

COMMISSION ON POLICE PRACTICES
Wednesday, September 4, 2024
4:30pm-7:30pm
REGULAR BUSINESS MEETING AGENDA
Procopio Towers Building
Conference Room
525 B Street
San Diego, CA 92101

The Commission on Police Practices (Commission) meetings will be conducted pursuant to the provisions of California Government Code Section 54953 (a), as amended by Assembly Bill 2249.

The Commission business meetings will be in person and the meeting will be open for in-person testimony. Additionally, we are continuing to provide alternatives to in-person attendance for participating in our meetings. In lieu of in-person attendance, members of the public may also participate via telephone/Zoom.

The link to join the meeting by computer, tablet, or smartphone at 4:30pm is:

<https://sandiego.zoomgov.com/j/1610950576>

Meeting ID: 161 095 0576

In-Person Public Comment on an Agenda Item: If you wish to address the Commission on an item on today's agenda, please complete and submit a speaker slip before the Commission hears the agenda item. You will be called at the time the item is heard. Each speaker must file a speaker slip with the Executive Director at the meeting at which the speaker wishes to speak indicating which item they wish to speak on. Speaker slips may not be turned in prior to the day of the meeting or after completion of in-person testimony. In-person public comment will conclude before virtual testimony begins. Each speaker who wishes to address the Commission must state who they are representing if they represent an organization or another person.

For discussion and information items each speaker may speak up to three (3) minutes, subject to the Chair's determination of the time available for meeting management purposes, in addition to any time ceded by other members of the public who are present at the meeting and have submitted a speaker slip ceding their time. These speaker slips should be submitted together at one time to the Executive Director. The Chair may also limit organized group presentations of five or more people to 15 minutes or less.

In-Person Public Comment on Matters Not on the Agenda: You may address the

Commission on any matter not listed on today's agenda. Please complete and submit a speaker slip. However, California's open meeting laws do not permit the Commission to discuss or take any action on the matter at today's meeting. At its discretion, the Commission may add the item to a future meeting agenda or refer the matter to staff or committee. Public comments are limited to three minutes per speaker. At the discretion of the Chair, if a large number of people wish to speak on the same item, comments may be limited to a set period of time per item to appropriately manage the meeting and ensure the Commission has time to consider all the agenda items. A member of the public may only provide one comment per agenda item. In-person public comment on items not on the agenda will conclude before virtual testimony begins.

Virtual Platform Public Comment to a Particular Item or Matters Not on the Agenda: When the Chair introduces the item you would like to comment on (or indicates it is time for Non-Agenda Public Comment), raise your hand by either tapping the "Raise Your Hand" button on your computer, tablet, or Smartphone, or by dialing *9 on your phone. You will be taken in the order in which you raised your hand. You may only speak once on a particular item. When the Chair indicates it is your turn to speak, click the unmute prompt that will appear on your computer, tablet or Smartphone, or dial *6 on your phone. The virtual queue will close when the last virtual speaker finishes speaking or 5 minutes after in-person testimony ends, whichever happens first.

Written Comment through Webform: Comment on agenda items and non-agenda public comment may also be submitted using the [webform](#). If using the webform, indicate the agenda item number you wish to submit a comment for. All webform comments are limited to 200 words. On the [webform](#), members of the public should select Commission on Police Practices (even if the public comment is for a Commission on Police Practices Committee meeting).

The public may attend a meeting when scheduled by following the attendee meeting link provided above. To view a meeting archive video, click [here](#). Video footage of each Commission meeting is posted online [here](#) within 24-48 hours of the conclusion of the meeting.

Comments received no later than 11 am the day of the meeting will be distributed to the Commission on Police Practices. Comments received after the deadline described above but before the item is called will be submitted into the written record for the relevant item.

Written Materials: You may alternatively submit via U.S. Mail to Attn: Office of the Commission on Police Practices, 525 B Street, Suite 1725, San Diego, CA 92101. Materials submitted via U.S. Mail must be received the business day prior to the meeting to be distributed to the Commission on Police Practices.

If you attach any documents to your comment, they will be distributed to the Commission or Committee in accordance with the deadlines described above.

- I. CALL TO ORDER/WELCOME (Chair Tran)

- II. ROLL CALL (Executive Assistant Conde)
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES
The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES (Chair Tran)
 - A. CPP Regular Meeting Minutes of August 21, 2024
- V. NON-AGENDA PUBLIC COMMENT
(Executive Director Paul Parker)
- VI. THE PROCESS OF DECISION-MAKING IN CASE REVIEW (Professor Sharon Fairley)
 - A. Presentation
 - B. Public Comment
 - C. Discussion
- VII. DISCUSSION BY OUTSIDE COUNSEL REGARDING COMMISSIONERS, AND OUTREACH (Outside Investigator Duane Bennett)
 - A. Presentation
 - B. Public Comment
 - C. Discussion
- VIII. CHAIR/CABINET REPORT (Chair Tran)
- IX. EXECUTIVE DIRECTOR REPORT (Executive Director Paul Parker)
- X. PRETEXT STOPS UPDATE (Ad Hoc Committee Chair Rodriguez)
 - A. Update
 - B. Public Comment
 - C. Discussion
- XI. COMMISSIONER COMMENTS (Time Permitting)
- XII. ADJOURNMENT

Materials Provided:

- DRAFT Minutes from Regular Meeting on August 21, 2024

Access for People with Disabilities: As required by the Americans with Disabilities Act (ADA), requests for agenda information to be made available in alternative

formats, and any requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for alternatives to observing meetings and offering public comment as noted above, may be made by contacting the Commission at (619) 236-6296 or commissionpolicepractices@sandiego.gov.

Requests for disability-related modifications or accommodations required to facilitate meeting participation, including requests for auxiliary aids, services, or interpreters, require different lead times, ranging from five business days to two weeks. Please keep this in mind and provide as much advance notice as possible to ensure availability. The city is committed to resolving accessibility requests swiftly.

Commission on Police Practices

COMMISSION ON POLICE PRACTICES REGULAR BUSINESS MEETING

Wednesday, August 21,

2024

4:30pm-7:30pm

Balboa Park Santa Fe Room

2144 Pan American W. Road

San Diego, CA 92101

Click <https://youtu.be/Dyy547Tjw6Y> to view this meeting on YouTube.

CPP Commissioners Present:

Chair Gloria Tran

1st Vice Chair Dennis Brown

2nd Vice Chair Doug Case

Octavio Aguilar (arrived at 4:35 pm)

John Armantrout

Bonnie Benitez (arrived at 4:38 pm)

Alec Beyer

Cheryl Canson

Stephen Chatzky (arrived at 4:33 pm)

Lupe Diaz

Jessica Dockstader

Armando Flores (arrived at 4:46 pm)

Christina Griffin-Jones (arrived at 4:48 pm)

Dwayne Harvey (arrived at 4:36 pm)

Brandon Hilpert

Clovis Honoré (arrived at 4:32 pm)

James Justus

Daniel Mendoza

Darlanne Mulmat

Viviana Ortega

Imani Robinson (arrived at 4:44 pm)

Gonzalo Rocha-Vazquez

Ada Rodriguez

Excused:

None

Absent:

Dan Lawton

CPP Staff Present:

Paul Parker, Executive Director

Duane Bennett, CPP Outside Counsel (attended virtually)

Olga Golub, Chief Investigator

Yasmeen Obeid, Community Engagement Coordinator

Alina Conde, Executive Assistant

Jon'Nae McFarland, Administrative Aide

- I. CALL TO ORDER/WELCOME: Chair Gloria Tran called the meeting to order at 4:30pm.
- II. ROLL CALL: Executive Assistant Alina Conde conducted the roll call for the Commission and established quorum.
- III. PURPOSE OF THE COMMISSION ON POLICE PRACTICES: The purpose of the Commission on Police Practices (CPP or Commission) is to provide independent community oversight of SDPD, directed at increasing community trust in SDPD & increasing safety for community and officers. The purpose of the Commission is also to perform independent investigations of officer-involved shootings, in-custody deaths and other significant incidents, and an unbiased evaluation of all complaints against members of SDPD and its personnel in a process that will be transparent and accountable to the community. Lastly, the Commission also evaluates the review of all SDPD policies, practices, trainings, and protocols and represents the community in making recommendations for changes.
- IV. APPROVAL OF MEETING MINUTES
 - A. CPP Regular Meeting Minutes of August 7, 2024
 1. **Motion:** Commissioner James Justus moved for approval of the CPP Regular Meeting Minutes of June 18, 2024. Commissioner Daniel Mendoza seconded the motion. The motion passed with a vote of 16-0-0.
Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Aguilar, Armantrout, Beyer, Canson, Diaz, Dockstader, Hilpert, Justus, Mendoza, Mulmat, Ortega, Rocha-Vazquez, and Rodriguez
Nays: 0
Abstained: 0
Absent/Late Arrival: Benitez, Canson, Chatzky, Flores, Griffin-Jones, Harvey, Honoré, Lawton, and Robinson
- V. NON-AGENDA PUBLIC COMMENT: None
- VI. CHAIR/CABINET REPORT
 - The OCPP have given out a CPP Handbook to all Commissioners and staff. The handbook has foundational materials to use as a resource manual.
 - There will be a Protest Policy Community Hearing on Saturday, September 14th at the Logan Heights Library.
 - City Council is accepting applications for the one open seat on the CPP (representatives for the low to moderate income areas of the City).
 - Welcoming new Commissioners: Jessica Dockstader, Dan Lawton, Viviana Ortega, Imani Robinson, and Gonzalo Rocha-Vazquez.
- VII. EXECUTIVE DIRECTOR REPORT
 - Staffing update: CPP Policy Manager and CPP Senior Management Analyst will start employment on September 3rd. Conditional job offers have been sent to two Investigators. The OCPP priorities positions will be the Deputy Executive Director, General Counsel, and Performance Auditor.
 - The Training Committee, Executive Director, and Outside Counsel have started a recorded Training Overview (part 1). This includes the training courses identified by the Training Committee to be accessed by new commissioners and refresher trainings for the Commission.

- The new IA Captain Julie Epperson met with the new Assistant Chief over Internal Affairs Tina Williams and Police Chief Wahl. The purpose of the meeting was to determine how they will interact with the CPP. There will be more updates soon.
- The OCPP is currently exploring the release of redacted summaries.
- Executive Director has a meeting set up next week with Risk Management regarding costs associated with pursuit related payouts.
- There are plans for the Community Engagement Coordinator Yasmeen Obeid to get out into the Community next week.

VIII. PRETEXT STOP COMMUNITY HEARING

- Debrief Community Hearing – Chair Gloria Tran thanked the community for coming out the hearing. There were 21 public speakers and Chief Wahl who publicly addressed and acknowledged the issues and concerns of the community.
- In person Public Comment: Kate Yavenditti (*Timestamp 12:54*) Spoke regarding pretext stops and the coalition in San Diego who works on policing issues. The name of the coalition is CPAT (Committee on Police Accountability and Transparency).
- Discussion - (*Timestamp 14:43*)
- Action – Vote on Pretext Stop Ad Hoc Committee
Motion: Commissioner Darlann Mulmat moved to form a Pretext Stop Ad Hoc Committee. Commissioner Bonnie Benitez seconded the motion. The Pretext Stop Ad Hoc Committee will include potential Chair Ada Rodriguez, 2nd Vice Chair Case, Alec Beyer, Steve Chatzky, Armando Flores, Christina Griffin-Jones, and Darlann Mulmat. The motion passed with a vote of 22-0-0.
 Yays: Chair Tran, 1st Vice Chair Brown, 2nd Vice Chair Case, Aguilar, Armantrout, Beyer, Canson, Chatzky, Diaz, Dockstader, Flores, Griffin-Jones, Harvey, Hilpert, Honoré, Justus, Mendoza, Ortega, Robinson, Rocha-Vazquez, and Rodriguez.
 Nays: 0
 Abstained: 0
 Absent: Lawton

IX. PURSUIT POLICY UPDATE

- Preliminary Recommendations Update – Ad Hoc Committee Chair Doug Case updated the commission that the committee met on 8/20. Chief Wahl has temporarily assigned Captain Jeffrey Jordan as a liaison to the committee. The ad hoc committee had a discussion regarding the first two recommendations of the report and are reworking them. The ad hoc committee has received the first draft of the introduction to the report. They are developing a detailed introduction explaining the context of recommendations and explaining how the ad hoc committee came up with the recommendations.
- Public Comment – None
- Discussion (*Timestamp 32:36*)

X. CLOSED SESSION (NOT OPEN TO THE PUBLIC)

- Public Comment – None
- Outside Counsel Duane Bennett led CPP into Closed Session
- PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE**
 Discussion & Consideration of Complaints & Reports: Pursuant to Government Code Section 54957 to discuss complaints, charges, investigations, and discipline (unless the employee requests an open public session) involving San Diego Police

Department employees, and information deemed confidential under Penal Code Sections 832.5-832.8 and Evidence Code Section 1040. Reportable actions for the Closed Session items on the agenda will be posted on the Commission's website at www.sandiego.gov/cpp or stated at the beginning of the Open Session meeting if the meeting is held on the same day.

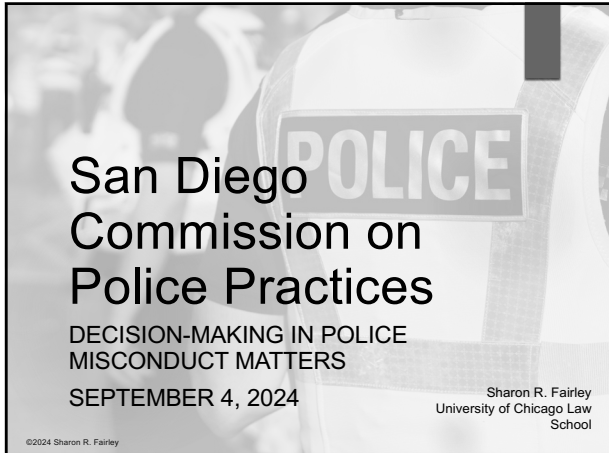
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|-------|---|
| I. | San Diego Police Department Feedback on Case Specific Matters (0) |
| II. | Officer Involved Shooting (1) |
| III. | Category II Case Audit Reports (1) |
| IV. | Discipline Reports (1) |
| V. | Case Review Reports (4) |
| VI. | Case-Specific Recommendations to the Mayor/Chief (0) |
| VII. | Referrals to other governmental agencies authorized to investigate activities of a law enforcement agency (0) |
| VIII. | Legal Opinion(s) Request & Response (0) |

XI. REPORT OUT FROM CLOSED SESSION (7:18pm): Outside Counsel Duane Bennett reported that there was no reportable action.

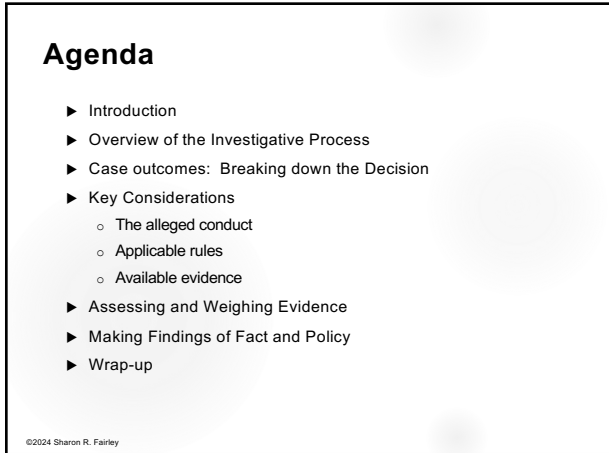
XII. COMMISSIONER COMMENTS:

- Commissioner Christina Griffin-Jones: Shared opinions on what case review is revealing to the Commission and how critical changing policy is.
- Commissioner Clovis Honoré: Welcomed the new commissioners and thanked the commission on the work that is being done on cases.

XIII. ADJOURNMENT: The meeting adjourned at 7:23 pm.



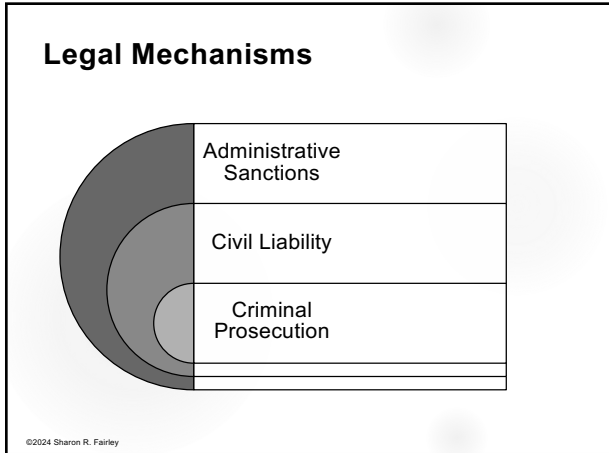
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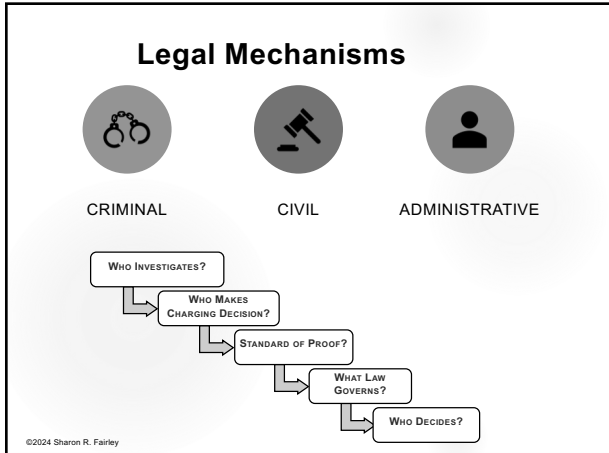
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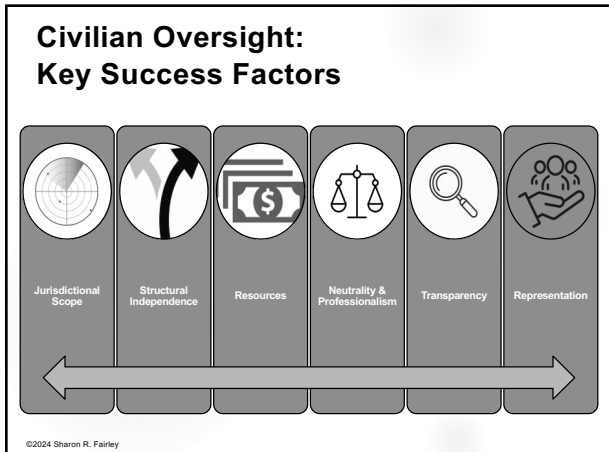
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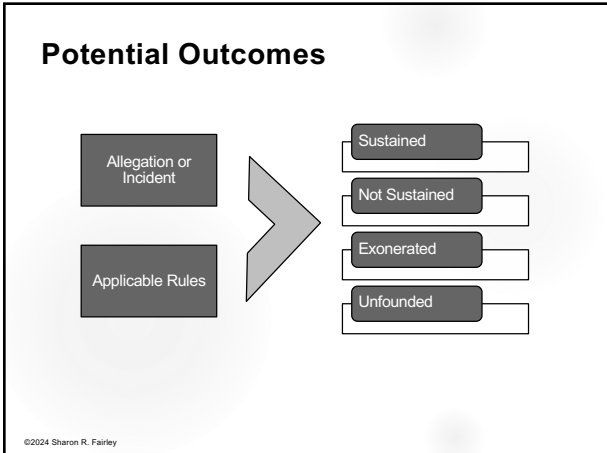
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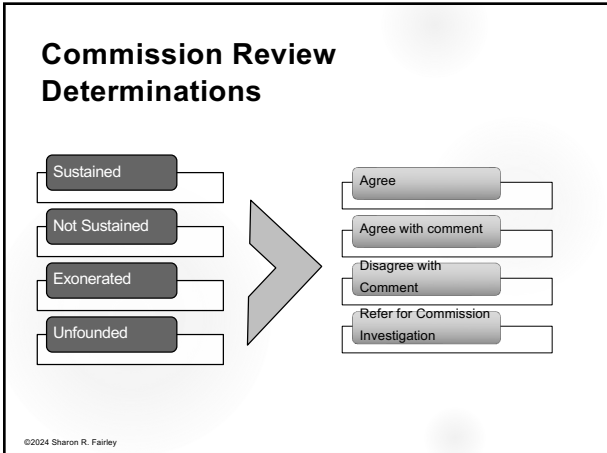
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CPP Bylaws

INDEPENDENT AND THOROUGH OVERSIGHT

- ▶ Conduct investigations, audits, evaluations and reviews with diligence, an open and questioning mind, integrity, objectivity and fairness, in a timely manner.
- ▶ Rigorously test the accuracy and reliability of information from all sources.
- ▶ Present the facts and findings without regard to personal beliefs or concern for personal, professional, or political consequences.

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ordinance or covenant

BURDEN OF PROOF

allegation or issue, either
the trial or to convince
to prevail in a civil or c

EXAMPLE: Jean files

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Standard of Proof

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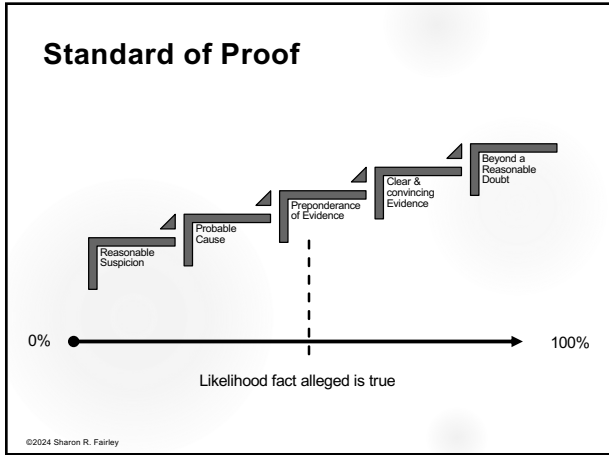
Standard of Proof

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 100%

Likelihood fact alleged is true

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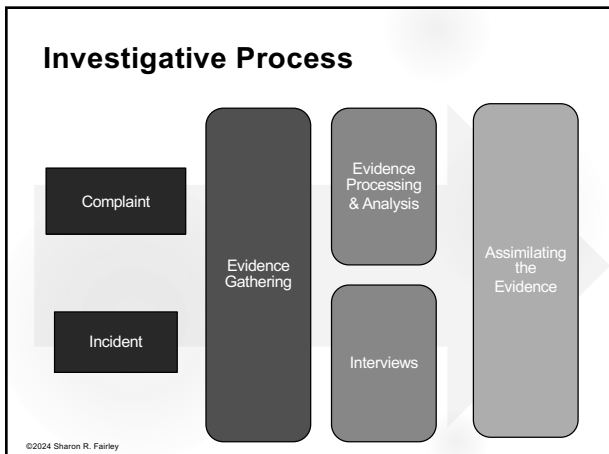
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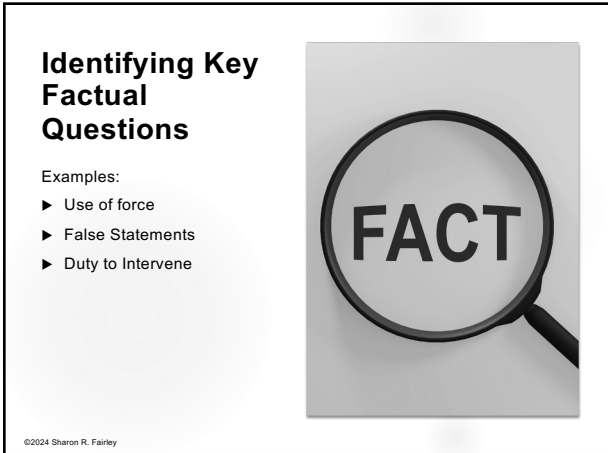
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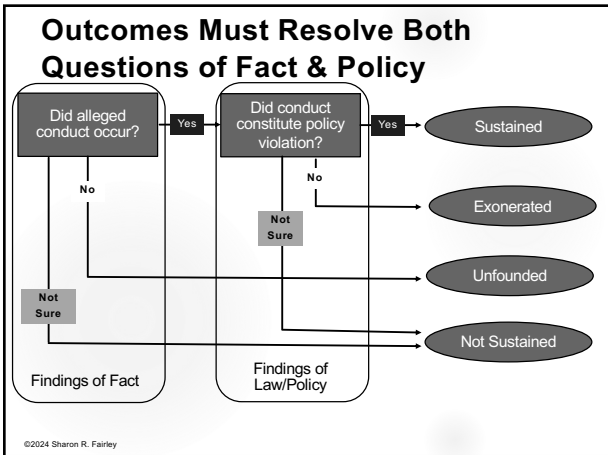
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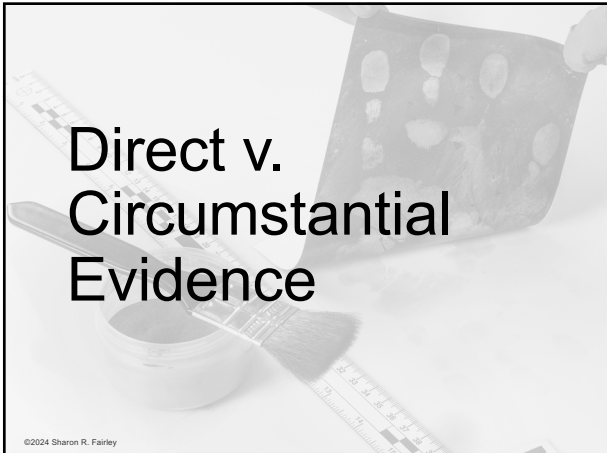


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Types of evidence

Physical <ul style="list-style-type: none"> • Narcotics • Firearms/Ammo • Objects • Clothing 	Testimonial <ul style="list-style-type: none"> • Complainant • Lay witnesses • L.E. witnesses • Involved L.E. 	Documentary <ul style="list-style-type: none"> • Reports • Dispatch Logs • Warrants • Medical records • Duty rosters
Audio/video <ul style="list-style-type: none"> • Dashcam • Bodycam • 3rd party • LPR's • Photos – Scene • Photos - people 	ESI <ul style="list-style-type: none"> • Electronic communications • facebook posts • computer logs • Phone data • GPS data 	Forensic <ul style="list-style-type: none"> • bullet fragments/casings • fingerprints • DNA/Biological evidence • Body/BAC/wounds

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Brown incident video

<https://www.chicagocopa.org/case/1062377/>

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Considerations: Testimonial Evidence

- ▶ the opportunity and ability of the witness to see or hear or know the things testified to;
- ▶ the witness's memory;
- ▶ the level of detail provided
- ▶ the witness's manner while testifying; the witness's interest in the outcome of the case, if any;
- ▶ the witness's bias or prejudice, if any;
- ▶ whether other evidence contradicted the witness's testimony;
- ▶ the reasonableness of the witness's testimony in light of all the evidence; and
- ▶ any other factors that bear on believability.

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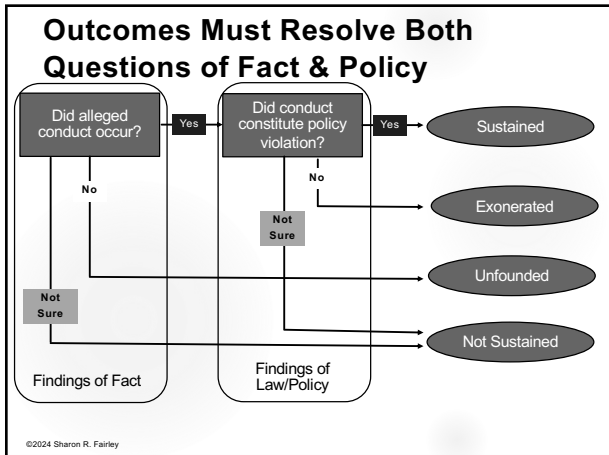
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Testimonial Evidence



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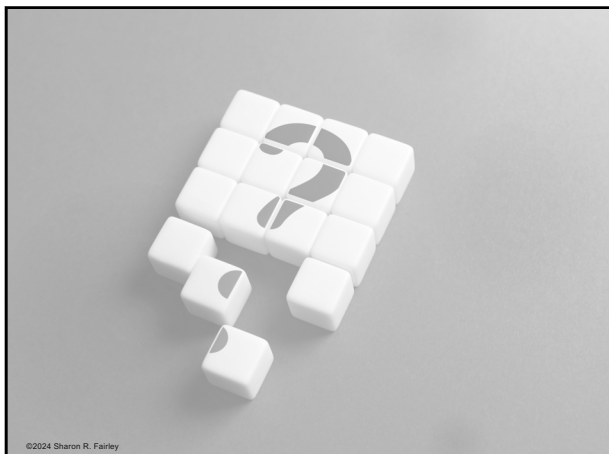
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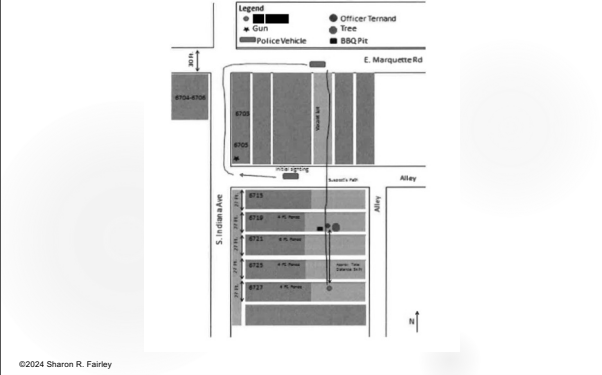


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Case Example I:



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SDPD Use of Force Policy

- ▶ An officer is justified in using deadly force upon another person only when the officer **reasonably believes**, based on the totality of the circumstances, that deadly force is necessary to defend against an **imminent threat** of death or serious bodily injury to the officer or to another person, or
- ▶ to **apprehend a fleeing person for a felony** that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended.

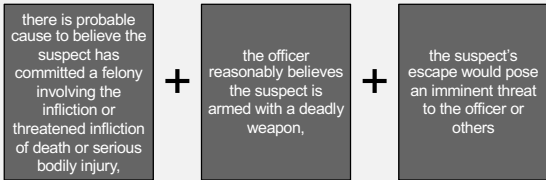
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SDPD Use of Force Policy

Discharge of a firearm is permitted when necessary to apprehend a fleeing suspect if:



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SDPD Use of Force Policy

A verbal warning to submit to the authority of the officer shall be given prior to the use of a firearm, if feasible, and if doing so would not increase the danger to the officer or other persons.

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Case Example I

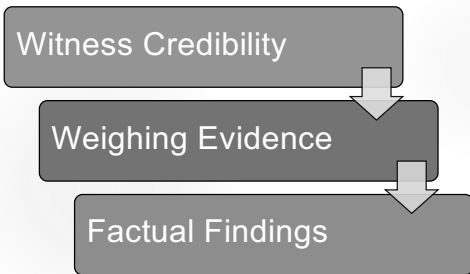
Key Factual Question:

Did the subject present an Imminent threat?

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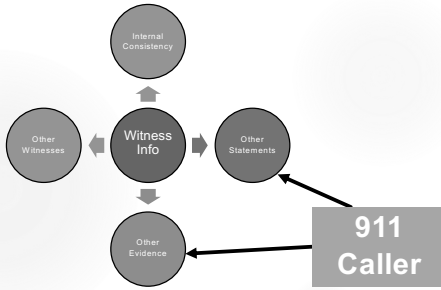
Case Example I



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Case Example I: Evaluating Witness Credibility



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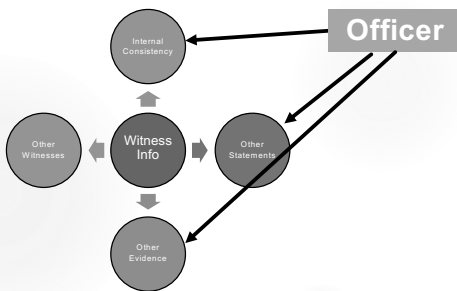
Case Example I: Witness Statement Comparison

911 Call	Stmnt #1	Stmnt #2	Stmnt #3
<ul style="list-style-type: none"> ▶ One of the officers just shot him in the back ▶ He was runnin' and he was jumpin' the gates and they just stopped and started... they fired shots. 	<ul style="list-style-type: none"> ▶ Did NOT make 911 call ▶ Did NOT see shooting ▶ Subject had no weapon in his hands ▶ Subject was hopping gates ▶ Subject was NOT grabbing his body 	<ul style="list-style-type: none"> ▶ Did NOT make 911 call ▶ Heard shot, but did NOT see shot. ▶ Officer did not jump any fences ▶ Subject was 3 to 4 houses away when shot ▶ Officer's arm got stuck on fence ▶ Saw Subject on fence when she heard gunshot – subject did not get up. ▶ Subject appeared familiar with jumping over fences 	<ul style="list-style-type: none"> ▶ DID make 911 call ▶ DID see shooting – clear line of sight ▶ Subject was jumping fences and gaining distance on the officer ▶ Described seeing Subject's body high over fence, then did not see Subject get back up after the shot ▶ Saw Subject on fence when she heard gunshot – subject did not get up. ▶ Admitted to previous false statements – did not want to get involved

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Case Example I: Evaluating Witness Credibility



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**Case Example I:
Officer Statement Comparison**

<u>On-scene</u>	<u>Stmt #1</u>	<u>Stmt #2</u>	<u>Stmt #3</u>
<ul style="list-style-type: none"> ▶ Saw Subject with firearm ▶ Subject stumbled, rose ▶ Subject looked back at officer ▶ Subject reached to waist, then turned body and right arm in Officer's direction 	<ul style="list-style-type: none"> ▶ Saw subject with firearm ▶ Subject readjusted waistband after jumping over fence ▶ Subject stood, hesitated, looked back ▶ Subject made a movement toward waistband ▶ Subject "gets kinda towards" officer 	<ul style="list-style-type: none"> ▶ Subject was reachin g into waistband area and turning towards officer ▶ Subject made abrupt movement ▶ Subject was "coming towards me, he was drawing it" ▶ Subject was "nervous" ▶ Subject's body language was "indecisive" 	<ul style="list-style-type: none"> ▶ Subject was running "hunched over" ▶ Subject reached for waistband and turned to look in officer's direction ▶ Subject's head and torso were turned towards the officer as he made abrupt motion towards his waistband

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KEY FACTUAL QUESTIONS:

- _____
- _____
- _____
- _____

<u>SUPPORTING FACTS</u>	<u>CONTRADICTIONARY FACTS</u>
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

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Case Example I

Key Factual Question: Did the subject present an Imminent threat?

<u>Supporting Facts</u>	<u>Refuting Facts</u>
<ul style="list-style-type: none"> ▶ Officer's said subject was about to shoot ▶ Officer and partner claim to have seen subject running with firearm 	<ul style="list-style-type: none"> ▶ Subject was not armed ▶ Subject was two yards away from officer ▶ Subject shot directly in the back of the head ▶ 911 Call: said subject was shot in the back ▶ 911 Caller states subject was getting away

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Case Example I

Application of Policy to Facts:

Was the officer's belief that the subject presented an imminent threat reasonable under the circumstances?

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Case Example I

Key Policy Question: Was officer's belief that subject was imminent threat reasonable?

<p>Supporting Facts</p> <ul style="list-style-type: none"> ▶ Officer and partner claim to have seen subject running with firearm → reasonable belief that subject was armed 	<p>Refuting Facts</p> <ul style="list-style-type: none"> ▶ Subject was not armed ▶ Subject was two yards away from officer ▶ Subject shot directly in the back of the head ▶ 911 Call: said subject was shot in the back ▶ 911 Caller states subject was getting away
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Case Example II

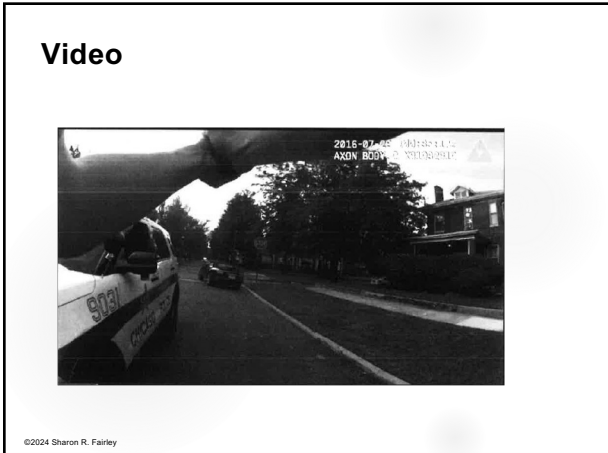
- ▶ Allegations
- ▶ Key Facts
- ▶ Application of Policy to Facts

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Allegations

- ▶ Officer A
 - Firearms discharge at subject driver
 - Firearms discharge at subject passenger
 - Firearms discharge at Officer B (partner)
 - Firearms discharge at Officer C & D (in other car)
 - Firing weapons at/into moving vehicle
- ▶ Officer B
 - Firearms discharge at subject driver
 - Firearms discharge at subject passenger
 - Firearms discharge at Officer C & D (in other car)
 - Firing weapons at/into moving vehicle

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Allegations (cont)

- ▶ Officer C
 - Firearms discharge at subject
 - Failure to activate BWC
 - Kicking of subject
 - Abusive language directed at subject

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SDPD Use of Force Policy

- ▶ Firearms shall not be discharged at a vehicle solely in an attempt to disable the vehicle.
- ▶ Officers shall consider the ramifications when shooting at moving vehicles, such as:
 - Moving vehicles present a rapidly changing field of fire;
 - If the driver is incapacitated, the vehicle would be uncontrolled; or,
 - The action could create a danger to the public that outweighs the need to use deadly force.
- ▶ Shooting through barriers such as auto glass consisting of several layers of laminated safety glass, can affect the trajectory and effectiveness of a projectile.
 - The glass fragmentation created by the projectile travelling through auto glass exposes the officer, civilian bystanders and others inside the vehicle to the potential of serious eye, inhalation and laceration injuries.
- ▶ Officers shall not discharge a firearm at an occupant of a vehicle unless:
 - The officer has probable cause to believe that the subject or the vehicle poses an immediate threat of death or serious physical harm to the officer and there is no reasonable alternative for the officer to avoid the harm; or,
 - The officer has probable cause to believe that the subject or the vehicle poses an immediate threat of death or serious physical harm to other persons.

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Key Factual Questions

Imminent Threat

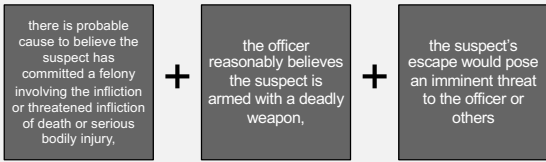
- ▶ Did the subject represent an imminent threat of great bodily harm to the officer or someone else?
- ▶ If not, was the officer's belief that the subject represented an imminent threat of great bodily harm to the officer or someone else?

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Key Factual Questions Fleeing Person Justification

Discharge of a firearm is permitted when necessary to apprehend a fleeing suspect if:



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Key Questions

PC to believe Subject committed violent felony	Officer reasonably believed subject was armed	Officer reasonably believed Suspect posed imminent threat if not caught

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Wrap-up

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**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: FEBRUARY 28, 2020
NUMBER: 1.04 - ADMINISTRATION
SUBJECT: USE OF FORCE
RELATED POLICY: [1.04, 1.05, 1.06](#)
ORIGINATING DIVISION: INTERNAL AFFAIRS
NEW PROCEDURE:
PROCEDURAL CHANGE: **EXTENSIVE CHANGES**
SUPERSEDES: DP 1.04 – 01/23/2019

I. PURPOSE

This Department procedure establishes guidelines on the use of force options available to Department personnel.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

NEW The San Diego Police Department recognizes and respects the value of human life, having this as its highest priority. It is the policy and practice of the Department to train its officers to perform their duties to the highest standards. Our officers perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. However, in the performance of their duties, officers may encounter situations where the use of force is reasonable to effect a detention or arrest, to overcome resistance, or to protect themselves or others. This protection of human life recognizes that the innocent victim and uninvolved citizen are the least able to control a dangerous situation and thus must be our highest priority. Our next priority is to the officers protecting others as well as themselves.

NEW The Department trains its officers in tactics, techniques, and strategies to control an incident using time, distance, communications, and available resources in an effort to de-escalate encounters and gain voluntary compliance. However, successful resolution of an

encounter requires the subject to provide officers with the opportunity to employ de-escalation techniques.

NEW

Penal Code 834a creates a duty to submit to an arrest by a peace officer. Penal Code 834a states, “If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he/she is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest.”

NEW

Penal Code 148(a)(1) makes it illegal to resist, delay, or obstruct an officer’s attempt to carry out his or her duties. Penal Code 148(a)(1) states, “Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge of attempt to discharge any duty of his or her officer or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.”

NEW

Penal Code 69(a) is a wobbler and may be charged as a felony or a misdemeanor, and says: “Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.”

NEW

Penal Code section 835a(b) authorizes an officer to use reasonable force to make a lawful arrest, prevent an escape, or to overcome resistance. Officers are not required to retreat or desist from their efforts by reason of resistance or threatened resistance of the person being arrested. The decision to use deadly force in response to a perceived imminent threat of death or serious bodily injury to the officer or another person is one of the most critical decisions an officer will ever be called upon to make. Only force that is reasonable to overcome resistance may be used to effect a detention or an arrest, or take a person meeting the requirements of Welfare and Institutions Code section 5150 into protective custody. Additionally, officers shall not use deadly force against a person based on the danger that person poses to themselves, if an objectively reasonable officer would believe the person does not pose an imminent threat of death or serious bodily injury to the peace officer or to another person.

NEW

Assembly Bill 392 amends Penal Code sections 196 and 835a. This bill states that an officer is justified in using deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that deadly force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person, or to apprehend a fleeing person for a felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless the person is immediately apprehended.

AB392 also addresses an officer's decision making, leading up to their use of force, when given the time and opportunity to do so. When feasible, officers shall take reasonable steps in the pre-planning of responses to critical incidents, taking into consideration the need for additional officers, force options and other available resources.

The U.S. Supreme Court in *Graham v. Connor*, 490 U.S. 386 (1989), acknowledged that the "reasonableness" test in analyzing the use of force is "not capable of precise definition or mechanical application." For that reason, in determining whether an officer's use of force is reasonable in a particular case, it is necessary to evaluate the facts and circumstances confronting the officer at the time that force was used. All of the surrounding circumstances will be considered, including whether the subject posed an imminent threat to the safety of the officer or others, the severity of the crime at issue, and whether the suspect actively resisted arrest or attempted to flee.

The evaluation of an officer's use of force will be undertaken from the perspective of a reasonable officer on the scene, not through the 20/20 vision of hindsight. The central inquiry in every use of force case is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer. When evaluating an officer's use of force, it must be understood that the officer's decision to use force is based on the totality of the circumstances known to or perceived by the officer at the time the force is used.

NEW

The Department and the community expect officers to perform their duties with integrity, and make decisions that are fair, respectful, lawful, and based on good judgment. The expectation that officers will use reasonable force also carries the responsibility for other officers to verbally and/or physically intervene if the force necessary to overcome resistance has been achieved.

NEW

IV. **DEFINITIONS**

- A. Active Resistance – Physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, running away or verbally signaling an intention to avoid or prevent being taken into or retained in custody.
- B. Assaultive Behavior - behavior that consists of aggressive physical opposition to being physically controlled and conveys a threat of injury to the officer; or, behavior that consists of a threat of attack conveyed through aggressive physical actions or aggressive physical actions coupled with verbal threats. Verbal threats alone do not constitute assaultive behavior. Assaultive behavior can be directed at the officer or others.
- C. Compliant Behavior - behavior that complies with the officer's verbal commands.

NEW

- D. Crowd Control and Mobile Field Force Techniques - levels of force that include close range strikes with an impact weapon. These strikes are designed to redirect or move a subject who fails to follow verbal commands. The amount of force used in delivering the strike should be reasonable given the circumstances. The intent of the technique is to move a subject backwards or to the side.
- E. Deadly Force - force that creates a substantial risk of causing death or serious bodily injury.
- F. De-escalation - the use of strategies and/or techniques to gain voluntary compliance from a subject in order to maintain control of an incident while reducing physical coercion. These strategies and/or techniques are used to increase time and distance from the subject while attempting to establish effective communication.
- G. Defending Force - the force needed to stop assaultive behavior against an officer or another person. This level of force generally involves impact strikes by the officer. Impact strikes can be delivered either by personal body weapons (e.g., hands, feet, knees, etc.) or impact weapons (e.g., PR-24, OPN, Baton, Flashlight). Due to the potential for serious injury, intentional strikes with an impact weapon are prohibited from being directed at the head, face or throat of the subject unless the subject's actions and behavior pose an imminent threat of death or serious bodily injury to the officer or others.
- H. Distraction Techniques - acts used to divert or redirect a subject's focus away from resistive behavior in order to assist the officer in gaining control of the individual. Distraction techniques may include an open-handed strike and/or knee strikes that specifically target the lower body, such as the buttock or thigh area. These are controlled strikes, using a lower level of force. These lower level types of strikes are not intended, nor likely to cause serious injury. Personal body weapons may be used under these constraints, when lesser controlling force has not been effective, or the officer reasonably believes lesser controlling force will not be effective. If a distraction technique proves ineffective, a different distraction technique or force option should be considered.
- I. Force - the act of gaining and/or maintaining control of a subject or situation.
- J. Life-threatening Behavior - behavior likely to cause serious bodily injury or death.
- K. Passive Resistance - behavior that consists of a refusal to comply with verbal commands and does not convey a threat of physical resistance to the officer or another person.

NEW

NEW

- L. Verbal Control - a tactic used when encountering compliant behavior. Such control consists of the officer's mere presence, requests, explanations and orders.

V. PROCEDURES

- A. Force, as defined above, may be used to effect an investigative detention or arrest; control a subject who is in lawful custody; prevent an escape; or, protect the officer, the subject, or another person from injury or death. Any time force is used, the officer shall apply a level of force that is reasonable for the situation.
- B. Officers should use caution when using a takedown technique on a handcuffed prisoner. There is potential for injury since the prisoner's hands are behind his or her back, and they have no way of breaking his or her fall. If possible, when the person is handcuffed, officers should consider other controlling methods prior to a takedown.
- C. The use of canines, extended range impact weapons, and standard impact weapon techniques may be used to control an actively resisting subject reasonably believed to possess, or have immediate access to, a deadly weapon.
- D. Officers should maintain control of enforcement situations. Officers who are not readily identifiable as police officers, whether on or off-duty, shall identify themselves as police officers, when it is safe to do so or if identification would not jeopardize the safety of the officer or others. Additionally, where feasible, when apprehending a fleeing person for a felony that threatened or resulted in death or serious bodily injury, where the Officer reasonably believes the person will cause death or serious bodily injury to another unless immediately apprehended, Officers shall make reasonable efforts to identify themselves as peace officers and warn that deadly force may be used, prior to the use of force. Subjects should not be allowed to gain the advantage in a physical confrontation. Officers may need to use a force option which is greater than the subject's force level and which is reasonable under the circumstances.
- E. The use of force by an officer can be viewed as a matrix of force options that can be used in response to a subject's actions and behavior. It is the totality of the circumstances that an officer considers when using force. The matrix is a guide designed to assist officers in understanding how force can fluctuate and can assist officers in documenting the subsequent force used. The force matrix illustrates the relationship between a subject's actions and the officer's response.
- F. An officer's decision to use force is based upon the totality of the circumstances and various factors that pertain to officers and/or subjects. These factors include, but are not limited to, the following:

NEW

NEW

NEW

1. Age;
2. Availability of other options;
3. Confined spaces;
4. Ground fighting;
5. Distance between subject(s) and officer(s);
6. Influence of alcohol or drugs;
7. Injury/disability;
8. Location/terrain/lighting conditions;
9. Multiple subjects/officers;
10. Nature of offense;
11. Opportunity/Time, provided by subject, to allow for de-escalation;
12. Proximity to weapons;
13. Size;
14. Skill;
15. Special knowledge/imminent danger;
16. Strength/endurance;
17. Type of weapon subject is armed or perceived to be armed with; and,
18. Crowd control situations.

NEW

NEW

G. Use of Firearms

1. Officers shall not discharge any firearm in the performance of their duties, except as authorized by this Department procedure.
2. No officer shall discharge a firearm in the performance of duty except:
 - a. During authorized training at a target range;
 - b. When the officer has a reasonable belief that a subject (or

animal) poses an imminent threat of death or serious bodily injury to the officer or another person;

- c. When necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others; or,
- d. As permitted by Department Procedure 6.09, Handling of Injured Animals.

- 3. A verbal warning to submit to the authority of the officer shall be given prior to the use of a firearm, if feasible, and if doing so would not increase the danger to the officer or other persons.
- 4. Officers shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties and while exercising their option to carry a loaded and concealed weapon while off- duty. Factors that should be considered before an officer discharges a firearm include, but are not limited to, the following:

NEW

- a. The life-threatening behavior perceived by the officer;

NEW

- b. Immediacy of the threat;

NEW

- c. Suspect(s) age, size, skill, injury, or disability;

NEW

- d. Environment (field of fire);

NEW

- e. The presence of and perceived capabilities of the suspect's weapon;

NEW

- f. Officer's current level of training and capability with their weapon;

NEW

- g. Type of crime.

- 5. Firearms are found to be generally ineffective in stopping vehicles. Firearms shall not be discharged at a vehicle solely in an attempt to disable the vehicle. Officers shall consider the ramifications when shooting at moving vehicles, such as:

- a. Moving vehicles present a rapidly changing field of fire;

- b. If the driver is incapacitated, the vehicle would be uncontrolled; or,

NEW

- c. The action could create a danger to the public that outweighs the need to use deadly force.
 - d. Shooting through barriers such as auto glass consisting of several layers of laminated safety glass, can affect the trajectory and effectiveness of a projectile. The glass fragmentation created by the projectile travelling through auto glass exposes the officer, civilian bystanders and others inside the vehicle to the potential of serious eye, inhalation and laceration injuries.
6. Officers shall not discharge a firearm at an occupant of a vehicle unless:
 - a. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to the officer and there is no reasonable alternative for the officer to avoid the harm**; or,
 - b. The officer has probable cause to believe that the subject or the vehicle poses an **immediate threat of death or serious physical harm to other persons**.
7. Officers shall not knowingly position themselves in the path of a moving vehicle.
8. Warning shots present a danger to the officer and other persons. They are prohibited, except under exigent circumstances when:
 - a. The officer has a reasonable belief that a subject (or animal) poses an imminent threat of death or serious bodily injury to the officer or another person; or
 - b. The warning shot is necessary to apprehend a fleeing suspect if there is probable cause to believe the suspect has committed a felony involving the infliction or threatened infliction of death or serious bodily injury, and the officer reasonably believes the suspect is armed with a deadly weapon and the suspect's escape would pose an imminent threat to the officer or others.
9. Firearms are not designed or intended for use as impact weapons and shall not be used to strike another person, except when necessary to protect the officer or another person from death or serious bodily injury.

VI. REPORTING THE USE OF FORCE

A. Officers who use force shall ensure that detailed, accurate reports (arrest, detention, or ARJIS-9) describing the force used and all the circumstances and facts surrounding the use of that force are prepared, including, but not limited to, factors listed in the Force Matrix section of this procedure. In addition, force effectiveness statistical data is also collected whenever force is used. To facilitate this, officers will complete a Use of Force, BlueTeam entry.

B. Reportable Force

For reporting purposes, the following are considered use of force incidents requiring a report:

1. Any force option, control hold, or weaponless defense technique applied to a person, or any force that causes injury or complaint of injury to either the officer or the subject being restrained;
2. Discharge of a firearm in an official capacity;
3. Discharge of a Taser;
4. Use of the baton, police nunchaku (OPN), or other impact weapons where the suspect has been struck;
5. Use of any type of chemical agent (mace, OC, etc.);
6. Use of carotid restraint;
7. Use of a police service dog, when a bite or other injury occurs;
8. Use of any restraint device, to include a cord cuff, WRAP restraint device, safety control chair or restraint car seats, as outlined in Department Procedure 6.01;
9. When the officer overcomes physical resistance to applying the handcuffs;
10. Use of "specialty munitions," as defined in Department Procedure 1.36, Use of Specialty Munitions; and,
11. The pointing of a firearm at a person to gain compliance.

NEW

C. Officers who use a force option shall personally prepare the appropriate report (arrest, detention, ARJIS-9) documenting their use of force. An exception to an officer personally preparing a document (detailing force used) is if an SDPD investigator interviews the officer and his/her statements (regarding the force used) are documented in the investigator's report.

- D. In the event San Diego Police Department officers are involved in a situation with an outside agency, the SDPD officer responsible for writing the report shall request documentation describing the outside agency officers/deputies use of force options.
- E. Whenever physical force used by an officer results in an injury that necessitates medical treatment of any person, the officer shall immediately contact a field supervisor (Refer to Department Procedure 6.01, Handcuffing, Restraining, Searching, and Transporting Procedures).
1. The field supervisor shall evaluate the circumstances surrounding the incident.
 2. The field supervisor shall notify the Watch Commander and/or field lieutenant.
 3. If the Watch Commander or field lieutenant deems the incident to be of significant magnitude, including but not limited to, a use of force resulting in great bodily injury, Internal Affairs shall respond and conduct an on-scene investigation.
 4. If Internal Affairs responds to the scene, the Watch Commander shall immediately telephone the Police Officers' Association and report the general nature of the incident.
 5. All statements made by the subject regarding his/her alleged or apparent injury should be documented.
 6. Photographs shall be taken to document the existence or absence of injury to the subject, officers, or other persons. Photographs shall also be taken of any damage to the clothing or personal property of the subject, officers, or other persons at the scene. The photographs shall be impounded as evidence.

NEW

VII. ASSEMBLY BILL 953

Assembly Bill 953 (AB 953), also known as the Racial and Identity Profiling Act (RIPA) of 2015, requires law enforcement agencies to collect data on all stops, detentions, and searches. This includes consensual searches and instances where force was utilized. In order to capture this data, a new application will be available for every event generated through the Department's MPS and Intranet systems beginning July 1, 2018. There is a template to collect the required data in the F: Drive under Templates/Patrol Based Forms/PD-953, if the database application is temporarily unavailable. The data documented on this form shall be entered into the electronic application prior to the end of officer's shift unless exigent circumstances exist.

Under this mandate, the data collected will include the date, time, and duration of the stop, the location, perceived race or ethnicity, perceived gender, perceived LGBT, perceived or known disability, English fluency, perceived age, and the reason for the stop, detention, or search. The reason for the stop may be generated from a call for service, a traffic violation, reasonable suspicion or knowledge that the person was engaged, or about to engage in criminal activity and conclude with the actions taken by the officer. These actions will describe the basis of the search, whether or not contraband or other evidence is discovered, the reason for and type of property seized and the results of the stop or detention. The data collected under RIPA replaces the data previously collected from vehicle stop data cards.

- A. When completing a detention and/or arrest report, officers will ensure the narrative includes that a RIPA entry was submitted for every person being arrested or detained.
- B. Supervisors will verify officers have documented the RIPA entry in their narrative prior to approval.

Use of Force Matrix

Suspect's Behavior

Compliant Behavior	Passive Resistance Behavior	Active Resistance Behavior	Assaultive Behavior	Life Threatening Behavior
<p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons may be used as defined in section V.C. of this procedure</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>	<p>Firearms Hard Impact Weapons (Blows to the head, face, neck and throat are prohibited unless defending against life-threatening behavior as defined in this procedure.)</p> <p>Hard Impact Weapons (PR-24, OPN, ASP, flashlight) Personal Body Weapons (head, hands, elbow, knees and feet)</p> <p>Carotid Neck Restraint, Takedown Techniques, Distraction Techniques, Chemical Agents (OC spray may be used on a spitting person to assist officers in gaining control.), Canine, Taser, Extended Range Impact (ERI) and Impact Weapons</p> <p>Impact Weapons – Close Range strikes with an impact weapon may be used in crowd control situations as outlined in this procedure.) Impact Weapon Control Holds (PR-24, OPN, ASP, flashlight) Control Holds (other than with impact weapons), Pain Compliance, Pressure Points, Body Weight, Physical Strength</p> <p>Touch Verbal Control (Orders, explanations, requests, officer's presence)</p>

Reasonable Force Under the Totality of the Circumstances

Officer's Response

Case Example I: Summary of Facts

- Officers A, B, C & D responded to a burglary call, and determined that there was no crime being committed.
- As Officers A & B are leaving the area, they saw a Subject who turned to flee upon seeing the officer's patrol car approach
- Officers A & B pursued the Subject in their vehicle
- Officers A & B claim to have seen a firearm in Subject's hand as he fled
- Officers A & B called in a pursuit: "male in red jacket holding side" – there was no mention of a firearm being seen in his hands
- Officers A & B lost sight of Subject during vehicle pursuit
- Officers A & B claimed to have seen Subject holding his side as he fled
- Officer A got out of the police vehicle and initiated foot chase after Subject turned into the empty lot behind a residential block. Officer B remained in the car. Officers C & D got out of their car and proceeded down an adjacent alley in an attempt to assist with the foot chase.
- During the chase, Officer A yelled, "stop, police, drop the gun."
- Subject scaled at least three backyard fences during his flight from Officer A.
- Autopsy records indicate that Subject had wounds on his hands consistent with injury from barbed wire on fencing
- Autopsy records show Subject was shot squarely in the back of the head.
- 911 Call: "the officers just shot him in the back ... they shootin' at him" and "I just seen him up over the gate, I never seen him get back up"
- No firearm was found near subject. However, an officer who responded to the scene later recovered a firearm from the yard of home along Subject's flight path (close to where Subject was initially observed)
- When initially interviewed, 911 Caller denied making the 911 call and denied having seen the shooting.
- In later statements, the 911 caller admitted to having made the 911 call and to having seen the shooting as it occurred.
- 911 Caller (in later statement) said the subject was 3 or 4 houses ahead of the officer when he was shot
- 911 Caller described that the Officer A's arm got stuck on one of the fences as he was chasing Subject
- 911 Caller said she did not see anything in Subject's hands because he was using his hands to get over the fences
- 911 Caller said: "basically, he was gone. If he didn't get shot, he was gonna get away."
- Officer A claimed that he discharged his weapon in response to the subject turning and making a threatening gesture (as if he was planning to shoot a firearm).
- None of the other officers involved in the incident witnessed the shooting.

Witness Statements

Officer A Statements

Statement #1: the day of the incident

The offender continued to flee south through the vacant lot and across the alley south of Marquette. The offender went over a guard rail into a backyard of a residence. Officer A then saw Officer C just to the west running east in the alley, and Officer A told the Officer C that the offender had a gun. Officer A described that Subject then fled south into the backyard of jumped and climbed a fence, then jumped or climbed over another fence, then stumbled to ground. According to Officer A, Subject then rose, looked back at him [Officer A], reached into his waist, then turned his body and right arm in Officer A's direction.

According to Officer A, in fear for his life and the life of other officers, and believing the offender was armed, the officer fired one time.

It should be noted that there was nothing in the interview or the detective's notes associated with the interview indicating that Officer A had observed the Subject periodically reaching into or toward his waist as he fled through the yards and over the fences.

Statement #2: 20 months after incident

Officer A stated that, as he pursued the subject, he yelled out "Stop police! Drop the gun. Drop the gun." Officer A stated that he had his weapon drawn but had to periodically put it back in his holster, in order to get over the fences because Officer A did not want to jump over the fences with the weapon in his hand. Officer A stated that the subject jumped over a fence that was approximately six feet in height, readjusted his waistband, and kept running. Officer A stated that the subject then jumped over another fence which - was the last fence he jumped — after which Officer A described the Subject's actions as follows:

"Uh, he gets to — it would be — one of the other fences. That's the last fence he went over. He actually goes over it, and readjusts but, hesitates. He stands up, hesitates, looks back, and then makes a, you know, movement towards his waistband. He gets kinda towards me, and then, at which point, I fired a shot."

Officer A stated that he was standing close to a fence when he fired his weapon. According to Officer A, as he looked through the taller fence, he could see the subject clearly on the other side of the shorter fence the next yard over.

Officer A stated that a gun was later recovered along Subject's flight path. Officer A was shown the firearm and stated that it looked exactly like the one he saw the subject holding in the alley. Officer A stated that he discharged his firearm because he was in fear for his life. He stated that he believed that the subject was still in possession of the gun he had seen him with earlier. Officer A also stated that he believed that the subject was reaching for the gun. At no point in the foot pursuit did Officer A see the subject discard a firearm. Officer A lost sight of the subject twice during the pursuit.

Statement #3: 3 ¾ years after incident

Officer A stated that when he discharged his firearm at the subject, the subject had already cleared the fence that he had jumped and that he had both of his feet planted on the ground. When asked what the Subject was doing when he fired, Officer A made the following statements:

- “he was reaching into his waistband area and turning towards me in a, like an abrupt movement.”
- “I saw ‘em tuck [his hand] and he was coming towards me. He was drawing it, and that’s when I fired.”
- “and he was like a, it was like a pause when he got over the fence that’s when it was a very like his body was very like nervous. It was like I got the, it felt like as if he was very nervous. That’s the way I got from the body, his body language. Like indecisive.”

Officer A stated that he believed the subject was reaching for the handgun that Officer A had seen Subject with earlier. Officer A stated that he thought Subject was going to try and kill him.

Statement #4: 4 years after incident

Officer A explained that Subject “reached, he reached into his waistband area, couldn’t see his hand and his body turned towards me.” He further stated that “he was, when he was running he was hunched over, not allowin’ me to see his right hand. And you couldn’t see what was tucked into his, I don’t know if it was his waistband or shirt, but you couldn’t see his hand and he would never make an effort to show me.” Officer A explained that Subject’s head and torso were turned towards him as he made the abrupt motion towards his waistband.

Officer A stated that Subject was in a turning motion but did not take steps toward him. Officer A stated that, at that time, his firearm was drawn as Subject had cleared the last fence, but could not recall what position he had it in. Officer A did recall that, at the moment when Subject turned towards him, he had his firearm pointed at Subject.

Officer A stated that when Subject was reaching for his waistband and turning to look in his direction, he fired his weapon and that he fired “almost simultaneously” while Subject turned. Officer A was asked to explain, if Subject was looking at him and turning his body toward him at

DECISION-MAKING IN POLICE MISCONDUCT CASES

the time he elected to fire, how was it that his shot struck Subject in the back of the head. Officer A stated, “my guess is he turned his head back when simultaneously, split second, probably just turned his head right back.”

As to the allegation that he used an unreasonable and excessive amount of force when he shot the subject, Officer A stated that he believed Subject was drawing a handgun and believed Subject was going to kill him. As to the allegation that Officer A used deadly force against Subject which was unprovoked and unwarranted, Officer A stated that he believed the subject was drawing the weapon he had previously seen him with and was going to use the weapon to kill him.

During this interview, Officer A did clarify that when he stated that Subject “was coming towards me” in his previous statement, he meant to say was that Subject “was turning towards him and that did not take any steps toward the officer.

Eyewitness Statements

911 Call: Contemporaneous with Incident

911:	Chicago emergency [unintelligible]
Witness:	Hi, I was callin’ because ... um ... some boy was just runnin’ from the police officers ... and... while he was jumpin’ the gate, one of the officers just shot him in the back... they shootin’ at him...
911:	He’s been shot?
Witness:	In the [unintelligible] of and...around the block...right there...on the main street
911:	He was shot you think?
Witness:	Yeah.
911:	You said the guy has been shot?
Witness:	I think so... he was runnin’ and he was jumpin’ the gates and they, they just stopped and started ... they fired shots.
911:	And where is he at now?
Witness:	I just seen him up over the gate, I never seen him get back up.
911:	[unintelligible] I just gotta call this lady back ... she said the police hit somebody in the back... but when I transferred her ... the phone dropped.

Statement #1: One day after incident

Witness A stated that on, the date and time of the incident, she was in the vicinity of 67th and Indiana Avenue waiting for a friend. As she stood near the intersection of 67th and Marquette Avenue she saw a black male wearing a hat and red clothing running away from two white male police officers, across the street from where she was standing. Witness A stated that after the black male ran past her location, an unknown black female asked to use cell phone. She stated that her attention was focused more on the unknown black female who had her cell phone then the black male who was running from the police officers.

Witness A stated that when she got her cell phone back from the unknown black female, the cell phone was in 911 mode. She stated that she assumed that the unknown black female must have known the black male that was running from the police officers. After Witness A got her cell phone back, she received a call from 911 regarding the earlier phone call made from her phone.

Witness A did not observe the black male holding his clothes or waist area because he was holding the gates, “hopping” the fences. Witness A specifically stated that “naw he ain’t have no weapon” and “he couldn’t hold nothing’ because he was holding’ onto the gates, hoppin’ the gates.” She also remarked about how fast Subject was running, stating: “yeah, he was movin’ fast.”

When more specifically asked if she had seen Subject holding any part of his body, Witness A responded, “naw cuz he was grabbin’ the gates,” referring to the fences that Subject went over as he fled. Witness A claimed that she did not see the police officer fire a weapon. She stated that she saw the police officer fall, as it appeared that he tripped trying to get over a fence. Witness A stated that she heard a sound, but because there was construction on the road, she thought the sound came from the construction. When Witness A heard the sound, it never entered her mind that it might have been the noise of a gunshot. She stated she could not tell what the two officers looked like because they were too far from where was standing.

Witness A stated that she could not tell if the two officers were wearing plainclothes or uniforms. She did not see if the two officers had their guns out while they chased the black male. She stated that she did not hear the two officers or black male say anything because they were too far away. When asked to describe the officers she saw, again Witness A claimed she was unable to provide a description because “it was too far.”

Statement #2: 2 ½ years after incident

Witness A was asked to clarify some of the information she had provided in her earlier statement. She stated that she has not seen the unknown black female who used her cell phone since the date of the incident. She confirmed that she had observed a black male jumping over the fences while being chased by the police. She recalled that the white male police officer was wearing a black bulletproof vest and regular clothing. She stated that the black male that was running from the police officer was three to four houses/yards ahead of the police officer.

Witness A stated that she did not see the police officer that was chasing the black male jump any fences. She stated that she observed the police officer’s arm appear to get stuck on the fence when he attempted to climb over it, adding that the officer never made it over the fence. When asked what she meant when she said she saw the officer “tripped,” she stated that “he was tryin’ to jump the gate but he didn’t make the first gate because the gate and his arm, this part got caught on the gate.” According to Witness A, when the officer’s arm got stuck on the fence, Subject was already “two or three houses down because he was jumpin’ the gates.” According to Witness A, she did not see the officer jump any fences during the chase.

In contradiction to the first statement, in this second statement, Witness A acknowledged that she heard a single gunshot, but denied seeing who fired the shot. She said that she heard the shot, and

then did not “see the boy come back from the fence that the tried to jump.” She claims that she saw Subject on the fence when she heard the gunshot, and that Subject went over the fence but failed to get back up.

Witness A described seeing Subject as he scaled the fence: “Subject had both his hands comin’ up over the fence ... like he was tryin’ to bring his lower body over.” Witness A noted that it seemed that Subject was familiar with scaling the fences: “I could tell he looked like he did this before.” Witness A stated that she did not see any police officers in the same yard with Subject, as she left the area thereafter.

Statement #3: 3 ½ years after incident

Witness A was again asked to clarify some of the information she had previously provided. Witness A described how clearly she was able to view the events from her vantage point, remarking that due to the time of year there was no foliage obstructing her line of sight. She also described how she observed Subject jumping the fences and gaining distance on Officer A, stating:

“he was just doin’ it good, like he was gone. Basically he was gone. If he didn’t get shot he was gonna get away.”

Witness A also described seeing Subject as he grabbed the last fence he jumped with both hands and elevated his body over the fence stating:

“his body was high but you didn’t see it come back. After you heard the shot, he didn’t come back up.”

Witness A did admit that she had previously lied to investigators about an unknown female asking to use her cell phone to call 911. Witness A admitted that it was she herself who made the 911 call. She stated that she lied about the female borrowing her phone, as she was afraid to become involved as a potential witness in the case. Witness A stated:

“I don’t wanna get killed dealin’ with this from no officer, from nobody dealin’ with this. I don’t play that kinda stuff. I got a daughter.”

Case Example II: Involved Officer Statement Summary

- Officer A learned during rollcall that there were stolen vehicles in the district
- Officer A was on patrol with partner in uniform and in marked vehicle, riding on passenger side, with partner driving.
- Officer A observed a Jaguar with a distorted license plate.
- Officer A and his partner followed the Jaguar and obtained the license plate number.
- A License plate check revealed that the Jaguar was stolen.
- As the officers followed the Jaguar, the LoJack System in the police vehicle alerted.
- Another vehicle cut in front of the police vehicle and the Jaguar took off.
- The Officer A and his partner lost sight of the Jaguar and notified dispatch.
- Officer A and his partner then pulled over to assess get a better read from the LoJack system.
- As they were stopped, Officer A and his partner heard another police unit state that they had located the Jaguar and provided the location information
- Officer A's partner turned their vehicle around and then proceeded in an attempt to locate the stolen Jaguar.
- As they drove south on a residential street, Officer A and his partner could see the Jaguar approaching at high speed.
- Officer A heard gunfire coming in their direction causing him to believe that the occupant(s) of the Jaguar were shooting at them.
- Officer A and his partner ducked down over the center console to protect themselves from the gunfire.
- Officer A then heard a loud explosion, and sat up.
- Officer A exited the vehicle and saw his partner running toward the yard of a residence.
- Officer A then ran into a yard adjacent to that residence in an attempt to get to the alley.
- As Officer A entered the yard, he saw a male subject jump over a wooden fence.
- The subject hit the ground in a "squat" position with both of his hands on the ground.
- Officer A yelled, "show me your fucking hands, Don't fucking move, show me your fucking hands"
- Officer A then discharged his firearm.
- Officer A fired his weapon because he believed the subject was going to shoot back at him.
- The subject continued to flee.
- Officer A then heard another officer come across the radio describing the location of the subject.
- The officer then went to that location and saw the other officers placing the subject in handcuffs.