

INTRADEPARTMENTAL CORRESPONDENCE

March 10, 2016
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BPC #16-0077

TO: The Honorable Board of Police Commissioners

FROM: Inspector General, Police Commission

SUBJECT: TEN-YEAR OVERVIEW OF CATEGORICAL USE OF FORCE
INVESTIGATIONS, POLICY, AND TRAINING

RECOMMENDED ACTION

REVIEW and APPROVE the Inspector General's Report.

DISCUSSION

In November 2015, the Board of Police Commissioners directed the Office of Inspector General (OIG) to prepare an overview of how the investigative practices, use of force-related policies, and training of the Los Angeles Police Department have evolved during the last decade. Consistent with the Commission's goal of minimal reliance upon the use of force by the Department, the Inspector General's report regarding this overview is intended to inform discussions regarding enhancements to current use of force-related practices and policy. The report includes a series of recommendations, formulated by Commissioners Matthew Johnson and Robert Saltzman, for the consideration of the full Board.

I am available to provide any information the Board may require.

E-Copy – Original Signature on File with the Police Commission

ALEXANDER A. BUSTAMANTE
Inspector General
Police Commission

Attachment

LOS ANGELES POLICE COMMISSION

**TEN-YEAR OVERVIEW OF
CATEGORICAL USE OF FORCE
INVESTIGATIONS, POLICY,
AND TRAINING**



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

ALEXANDER A. BUSTAMANTE
Inspector General

March 10, 2016

TEN-YEAR OVERVIEW OF CATEGORICAL USE OF FORCE INVESTIGATIONS, POLICY, AND TRAINING

I. Introduction

Investigations, policies, and training are major factors influencing the ways in which police officers use force in carrying out their duties. With this in mind, the Board of Police Commissioners (Commission) directed the Office of Inspector General (OIG) to prepare an overview of how the investigative practices, use of force-related policies, and training of the Los Angeles Police Department (Department) have evolved during the last decade. Consistent with the Commission's goal of minimal reliance upon the use of force by the Department, this overview is intended to inform discussions regarding enhancements to current use of force-related practices and policy.

Throughout the last decade, Force Investigation Division (FID) has maintained responsibility for the investigation of the Department's most serious types of use of force, known as categorical use of force. Governed by detailed protocols developed as a result of the Federal Consent Decree, FID's investigations are subject to intensive oversight by OIG personnel. While the system for the investigation of categorical uses of force has remained substantially unchanged during the last decade, significant changes to the system by which incidents are administratively adjudicated were introduced in 2008. These changes, which remain current, codified adjudicative classifications and provided the option for both disciplinary and non-disciplinary actions to be taken in those instances where officers are found to have violated training or policy standards.

Policy governing the circumstances under which officers are authorized to use force, including deadly force, underwent significant revision in 2009. The 2009 policy, which remains current, consolidated numerous prior policy standards regarding the use of force and established that officers may use only that force which is "objectively reasonable." With the adoption of the 2009 standard, prior policy explicitly limiting the use of deadly force to situations of last resort was discontinued. Policy regarding the drawing and exhibitions of firearms also underwent revision in 2009, with the lifting of specified restrictions on the deployment of slug shotgun ammunition and police rifles.

As with use of force policy, use of force-related training has undergone significant change during the last decade. Broadly-speaking, there has been a move away from the provision of specific guidance to officers, toward an emphasis on concepts. Intended by the Department to enhance officers' critical thinking skills, as well as to reduce exposure to civil liability, these changes have implications both for officers' performance in the field, and for the system by which their actions are reviewed by adjudicators.

The OIG has presented its overview of changes during the last decade to Commissioners Matthew Johnson and Robert Saltzman. Based on that presentation, and in the furtherance of the Commission's goal of minimal use of force, Commissioners Johnson and Saltzman have devised

a series of recommendations regarding both policy and training for the full Board's consideration. This report sets forth those recommendations.

II. Categorical Use of Force Investigation Process

Department policy defines the most serious types of use of force incidents, such as officer-involved shootings, as "categorical use of force" (CUOF). CUOF incidents are investigated by Force Investigation Division (FID) – a specialized detective division. Completed investigations are reviewed within the Department by both a Use of Force Review Board and by the Chief of Police. Following the Department's internal review, the Commission adjudicates each case, making the final determinations whether officers involved in CUOF incidents complied with applicable policy and training standards. All aspects of the Department's CUOF investigation and review processes are closely monitored by the OIG.

a. Force Investigation Division

Force Investigation Division is responsible for investigating all aspects of CUOF incidents, as well as any other investigation at the direction the Chief of Police. FID, which has been in operation throughout the last decade, was originally created by the Department in order to achieve compliance with the mandates of the Federal Consent Decree.¹ FID is currently staffed with 74 sworn and 11 civilian employees, and is situated within the Department's Professional Standards Bureau. As a division dedicated to and specializing in the investigation of CUOF incidents, FID was effective in achieving its original objective of Consent Decree compliance. Over its years of operation, FID's processes have become widely recognized as a model for other agencies seeking to improve their performance in investigations of serious use of force incidents.

b. Consent Decree and Policies Governing Investigations

i. Definitions

The definition of the CUOF incidents FID is responsible for investigating includes the following:

- *An incident involving the use of deadly force by a Department employee;*
- *all uses of a carotid restraint control hold by a Department employee;*
- *all deaths while the arrestee/detainee is in the custodial care of the Department, commonly referred to as an in-custody death;*
- *a use of force incident resulting in death;*
- *a use of force incident resulting in an injury requiring hospitalization;*
- *head strikes with an impact weapon (e.g., baton, flashlight, etc.); and,*

¹ The Federal Consent Decree was a legally binding settlement between the Federal Department of Justice and the City of Los Angeles. In effect from 2001 to 2009, it mandated a series of reforms to the Los Angeles Police Department, including to the manner in which it investigated and reviewed use of force incidents.

- *an incident in which a member of the public is bitten by a Department K-9 and hospitalization is required.*²

For those incidents where criminal investigation is warranted, FID conducts both the criminal and administrative investigations. Using a bifurcated model of investigation, one team of FID detectives conducts the criminal investigation at the same time that another, independent team completes an administrative investigation. This model of concurrent investigations avoids delaying the initiation of the administrative investigation until the conclusion of the criminal investigation – a common practice in other agencies.³

Department policy, developed as a result of the Federal Consent Decree, requires that FID be notified following the occurrence of a CUOF, and that FID be available 24-hours a day to respond promptly to the scene of the incident. Policy also regulates the manner in which the investigation may be conducted. Key investigative policies include the following:

- *Involved and witnessing officers must be separated and monitored by a supervisor following a CUOF, and must remain so until interviewed by FID;*
- *all interviews of officers and witnesses must be recorded;*
- *civilian witnesses must be interviewed at times and locations convenient to the witnesses;*
- *group interviews are prohibited; and,*
- *all inconsistencies in officer and witness interview statements must be identified and documented.*

ii. Changes Over Time

Since the creation of FID, several policy changes have been approved by the Commission in relation to the manner in which FID is required to conduct its investigations. These policy changes have been designed to reduce the expenditure of FID resources on low-risk or redundant aspects of CUOF investigations.

In 2010, the Commission approved a revised policy regarding the classification and investigation of head strikes with impact weapons. Before this revision, all head strikes were considered a CUOF and therefore investigated by FID. Under the revised policy, head strikes that are unintentionally administered, and that do not result in serious bodily injury, can be reclassified as

² Department Manual section 3/792.05, 2015 3rd Quarter.

³ As explained in the *Review and Adjudication* section of this report, the District Attorney reviews certain categories of CUOF incidents to determine whether there is criminal liability on the part of the involved officers. LAPD officers routinely decline to provide voluntary statements regarding their involvement in CUOF incidents, and so are compelled to do so by the Department as it conducts its investigation. Compelled statements, and/or evidence derived from such statements, cannot be used against an officer in a criminal prosecution of him/her, and so are not provided to the District Attorney. The compelled statements do, however, become part of the administrative investigation and are used by the Commission in its administrative adjudication of a CUOF incident.

non-categorical uses of force.⁴ When such reclassification occurs, the cases are removed from the CUOF process and investigative responsibility is passed from FID to the involved employee's chain-of-command.

In 2011, the Commission approved a revised policy regarding the classification and investigation of in-custody deaths. Prior to these changes, all in-custody death investigations were considered CUOFs. Under the revised policy, in-custody death cases identified as "low risk" could, following initial investigation by FID, be removed from the CUOF process and reclassified as Death Investigations. A Death Investigation requires less voluminous file production than does an FID report regarding an in-custody death, and does not require adjudication by the Commission. The criteria for reclassification of an in-custody death include that no force was used against the decedent, that no misconduct occurred that would amount to negligence, and that the death was not the direct result of violations of Department policy. In-custody deaths are only eligible for reclassification if the Coroner determines the manner of death to be either Accidental, Undetermined, or Natural. The Commission makes the final decision to approve the reclassification of an in-custody death investigation.

In 2015, the Commission approved a revised policy authorizing FID to forgo tape-recorded interviews of officers and civilian witnesses who only *hear* gunshots, but do not otherwise witness an incident. Under this revised policy, so-called "Heard Only" witness accounts can be memorialized on a written form in those cases where there is no further investigative value in establishing the rate, sequence, or other audible characteristics of the gunfire.

c. Inspector General Oversight

All FID investigations are closely overseen by the OIG. The OIG's oversight begins immediately following the occurrence of a CUOF. The OIG has a 24-hour response capability, and is promptly notified following the occurrence of a CUOF.⁵ The OIG responds to the scenes of CUOF incidents and monitors the conduct of FID's on-scene investigation, assessing compliance with applicable policy standards, as well as more generally working to ensure the overall quality of the investigative work being performed. As the investigation progresses over the months that follow the incident, the OIG maintains its oversight role. The OIG's oversight of each investigation culminates in a detailed review of every completed investigation case file, and a written assessment to the Commission of the quality of that investigation. In practice, the OIG

⁴ Department policy classifies use of force incidents as either "categorical" or "non-categorical." Categorical force is the most serious type of force, including uses of deadly force, or force that results in serious injury, and receives a high level of investigation, review, and oversight. Non-categorical force includes less serious uses of force, and is investigated by the involved employee's chain-of-command.

⁵ The OIG's Use of Force Section is a unit dedicated on a full-time basis to reviewing all work performed by FID. Currently staffed by seven Police Special Investigators and headed by an Assistant Inspector General, the Use of Force Section closely reviews all work performed by FID and, on behalf of the Inspector General, prepares a detailed report on each case for the Commission.

works closely with FID in order to ensure that, whenever possible, investigative concerns identified during the course of the investigation are addressed and resolved. In so doing, the OIG works to ensure that the Commission is provided with a high-quality investigation upon which to base its administrative adjudication of each and every CUOF case. If investigative concerns or shortcomings in the analysis persist, the OIG will detail these deficiencies within its report to the Police Commission for their review and action.

III. Categorical Use of Force Review and Adjudication

Once FID's investigation of an incident is completed, an administrative review of the case is carried out. This review process culminates in the administrative adjudication of the case by the Commission, with determinations made as to whether officers followed relevant training and policy standards. The Commission has adjudicative authority over all categorical use of force incidents. Once the Commission has completed its administrative adjudication of an incident, its findings are final.⁶ This finding is separate and apart from any decision regarding the imposition of discipline. Under the City Charter, disciplinary authority rests solely with the Chief of Police.

a. CUOF Review Process

Before a case is presented to the Commission for its adjudication, it is reviewed within the Department. The first formal level of review by the Department occurs at a Use of Force Review Board (UOFRB). The UOFRB is comprised of five members, and is chaired by the Assistant Chief who serves as Director of the Office of Administrative Services. The UOFRB includes representatives from the Bureau to which the involved employee is assigned, the Office of Operations or Special Operations (as applicable), and Police Sciences and Training Bureau. A peer member – an individual of the same rank as the involved officer⁷ – also sits on the UOFRB. After hearing the evidence in the case and deliberating, the UOFRB votes to determine the findings it will recommend to the Chief of Police.

Following its review by the UOFRB, a case is presented to the Chief of Police. Having reviewed the case, the Chief may adopt or modify the recommendations of the UOFRB. Having

⁶ The Commission's administrative findings as to whether officers followed training and policy standards are final and cannot be overturned. There are, however, other processes through which incidents may be reviewed, independent of the administrative adjudication process. For instance, an officer who receives a disciplinary penalty for violating the use of force policy and is directed to, or appeals a penalty to, the LAPD's Board of Rights (BOR) could be found "Not Guilty." A Not Guilty BOR finding would result in the disciplinary penalty being withdrawn, but would not affect the Commission's finding that the officer had violated Department policy. Similarly, a case may be the subject of civil litigation, and/or the subject of criminal review by the District Attorney.

⁷ All "substantially involved" employees are evaluated in the CUOF adjudication process. As defined in Department policy, "the term substantially involved includes the employee(s) applying force or who had a significant tactical or decision making role in the incident." In cases involving employees of different ranks, a peer of similar rank to each will sit on the board and will vote on the findings for the employee(s) of that rank.

determined his own findings in the case, the Chief signs a correspondence to the Commission, memorializing his findings and associated rationales.

Concurrent with the Department's internal review is the OIG's independent review of every CUOF case. As it conducts its own independent review, the OIG's staff also monitors the progression of the Department's internal review. This monitoring role includes attendance at every UOFRB, where the OIG may ask questions and provide input to the board members.

Once the Chief's report on the case is completed, it, too, is reviewed by the OIG. The OIG evaluates the Chief's findings and reports its own, independent set of recommendations to the Commission for use in its adjudication of the case. In those cases where the OIG concurs with the findings of the Chief of Police, it will recommend to the Commission that it adopt those findings. If the OIG believes additional or different analysis is warranted, even if that analysis leads to the same findings as the Chief has recommended, the OIG will provide that analysis to the Commission in its report. If the OIG determines that the available evidence supports findings other than those set forth by the Chief, it will recommend, with supporting analysis, that the Commission modify the Chief's findings.

In advance of the Commission's adjudication of each case, Commission members receive the reports of both the OIG and Chief of Police, as well as the underlying investigation file. When the Commission meets to hear the case, a summary of the evidence is presented to the Commissioners by an FID detective. Department and OIG staff are present to provide their positions and to answer any questions the Commission may have before it makes its final adjudication.

b. Adjudication Standards

i. Pre-2008

Throughout the last decade, the Commission has adjudicated CUOF incidents in terms of three categories: 1) the *tactics* employed by the officers leading up to, during, and after the use of force, 2) the *drawing or exhibition of a firearm*, and 3) the *use of force* itself.

Current policy governing CUOF adjudications was adopted in 2008. Prior to the adoption of the current policy, the Commission could determine that an officer's tactics warranted findings of either "No Action," "Training," or "Administrative Disapproval." The thresholds delineating these findings were not codified in policy; however, a finding of "Administrative Disapproval" was generally understood to mean that the officer's tactics were seriously deficient, whereas less significant tactical shortcomings would result in a finding of "Training." For the drawing or exhibition of a firearm and for the use of force, the Commission could make findings of "In Policy" or "Out of Policy." Although the Chief of Police has authority over the imposition of discipline, a finding by the Commission of "Administrative Disapproval" or "Out of Policy"

would automatically trigger the initiation of a Personnel Complaint (and, hence, the disciplinary process) against the involved officer.

ii. Current Standard

Current Department policy regarding the adjudication of a CUOF, approved by the Commission in 2008, is similar to the prior system in that it employs the three adjudicative categories of tactics, drawing/exhibition, and use of force. There are, however, some significant differences. The current policy defines available findings in the tactics category as either “Tactical Debrief” or “Administrative Disapproval.” The standards for these findings are codified in policy, with a finding of “Administrative Disapproval” being warranted when an officer’s tactics *unjustifiably and substantially deviate from approved Department tactical training*.

Whereas the prior system had a finding of “No Action,” which could result in no formal follow-up action being taken with the involved officer(s), the current system ensures that all personnel who were involved in a CUOF will receive, at a minimum, a tactical debrief. A tactical debrief is a discussion of the incident with training personnel, and is intended to serve as a mechanism for enhancing future performance by reinforcing, improving, or developing an officer’s tactical skills.

A further significant change brought about by the Commission’s adoption of the current adjudication policy is that a finding of Administrative Disapproval or Out of Policy by the Commission no longer automatically triggers the initiation of a Personnel Complaint. Rather, following such a finding, the Chief of Police now has the complete discretion to impose the non-disciplinary remedies of Extensive Retraining or a Notice to Correct Deficiencies, and/or to initiate a Personnel Complaint. The current policy does not provide a role for the Commission in determining which of these options the Chief should select.

IV. Policy

An officer’s administrative authority to use deadly force is defined by Department policy. It is compliance or otherwise with this policy that is evaluated by the Commission in its adjudication of categorical uses of force. This *administrative* evaluation is separate and distinct from the *legal* evaluation of officers’ actions, which is made by the District Attorney against applicable statutes. As the policymaking body for the Los Angeles Police Department, the Commission is responsible for approving the use of force policy.

a. Use of Deadly Force Policy

Policy regarding the use of deadly force plays a critical role in regulating the rate and manner in which such force will be used. Policy defines the scope of an officer’s authority to employ deadly force, and thus defines the Commission’s expectations regarding this critical aspect of officer performance. The Department’s use of force policy underwent major revision in 2009.

i. Pre-2009 Policy

Prior to 2009, Department policy regarding the use of deadly force read as follows:

An officer is authorized the use [sic] of deadly force when it reasonably appears necessary:

- *To protect himself or others from the immediate threat of death or serious bodily injury, or*
- *To prevent a crime where the suspect actions place persons in jeopardy of death or serious bodily injury, or*
- *To apprehend fleeing felon for a crime involving serious bodily injury or the use of deadly force where there is a substantial risk that the person whose arrest is sought will cause death or serious bodily injury to others if apprehension is delayed.*

Officers shall not use deadly force to protect themselves from assaults which are not likely to have serious results.

Deadly force shall only be exercised when all reasonable alternatives have been exhausted or appear impracticable.

In addition to this general policy regarding the use of deadly force, shooting at or from a moving vehicle was specifically regulated by the following policy, approved by the Commission in 2005:

Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle. For the purposes of this Section, the moving vehicle itself shall not presumptively constitute a threat that justifies an officer's use of deadly force. An officer threatened by an oncoming vehicle shall move out of its path instead of discharging a firearm at it or any of its occupants.

Firearms shall not be discharged from a moving vehicle except in exigent circumstances and in the immediate defense of life.

It is understood that this policy may not cover every situation that may arise. In all situations, officers are expected to act with intelligence and exercise sound judgment, attending to the spirit of this policy. Any deviations from the provisions of this policy shall be examined rigorously on a case by case basis. The involved officer must be able to articulate clearly the reason for the use of deadly force. Factors that may be considered include whether the officer's life or the lives of others were in immediate peril and there was no reasonable or apparent means of escape.

Although the above-cited policies represented the Departments primary policy regarding the use of deadly force, the policy manual also contained other, related policies relevant to the use of

deadly force. These included policies regarding the “*Protection of General Public*,” the stipulations of which included that officers “*shall not fire under conditions that would subject bystanders or hostages to death or possible injury, except to preserve life or prevent serious bodily injury*,” and a policy section entitled “*Minimizing the Risk of Death*,” which stated that requiring an officer, “*in every instance, to shoot at a nonfatal area could increase the risk of harm to [the officer] or others*.” That policy further stated, however, that “*in keeping with the philosophy that the minimum force that is necessary should be used, officers should be aware that, even in the rare cases where the use of firearms reasonably appears necessary, the risk of death to any person should be minimized*.”

ii. 2009 Policy Change

The Department’s administrative use of force standard underwent significant revision and consolidation with the Commission’s 2009 approval of a new policy.⁸ That policy, which remains current, requires that officers only use force that is “objectively reasonable.” This standard, which is derived from the 4th Amendment test established by the *Graham v. Connor* case, governs all use of force. The portion of the policy specifically regulating the use of deadly force reads as follows:

Law enforcement officers are authorized to use deadly force to:

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

Current policy additionally includes the language, unaltered, of the 2005 policy placing restrictions on shooting at or from a moving vehicle.

iii. 2014 Policy Change/Current Standard

In 2014, the Commission approved the addition of the following language to the Department’s Use of Deadly Force policy:

⁸ The above-quoted, additional force-related policy sections were eliminated when the 2009 revisions to the use of force policy were approved.

The reasonableness of an Officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force.

This added language clarified existing policy, codifying that adjudicators may consider not only the moment when deadly force is used when determining its reasonableness, but that they may also consider the tactical conduct and decisions that led to that use of force.⁹

iv. Conclusion

The policy change approved by the Commission in 2009 marked a significant shift in the way the Department regulates the use of deadly force. By consolidating use of force policy, and deadly force policy in particular, into a coherent policy section, the revised policy was made more accessible than the prior collection of more than ten relevant policy sub-sections. The adoption of the “objectively reasonable” standard mirrored the applicable constitutional test, and created a single lens through which all types of force could be assessed.¹⁰

A further notable effect of the policy change was the elimination of the requirement that officers only use deadly force when “*all reasonable alternatives have been exhausted or appear impracticable,*” and the related requirement that deadly force only be used when it “*reasonably appears necessary.*” The 2009 policy does not include language to indicate that deadly force should be used only when necessary, or as a last resort, or that alternative options must be exhausted or appear impracticable. The elimination of such language has the effect of making the current policy more permissive, removing the mandate that officers use available alternate means of resolving a potentially deadly encounter, such as by moving to a safer position when confronted by a person armed with a knife,¹¹ or by using a less-lethal weapon in place of a firearm. As such, the adoption of the current policy implicitly broadened authority for the use of deadly force to situations where alternative courses of action may be available to the officer.¹²

⁹ For further information relating to this policy issue, see the OIG’s February, 2014, report entitled *Review of Categorical Use of Force Policy*. The report is available online at http://media.wix.com/ugd/b2dd23_d5785bc8c5ca48b48f3a6e67accc91d6.pdf

¹⁰ As noted above, the specific, more restrictive policy regarding shooting at or from moving vehicles did not change with the adoption of the 2009 policy.

¹¹ California Penal Code Section 835a, in which officers are trained, defines State law regarding an officer’s legal authority to use force, and specifies that an officer “*need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested.*” Los Angeles police officers are trained in the concept that distance and cover may be used to mitigate the threat posed by a potentially dangerous individual, but are not mandated by policy to employ distance and cover when it is feasible to do so.

¹² There is no requirement in current policy that an officer attempt to de-escalate a violent potential a violent encounter, when feasible. Such de-escalation clauses are an emerging trend in of force policy development, and reflect in principle the Department’s pre-2009 requirement that officers exhaust alternative options to deadly force, where practical. A recently-published report by the Police Executive Research Forum (PERF), *Use of Force: Taking Policing to a Higher Standard*, recommends that agencies adopt de-escalation as a formal policy.

The 2009 policy additionally included the subtle shift from authorizing deadly force to defend against an *immediate* threat to the authority to use deadly force to defend against an *imminent* threat. This shift in terminology equates to a slight broadening of an officer's authority to use deadly force, with the pre-2009 "immediate" being the more restrictive term.¹³

b. Drawing/Exhibiting of a Firearm Policy

Department policy regulating drawing or exhibition of conventional firearms (i.e., pistols, shotguns loaded with buckshot ammunition) has not changed during the last decade. That policy reads as follows:

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.

Note: During a special meeting on September 29, 1977, the Board of Police Commissioners adopted the following as a valid interpretation of this Section:

"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 practicable, secure or holster the firearm."

i. Rifles and Slug Ammunition: Pre-2009 Policy

In addition to pistols and shotguns loaded with buckshot ammunition, the Department fields shotguns loaded with slug ammunition, and rifles. These types of weapons are more powerful than conventional pistols and buckshot, and provide for more accuracy when engaging distant targets. Policy regulating the circumstances under which these more powerful weapons can be deployed changed significantly in 2009.

Patrol Rifles are semi-automatic, AR-15-style weapons, used with detachable magazines with capacities of 20 or 30 rounds. These weapons fire 5.56mm rounds, which travel at much higher velocities than pistol or shotgun rounds, and thus remain potentially lethal at greater distances.

¹³ "Immediate" connotes that the threat must be instantly present, whereas "imminent" connotes that the threat must be fast approaching or about to happen.

Slug ammunition employs a single, solid, 12-gauge projectile (as opposed to the nine smaller projectiles in the buckshot rounds typically used by patrol personnel). Slug ammunition has a greater ability to defeat barriers (e.g., vehicle bodies, walls) than does buckshot ammunition, and is effective at greater ranges than is buckshot. The ability of slug ammunition to defeat barriers can be advantageous in scenarios where a suspect presents a deadly threat from behind cover (e.g., when barricaded within a vehicle). This same property means that slug rounds also have a greater potential for passing through barriers such as walls or vehicles and potentially endangering unintended targets in the background of a shooting.

Until 2009, Department policy regulating the deployment/use of patrol rifles and slug ammunition¹⁴ included the following language:

In performing its mission to protect the people of this City, the Department equips officers with weapons sufficient to control most field situations. In determining the type of weapons and ammunition routinely carried by field officers, a careful balance must be achieved between our urban setting the degree of danger we face. For anticipated events which pose a higher degree of danger, special units are equipped and trained to use more powerful weapons consistent with the anticipated threat level. However, unanticipated field situations occasionally arise which require immediate access to specialized weapons in order to control the situation and protect the community as well as the officers responding to the incident.

*In recognition of this need, the department has authorized the field deployment of special weapons and ammunition. However, these weapons and ammunition may only be deployed by specially trained field offices including trained supervisors, and **absent an immediate threat of death or serious bodily injury which precludes waiting for approval, supervisory approval is required prior to using these weapons and ammunition during a field situation.***

*The Urban Police Rifle (UPR) and Shotgun Slug Ammunition (SSA) may be used to assist officers who respond to an **unplanned and spontaneous incident involving a suspect(s) who is wearing protective body armor, believed to be armed with or who has immediate access to a high powered weapon, or who is believed to be armed and situated in a distant or fortified location which affords the suspect(s) a tactically superior position.** [...].*
(Emphasis added.)

ii. Current Policy

In 2009, the Commission approved a revised policy that eliminated the specific restrictions on the deployment/use of Patrol Rifles and Slug Ammunition, as well as eliminating the

¹⁴ Prior to 2009, Patrol Rifles were referred to as Urban Police Rifles, and Slug Ammunition was referred to as Shotgun Slug Ammunition.

requirement that the deployment/use be authorized by a supervisor. The revised policy, in relevant part, states the following:

Qualified Patrol Rifle or Slug Ammunition personnel may deploy their firearms in field operations [...] as they determine necessary, just as they would any other Department-approved firearm. However, personnel must be able to articulate the reason(s) for drawing, exhibiting and deploying the firearm(s), Patrol Rifle, or Slug Ammunition. The articulable facts justifying the action shall meet the Department's Use of Force Policy.

Situations occasionally arise where the deployment/use of rifles or slug ammunition is advantageous. However, given the potentially elevated risks to innocent parties associated with the use of such high-powered weapons in densely populated urban environments, the manner in which decisions to deploy rifles or slug ammunition are made has implications for public safety. The elimination of policy restrictions specifying the circumstances under which an officer may deploy a rifle or slug ammunition delegated to individual officers the responsibility for determining when deployment/use of these more powerful weapons should occur. Although current policy requires that “the articulable facts justifying the action shall meet the Department’s use of force policy,” that policy does not regulate weapon deployment and so does not limit an officer’s discretion in this regard.

V. Training

Tactical training and training in the use of force standard occurs both during the academy for new officers and in in-service training for more tenured officers. Department-approved tactical training sets the benchmark against which tactical performance is adjudicated in connection with categorical uses of force, as well as setting expectations for tactical performance more generally.

During the last decade, there has been a shift in the style of tactical standards articulated in the Department’s training documents. Broadly speaking, this shift has been away from prescriptive language (e.g., officers should/should not), toward a greater emphasis on tactical concepts. In their totality, the shifts in these tactical standards has placed greater responsibility onto officers in determining what tactics they should use in a given operational scenario.¹⁵

The OIG met with Police Science and Training Bureau (PSTB) staff in order to explore the philosophy behind this shift and how it has been implemented in practice. The focus of this discussion was on what changes have been made in both the training materials and the way in which officers were taught the subject matter. The Department indicated that the overarching change that has occurred was a general shift from more specific guidance to training officers in critical thinking, using concepts.

¹⁵ Changes to training are developed and approved within the Department, without any direct involvement or review by the Commission. As of early 2016, the OIG has begun to attend meetings of the Tactics and Training Review Committee, which plays an important role in the review and revision of Department training materials.

According to PSTB, the change in the use of force policy “prompted the Department to re-examine and shift the language contained within training documents to go from specific details to concepts. The change in verbiage was a continuation of the emphasis and reinforcement of the officers’ use of critical thinking skills in contrast to memorization of categories. This change in philosophy places greater emphasis and responsibility on officers to think about when and why they might use of force option, rather than simply how to apply an option. This caused a review of the entire Department library of training documents and all dated references were changed to reflect compliance with the policy and best practices. It was determined that many of the old documents contained language that reinforced a checklist approach, frequently referring to sequences, rather than the more appropriate critical thinking approach.

As PSTB’s responses to the OIG’s inquiries underscore, the changes in training have shifted responsibility for determining how tactical situations should be handled toward individual officers. This contrasts with the earlier approach, by which officers were provided with more specific guidelines as to the actions they should take in given scenarios.

a. Use of Force Standard Diagrams

The general shift described above is also apparent when comparing the visual tools that have been used to teach the Department’s standards for the use of force over this period. The diagram used prior to 2009, entitled *Situational Use of Force Options* (attached as Appendix A in this report), identified specific suspect behaviors (arranged in five categories, ranging from “cooperative” to “serious bodily injury or threat of death”) and listed the corresponding tactics that officers could to use in response. Additionally, the diagram instructed that “verbalization should be continued to de-escalate a use of force situation.” According to PSTB, while this framework may have lent itself to classroom teaching, the Department found that it did not reflect the totality of circumstances officers faced in the field. Additionally, officers had difficulty later articulating the reasoning for their actions in court.

With the policy change in 2009, the use of force training (and associated diagram) had to be modified. The current diagram, developed in conjunction with the policy change, is entitled *Los Angeles Police Department Use of Force Standard* (attached as Appendix B in this report). According to PSTB, this diagram identifies the need for officers to constantly assess based on the fluidity of the situation requires critical thinking to respond appropriately the totality of the circumstances. Using concentric rings featuring force options and levels of threat posed by the suspect, the diagram suggests force options associated with those varying levels of threats, but does not dictate which specific force option would be appropriate. PSTB characterized this shift, as represented in the post-2009 diagram, as placing greater emphasis and responsibility on officers to learn, think about, and be able to articulate when and why they might use a force option, rather than simply how to apply an option.

Consistent with the overall trend toward the use of less specific guidance in training documents, the post-2009 diagram is less prescriptive than the prior version, placing more responsibility

upon individual officers to make determinations as to what force would be appropriate in a given scenario.

b. Training Publications

The shift from providing more specific guidance in training to the provision of concepts is also illustrated by the transition the Department has undertaken from the use of training documents known as Training Bulletins toward the current equivalent documents, known as Use of Force Directives. Generally speaking, Training Bulletins provided more specific instruction regarding the manner in which officers should perform during tactical situations, whereas as Use of Force Directives provide less specific guidance, instead emphasizing concepts which the officer is responsible for applying as he or she decides how to address a tactical situation.

According to PSTB, Training Bulletins “traditionally were to specifically address the mechanical responses of how to use items to have to think through and respond. [Use of Force] Directives were implemented to give prevailing overview documents regarding a field response instead of giving a step-by-step breakdown. Additionally, training bulletins became problematic to keep current and properly maintained with the dynamic changes in policing. As a result, officers were being held to the specifics of the training bulletin in court when in reality, their response is objectively reasonable standard. Training bulletins were initially created as supportive documents for officers but gradually became something used against them in court. The Department had to change to meet expectations both in the field and in the courtroom as well.”

In addition to the emphasis on concepts, Use of Force Directives conclude with an advisement that deviations from concepts may occur, and that those deviations are to be explained by the officer.¹⁶

Changes in Department training regarding foot pursuits, a relatively common and potentially high-risk tactical scenario, are illustrative of the general shift that occurred with the transition to Use of Force Directives. For example, with regard to radio communications, the Training Bulletin that defined the Department’s tactical standards for foot pursuits until 2009 specified that it was the “*primary officer’s responsibility to broadcast the progress during a foot pursuit.*” The bulletin further provided a list of information that “*should be included*” in a foot pursuit broadcast. In contrast, the current Use of Force Directive regarding foot pursuits advises that: “*Effective communication is essential during foot pursuits. Due to the rapidly unfolding situation, officers may not be able to include complete information in the initial broadcast. Additional information may be provided when tactically sound to do so.*” As such, current

¹⁶ The full text of this advisement is as follows: *Deviation from these basic concepts sometimes occurs due to the fluid and rapidly evolving nature of law enforcement encounters and the environment in which they occur. Deviations may range from minor, typically procedural or technical, to substantial deviations from Department tactical training. Any deviations are to be explained by the involved officer(s), and justification for substantial deviation from Department tactical training shall be articulated and must meet the objectively reasonable standard of the Department’s Use of Force policy.*

directive does not explicitly state that an officer has a responsibility to broadcast the progress of a foot pursuit, or to provide a complete set of information in any such broadcast, and thus provides greater discretion to the officer in determining how broadcasts are to be made.

A second example of the shift in emphasis in the Department's foot pursuit training relates to the issue of whether officers should pursue an armed suspect. The pre-2009 foot pursuit Training Bulletin instructed that "*officers should **not** attempt to follow a suspect who is reasonably believed to possess a firearm. The exception is if the surroundings provide a reasonable amount of cover to allow the officers to move from one position of cover to the next.*" This very specific guidance was superseded in post-2009 training with the following, more permissive, language: "*When pursuing a suspect believed to be armed, officers should generally do so in **containment** mode while considering the available tactical advantages, including cover and concealment where available. [...] The decision to pursue an armed suspect in **apprehension** mode may be appropriate when the suspect is at a tactical disadvantage and an arrest can be accomplished with limited risk to officers or innocent parties.*" (Emphases in original.) Again, the current standard provides much more discretion to officers in determining whether to do a foot pursuit of an armed suspect than did the pre-2009 standard.

As with the shift in emphasis seen in the transition from Training Bulletins to Use of Force Directives, a review of the Department's Basic Firearms Manual reveals a similar shift in emphasis. For instance, with regard to the critical issue of balancing the speed at which rounds are fired with accurate marksmanship, the 2009 firearms manual included the instruction that "*[A]n officer should shoot as fast as they are able and no faster than combat accuracy can be maintained. [...] Officers must not allow the actions of the suspect to cause them to lose self-control and fire indiscriminately in the hopes of obtaining a lucky hit. [...] Officers should never fire their weapons so quickly that they cannot obtain center hits on the target.*" In contrast to this specific guidance, which told officers what they should (and, by extension, what they should not) do, the current firearms manual includes the instruction that: "*It is common for accuracy to degrade as shooting speed increases. As speed increases, the time between shots is reduced and may cause shooters to sacrifice accuracy based elements when shooting.*" Although the current manual does instruct that officers "*must **learn** to balance the shooting speed with their accuracy*" (emphasis added), it does not contain the prescriptive terminology of the 2009 manual, instructing them how they should *actually* balance shooting speed with accuracy.

c. California Police Officer Standards and Training

New recruits to the Department undergo approximately six months training at the Department's Academy prior to beginning to work in the field. Recruit training covers a broad range of topics necessary to prepare recruits to perform as police officers, and includes 316 hours of instruction related to tactics and the use of force.

Beyond their academy training, officers receive in-service instruction in a variety of areas, including tactical and use of force training. The California Commission on Peace Officers

Standards and Training (POST) sets minimum selection and training standards for California law enforcement agencies. POST requires that all peace officers of the rank of Lieutenant and below who routinely affect the physical arrest of criminal suspects are required to complete Perishable Skills and Communications training.¹⁷ This training requires that all peace officers complete a minimum of 14 hours of Perishable Skills and Communications training and 10 hours of Continuing Professional Training (CPT) every two years. The training must cover four categories: 1) Arrest and Control (4 hours); 2) Driver Training (4 hours); 3) Tactical Firearms (4 hours); 4) Communications (2 hours). The Department's POST-approved lesson plans for Tactical Firearms and Arrest and Control each include a use of force update (usually 1 to 1 ½ hours). This update is typically general in content.

Recruit and in-service training are provided by different units within the Department's Training Division. In its discussions with personnel involved in the delivery of recruit and in-service training, the OIG determined that there may be some inconsistency between the two types of training in terms of the guidance provided regarding Department standards. It is also unclear how much of existing training specifically deals with the concept or practical application of de-escalation techniques.

d. Recent Updates

In recent months, the Department has developed a 10-hour Use of Force Update course, which all officers will be required to complete. This course covers a broad range of force-related topics, and includes practical components such as firing the less-lethal beanbag shotgun.

In 2015, the Department discontinued the use of a training concept known as "DOA." DOA, which stands for Desire-Opportunity-Ability, and appears to have been predominantly used in recruit (versus in-service) training, instructed officers that a suspect who has both the desire and the ability (e.g., access to a weapon) to assault them can only do so when he/she has the opportunity. The training included showing officers how the use of deadly force against a suspect could be used to cut-short his or her "opportunity" to cause harm. While the concept, in the abstract, may have had some instructional value, its use gave rise to concerns that it could be interpreted as encouraging officers to use deadly force prematurely.¹⁸

¹⁷ POST Administrative Manual (PAM), Regulation 1005.

¹⁸ In a written response to questions from the OIG, PSTB indicated the following: "Use of the DOA acronym was discontinued in Department training as of 03/2015. This method relied more on the legal aspects of using force and changes were made to reinforce the other aspects of our use of force policy such as the reverence for human life and the need to use force as a last resort."

e. Conclusion

The above-described shift away from specific guidance toward a concept-based approach has implications both for officers' ability to discern the Department's expectations regarding tactical performance, and to develop the skill sets necessary to be effective in the performance of their duties. The Department has made these changes based on the understanding that they will enhance performance, as well as to reduce exposure to civil liability.¹⁹

Beyond these implications, the shift toward a concept-based approach impacts upon the manner in which categorical uses of force may be adjudicated. As discussed in the *Review and Adjudication* section of this report, whereas use of force is assessed using the objective reasonableness standard, evaluation of an officer's tactics is based upon whether those tactics unjustifiably and substantially deviated from approved Department training. Prescriptive standards readily lend themselves to determinations whether substantial deviations have occurred, as tactical performance can be measured against the specified expectations set forth in training. Concept-based training, in contrast, relies more heavily upon decision-making by individual officers and provides fewer specific guidelines as to how officers should perform.

VI. Recommendations

In November, 2015, the President of the Board of Police Commissioners set forth the goal of minimizing the number of use of force incidents. The achievement of this goal requires a critical evaluation of current policy and training related to the use of force, and of the philosophies underlying their development. In the course of preparing this report, the OIG presented its findings regarding the changes to Department policy and training to Commissioners Matthew Johnson and Robert Saltzman. Based on the OIG's presentation and concurrence, Commissioners Johnson and Saltzman make the following recommendations for the full Commission's consideration:

1. The Commission, with the assistance of the OIG, revise the use of force policy to include attempts at de-escalation whenever feasible as one of the factors for determining the reasonableness of an officer's use of force.
2. The Commission, with the assistance of the OIG, revise the use of force policy to emphasize that deadly force shall only be exercised when reasonable alternatives have been exhausted or appear impracticable. The revision in policy will also establish the expectation that officers redeploy to a position of tactical advantage when faced with a threat, whenever such redeployment can be reasonably accomplished in a manner consistent with officer and public-safety.

¹⁹ In preparing this report, the OIG has not conducted a study to test the premise that the provision of less specific guidance reduces civil liability.

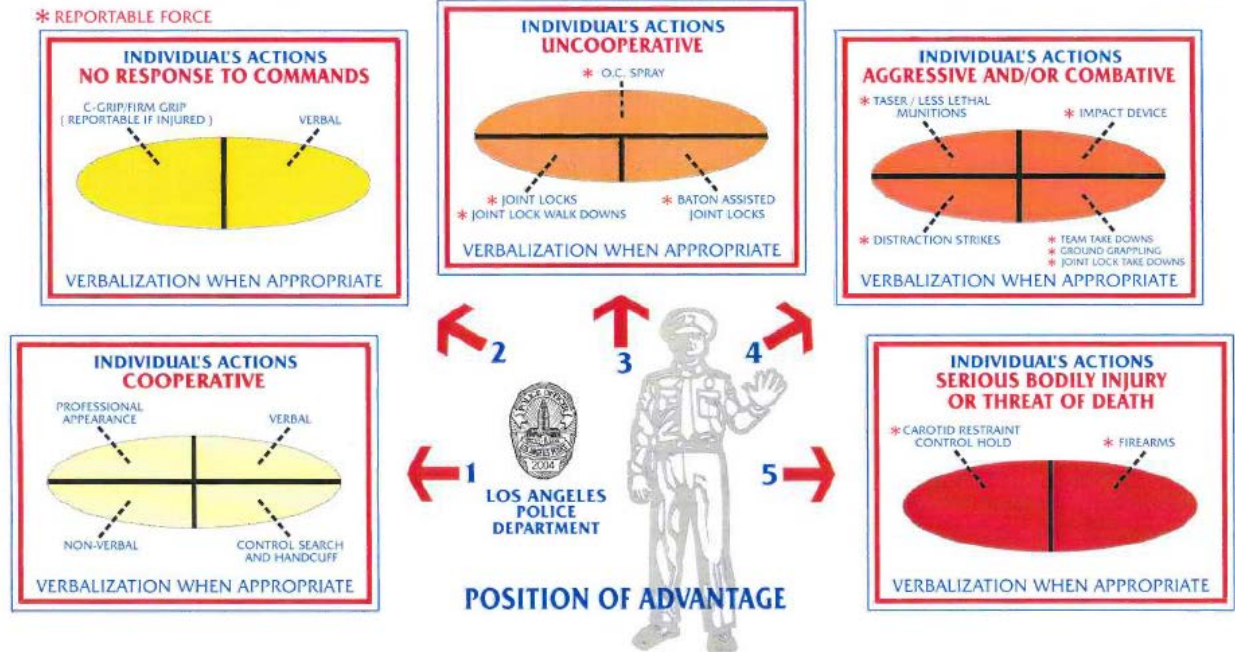
3. The Commission directs the Department to ensure that all investigations and evaluations of use of force incidents include written consideration of whether de-escalation was feasible and, for deadly force incidents, whether reasonable alternatives had been exhausted or appeared impracticable before the use of such force.
4. The Commission revise current policy regulating the deployment of rifles and slug ammunition to re-instate the restrictions contained in the pre-2009 policy that specifically disallow their use in certain situation where the risk to the community outweighs any tactical benefits for their deployment.
5. The Commission directs the Department to ensure that all officers assigned to the Resources Enhancement Services and Enforcement Team be provided all specialized training prior to engaging in any enforcement action with the mental health or homeless community.
6. The Commission directs the Department to reinforce the concept of de-escalation during all use of force-related training; ensure that personnel demonstrate a sound understanding of de-escalation concepts as part of the selection process for promotions; and specifically teach and reinforce this concept during all supervisor schools.
7. The Commission directs the Department to evaluate both recruit and in-service training to ensure that de-escalation concepts and methods are adequately addressed. To that end, the Commission requires the Department to survey agencies nationwide for best practices involving de-escalation policies, techniques, and training, and then to present its research to the Commission for its analysis and possible action. The Commission directs the Department to provide it is findings within four months; these findings will include a detailed plan for implementing any such changes within six months from the adoption of this recommendation.
8. The Commission directs the Department to provide to the Commission a presentation regarding the various de-escalation techniques taught to recruits and officers and the specific manner in which those techniques are currently being taught to them.
9. The Commission directs the Department to evaluate current training materials to ensure that the concept-based model also includes more specific guidance for common, re-occurring tactical situations.
10. The Commission directs the Department to evaluate current recruit and in-service training to ensure consistency between the two, and to ensure sufficient emphasis on the Commission's goals of reducing the use of deadly force and emphasizing de-escalation.

11. The Department's primary consideration in designing training must be the maximizing of officer performance, safety, and accountability. The Commission directs the Department to provide it advance notice of any and all contemplated changes to existing training in the areas of de-escalation, less-lethal and lethal uses of force, and mental health.
12. The Commission directs the Department to continue the inclusion of the OIG in Tactics and Training Review Committee (TTRC) meetings, and to codify that inclusion into TTRC protocols.

Unless specified otherwise in the individual recommendations, the Commission's expectation is that these recommendations will be fully implemented within 30 days from the adoption date of this report.

APPENDIX A

SITUATIONAL USE OF FORCE OPTIONS



VERBALIZATION SHOULD BE CONTINUED IN ORDER TO DE-ESCALATE A USE OF FORCE SITUATION.

POLICY FORCE MUST BE:
 A LAST RESORT
 REASONABLE
 KNOWN FACTS AT THE TIME

LAW 835(a)PC FORCE CAN ONLY BE USED TO:
 EFFECT AN ARREST
 PREVENT ESCAPE
 OVERCOME RESISTANCE

FIVE ELEMENTS OF TACTICS
 PLANNING
 COMMUNICATING
 OBSERVING
 APPROACHING
 FLEXIBILITY

APPENDIX B

Los Angeles Police Department Use of Force Standard

