



7142 Trask Avenue
Playa del Rey, CA 90293
323-821-0586
www.oirgroup.com

By: Michael J. Gennaco
Principal, OIR Group

April 2020

**Independent Review of the December 2, 2015 Officer-Involved
Shooting of Mario Woods**

I. Factual Summary

On December 2, 2015, SPFD officers received a 911 call reporting that a man had stabbed another person with a knife. Soon thereafter, Officers Charles August and Brandon Thompson saw a man matching the subject's description, subsequently identified as Mario Woods, standing on a street corner near a bus stop and contacted him. According to Officer August, they first approached Woods while seated in their patrol car, and Woods told the officers: "I'm not going with you."

Officer August said that when he got out of the car, Woods pulled out a knife and said something to the effect of "you not taking me today" while projecting an aggressive and challenging demeanor. In response, Officer August said that he drew his gun and told Woods to drop the knife. August said that Woods responded something to the effect that the officers were going to have to "squeeze" the triggers of their guns.

August said that Woods then began walking away from the officers. Officer August said that he repeatedly ordered Woods to drop the knife. According to August, Woods yelled back "You're gonna have to fuckin' shoot me." Dispatch records showed that Officer Thompson radioed for back-up assistance and communicated that Woods had a knife and was "coming at my partner." Officer Thompson also requested an "ERIW" (Extended Range Impact Weapon).

Eventually, numerous other officers arrived, surrounding Mr. Woods in a semi-circle with Woods' back to a closed garage door. The officers commanded him to drop the knife and two officers (Officers Shaun Navarro and Jennifer Traw) deployed less lethal force, bean bag rounds and foam baton rounds respectively. Officer Jesse Ortiz then moved towards Mr. Woods and deployed pepper spray.

At one point, Mr. Woods crouched down but eventually stood up still holding the knife. Woods began to walk away once more. In response, Officer August closed distance to block Woods from leaving. Woods continued to advance forward. Officer August and four other officers, Winston Seto, Antonio Santos, Nicholas Cuevas, and Scott Phillips then collectively fired 26 deadly force rounds at Woods. Mr. Woods was pronounced deceased at the scene.

The District Attorney reported that at least nine other officers were present for at least part of the incident and did not use any force, but it was unclear how many of them were part of the semi-circle surrounding Woods.¹

¹ The District Attorney reported that he was unable to confirm the names of all officers at the scene because most SFPD officers refused to cooperate with his investigation.

The District Attorney determined that the use of deadly force did not violate the Penal Code. SFPD determined that all uses of force and actions of the officers was consistent with Departmental policy.

II. Investigative Issues

A. Failure to Definitively Identify and Interview Witness Officers to Deadly Force Incident

As noted above, there were at least nine SFPD officers who were on scene when the deadly force incident occurred but did not use force. The identified officers who did not themselves use force prepared incident reports. The criminal investigation does not indicate how on-scene officers were identified. And the witness officers were not interviewed by SFPD during either the criminal investigation or during its subsequent administrative investigation. As a result, no witness officers were ever interviewed by SFPD about their actions and observations.

There are several problems with this. First is the seeming lack of a protocol or expectation in the aftermath of an officer-involved shooting for conducting a meticulous witness officer canvass as to when officers arrived and what they were in a position to see. Clearly the agency must determine which officers were on scene during, immediately prior to or immediately after the use of deadly force.

In this case, the homicide investigative report fails to clearly demarcate the investigative process whereby witness officers were identified. As a result, it is possible that SFPD personnel were on scene contemporaneous to the incident and no account whatsoever of their observations and actions was obtained from them.

The second issue is the absence of interview statements from those witnesses who were identified. Best practice would not only have each witness officer be formally interviewed (as opposed to simply preparing a written statement) but would also arrange for this to occur prior to being relieved from their duty shift. Here, the nine identified officers were only asked to prepare an incident report regarding their observations and actions.

In the context of investigating a deadly force incident, incident reports are never an adequate substitute for interviews. When police reports are prepared, it is the officer who determines the level of detail, and what observations and actions are documented. In contrast, the range and depth of information gained from interviews are driven by the investigator. Moreover, and unlike a written report, an interview affords the opportunity for follow up questions to gain further clarity and detail from the witness.

In this case, the witness officers who were on scene would have been able to provide helpful information about their observations as to the threat presented by Mr. Woods. Most significantly, through an interview process, each of the witness officers could have been asked about why, in light of their own observations and role in the encounter, they

chose not to use any force. None of the officers who wrote police reports provided any insight regarding this critical issue.

Moreover, as detailed above, SFPD declined to interview Officer Thompson about his initial observations of Woods. Radio recordings indicated that he radioed for back-up assistance, requested an Extended Range Impact Weapon, and reported that Woods was in possession of a knife and was coming at his partner. However, because he was not interviewed, Officer Thompson was not asked whether he heard the same comments that Officer August attributed to Woods about how they were going to have to kill him. Moreover, because no interview occurred, Officer Thompson was not asked about why if he heard similar comments, he did not radio those comments so that responding officers could be advised of them.

Additionally, Officer Thompson was not asked when he observed and then radioed that Woods was coming at his partner, especially since his partner did not describe any such actions by Woods prior to the formation of the semi-circle. Radio communications indicate that Thompson asked Officer August to “back up” but SFPD chose not to further explore the circumstances and observations that caused the officer to so instruct his partner. Finally, the lack of an interview prevented SFPD from learning in detail the actions that Officer Thompson took and the observations he made after the initial encounter.

In sum, a police witness who made critical observations about the actions of Woods during the initial encounter was never questioned about those observations or any of his on-scene actions by SFPD investigators. This gap in the evidence resulted in critical information not being acquired during the Department’s investigation.

Recommendation One: SFPD should revise its investigative protocols for deadly force incidents to ensure – through a canvass – or other measures – that all witness officers are identified for prompt interviews.

Recommendation Two: SFPD should revise its investigative protocols so that all witness officers to a deadly force incident and all officers involved in the incident prior to or immediately after the shooting are interviewed prior to being excused from their shift.

B. Refusal of Witness Officers to Cooperate with Criminal Investigation

As noted above, the District Attorney indicated that, while he was advised of the names of many officers who were on scene, he was unable to confirm the names of all officers who were present because most SFPD officers who were contacted refused to cooperate with the investigation. It is extremely disappointing that witness officers to a deadly force event declined to cooperate with an investigation conducted by a criminal justice

partner. Offering evidence to the formal investigation into a significant public safety matter, especially when requested to do so, would seem to be a baseline expectation for peace officers in whom we place so much trust and authority. Certainly, because the investigation conducted by the District Attorney is a criminal investigation, those officers who use deadly force have the Constitutional right to decline to provide a statement. But for those officers who do not use force and have no potential criminal liability, there are no such Fifth Amendment implications and their account should be readily obtainable by the District Attorney.

SFPD could and should assist in this matter by devising policy that requires witness officers to cooperate in District Attorney deadly force investigations and provides sanctions for those officers who fail to comply with such directives. The effectiveness of a deadly force investigation should not be compromised by the unwillingness of witness officers to share their observations. In San Francisco, that should no longer be an option for members of SFPD.

Recommendation Three: SFPD should devise General Orders that instruct witness officers to cooperate with any deadly force investigation conducted by a government agency, and that provide administrative sanctions for non-compliance.

C. Exposure to Video Evidence Prior to Interview

Prior to being interviewed, the involved officers were provided the opportunity to review video footage of the incident. As a result, the investigators forfeited the ability to obtain a “pure” statement of the incident from the officers – that is, one that was not affected by exposure to a recording of events that provided information different from the officer’s own recall and perspective. Such exposure, particularly when depicting events from a different vantage point, influences recall in subtle or even subconscious ways, thus potentially causing officers to relate events that they were not actually able to observe.

Since the Woods’ shooting, protocols have been modified so that a scripted statement is provided by officers before any video evidence has been shown. However, because it is a statement, the level of detail about the incident is in the control of the officer and her/his attorney and the scripted result is virtually useless to the fact collection process. Protocols must be changed so that a comprehensive interview is conducted of involved officers prior to exposure to video.

Recommendation Four: SFPD protocols should be modified to ensure that involved and witness officers are fully interviewed prior to exposure to video evidence of the event.

III. Tactical and Performance Issues

A. Lack of Comprehensive Assessment of Officer Performance

SFPD's review of officer performance focuses virtually exclusively on the Constitutional standard of objective reasonableness of the force that is used. While that standard may set out a minimal expectation regarding the decision to pull the trigger, progressive police agencies recognize that officer decision-making in deadly force incidents should be subjected to more rigorous and holistic review. All tactics and decision-making relating to a deadly force incident – including the precursors to the force and potential alternative options – should be evaluated objectively. The goals should extend beyond “bottom line” determinations into a broader assessment that reinforces effective performance and addresses possible shortcomings as needed. Such a review has implications not just for individual officer accountability but also as a source of useful information for the agency as a whole. Until that type of exacting review occurs, SFPD will be unable to effectively remediate and fully prepare its officers for future challenges.

Recommendation Five: SFPD should conduct a thorough and wide-ranging administrative review of officer decision-making in deadly force incidents, so that the involved officers and the Department itself are better equipped to address future tactical challenges.

B. Limited Assessment of Deadly-Force Rationale

Decision-Making by Initial Officer

Officer August reported that after he and other officers had created a semi-circle around Mr. Woods, less lethal force and pepper spray were used by other officers, and Woods began to walk away, he decided to close the distance to try to prevent Woods from leaving. Officer August said that he then used deadly force because he had placed himself too close to Woods and Woods continued to advance on his new position. The officer said he was in fear for his life as well as for the safety of others should Woods successfully elude the semi-circle. However, Officer August was not asked – and SFPD's review did not consider – the following:

- If there was legitimate concern about Woods' potential use of the knife on third parties, to the point where deadly force was deemed necessary, why had it (or other adjustments in positioning and tactics) not been employed by August or his partner when Woods' *initially* disobeyed instructions and walked away from them?
- How consistent with SFPD directives and expectations was it for Officer August and others to position themselves so close to Woods in forming the semi-circle?

- Did Officer August fully consider the likelihood that his move to block the passage of Mr. Woods would precipitate the need for deadly force?
- After the semi-circle was formed, why didn't August or any officer develop a concerted and coordinated plan to safely take Mr. Woods into custody?
- Given that multiple less lethal munitions and pepper spray had been used on him, was consideration given to Woods' actions being consistent with simply wanting to move away from further use of those weapons upon him, as opposed to being intent on harming officers or others?
- If there was concern about civilians being endangered by Mr. Woods, why was there no apparent concerted effort to block egress into the area, stop pedestrian and vehicular traffic, and move civilians away who were in potential danger?

Decision-making by Other Officers Who Used Deadly Force

The four additional officers who used deadly force said they decided to fire out of concern for the safety of Officer August and a concern about civilians being endangered if Woods had been allowed to break the semi-circle of officers. However, SFPD conducted no independent analysis of these issues:

- Whether the officers could have effectively deployed at a safer distance, given the concern several of them expressed about being too close to Woods.
- Whether there were available positions of cover or whether officers could have created more opportunities for cover, such as by moving police units into different positions.
- Whether the close deployment created a potential for cross-fire when deadly force was deployed.
- Whether some of the numerous responding officers could have been deployed to move bystanders to a position of greater safety.
- Whether any officer considered requesting a crisis negotiator to the scene.

Relating to some of the above issues, when asked by the District Attorney, a supervisor from the SFPD's Training Academy opined that he would have preferred if the officers had been able to take cover and noted that their tight semi-circle increased the risk of cross-fire. However, the Department itself chose not to take advantage of the expertise and acumen of its training staff in evaluating the decision-making of the involved officers.

The Possibility of Contagious Fire Not Analyzed

“Contagious fire” is a phenomenon whereby an officer decides to fire because he detects, observes, hears, or believes that a fellow officer has fired. Officers are expected to use deadly force based on their own observations and independent evaluation of any potential threat rather than shoot because other officers are perceived as doing so.

Whenever a shooting involves multiple officers and a significant number of rounds, it is incumbent upon the agency to fully investigate and review the incident and consider whether contagious fire could have been a factor in the number of shooters and rounds delivered. In this case, the mere fact that five officers used deadly force and 26 rounds were fired necessitates consideration of the existence of contagious fire.

And the initial explanations by officers who used deadly force raise questions about why they decided to shoot. Officer Cuevas told detectives that “they all fired” (which was objectively inaccurate) and that he did not remember who fired first; it seemed like Officer August fired first. According to Officer Cuevas, “it seemed like everyone just knew; everyone worked together as a unit and knew that it was time”, (even though there was no effective planning or communication by the on-scene officers about this decision). Officer Seto said that he heard a “pop” and then fired his weapon. Officer Santos said he fired when he heard the first shot.

When questioned later during the administrative interview, all three denied shooting because fellow officers had done so. However, none of the officers were confronted by their earlier statements that could be interpreted otherwise. Moreover, the Department itself did not assess or actively consider the possibility of contagious fire having occurred, despite the number of shooters, rounds fired, and the initial statements of the officers.

The failure of SFPD to evaluate whether contagious fire did occur in this case is a shortcoming in the Department’s analysis. If the officers did fall victim to contagious fire, it would have obvious implications for the Department in terms of both incident-based accountability and the possible need for training and remediation at the level of these officers and the agency. The analysis herein should not be read as a conclusive finding that there was contagious fire; but it was incumbent upon SFPD to do more investigative work and consideration of the issue. By not doing so, SFPD forfeited the opportunity to address a potentially significant deficit in officer performance.

Recommendation Six: Whenever there is any indication that contagious fire might have been the cause of the use of deadly force, SFPD should carefully and objectively analyze the evidence.

Failure to Address the “21 Foot” Rule

Several of the officers spoke about how they were concerned about being too close to Mr. Woods and recalled being taught that whenever they were within 21 feet of a subject armed with a knife, they were per se in the “danger zone.” Originally based on one article from the early 1980’s, the 21-foot rule has been largely discredited since then,

and progressive police agencies no longer teach it. However, it is apparent that at least some SFPD officers continue to profess its legitimacy and rely on its principles.² Once the Department learned that the 21-foot rule continued as SFPD lore, it should have moved to clarify its parameters via a training bulletin.

Recommendation Seven: SFPD should promulgate a training bulletin that updates officer understanding and disavowal of a per se “21- Foot Rule”.

Use of Less Lethal Force Not Analyzed

In this incident, SFPD officers fired four rounds of foam baton and two rounds of bean bags at Mr. Woods, striking him several times. SFPD has very specific directives and training bulletins relating to the use of less-lethal force. For example, the Department Bulletin 15-234, Extended Range Impact Weapon Guide Sheet requires that as part of the pre-deployment procedures that communications dispatch a stand by for emergency equipment, that upon arrival with less lethal munitions that a briefing occur to determine if the less lethal equipment is warranted, and that a plan is formulated with cover officers and ground arrest teams.³ The Bulletin further dictates that, prior to less lethal munitions being deployed, warnings be provided, that there be an assessment after each deployment, and if the decision is made to deploy subsequent rounds, officers are to take aim at a different target area.

However, the Department’s review did not analyze whether the decision-making relating to the use of less lethal force in this incident was consistent with policy and training. As a result, the following questions remain about whether officers complied with the Training Bulletin dictates:

- Did the on-scene officers request emergency personnel to stand by when use of less lethal was contemplated?
- Was there any type of on-scene briefing undertaken to determine whether the use of less lethal was warranted?

² According to SFPD’s Training Academy supervisor, the 21-foot rule is not taught as a per se rule, but as a general concept about the need to keep a reasonable distance between themselves and a subject armed with an edged weapon.

³ A review of the radio communications suggests that the decision to deploy less lethal was made by a supervisor who was not even on scene at the time of the incident. Clearly, it would have been preferable, and consistent with the intent of SFPD policy, for that instruction be made by someone on-scene. Yet, this issue was not considered by the Department in its internal review; in fact, the supervisor who authorized the use of less lethal was not even interviewed.

- Were the specific warnings for less lethal communicated to Mr. Woods prior to its deployment?
- Was there an assessment of the effect of the less lethal rounds prior to subsequent deployment?
- Did officers target different areas when deploying subsequent rounds?

The evidence that does exist does not indicate a thoughtful and deliberate consideration of whether and when to use less lethal force. Instead, the multiple rounds of less lethal munitions appear to have been discharged in a disjointed, uncoordinated, unsupervised and hasty fashion. In fact, the information indicates that the less lethal operators discharged their weapons so quickly and indiscriminately that at least one operator ran out of munitions, thus rendering any additional immediate use of that device not possible.

Despite these weighty issues, the Department declined to conduct robust fact-gathering and a detailed analysis regarding the use of less lethal munitions, and instead simply concluded in a one sentence conclusion that the use of those force options was consistent with SFPD policy.

Use of Pepper Spray

As noted above, after the officers formed a tight semi-circle around Mr. Woods and after less-lethal munitions were used, Officer Jesse Ortiz told investigators that he holstered his weapon, approached Woods, retrieved his pepper spray canister, and sprayed him in the face for two seconds with no apparent effect. However, SFPD engaged in no analysis about the advisability of this force option. Nor did it address the apparent disconnect between the account of all other interviewed officers and that of Officer Ortiz as to the safety of pepper spray as an option in the prevailing circumstances. This gap suggested the potential value of a thorough assessment: no matter the outcome, one perspective or the other would have presumably been validated for the edification of involved personnel and the Department as a whole. Instead, the Department merely opined in one sentence that the use of pepper spray was consistent with SFPD Policy. By not evaluating the advisability of this force option, and providing appropriate feedback to involved officers, the Department failed to take advantage of a potential learning lesson in this case.

Recommendation Eight: When less lethal force is used in conjunction with a deadly force incident, SFPD must conduct a detailed analysis of whether its use is consistent with policy and training.

Recommendation Nine: When other force is used in conjunction with a deadly force incident, SFPD should opine about the advisability of each option used.

Supervisory Issues Not Addressed

In SFPD's investigation, no supervisors were interviewed. It appears that no supervisors were on scene at the time that the shooting occurred, but at least one supervisor, Sergeant Hugh Hall, apparently remotely authorized the deployment of the less lethal munitions. Most significantly, after Officer Thompson radioed that less lethal had been deployed, Sergeant Hall radioed: "Time and distance, time and distance."

An interview with Sergeant Hall would obviously have shed important light on his rationale for authorizing the use of less lethal options as well as the challenges in doing so remotely. In addition, an interview with Sergeant Hall could have been helpful in assessing how his "time and distance" admonitions were intended, and how that comported with actual officer decision-making and performance.

In its investigation, SFPD did not ask any of the on-scene officers about the advisory from Sergeant Hall and whether anyone took actions in heed of the transmission to slow the incident down and ensure deployment at a safe distance. Available evidence suggests it did not in fact influence officer actions and that the instruction was essentially ignored. A thorough investigation would have ensured that this issue was fully explored – with potential value for both evaluating officer performance and identifying learning opportunities for future scenarios.

In addition, SFPD did not analyze any supervisory decisions in its internal review. Apparently, several supervisors were en route to the incident, but had not arrived on scene prior to the deployment of any force. A more robust analysis would have evaluated why no supervisors had arrived and whether it was feasible and desirable for on-scene officers to focus on neutralizing the dynamic until supervisors were on scene.

The Training expert used by the District Attorney indicated that SFPD's current training curriculum emphasizes more supervisory scene control, with sergeants directing officers into position and handling crowd control. In this case, however, there was no analysis about whether an on-scene supervisor could have potentially changed the outcome of the shooting by effective deployment and coordination of resources. It was incumbent on SFPD to engage in such analysis.

Recommendation Ten: SFPD should automatically incorporate supervisory decision-making where relevant in any review of deadly force.

Post-Incident Scene Investigation Concerns Not Addressed

Mr. Woods was standing in front of a closed garage door when he was killed. According to a civilian witness, responding SFPD officers demanded access to the garage; when consent was not immediately forthcoming, they threatened to tear down the door with a crow bar. The witness reported that, at a later point, calmer and more professional officers appeared, asking if anyone had been injured by stray rounds.

While it is important for police to inquire about the public safety of individuals who may have been hurt as a result of the use of deadly force, SFPD received information that the initial approach was less than professional. This was a perspective that seems especially noteworthy in light of the same witness's willingness to credit officer comportment by others in dealing with the same situation. It was incumbent upon SFPD to identify the involved officers so that appropriate investigatory and/or remedial action could be taken.

Recommendation Eleven: SFPD should evaluate the post-incident actions of its personnel as part of its standard review process and should remediate as needed.

Possible Untimely Notification of Next of Kin

According to media reports, Mr. Woods' next of kin was not timely notified and only learned of his death via social media. There is little documentation in the investigative file about what efforts were made by SFPD to notify Woods' family immediately after the incident and it appears that any such notification was not made until the next day. In the aftermath of an officer-involved shooting, the notification issue often fails to receive appropriate attention. As a result, some police agencies have specially assigned the task to community-oriented personnel, resulting in a more sensitive and timely transmission of information to family members. SFPD should consider a similar protocol to improve its handling of this sensitive and important task.

Recommendation Twelve: In the officer-involved shooting context, SFPD should consider assigning notification of next of kin responsibilities to personnel better equipped to handle such tasks.

IV. Review and Analysis Concerns

Return to Work Decisions Purely Internal

Prior to authorizing officers involved in deadly force incidents to return to the field, an elaborate review is undertaken by SFPD and a recommendation is made to the Chief about whether and when an officer should be returned to active duty. (In this case, the

involved officers were placed on administrative leave, at least until the criminal investigation was completed.) This process is not as formal and multi-faceted in other agencies, and the Department deserves credit for its efforts in this regard. Still, the legitimacy and effectiveness of this exercise would be enhanced if the perspective of the Department of Police Accountability (DPA) were added to the deliberations. It should be noted that the DPA has been provided increased jurisdiction to conduct independent deadly force investigations as a recent reform that reflected public interest in objective accountability. Nonetheless, it has not been invited to participate in the important decision as to whether and when an officer involved in a shooting should be returned to work. Such input would be both intrinsically valuable and a gesture in the direction of increasing the public's trust in the process. While ultimately the deployment decision should rest with the Chief after consultation with the President of the Police Commission, DPA should be able to opine and report on its position regarding field deployment decisions.

Recommendation Thirteen: The City's Department of Police Accountability should be authorized to participate in an advisory role in the decision as to whether and when an officer involved in a deadly force incident should be returned to the field.

Rendering of Opinions by SFPD Training Personnel Based on Incomplete Information

According to the opinion letter published by the District Attorney, a supervisor in the SFPD Training Academy reviewed the videos of the incident and concluded that the officers acted in accordance with their training at the time. However, the determination by the Training Supervisor was apparently solely based on review of the videos. While video evidence is important to any review of a critical incident, it cannot be the sole source of any determination. Officer statements, witness statements, other forensic evidence, radio communications, and other relevant reports must also be reviewed before any opinion can be effectively rendered about a certain officer's performance. Because the Training Supervisor was not apparently provided the complete investigative file, his ultimate opinion was compromised by this limitation.⁴

Recommendation Fourteen: SFPD Department training experts should refrain from rendering opinions about officer performance in critical incidents unless provided with the complete investigative file.

Faulty Information Regarding Shooting Provided for Public Review

Shortly after the incident, SFPD released still photos from video footage of the incident that purported to show that Mr. Woods extended his hand armed with the knife prior to the shooting. Subsequent video analysis called this conclusion into question. As a result, public trust was lost in the objectiveness of the investigation.

Whenever an officer-involved shooting occurs, police agencies must balance the public's interest in information versus the need to be entirely accurate. Providing selective information to establish the legitimacy of the officers' actions is presumably meant to reassure the public, but the effects can be quite different. What often results instead is a concern that the police have predetermined an outcome in favor of their personnel. And the skepticism this provokes is obviously compounded when – as here – the initial information proves to be mistaken.

Recommendation Fifteen: In deadly force incidents, SFPD should refrain from premature and selective release of information intended to justify an involved officer's actions.

Recommendation Sixteen: SFPD should not expound about the legitimacy of any deadly force incident until the investigation is completed.

Recommendation Seventeen: In cases in which inaccurate or misleading information about an officer-involved shooting is released, SFPD should promptly correct the information.