



**CITIZEN REVIEW COMMITTEE
USE OF DEADLY FORCE WORKGROUP
OCTOBER 31, 2016**

**A Policy Review Conducted by the Use of Deadly Force Workgroup of the
Citizen Review Committee**

Citizen Review Committee Chair: Kristin Malone

Work Group members:

**Chair: David Denecke
Dr. Rochelle Silver
James Young
David Green
Michael Bigham**

Introduction and Background

A significant number of people in Portland have over time expressed concerns to the Citizen Review Committee (CRC) about the Portland Police Bureau's (PPB) policies, directives, training and practice regarding use of deadly force in encounters with people in this City. These concerns are also echoed in the U.S. Department of Justice enforcement action against the City of Portland and PPB and resulting consent decree with the City of Portland (the DOJ / PPB consent decree was entered into during the WG's deliberations). In response, the CRC established the Use of Deadly Force Workgroup (the 'WG') in 2012 to review PPB policies, directives, training and practices regarding use of deadly force, in order to advise PPB on possible changes to its policies, directives, training and practices with respect to use of deadly force.

Summary of WG Activity

Between 2012 and 2015 the WG met with many representatives of PPB, interested groups from the community and subject matter experts on various subjects. These sources included:

1. PPB Training Division
2. PPB Behavioral Health Unit
3. PPB SERT (special emergency reaction team)
4. Com. Robert Day, Precinct Commander (re Crowd Control)
5. Of. Daryl Turner, PPA
6. Albina Ministerial Alliance
7. "Don't Shoot Portland" leaders
8. Portland Cop Watch
9. League of Women Voters
10. Project Respond (mental health professionals)
11. Portland City Attorney (Dave Worboril)
12. Office of Internal Review (OIR)
13. OHSU Public Safety Office
14. Labor Law (Attorney Barbara Bloom)

Results of WG Research and Outreach

The WG sought to engage the various groups and individuals to learn not only about the particulars of use of force, but also about the competing interests involved and the effects of uses of force.

The Following are some of subject matter areas and considerations covered by the WG's outreach to these various groups and individuals:

1. PPB Training Division : Learned about defensive tactics and action / reaction time disadvantage; use of surprise; dealing with those in mental crisis; drug and alcohol influence; communication barriers; use of tactics such as command presence, control holds, less than lethal force and intimidation to discourage resistance.
2. Behavioral Health Unit (BHU) : Discussed training for and handling of those perceived to have mental illness [flight or fight mechanism] and limitations on availability of BHU.
3. SERT (Special Emergency Reaction Team): Discussed SERT use of force including disengagement, de-escalation and the advantages of time and distance available to SERT due to circumstances sometimes unique SERT deployments.
4. Precinct Commander Bob Day: Discussed use of force mostly related to crowd control circumstances (again, covering advantages of time, distance and advanced planning).
5. AMA (Albina Ministerial Alliance): Discussed disproportionate use of force against minorities.
6. “Don’t Shoot Portland”: Discussed disproportionate use of force against minorities and force use against demonstrators.
7. Portland Cop Watch: Attended most WG meetings and provided input on most subjects covered.

8. League of Women Voters: Attended most WG meetings and provided input on most subjects covered.
9. Project Respond [mental health professionals]: Discussed uses and limitations of Project Respond to deal with persons in mental health crisis and the flight or fight reaction.
10. Portland City Attorneys: Discussed city attorney perspective on PPB directives and the U.S. Constitutional law applicable to police use of force (*Graham vs Connor* and other decisions.)
11. PPA [Daryl Turner]: Discussed PPA perspective on use of force and protections of member's collective bargaining rights.
12. Office of Internal Review (OIR): Discussed OIR findings on facts and circumstances with respect to historical PPB use of deadly force.
13. OHSU Dept. of Public Safety: Discussed OHSU unique perspective on de-escalation of use of force to deal with resistance to arrest [a use of force policy is actually a 'response to resistance policy'.]
14. Labor Lawyer Barb Bloom (Government Labor Lawyer): Discussed arbitration law and procedures, effects of directives and possible ambiguity in directives.

Fact Finding

PPB's use of force directives can now be found in Dir. 315.30, 1010 and 850.20. Some of these directives require officers to use less force than may be legally allowed. Such directives include those that require:

1. Officers not to precipitate a use of force by placing themselves or others in jeopardy through actions that are inconsistent with the Police Bureau's directives and training [Dir. 1010, Sec 9.2.2.)
2. Officers use **"less force than the maximum allowed by (law)"** and for **"minimizing or avoiding force when possible"**. [Dir. 1010, Sec 4.8; 315.30 Sec, 2.3.1 and 2.3.4].

3. Officers be aware that PPB directives **require use of force that is less than that allowed by state statute:** [Dir 1010, Sec.4.10]

PPB directives, however, also depend in large measure on the use of force standard contained in the United States Supreme Court decision *Graham vs. Connor*. *Graham* requires officers use only the amount of force that is “objectively reasonable” under the circumstances, as seen at the time from the officer’s perspective. “This Directive [Dir.1010] adopts the constitutional standard for the use of force established by the United States Supreme Court in *Graham v. Connor* and subsequent case law as an outside limit on the amount of force that members may use. In this Directive, the Portland Police Bureau prohibits force that is not objectively reasonable under the constitutional standard....”

Current PPB training teaches officers to de-escalate situations, under certain circumstances, in order to reduce the need for force. These situations involve primarily citizens identified to be in mental crisis. However, officers sometimes cannot identify whether an arrestee is in metal crisis or has some other form of diminished ability to comply with police commands. Also, PPB training teaches officers about the officer’s action / reaction time disadvantage; to use various forms of intimidating ‘command presence’, and to sometimes use the element of surprise in making arrests and applying force. Some of these trained tactics may actually encourage unnecessary use of force, intimidation and lack of communication with arrestees. *Current PPB directives have no clear organizing principle about use of force that leads to diminished reliance on use of force.*

WG Conclusions

Based on the input from the various sources the WG has concluded the following:

*Use, or threat of use, of even moderate force against people with diminished capacity due to mental crisis, fear of police, drugs, alcohol, physical impairment, language barriers or hearing deficit can trigger fright, resistance, flight and aggression by person being confronted by police: the Fight or Flight reaction.

*Use of force against people, especially those with diminished capacity, can lead to a rapid upward spiral of added police use of force to combat added resistance, quickly endangering both officers and citizens.

* Current PPB directives give inadequate guidance on when and how force should be used and no guidance on how to avoid use of force.

Graham vs Connor* does **not consider whether or not less force could have been used, nor what to do if a suspect may be in ‘crisis’ or otherwise not have the mental, intellectual and physical capacity to understand and follow lawful police commands. Police do not always consider *why* a person is acting “weird”, threatening, violent or resistant. (The suspect in the *Graham* case, Mr. Graham, was a perfect example; he was acting ‘weird’ due to diabetic shock.)

*The *Graham* decision does not (1) provide adequate direction to PPB officers and (2) does not reflect current best practices for use of force. Several courts have held that police have a different responsibility to people with diminished capacity: to protect them from themselves.

* Use of force is properly a last resort, especially against persons unlikely to comply with police directions due to drugs, alcohol, mental or physical impairment, mental crisis, fear, language barriers, or hearing deficit.

*Arresting officers should, where circumstances may reasonably allow, create time and distance from the arrestee in order to slow down the officer’s decision making process and to consider all facts and tactical alternatives before resorting to use of force. A high percentage of arrestees, especially in sometimes predictable circumstances, are in fact suffering from some form of diminished capacity. Use of force in such circumstances may be unnecessary as well as degrading and dangerous to both the officer and the arrestee.

*PPB officers need, as an organizing principle, a use of force directive that requires officers to de-escalate situations, where circumstances reasonably and safely allow, in order to avoid the need for unnecessary use of force.

Recommendations

The WG recommends PPB adopt a use of force directive that incorporates use of disengagement/de-escalation principles *as an organizing principle*. The WG provides, as an example, City of Seattle Police Department Directive 8.100: De-escalation, attached.