



COMMUNITY
POLICE REVIEW COMMISSION

TOTALITY OF CIRCUMSTANCES

- **IN THE REVIEW OF OFFICER INVOLVED DEATH CASES – OID’S**

NOVEMBER 2017



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TOTALITY OF CIRCUMSTANCES

- **THE QUESTION FOR THE CPRC IS:**

Should the CPRC make findings on two sets of criteria:

- 1) Whether Preshooting tactics are in policy
- 2) Whether the Use of Deadly Force was in policy

In addition, to also make policy recommendations if the Commission deems it necessary.



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- The L.A. Police Commission voted to use this formalized method on February 12, 2014, based upon the California Supreme Court opinion in *Hayes v. County of San Diego*, 2013 CAL. LEXIS 6652. It has been utilized since that time.
- The California Supreme Court found that under the California **negligence** law, an officer's preshooting conduct leading up to a deadly use of force may affect whether a use of force is ultimately reasonable and therefore may be considered in the analysis of any use of deadly force.
- The Hayes case decision was based on a civil action filed against San Diego County by the daughter of Mr. Shane Hayes, who was shot and killed by two San Diego County deputy sheriff's in 2006. **NOTE:** This was a civil case and not based on a criminal case against the deputies.



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- The Hayes case was sent to the Ninth Circuit Court of Appeals and the California Supreme Court to decide on one aspect of the case – Can preshooting actions and tactics by officers be considered "liability" (negligence) in a civil case.
- The liability aspect of this decision was specific to dealing with a suicidal individual
- In the Hayes incident, deputies were called to Hayes' girlfriend's home on a domestic dispute complaint from a neighbor
- Two deputies spoke with the girlfriend out in the front yard – she claimed they were arguing about his wanting to commit suicide by gas fumes from a vehicle in the garage
- She informed the deputies he was inside the home and did not have a gun
- Deputies entered in concern for Hayes' welfare
- Entered the home with guns holstered considering what the girlfriend told them
- Deputies located Hayes in a dimly lit room off the kitchen – hands behind his back
- Deputies were appx 7" – 10 " away



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- Questions the deputies did not ask the girlfriend prior to entering the residence:
 - Manner of prior suicide attempts that would have revealed he used a knife.
 - Other weapons that Hayes might use
 - Inquires as to prior calls at the location which would have revealed Hayes was taken into protective custody for a suicide attempt with a knife
 - If Hayes was intoxicated that night – info sent but deputies did not receive it prior to entering

The California Supreme Court – sent the case back to the appellate courts indicating that preshooting actions by police may be considered in the totality of circumstances for purposes of establishing negligence in a civil case when encountering a suicidal individual.



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- Deputy ordered him to show his hands. Hayes took two steps forward toward the deputies and held up his arms at shoulder height – holding a knife that was pointed downward.
- Deputies believed Hayes represented a threat so both drew their weapons and each fired twice at Hayes, striking him.
- Graham v. Conner was applied in the review and the initial court found the criteria was met. The Ca Supreme court said that in considering the first and third factors under Graham, "it is undisputed that Hayes had committed no crime, and there is no evidence suggesting that Hayes was actively resisting arrest or attempting to evade arrest." When asked to show his hands, Hayes complied."
- Reminder - Under Graham v. Connor, a court must pay "careful attention to the facts and circumstances of each case, including: *the severity of the crime at issue; whether the suspect poses an immediate threat to the safety of the officers or others; and whether he is actively resisting arrest or attempting to evade arrest by flight.*"



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- Prior to the Hayes decision, the L.A. Police Commission already used the Totality of Circumstances methodology when reviewing Categorical Use of Force cases
- Subsequent to the Hayes decision, the L.A. Police Commission elected to formalize a finding in preshooting actions by officer that might have violated policy.
- The L.A. Police Commission added the following language to the Use of Deadly Force Policy:
....adjudicators may consider "the reasonableness of an officer's use of deadly force includes consideration of the officer's tactical conduct and decisions leading up to the use of deadly force."
NOTE: L.A. Police Commission sets Policy for LAPD. This is not the case with the CPRC.
- The L.A. Police Commission has rarely found an out of policy shooting based upon the totality of circumstances. (The conduct was so substantially deficient that it unreasonably created the need to use deadly force.
- The adjudication process used by the L.A. Police Commission prior to the language change – typically functioned to produce separate evaluations for tactics, "drawing" and the use of force. These are the three separate criteria that are evaluated where a finding is established for each one of them.



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- The CPRC has discussed, reviewed and commented on preshooting actions and activities by officers in OID case reviews in the past.
- In many instances, this information was relayed to the City Manager and Chief of Police in writing in order to share concerns and possibly making policy change recommendations.

- **THE QUESTION FOR THE CPRC IS:**

Should the CPRC make findings on three sets of criteria:

- 1) Whether Preshooting tactics are in policy
- 2) Whether the Use of Deadly Force was in policy

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APPLICATION TO RIVERSIDE CPRC

- The Riverside CPRC methodology for reviewing cases does not include detail on how a case will be reviewed except for the "Stages" of the review process
- The CPRC has made "Tactical" recommendations to the Police Department in past cases
- Use of the "Totality of Circumstances" methodology would standardize how case reviews are conducted by Commissioners



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COMMISSIONER CONCERNS

- CPRC Commissioners are not educated on the specific tactical information used by RPD.
 - The CPRC would not establish whether or not the tactics were correct rather whether the tactics were within policy
- This method could add to more debate and disagreement among Commissioners
 - Although the debate might lengthen the review it will increase the thoroughness of it
 - It will also increase the community's faith in the outcome.



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