

**DRAFT (3/7/2018)**  
**RCPA REPORT:**  
**THE CPRC REJECTION OF THE PROPOSAL FOR A TOTALITY OF**  
**CIRCUMSTANCES ANALYSIS OF OFFICER INVOLVED DEATHS**

**EXECUTIVE SUMMARY**

At the December 13, 2017, meeting of the Community Police Review Commission (CPRC)<sup>1</sup>, the proposal to adopt a modified model for reporting their findings on officer involved deaths was discussed in open session. Briefly stated, the proposed change would modify the report to include two findings, (1) tactics (the totality of circumstances), and (2) use of deadly force. Following this discussion, the Commissioners voted 8 to 1 against adoption of the model. In the spirit of continued discussion, our response to this decision is presented herein.

This document was prepared by the Riverside Coalition for Police Accountability (RCPA) in response to the audio portion of the City video-taped discussion<sup>1</sup> among CPRC Commissioners, the CPRC Manager, and RPD Chief Diaz concerning the proposed adoption of the Totality of Circumstances Model. We regret that the RCPA was not included in the discussion of the Model. While the Model was brought to the attention of the CPRC by the RCPA, the RCPA was left out of the loop on the discussion, whereas the RPD was invited to weigh in on the discussion. Basically, the community's perspective was missing from the discussion. Therefore, we request a formal reopening of this topic.

**BACKGROUND**

Below, the RCPA summarizes the CPRC mandate required by the Riverside City Charter, and briefly outlines the history of the CPRC. We then summarize the concerns and objections voiced by Commissioners and RPD Chief Diaz in their discussion of the Totality of Circumstances Model. Finally we present the RCPA response and our concluding remarks.

CPRC Charter Mandate

- The main purpose of the CPRC is to review and investigate RPD officer-involved deaths and allegations of police abuse of force.
- The fulfillment of this mandate requires that the CPRC act on behalf of the community to achieve transparency regarding police use of force.
- The relationship between the CPRC and the RPD is not a collaboration. The independence of the CPRC is essential to its function. The CPRC is an independent body empowered to investigate RPD officer-involved deaths and allegations of police abuse of force on behalf of the civilian population of Riverside.

CPRC Historical Outline

- The CPRC was created via a Riverside City ordinance in 2000 by a vote of City Council and placed in the City Charter in 2004 by a ballot initiative vote of the citizens of Riverside.

- The CPRC has completed investigation of at least 32 OIDs since its inception (4 investigations are pending).
- Of the 32 OIDs investigated, all but one has been found to be “in policy” by the CPRC.
- The “bottom line” of the CPRC reports for each of the OIDs found to be “in policy” can be summarized by the statement that since the officers “feared for their lives and/or the lives of others,” the decision to use lethal force was justified and therefore the actions of the officers were within policy.
- Thus, regardless of the circumstances prior to the use of deadly force, if the officer(s) involved state they “feared for their lives and/or the lives of others”, then the decision to use lethal force was justified. While this is useful information, it is only the final piece of a tragic incident. Findings on tactics would help make the CPRC reports more insightful and strengthen the communities’ faith in the CPRC’s deliberations.
- On February 29<sup>th</sup> of 2016, members of the RCPA met with the Assistant City Manager and the City Attorney to discuss the possibility of incorporating the Totality of Circumstances Model.
- Soon thereafter, the RCPA met with members of the CPRC and the CPRC Manager to discuss adopting the Totality of Circumstances Model.
- At the December 2017 meeting of the CPRC by a vote of 8 to 1, the CPRC rejected a proposal to include findings on tactics (the Totality of Circumstances Model) in the CPRC reports.

#### The Totality of Circumstances Model

- The RCPA believes that inclusion of analyses of the circumstances prior to, and up to, the decision to apply deadly force will help to determine if there were tactical decisions/actions which contributed to, or dictated, a deadly outcome to the incident which reasonably could have been avoided.
- Such analysis would be reported in additional findings: (a) findings to determine if some or all of the tactics used were within policy; and (b) a finding on whether the use of deadly force was within policy.
- The Totality of Circumstances Model results in a more in depth analysis of the OID which helps to strengthen the community’s faith in the commission’s deliberations, enhance the transparency of the oversight process, and call attention to any needed changes in police procedures and policies.

### **CPRC CONCERNS**

All of the quotations below are taken from the video tape of the CPRC discussion<sup>1</sup> on December 13, 2017. The additional points were abstracted from comments made in the discussion but are not direct quotes.

- At the December CPRC meeting, some Commissioners, the CPRC Manager, and RPD Chief Diaz all stated that CPRC Commissioners are not educated (trained) on the RPD use of tactics and therefore are not qualified to make

findings on tactics. They are not educated on the specific tactical information used by the RPD.

- Some CPRC Commissioners, the CPRC Manager, and RPD Chief Diaz stated that CPRC Commissioners already conduct analyses of the tactics used in each OID (notice the apparent contradiction with the preceding point), and therefore does not need to formalize this in their OID reports.
- Some Commissioners worried that issuing findings on tactics would expand the scope of the CPRC duties and exceed the City charter.
- Some commissioners and the Chief expressed the concern that findings which identify out of policy tactics will be held against the individual officer who was involved.
- Totality of circumstances is an oxymoron – it would “separate out tactics and use of force from one another in an unnatural way. Pulling them apart doesn’t put us ahead of the work we are already doing.” We are already able to address RPD tactics during our discussions.
- It was argued that the additional finding on tactics would bolster civil suits put forward by decedents’ families.
- One Commissioner stated “it would make me uncomfortable to come up with a finding on tactics”.
- “The CPRC would be forced to decide whether the officer should have been behind a palm tree or a power pole.”
- “Most tactics are not in the RPD’s policies and procedures. They are decisions made in the moment, in stressful circumstances.”
- “The RPD has already shown that it is responsive to the CPRC’s recommendations about tactics, so there is no need to make a finding about it.”
- “Such a finding isn’t in the spirit of a collaborative relationship between the CPRC and the RPD.”
- “Making findings on tactics has the benefit of hindsight and ample time to assess the situation, which is exactly what officers don’t have when they are in the middle of an incident. Tactics can go out the window in the heat of the moment. We shouldn’t split hairs when it’s the officers who are putting their lives on the line.”
- “If laypeople like the CPRC make a finding, it’s a slippery slope.”

### **RCPA RESPONSE**

- We believe the training and career experiences of the Commissioners make them suitable to render findings both on tactics and on the use of deadly force. The CPRC Commission is made up of about 50% individuals with law enforcement experience. The CPRC Manager has had a long career in policing at the command level. Commissioners routinely receive training on RPD tactics. This training is targeted to technical issues arising from the review and investigation of the OIDs currently under consideration, and occurs almost on a monthly basis. Commissioners also partake in ride-along experiences with RPD officers to observe the routine tactics used.

- If the Commissioners need expert opinions on the tactics employed in an OID incident, then the CPRC should engage the services of experts just as it presently does to investigate OIDs.
- Civilians are expected to understand, evaluate and judge police tactics as jurors in criminal court proceeding and as jurors for grand juries. Our system of justice is based on the assumption that citizens are capable of understanding the laws of our country and can render justice as jurors through our system of jurisprudence. We are surprised that some Commissioners, do not consider themselves suited to understand RPD tactics.
- We are surprised that some Commissioners find themselves uncomfortable making a finding on tactics for a particular OID. In that instance, he/she should simply abstain on the vote. If the lack of comfort is more general, then the individual should not be a Commissioner.
- Whether the officer should have been behind a palm tree or a power pole is a specious argument and has no place in this discussion. Many tactics are in the RPD P&P, e.g., using less-lethal force and de-escalation techniques.
- The restriction of findings to consider only the use of deadly force tends to separate and disregard the influence of tactics on the decision to use deadly force. This is what is illogical, “unnatural”, in the current practice.
- Some decisions about tactics and the use of deadly force are made in the moment, under stressful circumstances. This is no excuse for not rendering findings about tactics or the decision to use deadly force.
- If Commissioners already review and investigate tactics (as acknowledged), then there is no reason why findings on tactics cannot be formally incorporated into the Commission’s OID reports. This is not only about the RPD, it is also about the community’s need to know what happened – it is a transparency issue.
- Commissioners would issue findings about whether the tactics were within RPD policy – not whether it was right or wrong.
- The RPD’s increased interest in de-escalation and its newly modified training in tactics demonstrate that the RPD believes the refinement of tactics is important and we believe the CPRC also shares this belief.
- The City Attorney has already reviewed the proposal to implement the Totality of Circumstances Model and he says that it is entirely up to the Commission to decide whether they choose to do this.
- Findings on tactics are not about “collaboration” with the RPD. The relationship between the CPRC and the RPD is not a collaboration. The City charter compels that they cooperate.
- The CPRC acts on behalf of, and answers to, the community on issues of transparency regarding police abuse of force, and is independent of the RPD.
- Yes, findings have the benefit of hindsight. Regarding OIDs, the *raison d’être* for the CPRC is to find out what actually happened and determine if there are needed changes in policies and procedures so that in future, loss of life both for civilians and for officers is avoided where possible.
- The CPRC charter mandates that laypeople make a finding as to whether an OID was in or out of policy. The CPRC has done this for 32 OIDs since its inception, yet where is the “slippery slope”? Extending its findings to include tactics under

the rubric of the Totality of Circumstances Model is a logical and much needed refinement of the responsibilities of the CPRC. Since the CPRC already looks at and discusses tactics there is no reason why this process should not be formalized and reported as a finding.

- This is not about liability for the City or the individuals involved. This is not about “playing a game of gotcha”, it is about avoiding unnecessary loss of life. This is not about bolstering law suits by decedents’ families. Currently, CPRC reports on OIDs identify the officer(s) involved in the decision to use deadly force as a matter of record. A finding that a tactic was out of policy in an OID incident will carry a similar exposure for the officer(s) involved. If the tactics were out of policy, then the public needs to know especially in instances where inappropriate tactics contributed to a death. It is about determining what actually happened in an OID and then changing policies and procedures when warranted. RCPA expects that CPRC will find that most tactics have been appropriate. In a recent instance where CPRC came to the conclusion that the tactics used were inappropriate, they made mention of the tactical problems in their report. Their recommendations were forwarded to Chief Diaz.

### **CONCLUDING REMARKS**

- Contrary to the statements of Commissioners and the RPD Chief, Commissioners are capable of rendering findings on tactics as set out in the Totality of Circumstances Model. Indeed, they already conduct analyses of the tactics used in each OID.
- Adoption of the Totality of Circumstances Model for the analysis of OIDs would provide a significant step up in transparency and therefore enhance the ability of the CPRC to better fulfill its Charter mandate.
- Adoption of the Totality of Circumstances Model would not exceed the bounds of the CPRC charter.
- The additional work required of the Commissioners is modest and more than justified by the resulting increase in transparency provided to the public.
- We believe adoption of the Model would contribute to a significant improvement in our collective understanding of what happened in an OID and would provide additional insight into any changes in RPD policy and practices needed to avoid unnecessary loss of life.

We understand the reluctance of the Commission to adopt the Totality of Circumstances Model. Creation of the CPRC in the aftermath of the death of Tyisha Miller met similar reluctance on the part of the City government, the Riverside Police Officers Association and the RPD. We believe the work of the CPRC has made a significant contribution to improved policing in the City of Riverside. Adoption of the Totality of Circumstances Model would further improve the work of the CPRC.

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<sup>1</sup>The video footage of the December 13<sup>th</sup> CPRC meeting is available at [http://riversideca.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=2982](http://riversideca.granicus.com/MediaPlayer.php?view_id=2&clip_id=2982)). The discussion starts at about minute 53.50.