when feasible and safe. In deconstructing the reason to have permissive language that recommends instead of dictates, it boils down to accountability. The only reason to have permissive language is to ensure officers are not held accountable to a higher standard that the community expects.

There are many cities that include “will”, “shall”, must” instead of the permissive and suggestive language of “should”, or “may” including New Orleans, Albuquerque, Chicago, and Cleveland.

This is critical to avoid expensive lawsuits, to ensure the language of the DGO reflects the spirit of the vision of the new direction of the Police Department, to increase both officer and public safety, and to ensure clarity of instruction to officers.

3) Remove Electronic Control Weapons From Discussion

In the midst of trying to move forward as a department to address the very real issues associated with current Use of Force policies, a decision was made by the Department to introduce Electronic Control weapons as part of that discussion. This threw a proverbial wrench into what was already a very complicated discussion, enflamed distrust and

frustration among community members, and sent a contradictory message that included sanctity of life, time and distance, de-escalation and contradictory a new often lethal weapon.

As you know, we have looked very closely at this proposal in the past, and while at first glance, electronic control devices appear to be a good alternative to a gun, once we dug deep into the research and outcomes, we have come to the solid conclusion that they are a very unsafe option.

In my previous letter, I outlined many of the medical concerns (attached). Since then there have been several new studies coming out that further indicate the dangers and doubts of the use of these weapons. In addition to safety concerns, new information indicates to disproportionate use on African Americans. For example, a Maryland study found the 64% of the time; these weapons were discharged on African Americans. In addition, a C.O.P.S. report in Salinas, found that the police department there did not follow their own policies, and greatly over-used the weapons.

4) Consider and Implement Crisis Intervention Team DGO

We need to fully operationalize the Crisis Intervention Team as our safeguard from officer-involved shootings. There are mainstream experts who agree and their expertise supports our lived experiences. This program has only been partially implemented, focusing mostly on training, but missing the operations component. Throughout this process, we have been regularly advised by the Department that the draft CIT DGO would be considered alongside the rest of the discussion. This has not happened to date, and there are many components that intersect with DGO 5.01. This must be prioritized within the broader discussion, and this DGO should be implemented alongside the Use of Force orders.

5) Ensure Data Collection on Use of Force

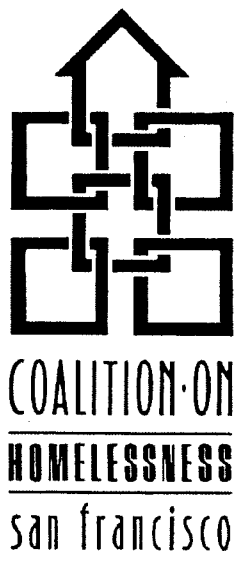
This is clearly needed – we must have transparent information on use of force that is accessible to the public. This should be outlined in the DGO.

We thank you for your service to our community and for holding open, community forums to gather the feedback and concerns from the citizens of San Francisco. We urge you to make a decision that best supports the entire city.

Respectfully,



Jennifer Friedenbach
Executive Director



January 5, 2016

Chief Greg Suhr
President Loftus
Vice President Turman
Commissioner DeJesus
Commissioner Mazzucco
Commissioner Hwang
Commissioner Melara
Commissioner Marshall
Police Commission Office
San Francisco Police Headquarters
1245 3rd Street
San Francisco, CA 94158

Dearest Chief and Commissioners,

We were very dismayed to learn that Electronic Control Weapons were being introduced once again after the death of Mr. Mario Woods. We do not believe the introduction of another, often lethal; weapon is the appropriate response to this tragedy. We believe there are many other pathways this incident could have taken, such as Officers being given alternative instructions, told to slow down and wait, to back away from the subject and utilize verbal de-escalation techniques. These would have potentially led to a much different outcome.

As you know, we have looked very closely at this proposal in the past, and while at first glance, electronic control devices appear to be a good alternative to a gun, once we dug deep into the research and outcomes, we have come to the solid conclusion that they are a very unsafe option.

We need to fully implement the Crisis Intervention Team as our safeguard from officer-involved shootings. There are mainstream experts who agree. We hope you can appreciate how their expertise supports our lived experiences and you will be able see the grave mistake that introducing Tasers would be for San Franciscans, and especially for our most vulnerable populations.

What the Medical Community Says

Independent, peer-reviewed research by cardiologists leaves no doubt that Tasers are harmful and often deadly. It's easy for members of the public to be confused about how dangerous Tasers really are. This is because Taser International has spent a lot of money to control public knowledge about Tasers, paying researchers and even suing coroners who have determined Taser shock to be the cause of death. Cardiologists at UCSF say that one way

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As you know, we have looked very closely at this proposal in the past, and while at first glance, electronic control devices appear to be a good alternative to a gun, once we dug deep into the research and outcomes, we have come to the solid conclusion that they are a very unsafe option.

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Respectfully,



Jennifer Friedenbach
Executive Director

to cut through this disinformation is to consider funding source and author affiliation when evaluating researchers' claims about Taser safety.ⁱ

During his time as Director of the Electrophysiology Laboratories and Clinics in UCSF's Cardiology Division, Dr. Byron Lee analyzed the conclusions of Taser safety studies funded by Taser International, and compared these studies to independent studies. Lee and his colleagues found that "the likelihood of a study concluding TASER® devices are safe was 75 percent higher when the studies were either funded by the manufacturer or written by authors affiliated with the company, than when studies were conducted independently."ⁱⁱ Cardiologists at UCSF caution that many studies commissioned by Taser are biased, and that Taser's conclusions do not apply to real-world situations. "When you read articles that are very favorable to the device, invariably you will see that one of authors is affiliated with the company making Tasers or sitting on the board," Dr. Lee explained.

Dr. Zian Tseng, a cardiologist at UCSF, told reporters that after he published his findings about the dangers of Tasers, representatives of the Taser company contacted him, urged him to reconsider, and even offered to fund his future research. Dr. Tseng refused this offer. He has since spoken out publicly about the harms of Tasers on many occasions.ⁱⁱⁱ

In addition, Dr. Douglas Zipes, a cardiac electrophysiologist at the University of Indiana found that Tasers have caused cardiac arrest and death in people who were shocked by police. Researchers agree that people with mental illness, especially those who may be using medications or drugs, are at even greater risk of sudden death.^{iv}

In an interview with ABC news, Dr. Zipes explained how Tasers could cause sudden death by stopping the heart. Dr. Zipes's research discussing how Tasers caused cardiac arrest was published in the peer-reviewed journal of the *American Heart Association*. Dr. Zipes told ABC news: "It is absolutely unequivocal based on my understanding of how electricity works on the heart, based on good animal data and based on numerous clinical situations that the Taser unquestionably can produce sudden cardiac arrest and death." Dr. Zipes has also been called to testify as an expert witness about the ways in which Tasers damage the human heart.^v

We're lucky to have independent medical experts right here at UCSF. We urge the commissioners to listen to what medical experts say about the potentially fatal outcome of 50,000 volts being shot into a person's heart.

We know that Tasers are harmful and often deadly, especially for the population that SFPD's Crisis Intervention Team will encounter. But some police officers might still wonder whether Tasers might reduce rates of officer injury or death by reducing the use of guns. This claim, which sounds reasonable at first, has actually been **tested and proven false by cardiologists at UCSF!**

Statistically, adding Tasers means more weapons, which translates into higher death rates. Attached is a graph of what happens when police departments get Tasers [see attachment].

Dr. Tseng and his colleagues analyzed all available data from California police departments after Tasers were introduced. They found that death rates actually increased after Tasers were introduced into departments! Dr. Tseng's findings give us a statistical picture of what happens when police departments add Tasers.

Please review these direct quotations from Dr. Tseng's article entitled, "Relation of Taser Deployment to Increase in In-Custody Sudden Deaths" which was published in the *American Journal of Cardiology* in 2009.^{iv} Although Tasers are *marketed* as a safer alternative to subdue prisoners and suspects in law enforcement custody, recent reports have described a temporal association between use of stun guns and over 300 in-custody sudden deaths in North America."

In this epidemiologic study of police and sheriff departments of moderate to large cities in California using Tasers, we found a statistically significant **6.4-fold increase in the rate of in-custody sudden deaths not involving lethal (firearm) force in the first full year of Taser deployment compared with the pre-deployment period**. Although Taser use has been *advertised* to decrease Lethal Force Deaths (by firearms) and prevent Officer Injuries, we observed **no decrease** in the rate of either event after Taser deployment. To the contrary, departments had a twofold increase in the rate of Lethal Firearm Deaths in the year of Taser deployment and the first full year after deployment, whereas the rate of serious Officer Injuries requiring visits to an emergency room was unchanged." (2009: 879). "...We speculate that early liberal use of Tasers may have contributed to these findings, possibly escalating some confrontations to the point that firearms were necessary" (Tseng et al. 2009: 879).

There have already been a number of lawsuits against Taser International for misinforming police departments about the dangers of Tasers, and against police who accidentally killed people with Tasers.^{vi} Tasing CAN kill. We need to pay attention to what medical doctors say to protect San Francisco from these tragic consequences. Enclosed you will find a list of medical conditions that puts those individuals at great risk if tasers are used on them, and also list the need for defibrillators and training on use of defibrillators in police cars. It should be noted that medical personnel must remove the probes from individuals after administering electronic control.

What the Civil Rights Community Says

The Civil Rights community has made it very clear that they do not stand in support of Tasers being introduced to SFPD. In a report produced by the ACLU of Northern California, legal experts outline the dangers that Tasers pose to vulnerable people in the city given the shown increase in officer involved shootings after Tasers are introduced: "Interactions with these high-risk groups, namely those in mental crisis, accounted for the substantial part of the police work in San Francisco. San Francisco's emergency dispatch center receives more than 10,000 mental health calls for service per year, about 30 mental health calls per day. Additionally, a KQED review of 51 San Francisco officer-involved shootings between 2005 and 2013 found that 58 percent — or 11 people — of the 19 individuals killed by police had a mental illness that was a contributing factor in the incident.

The link between elevated risks of Taser injury and these high-risk populations is virtually undisputed.”

An Amnesty International Report from 2001 and 2008 shows that African-Americans represented 45% of Taser deaths and are only 12% of the national population. The ACLU also highlights the particular risk that Tasers pose for the African-American community in San Francisco “An article investigating the SFPD found that use of force among officers was not only ‘alarmingly high,’ but that 40% of the victims of excessive force were African-Americans who make up less than 8% of San Francisco’s population” at that time.

From a national perspective, Assistant Attorney General for the Civil Rights Division Thomas E. Perez gave a press conference regarding a review of the city of Portland police department’s lethal use of Tasers against people experiencing mental health crisis. One of the more potent points in his presentation was: “Based on our review, we have concluded that, while most uses of force were lawful, there is reasonable cause to believe that PPB is engaged in a pattern or practice of using excessive force against people with mental illness, or those perceived to have mental illness. We found that encounters between PPB officers and persons living with mental illness too frequently result in a use of force, or in a higher level of force than necessary. We further found that, when dealing with people with mental illness, PPB officers use electronic control weapons, or tasers, in circumstances where the use of tasers was not justified, or deploy them more times than necessary. Finally, in situations where PPB officers arrest people with mental illness for low-level offenses, we found that there is a pattern or practice of using more force than necessary in these circumstances. “

San Francisco does not need to go down the same road as Portland who had their Tasers removed from the department after this scathing review. We have the opportunity to stop it from ever becoming a citywide problem.

Alternatives to Tasers

Nationally, there is movement towards re-imagining use of force and moving away from a reliance on weapons. This is supported by a recent report released by the Police Executive Research Forum (PERF), entitled “Re-engineering Training on Police Use of Force”. In this report they state, “As the PERF Board of Directors understood nearly a year ago in the immediate aftermath of the demonstrations in Ferguson, there has been a fundamental change in how the American people view the issue of police use of force.” They caution that many of the recommendations will be hard to hear “because leading police chiefs are saying that our practices need to change dramatically.” In summary, they recommend “its time for an overhaul of police training, policy, supervision, and culture on use of force” and they emphasize that verbal de-escalation is one of many ways in which the training of police officers can be improved.

We believe that we already have the tools needed to de-escalate and respond to people experiencing mental health and psychiatric crisis. In drop-in centers, shelters, and service provider’s offices we respond to and transform these experiences on the daily. And time and time again we have offered and provided our services and training to SFPD in effort

to shift the culture within the department. We believe that if the leadership in the department prioritized opportunities like the Crisis Intervention Team, Tasers would be a non-issue. San Francisco has made great strides in moving towards CIT, since 2012 when it was approved by the commission, and training was implemented, there has been a marked decrease in use of force incidents. However, there is a long way to go in fully implementing this program. This includes ensuring training has much higher proportion of hands on practical training in de-escalation techniques, changing the use of force general order overall and specifically for people in psychiatric crisis, and ensuring the "team" model is fully implemented, including a tactical plan at the scene, and then ensuring regular analysis of effectiveness and techniques, and folding that learning into training and planning at future incidents.

Tasers are not an alternative to guns—they are supplemental weapons with a primary purpose of harming and incapacitating a suspect through pain. The only alternative proven to save lives and reduce harm to both civilians and police officers is an effective Crisis Intervention Team. In fact, CIT programs across the country recognize that non-violent, verbal de-escalation techniques have (1) improved the crisis response time, (2) decreased the number of arrests and instances of use of force, (3) decreased patient violence and use of restraints in the ER, (4) lowered the officer injury rate when responding to crises, (5) improved cost savings, and (6) led to a "better trained and educated" police department.

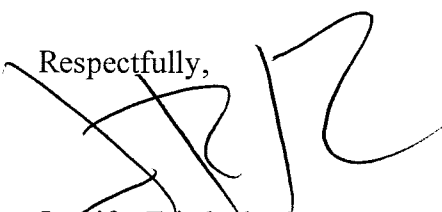
In one program, "Officer injury data has decreased by seven-fold since the program inception. University of Tennessee studies have shown that the CIT program has resulted in a decrease in arrests rates for the mentally ill, an impressive rate of diversion into the health care system, and a resulting low rate of mental illness in our jails."

No weapons, including Tasers, have had such a positive impact on a police force and the neighborhoods they patrol. CIT is the only alternative to guns and violence in which police officers and the citizenry are safer, smarter, and just.

We do not want Tasers to be a part of the SFPD. San Francisco doesn't want Tasers. San Francisco can't afford Tasers. San Francisco doesn't need Tasers.

We thank you for your service to our community and for holding open, community forums to gather the feedback and concerns from the citizens of San Francisco. We urge you to make a decision that best supports the entire city and reject this proposal for introducing Tasers to SFPD.

Respectfully,



Jennifer Friedenbach
Executive Director

ⁱ <http://www.ncbi.nlm.nih.gov/pubmed/21884872>

ⁱⁱ <http://www.universityofcalifornia.edu/news/article/25498>

ⁱⁱⁱ <http://www.cbc.ca/news/canada/british-columbia/story/2008/05/12/taser-inquiry.html?ref=rss>

^{iv} Dr. Tseng and his colleagues say that studies of Tasers based on their controlled application to healthy police officers that are lying down are not generalizable to “real world” situations (2009: 878-879). Here’s a direct quote from Dr. Tseng’s article: “Police suspects would be expected to have unique physiologic (hyperadrenergic state), environmental (restraint techniques, multiple Taser applications near the heart on the torso), and external (illicit drugs) influences, any of which may make them more vulnerable to sudden death” (2009: 879).

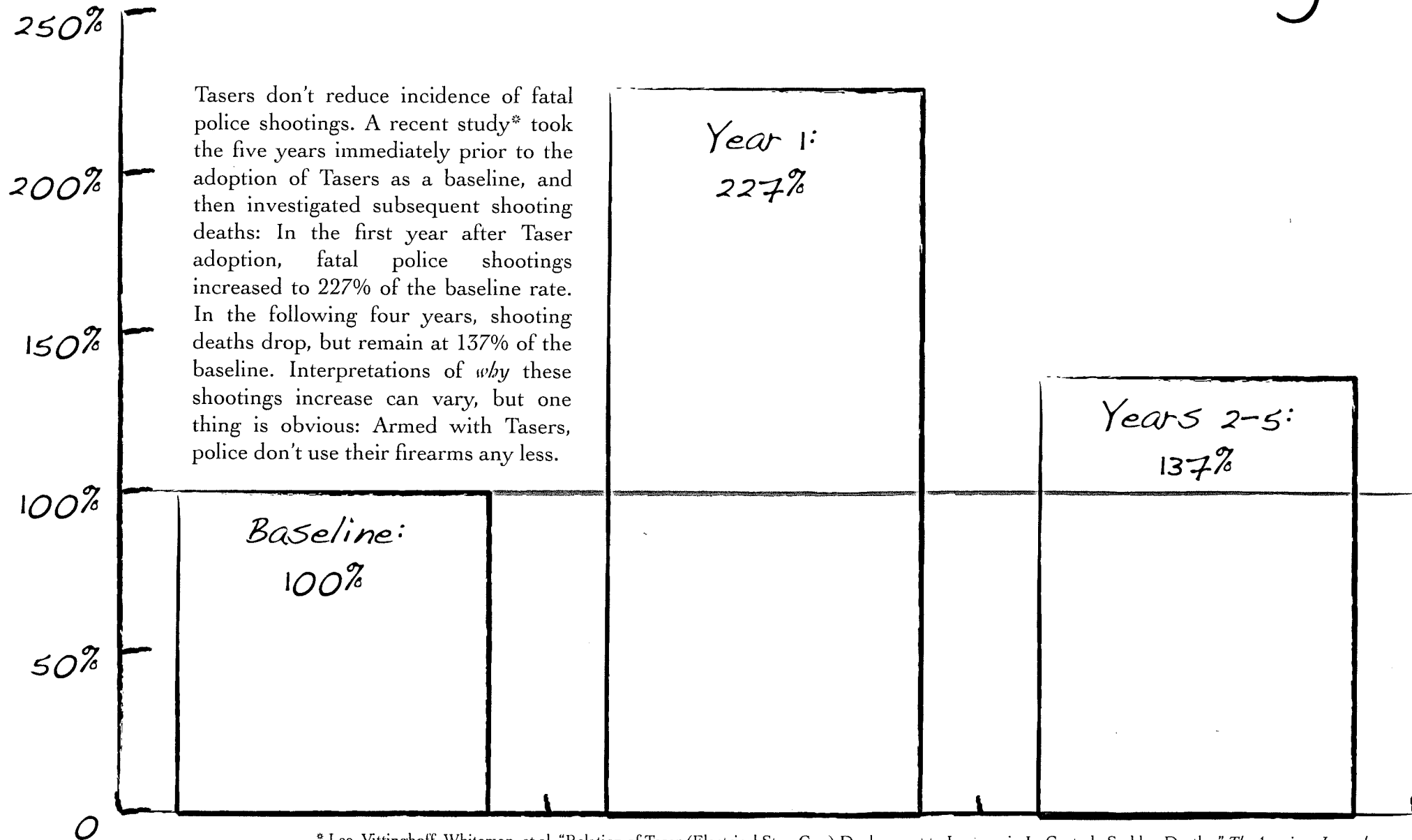
The San Francisco Mental Health Board Resolution against Tasers states: “WHEREAS, the risk of Taser injuries and/or death is heightened for the mentally and emotionally ill who, in a crisis may be potentially unable to connect actions to consequences and may resist police even in the face of stepped-up force; and, WHEREAS, research has found patients taking prescribed antipsychotic medications are already at increased risk of sudden cardiac death if tasered (Straus et al, 2004); and,

WHEREAS, people in states of acute agitation resulting from mental illness have been associated with unexplained deaths in custody. (Robison & Hunt, 2005)... THEREFORE, BE IT RESOLVED that the Mental Health Board of San Francisco urges the San Francisco Police Commission and the SFPD to oppose the adoption of Tasers to SFPD C.I.T trained officers.”

^v http://www.abcactionnews.com/dpp/news/local_news/investigations/american-heart-association-publishes-study-claiming-tasers-can-be-cause-of-death

^{vi} For example: <http://www.wcnc.com/news/local/NC-family-awarded-10M-in-lawsuit-against-Taser-125907818.html>

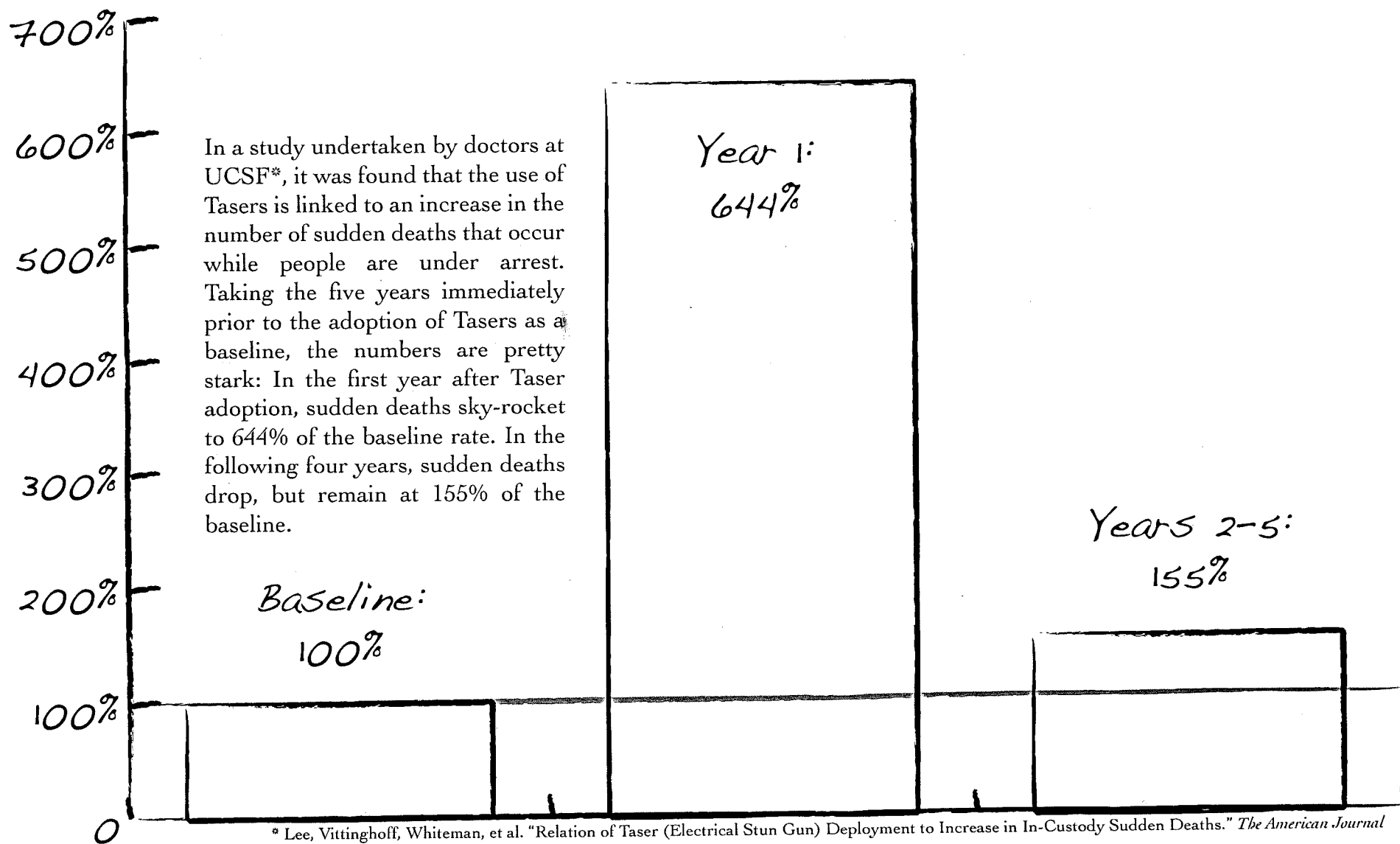
Tasers Don't Reduce Shootings



Tasers don't reduce incidence of fatal police shootings. A recent study* took the five years immediately prior to the adoption of Tasers as a baseline, and then investigated subsequent shooting deaths: In the first year after Taser adoption, fatal police shootings increased to 227% of the baseline rate. In the following four years, shooting deaths drop, but remain at 137% of the baseline. Interpretations of *why* these shootings increase can vary, but one thing is obvious: Armed with Tasers, police don't use their firearms any less.

* Lee, Vittinghoff, Whiteman, et al. "Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths." *The American Journal of Cardiology*. 103 (6): 877-880.

Tasers Kill



* Lee, Vittinghoff, Whiteman, et al. "Relation of Taser (Electrical Stun Gun) Deployment to Increase in In-Custody Sudden Deaths." *The American Journal of Cardiology*. 103 (6): 877-880.

SFPD CRISIS INTERVENTION TEAM PROGRESS ANALYSIS PATHWAY TO FULL IMPLEMENTATION

THE FOUNDATION

The SFPD has made considerable progress implementing Crisis Intervention Team within the San Francisco Police Department. This has resulted in decreased use of force by officers responding to those in psychiatric distress. However, many of the recommendations in the original resolution passed by the Police Commission have yet to be implemented.

WHAT HAS BEEN ACCOMPLISHED

The training has been developed and put in place, with over 300 sworn officers trained in a 40 hour training.

The Chief has committed to training all new recruits, and has added this training onto their academy training. The plan is for all officers to receive basic CIT training and the number of trainings has been increased.

Emergency dispatch has developed and implemented protocol for dispatching CIT trained officers to those instances where individuals are in psychiatric crisis.

CIT DGO has been drafted by Office of Citizen Complaints with input from mental health advisory board.

Administration and brass level support has been supplied to CIT. This includes staffing to coordinate training, assigning of commander to attend meetings, and assignment of Lieutenant and Commander to oversee operations.

Chief has agreed to assign data analyst to project to track progress and analyze results in terms of decreased use of force—part of this data collection involves an electronic form CIT officers will fill out for CIT incidents per the CIT DGO

CIT has been promoted by introduction of awards ceremony, and awarding of trained officers with pin.

Chief implemented 20 hour advanced officer training every 2 years that includes verbal de-escalation scenario training.

WHAT IS STILL TO BE DONE

I. Vertical Support for the Program

CIT is not simply training; it is a program that needs institutional support at each district station and from the top down. The Captains at each station need to attend CIT training, actively advocate and support this program; each district station is supposed to have two CIT liaison officers, one of whom is a sergeant, who are to assist with trainings, scheduling etc. Field training officers and sergeants need to be CIT trained so that they are trained in these de-escalation skills and body of information etc. and are able to oversee their subordinates who are CIT trained.

II. Operationalize "TEAM" portion of the project.

SFPD has not operationalized CIT, and it needs to move beyond a training program. The Department needs to make sure that DEM dispatches for CIT officers when needed, and that SFPD responds with CIT officers and allow these officers to develop a plan to de-escalate at the scene. The Mario Woods tragedy is a prime example. It appears from news reports that there were multiple signs he was in behavioral crisis. However, it doesn't appear CIT officers were specifically dispatched to the scene. And certainly, it doesn't appear they were given any authority to develop a plan to use communication and de-escalation at the scene. Moreover, supervisors of CIT officers also need to be trained in CIT.

Assignment of CIT senior officers to be in charge at scene of crisis

Training new recruits on CIT is good, however, they should not be dispatched as primary responders to individuals in psychiatric crisis. New recruits do not have law enforcement experience and may not be particularly skilled at responding to behavior crisis calls. Just as all officers would not make good hostage negotiators, and are required to have five years experience and volunteer to be a negotiator, when CIT was first adopted through the Police Commission resolution, CIT officers had to apply to be a CIT officer and needed three years of law enforcement experience. The working group and the draft CIT DGO have proposed having advanced CIT officers who have volunteered for the program, have three years of law enforcement experience & taken the 40 hour class in contrast to CIT certified officers who have taken the 40 hour class.

Training must be specific to creating a tactical plan—that involves input and evaluation not only from CIT trainers but also from Police Academy's Use of Force trainers.

Advanced training for CIT senior officers

Proposed DGO and Police Commission resolution requires CIT officers to refresh their training every two years—a type of "advanced officer training" with the notion that all of these skills are perishable. There's been no refresher training since February 2011 Police Commission resolution. This refresher/advanced officer training is a core aspect of building the CIT program because this training would build upon the 40 hour training and address the ongoing challenges officers are seeing in CIT calls. Part of any specialized team—the tactical teams, the

hostage and negotiator teams—involves advanced training and opportunities to acquire more skill etc. This has never happened.

Creation and Review of Tactical Plan before Approaching Person in Crisis as Led by Senior CIT officer

There is no mechanism right now for CIT coordinator & CIT officers to review use of force incidents, and identify tactics in the same manner that a tactical team or hostage negotiators will review incidents, trouble shoot etc.—this is the type of infrastructure that is needed.

The proposed DGO and the Police Commission resolution stated that CIT officers were to receive supervisory training so that they could assume control of the scene. This is more imperative than ever because now there are CIT officers (new recruits) who have no experience but have received CIT training and CIT advanced officers (who are CIT certified & have 3 years of police service) though they still need training in how to assume control of a scene.

Imperative to the this process is a review of use of force incidents in order to identify those tactics that resulted in decreased use of force and those that resulted in increased use of force, and fold into training modules.

Selection process for CIT officers - Currently, SFPD does not have an application process for officers to become advanced CIT officers. Key to success is for officers to volunteer to become advanced CIT officers. In addition, SFPD has yet to implement a selection process for officers to apply to become CIT officers. Not all officers can become CIT officers. It's for those who have the interest, experience, patience, and people skills to become great CIT officers. Currently, it appears SFPD sends whoever is available to the trainings.

Refresher training

A one time training is not enough. Refresher training is needed to maintain and further develop skills of CIT officers.

Data collection

It's been 5 years since the Police Commission adopted the resolution to implement CIT, however, SFPD has yet to provide any significant data to the CIT working group, or to do an analysis of the effectiveness of the program. This is in process, but there is a need to ensure it materializes.

Analysis of DEM dispatch

Conduct analysis of whether DEM is actually dispatching CIT officers as first responders. Although the capacity is there, there has been no analysis to see if DEM is identifying calls as a behavior health crisis call and a CIT officer is being dispatched.

Regular Debriefs on Crisis Incidents

When we traveled to Memphis to study their CIT program, Major Cochran and Dr. Dupont emphasized that debriefs of incidents with mental health providers and the police would help to improve both police response and mental health services delivery. The SF CIT working group has asked SFPD for debriefs countless times. This has yet to happen.

Concern About ECD/Tasers

Because CIT has yet to be fully implemented, now is not the time to give officers tasers. Training and operationalizing communication and de-escalation skills should be top priority and this can easily be derailed with the introduction of tasers, which often are used not to avoid use of a gun, but instead to obtain compliance from individuals.

II. Implementation of CIT DGO.

It is imperative that the CIT DGO be considered at the same time SFPD is rewriting its use of force policy because the CIT DGO involves a “re-engineering” of SFPD’s use of force policy and the CIT DGO and SFPD’s use of force DGOs (DGO 5.01 and 5.02) have to be consistent. The DGO must match the CIT program design to ensure correct implementation.

CIT DGO designates advanced CIT officers as individuals who have 3 years law enforcement experience, taken the 40 hour training and volunteered to be a CIT officer. These individuals are distinguished from recruits who are required to take the 40-hour CIT training though they lack the law enforcement experience and they may not be best suited to respond to CIT calls.

III. Improvement of Training Portion of CIT

Decrease Reliance on Volunteer Trainers

Training is reliant on community volunteers, which may prove difficult as number of training hours is increased with training of recruits and advanced training. Stipends are a cost efficient form of payment of trainers that will prove necessary going forward. The number of trainings is moving from 4 per year to 12.

Increase De-Escalation Portion

Training itself needs to be greatly modified to include at least 30% time spent practicing de-escalation techniques with paid actors and de-escalation experts in which the actors and trainers have training in providing feed-back. A recent study showed that key aspect of successful training is the feedback given to each officer after every scenario—a senior facilitating officer focused on officer performance and safety, a mental health professional who addressed mental health aspects, and professional actors who were trained to provide feedback regarding police behavior. (see How to Improve Interactions Between Police and Mentally Ill, Yasmeen Krameddine and Peter Silverstone, January 14, 2015, Frontiers in

Pshychiatry, Vol.5, Article 186.)

Incorporate Real Life Lessons

Training needs to incorporate lessons from real time successful and failed police interventions. Data analysis and findings should continuously shape training materials.

IV. Promotion of CIT within the department

In order to change culture and create a program that is widely respected within the department, it has proved successful in other localities to expend efforts on promoting the program.

Website

Utilize SFPD's website to promote CIT, incorporate real life story telling of positive resolutions of CIT calls, highlight CIT resources, and training.

Advancement

Provide status/benefits/recognition to advanced CIT officers similar to Hostage negotiators and Tactical officers. Ensure advanced CIT trained officers receive credit for promotions. In addition, the department should introduce pay deferential or other means to promote verbal de-escalation as ideal police intervention

Internal Promotion

The department should regularly promote positive interventions when no force is used, and regularly reinforce officers engaged in verbal de-escalation.