



# Spring

# The **BACKUP** *Newsletter*

The Official Publication of the California Reserve Peace Officers Association



Seven Myths About  
Use of Force



The Ultimate  
Foot Pursuit



Which One of Us is the  
REAL Cop?



2019 CRPOA Awards  
Announcement and Criteria

## SPRING 2019

Welcome to the Quarterly Newsletter of the California  
Reserve Peace Officers Association

### **ARPOC 2019**

August 21-24, 2019

San Diego

ARPOC 2019  
Registration is  
now open!

Early bird  
registration has  
been extended  
until July 15th!

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# Chief Executive Officer's Report

By Mike Voorhees

## Report from Headquarters



ARPOC 2019 is less than seven weeks away and we have a great lineup of POST-certified classes in store for those who attend. We're back at the Crowne Plaza in San Diego which has given us great service for the past two southern California conferences.

Go here for general information about the conference: [General Information](#)

Go here for detailed info about the classes: [Class Descriptions](#)

Make your hotel reservation here: [Crown Plaza Hotel](#)

### Director Elections

We annually elect three directors. This year there were only three nominees, incumbents Pete Downs, Ed Jones and Jim Lombardi. Pursuant to our bylaws, as there were the same number or fewer nominees than the number required to be elected, they were deemed elected. Their new terms began June 1, 2019 and will expire May 31, 2022. Nomination forms will shortly be available online for the 2020 elections.

### Officer Elections

The board of directors is required to elect officers annually. At our June board meeting, the following were elected to one-year terms:

President:	Jim Lombardi
Chief Executive Officer:	Mike Voorhees
Vice President-Administration:	Matt Lujan
Vice President-Legislation:	Pete Downs
Vice President-Recruitment And Retention:	Luke Lucas
Secretary:	Ed Jones
Chief Financial Officer:	Matt Lujan

Our other officers continue to serve at the pleasure of the Board:

General Counsel:	Ed Obayashi
Office Manager:	Carrie Lujan
Training Manager:	Janet Adams
Special Advisor:	Chuck Adams
Special Advisor:	Teri Adams
Special Advisor:	Kevin Bernzott

Are you interested in serving as a committee member or perhaps an officer? Introduce yourself to any of our officers, directors or staff at the conference. We'll be wearing blue shirts bearing the association logo and a name tag, to make it easy to identify us!

Thank you, Jim Rene!

A few months ago, Jim Rene resigned as General Counsel. Jim has served with distinction for the past several years, during a time when the demands on that office multiplied. A practicing attorney, the author of a definitive treatise on the Law Enforcement Officers Safety Act and provider of sage counsel to the Board and association members alike, Jim needed to spend more time attending to his paid employment and, more importantly, with his family, now that he is a grandfather! Jim, it would have been very difficult without you and we are most grateful for all of your valuable work! Thank you!

Welcome, Ed Obayashi!

Stepping into the legal fray to coordinate our Legal Services Plan is well-known and respected attorney Ed Obayashi. Ed has been a full-time peace officer for decades and is currently a Deputy Sheriff and Legal Advisor for the Plumas County Sheriff's Office and serves as the Legal Advisor and General Counsel for several other law enforcement agencies and organizations in California.

Ed is recognized as one of the foremost legal experts in California, nationally, and internationally in law enforcement matters related to both management and labor, particularly in Use of Force and Internal Affairs Investigations issues. He is also a leading expert witness in Use of Force cases and is regularly referred to by various California law enforcement associations and agencies. He trains and advises county counsels, city attorneys, and district attorneys in law enforcement legal matters and complex cases.

Ed has been hard at work serving our association for the past few months. We welcome Ed and thank him for agreeing to work with us to serve Reserve Peace Officers in California!

Do you need legal services related to your affiliation with a law enforcement agency? If you're a General Member in good standing, please use this link to request assistance:

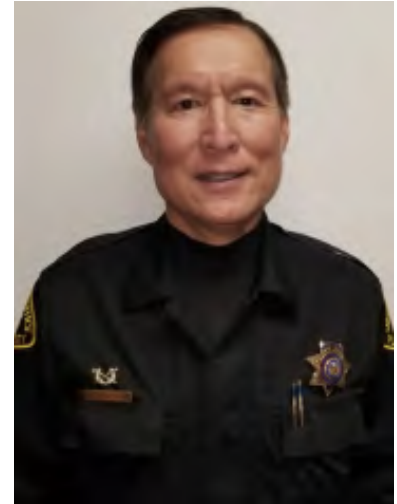
[Legal Service Request](#)

# CRPOA General Counsel

## Seven Myths About Use of Force That Prosecutors Need to Know

By Ed Obayashi

*(Ed Obayashi was asked to author this legal article for the Prosecutor's Brief, the quarterly journal of the California District Attorneys Association in the fall, 2017. The article is self-explanatory to cops, but not necessarily to prosecutors to whom it was addressed. As it is today, the article has more relevance than ever in light of the current Use of Force bill anticipated to be signed by the Governor.*



*The original version of this article was initially published in the Fall 2017 issue of Prosecutor's Brief, the quarterly journal of the California District Attorneys Association. What follows has been subsequently edited by the author.)*

The first day at the police academy teaches cadets an article of faith—the one and only unbreakable and unquestioned “rule” that dominates how cops interact with the public: “There is only one rule in my life from now on: I am going home after my shift.

This “rule” is recited by the instructor, repeated by cadets, and remembered by cops throughout their careers. It is, however, also criticized by police reform advocates and even some law enforcement groups who claim that such a single-minded focus on officer safety instills a paranoiac effect on officers to defend themselves at all costs.

Even with my patrol days long behind me (except when I make the occasional traffic stop), I still feel the protective call of the “rule” as strongly as I did then. So much so that in official training, I continuously remind officers to never let court cases compromise their safety. A trainee can fall short on report writing standards or even knowledge of legal issues and still graduate and pass the probationary period. But even a hint of concern about an officer's safety skills will ensure the end of his or her career as a cop.<sup>2</sup>

With the rise in violence against police officers, this “rule” is even more justified and is reinforced at the police academy. It is offered here to help explain why the demand for less lethal responses to subjects armed with weapons other than a firearm—from the public, politicians, and some law enforcement authorities—is unrealistic both from a policy and a legal perspective.

Use of force (UOF) by law enforcement officers is an emotionally volatile issue and prone to extreme differences in opinion by many experts. The opinions are dominated by “objective-subjective” analysis by the media, legal and UOF experts, and law enforcement managers. The hard truth is that there are only limited statistics and unreliable studies to support any type of responsible conclusions regarding UOF.

This article examines seven myths and realities related to UOF based on this author's anecdotal experiences and opinions as an active sworn peace officer, law enforcement legal advisor, and deputy district attorney, as well as some analysis of the referenced statistics.

MYTH #1: Peace officers (police and sheriffs' deputies) are killing more people than ever—especially the mentally challenged.

REALITY: This is false. In fact, such killings (shootings or other means) have likely decreased over the past few decades.

Considering the history of police UOF, one would expect that statistics on these incidences—especially shootings—would be automatic, if not required, by state and federal authorities. In fact, very few agencies in California or nationally compile use of force by police statistics—even for internal use. Whatever statistics do exist are highly inaccurate and exacerbate the perception that police are “hiding something.” There simply is no consistent increase or decrease in the numbers of police shootings. They are completely random.<sup>3</sup>

What also exaggerates the perception that police shootings have risen dramatically, especially against those with mental health issues, is that statistics typically focus on raw data (e.g., total number of people killed) with little emphasis on per capita analysis or other relevant statistical categories (e.g., armed or unarmed, type of weapon, mental health of victim, nature of crime, race, height, weight).

These “statistics” are cited by the media and advocacy groups as “evidence” that such deaths are rapidly rising, and therefore, are automatically questionable. Often overlooked by “experts” and the media is the expanding population of the United States since the Los Angeles riots and Rodney King beating in 1992, which is generally regarded as the baseline date of when the media began intensively scrutinizing police UOF. On July 1, 1992, the U.S. population was approximately 256.51 million. As of March 1, 2017, the U.S. population was approximately 323.42 million; a roughly 26 percent increase.<sup>4</sup>

Yet, addressing only California, there was an actual decrease in police UOF killings in larger jurisdictions perceived to be the “leaders” in officer-involved shootings. For example, the Los Angeles Police Department (LAPD) shot and killed 21 subjects in 2015, compared to 19 in 2016;<sup>5</sup> while the San Francisco Police Department (SFPD) shot and killed six subjects in 2015, compared to two by mid-year 2016.<sup>6</sup> Still, these agency-specific statistics provide only raw data and do not address the “why” of the killings. In fact, no statistics reveal any such informative details, often due to personnel confidentiality issues.

With the unprecedented public scrutiny of police shootings since the death of Michael Brown on August 9, 2014, in Ferguson, Missouri, the U.S. Department of Justice and the California Department of Justice have attempted to account for shooting statistics by police. Since Ferguson, the number of police shootings has remained consistent with virtually no change between 2015-2016.<sup>7</sup> Unfortunately, the media, lacking any reliable official database, has resorted to their own statistical research.<sup>8</sup>

The widespread perception that police are killing more individuals under legally or morally questionable circumstances is attributable to one reason in this author's opinion: social media. The effects of real-time audio and visual media have led to this perception. Regardless of how legally justified the shooting of, or UOF (e.g., repeated use of batons) against an individual, such a video will always be "ugly" and have an immediate and contagious emotional impact on many people.

UOF videos do not tell the whole story, however, and often convey a distorted perspective that is subject to endless "second guessing" of the officer's actions. Prosecutors should note that analyzing video is both an art and a science requiring specialized training. The lack of a reliable database for officer-involved incidents resulting in death, much less serious injuries, only worsens the public's perception that police officers resorting to deadly force is the norm rather than the exception.

What is not perception is the unprecedented number of police officers who have been killed this past year and the shocking way they have been killed—premeditated ambush as opposed to the spontaneous and typical types of confrontations that cops are trained to be prepared for (e.g., domestic violence and traffic stops). The numbers show an increase in total officers shot and killed (a 56 percent spike since last year) and a 250 percent rise in ambush fatalities.<sup>9</sup>

MYTH #2: Police must use the least intrusive (physical) means to control a subject who is armed with a knife or a bat.

REALITY: In fact, the opposite is true. Officers are not legally required to use lesser physical means to subdue a subject.

[T]he inquiry is whether the force that was used to effect [sic] a particular seizure was reasonable, viewing the facts from the perspective of a reasonable officer on the scene. Whether officers hypothetically could have used less painful, less injurious, or more effective force in executing an arrest is simply not the issue.<sup>[10]</sup>

The subtle nuances between reasonable and unreasonable UOF are very complex due to the varied nature of UOF incidents, and often baffle the courts. However, judges must make "allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."<sup>11</sup>

MYTH #3: Even if it is legally justifiable, officers should resort to less than deadly force when confronting individuals armed with knives, etc., as a matter of public policy.

REALITY: Officers should and do employ less than lethal force options and tactics if it is feasible (i.e., it is safe to do so for the officer and others). However, the shooting option is employed only when less lethal options are not practical, have no effect (more on this later), or the situation has escalated so rapidly that lethal force is the only reasonable option, which is almost always the case.

A knife or other such object is by legal—not to mention practical—definition<sup>12</sup> a *deadly weapon*.<sup>13</sup> Officers cannot, nor should they be expected to, use any force less than deadly force in favor of “kinder and gentler” tactics when confronted with the immediate possibility that they will be seriously injured or killed. Such alternative measures are plagued with the sort of hindsight bias the U.S. Supreme Court has forbidden.<sup>14</sup>

An expectation of using less than lethal force is based on the uninformed realities on the part of the public (and others) of confronting individuals who possess “deadly weapons.” To force officers to adopt a default rule against the use of deadly force in situations when it is legally justifiable is both unworkable and dangerous.

The notion that cops are martial arts experts on par with Bruce Lee, or can shoot a moving target from extreme distances is a Hollywood-created myth. It is safe to say that 99 percent of cops could not shoot a knife or any weapon out of a subject’s hand, even within the so-called “21-foot rule.”<sup>15</sup> This explains why officers are trained to never shoot to wound. Of the aforementioned police shooting statistics, LAPD killed 21 in 38 shooting incidents<sup>16</sup> while SFPD killed six in nine.<sup>17</sup> So, if cops were the marksmen that Hollywood portrays them to be, the number of people killed by police could easily be twice what it is. Regarding martial arts, most cops rarely practice hand-to-hand combat—the standard requirement is one day annually—much less use it on the streets.

Of note to prosecutors, this myth has found its way into many federal circuit court decisions. The courts—particularly, the Ninth Circuit—have found a legal basis to impose such a “requirement” upon police<sup>18</sup> only to be overruled and pointedly admonished by the U.S. Supreme Court over the years, most recently in *White v. Pauly*.<sup>19</sup>

Disturbingly, some law enforcement authorities and agencies (both large and small), along with politicians, have jumped on the bandwagon endorsing this myth’s reforms to mollify certain constituencies, often at the expense of sacrificing officer safety for the sake of public relations.<sup>20</sup>

Related to this myth is *Guiding Principles on Use of Force*, a report issued by the Police Executive Research Forum (PERF).<sup>21</sup> This “think tank” specifically addressed the issue of confronting mentally ill subjects armed with non-firearms in the report. It recommended that all U.S. law enforcement agencies formally adopt a policy, among others, that officers should respect the “sanctity of life.”<sup>22</sup>

Frankly, every sheriff, police chief, and officer I know understandably considers this highly offensive.<sup>23</sup> To suggest that cops need to be taught or reminded that life is sacred serves no purpose other than heightening the public’s mistrust in law enforcement.

The PERF “principles” and other related recommendations are mostly “public relations-oriented” reforms intended to prevent deadly confrontations between police and the mentally ill.<sup>24</sup> While well intended, they are highly impractical and dangerous to both officers and the public for the reasons stated here.<sup>25</sup>



MYTH #4: Officers should be trained in de-escalation techniques and mentally challenged subject recognition.

REALITY: This popularized “solution” has been highlighted by various police reform advocacy groups. Unfortunately, such techniques would not have worked in the high-profile shootings over the past few years because they are intended for a non-violent or very low-risk, manageable subject.

Contrary to what is viewed as a new and innovative improvement, officers have been mandatorily trained for decades in de-escalation techniques and sensitivity training toward mental health subjects. Advocacy groups recommend specially trained crisis response units that they claim would dramatically reduce such deaths. There is no evidence this would be the case, however, because such an approach is not a use-of-force tactic, but rather a long-term preventative process not intended to deal with the type of individual whom is the subject of this article.

In fact, recent events have called into doubt the effectiveness of such de-escalation and the dangers to officer safety.<sup>26</sup> Further, contrary to the overly optimistic expectation of preventing such confrontations, such a response team cannot be employed in these situations.<sup>27</sup> Crisis response units are typically composed of a civilian behavioral health specialist and a specially trained officer whose goal is to intervene as early as possible for those in need of mental health resources and develop a progress plan. So, assuming agencies even have such a resource (a luxury for the very few), a civilian is not going to be allowed anywhere near an armed subject for obvious safety reasons.

The individuals who have been killed by police are not the passive or semi-passive individuals they often are portrayed to be, for which such a process would have been helpful. In almost every one of these incidents that I have personally reviewed, and in almost every such publicized incident since Ferguson, these individuals were armed, or reasonably believed to be armed, with a knife or similar weapon. Most appeared to be unresponsive to any type of command or de-escalation efforts and posed an immediate threat to the officer or others (a legal analysis beyond the scope of this article).

Prosecutors should be aware that police have often been criticized for provoking mentally challenged subjects into otherwise avoidable confrontations. The Ninth Circuit has even created the so-called “Provocation Rule,” which holds that an officer can be civilly liable in excessive force cases when the officer “recklessly provoked” the confrontation that led to the use of force even though the use of force was reasonable.<sup>28</sup> In fact, this rule was relied upon by one California prosecutor in charging officers with murder.<sup>29</sup>

The Provocation Rule has been widely criticized by law enforcement as contrary to the “rapidly evolving” circumstances threatening officer safety, which the U.S. Supreme Court has consistently admonished the courts to consider in UOF cases. In a very significant development, the Supreme Court has granted certiorari to review this rule.<sup>30</sup>

MYTH #5: The officer should use a Taser, pepper spray, or bean bags instead of deadly force.

REALITY: Officers do employ Tasers and/or pepper spray in UOF situations if the opportunities are present. The problem is that typically, the mentally challenged individual, as a matter of well-documented experiences, is highly pain-tolerant and possesses almost “superhuman” strength because of an obsessive drive—a fact acknowledged by the courts.<sup>31</sup>

Law enforcement constantly struggles with developing less-lethal methods for controlling these armed subjects. There have been well-intentioned, but highly impractical, attempts at improvisation. One such tactic—dismissed immediately after its first demonstration when the officers had to chase the subject and repeatedly slipped and fell in the best tradition of Keystone Cops—called for officers to surround and wrap the subject with a volleyball net after another officer sprayed a fire extinguisher at the subject to distract him.

In addition, although certain to add to the controversy, not to mention the ethical considerations, advances in robotics may provide law enforcement with more less-lethal options.<sup>32</sup>

MYTH #6: Officers should “overwhelm” the subject with sheer physical force (e.g., body weight).

REALITY: Contrary to popular belief, officers will not and are trained not to go “hands-on” (weaponless) with a subject who is armed with a non-firearm weapon, especially one who is obviously mentally challenged. This is true even when multiple officers are present.

An officer must go hands-on, then all else has failed and the result is a chaotic, unrehearsable physical struggle commonly described as a “dog pile” that often leads to officer and subject injuries. More subjects have been killed and injured in “dog piles”—typically from compression asphyxia resulting from the sheer body weight of officers—than from the combined use of Tasers, batons, and/or pepper spray. In fact, it is the next highest cause of death in UOF cases after shootings.<sup>33</sup>

Think about another public policy consideration. If an officer gets hurt in a “hands-on” situation and injures his or her back (a common injury), a statutory presumptive basis for a disability claim exists that could, and often does, lead to a disability retirement—often a far costlier expense exceeding the average payout for an excessive force lawsuit considering the officer’s lifelong, tax-free salary. Risk management departments have had a huge stake and role in advocating for officers not to take unnecessary physical risks.

Although many advocacy groups would consider such a safety policy as evidence of police indifference toward saving lives, the reality is that these tragedies are the “cost of doing business” as long as necessary mental health resources are not devoted to effectively addressing the underlying problem. Generally speaking, cops are tasked to be the provider of de facto social services in many situations for which there are no viable solutions.

MYTH #7: UOF standards are or should be uniform throughout the state.

REALITY: This may come as a surprise to many readers, but UOF standards of agencies are influenced more by community standards than legal standards. This is because agencies are freely permitted to adopt less intrusive means for UOF, although they are not legally required to do so.<sup>34</sup>

For example, shooting at moving vehicles from helicopters is an acceptable UOF for Southern California agencies. However, any kind of shooting at a moving vehicle is prohibited by many Northern California agencies.<sup>35</sup>

What may be even more surprising is that there is no legal mandate in California that officers be trained or even be informed of the latest legal decisions related to the use of force. In my UOF training classes throughout the state, I have found it the rule rather than the exception, that officers, managers, and supervisors of both large and small agencies are uninformed on many important legal decisions, sometimes by years.

The norm is that county counsels, city attorneys, Attorneys General, or district attorneys do not, or cannot, provide this type of training. Thus, most law enforcement UOF policies typically are not current with “must know” UOF legal issues and cases.<sup>36</sup>

Most law enforcement agencies have no access to private resources, and even if they did, the services are often inadequate. Training is typically available from police training resource websites, which are not much better. There is no statutory or regulatory mandate for agencies or officers to be current on UOF law. Even if there was, both street officers and attorneys may find it difficult to understand.

It is very understandable that prosecutors are motivated to publicize cases about *Miranda* or other prosecutor-specific issues. But this author suggests that prosecutors are in the best position to provide training to law enforcement on UOF law. No cop ever got fired for failing to Mirandize a suspect, even deliberately. But a UOF incident could end a career.

## Conclusion

Such mandated or cooperative training may have prevented an otherwise preventable situation for many an officer who was disciplined or terminated because he or she was not provided this critical knowledge. How many readers realize—most cops in California do not—that merely pointing a firearm at the driver and occupants of a stolen car during the everyday “felony hot stop,” by itself without more, is an unreasonable use of force denying officers qualified immunity?<sup>37</sup> Or, that when “dog piling” the mentally challenged (or not) individual requires that officers ensure that the subject is able to breathe?<sup>38</sup>

I meet annually with district attorney representatives assigned by the state to select worthwhile new cases that may be of interest to law enforcement. It is often difficult to convince my prosecutor colleagues of the importance of UOF cases to law enforcement as

compared to the dwindling relevance of interrogation law. In this author's opinion, that needs to change.

It is highly unlikely that shootings such as those discussed here will decrease regardless of adopting any of the discussed "reforms." If the numbers do drop, it will likely be due to the random nature of these incidents. However, societal policies and economics have led to this problem and police are often left to deal with the consequences. With the help of UOF training by district attorneys, perhaps some of that growing burden can be lifted from the shoulders of law enforcement officers.

*Ed Obayashi serves as sheriff deputy/policy advisor for the Plumas County Sheriff's Office. A former special prosecutor, he is legal advisor to other law enforcement agencies, as well as a POST subject-matter expert on use of force and other police disciplines. Ed is also the recently appointed general counsel for the California Reserve Peace Officers Association.*

#### ENDNOTES

1. Renee Stepler, "Some 42% [of officers] say they nearly always or often have serious concerns about their safety," (Jan. 11, 2017) Pew Research Center. <<http://www.pewresearch.org/fact-tank/2017/01/11/police-key-findings/>> (accessed Sep. 11, 2017).
2. Kristine Phillips, "'Just shoot me,' an armed man told a cop. The officer didn't— and was fired, lawsuit says," (May 15, 2017) Washington Post. <<https://www.washingtonpost.com/news/post-nation/wp/2017/05/15/just-shoot-me-an-armed-man-told-a-cop-the-officer-didnt-and-was-fired-lawsuit-says>> (accessed Sep. 11, 2017).
3. Wesley Lowery, "How many police shootings a year? No one knows," (Sep. 8, 2014) Washington Post. <<https://www.washingtonpost.com/news/post-nation/wp/2014/09/08/how-many-police-shootings-a-year-no-one-knows/>> (accessed Sep. 11, 2017).
4. <<http://www.mtpl.com/united-states-population/table>> (accessed Sep. 11, 2017).
5. LAPD Use of Force Year-End Review Executive Summary 2015. <[http://assets.lapdonline.org/assets/pdf/UOF\\_Executive\\_Summary.pdf](http://assets.lapdonline.org/assets/pdf/UOF_Executive_Summary.pdf)> (accessed Sep. 11, 2017).
6. Joaquin Palomino, "SF's police-involved shootings: practices and patterns," (May 22, 2016) San Francisco Chronicle. <<http://www.sfchronicle.com/crime/article/SF-s-police-involved-shootings-practices-and-7921829.php>> (accessed Sep. 11, 2017).
7. Kimbriell Kelly, et al., "Fatal shootings by police remain relatively unchanged after two years," (Dec. 30, 2016) Washington Post. <[https://www.washingtonpost.com/investigations/fatal-shootings-by-police-remain-relatively-unchanged-after-two-years/2016/12/30/fc807596-c3ca-11e6-9578-0054287507db\\_story.html?utm\\_term=.486654077e70](https://www.washingtonpost.com/investigations/fatal-shootings-by-police-remain-relatively-unchanged-after-two-years/2016/12/30/fc807596-c3ca-11e6-9578-0054287507db_story.html?utm_term=.486654077e70)> (accessed Sep. 11, 2017).
8. Anita Chabria, et al., "Citrus Heights police: Too quick to shoot?" (Mar. 12, 2017) Sacramento Bee. <<http://www.sacbee.com/news/local/crime/article137804533.html>> (accessed Sep. 11, 2017).
9. Susan Miller, "Officer down: Police deaths hit a 5-year high," (Dec. 29, 2016) USA Today. <<https://www.usatoday.com/story/news/nation/2016/12/29/officer-down-police-deaths-hit-5-year-high/95984998/>> (accessed Sep. 11, 2017).
10. *Forrester v. City of San Diego* (9th Cir. 1994) 25 F.3d 804, 807-808; citing *Graham v. Connor* (1989) 490 U.S. 386, 396-397 and *Hammer v. Gross* (9th Cir. 1991) 932 F.2d 842.

11. Connor, *supra*, at 397.
12. Anita Chabria and Phillip Reese, "Lethal force against knife-wielding suspects draws increasing scrutiny," (Oct. 2, 2016) *Sacramento Bee*. <<http://www.sacbee.com/news/local/article105437571.html>> (accessed Sep. 11, 2017).
13. Pen. Code § 245.
14. *George v. Morris* (9th Cir. 2013) 736 F.3d 829, 846, citing Connor, *supra*.
15. *Norton v. City of S. Portland* (2011) 831 F.Supp.2d 340, 347 ["This standard training included videos and studies showing how quickly an average man with an edged weapon can close a distance of approximately 21 feet in an unanticipated attack and how quickly a police officer, would need to react, draw his weapon, aim and fire. Through this training, officers learn that the '21-foot rule' serves as a guideline as to the distance at which an officer might consider deploying deadly force against a person with an edged weapon."].
16. LAPD UOF Year-End Review, *supra*.
17. Palomino, "SF's police-involved shootings," *supra*.
18. *City and County of San Francisco v. Sheehan* (2015) 135 S.Ct. 1765; *Mullenix v. Luna* (2015) 136 S.Ct. 305.
19. *White v. Pauly* (2017) 137 S.Ct. 548, 551-553.
20. Anita Chabria, "San Francisco cop wrestles pantless man in scene that has some wondering if de-escalation has gone too far," (Feb. 27, 2017) *Sacramento Bee*. <<http://www.sacbee.com/news/local/crime/article135325579.html>> (accessed Sep. 11, 2017).
21. PERF is a police research and policy organization and a provider of management services, technical assistance, and executive-level education to support law enforcement agencies. <<http://www.policeforum.org/>> (accessed Sep. 11, 2017).
22. Police Executive Research Forum, *Guiding Principles on Use of Force* (Mar. 2016) p. 34. <<http://www.policeforum.org/assets/guidingprinciples1.pdf>> (accessed Sep. 11, 2017).
23. Anita Chabria, "Lethal force against knife-wielding suspects," *supra*.
24. PERF recommends that officers should never fire at a moving vehicle unless certain circumstances exist—a position the U.S. Supreme Court expressly rejected in *Luna*, *supra*, at 306.
25. In openly disagreeing with PERF, this threat to officer safety has drawn very strong official opposition from both myself in an official capacity and many California law enforcement groups, including the California Police Chiefs Association, the California State Sheriffs' Association, and the California Peace Officers Association.
26. Chabria, "San Francisco cop wrestles pantless man," *supra*.
27. Anita Chabria, "Sacramento mayor wants officers to spend a week learning how to approach mentally ill," (Jan. 18, 2017) *Sacramento Bee*. <<http://www.sacbee.com/news/local/crime/article127351199.html>> (accessed Sep. 11, 2017).
28. 42 U.S.C. § 1983; *Alexander v. City & County of San Francisco* (9th Cir. 1994) 29 F.3d 1355; *Billington v. Smith* (9th Cir. 2002) 292 F.3d 1177. At the time of this publication, the Supreme Court, in a unanimous decision, overturned the "Provocation Rule" created by the Ninth Circuit Court of Appeals, stating that the rule was "an unwarranted and illogical expansion of *Graham*." (*County of Los Angeles v. Mendez*, 2017 U.S. LEXIS 3396).
29. Orange County District Attorney Press Conference, "Kelly Thomas Investigation Results" (Sep. 21, 2011). <<https://www.youtube.com/watch?v=hN-gIRJoWNU>> (accessed Sep. 11, 2017).
30. *Mendez v. County of Los Angeles* (9th Cir. 2016) 815 F.3d 1178.

31. *Luchtel v. Hagemann* (9th Cir. 2009) 623 F.3d 975.
32. Legal Talk Network podcast, "Law Enforcement and the Use of Robots" (Sep. 12, 2016). <<https://legaltalknetwork.com/podcasts/lawyer-2-lawyer/2016/09/law-enforcement-use-robots/>> (accessed Sep. 11, 2017).
33. *Drummond v. City of Anaheim* (9th Cir. 2003) 343 F.3d 1052; *Arce v. Blackwell* (9th Cir. 2008) 294 Fed.Appx. 259.
34. Forrester, *supra*.
35. Nanette Asimov, "UC Berkeley police shift to safety over force at protests," (Feb. 11, 2017) *San Francisco Chronicle*. <<http://www.sfchronicle.com/bayarea/article/UC-Berkeley-police-shift-to-safety-over-force-at-10925226.php>> (accessed Sep. 11, 2017).
36. Chabria, "Citrus Heights police," *supra*.
37. *Green v. City and County of San Francisco* (9th Cir. 2014) 751 F.3d 1039.
38. *Mendoza v. City of West Covina* (2012) 206 Cal.App.4th 702.

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# Legislative Update

The Legislature is actively trying to move bills through the process and they have certain deadlines that have to be met. Here are some of the deadlines that they must meet:

- o May 31 Last day for each house to pass bills introduced in that house
- o July 12 Last day for policy committees to meet and report bills. Summer Recess begins on adjournment, provided Budget Bill has been passed.
- o Aug. 12 Legislature reconvenes from Summer Recess.



As always, if you have a particular interest in a specific bill drop me an email at [downs@crpoa.org](mailto:downs@crpoa.org).

## AB 392

This bill has been the major focus of law enforcement since its original introduction. The strong opposition by the law enforcement community finally forced the author to amend a significant obstacle to performing peace officer duties with the removal of the definition of “necessary” force. Here is the actual amendment language:

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include when ~~the killing is in self defense or the defense of another, consistent with the existing legal standard for self defense, or when the killing is necessary to prevent the escape of a fleeing felon whose immediate apprehension is necessary to prevent death or serious injury. The bill would additionally bar the use of this defense if the peace officer acted in a criminally negligent manner that caused the death, including if the officer’s criminally negligent actions created the necessity for the use of deadly force.~~ *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.*

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape or to overcome resistance.

Normal text is from the bill as introduced, the red stricken text was removed from the bill and the italicized text is the inserted text.

With the above modification, all law enforcement groups moved their positions too neutral. We will continue to watch this bill as it goes through the legislative process.

#### SB230

This bill was linked to AB 392 early on in the process and will only become effective if it is passed by the legislature and signed by the Governor. AB 392 now sets out the standards of training. The bill digest follows:

Would require each law enforcement agency to maintain a policy that provides guidelines on the use of force, utilizing de-escalation techniques and other alternatives to force when feasible, specific guidelines for the application of deadly force, and factors for evaluating and reviewing all use of force incidents, among other things. The bill would require each agency to make their use of force policy accessible to the public. By imposing additional duties on local agencies, this bill would create a state-mandated local program.

I have included the legislative analyst summaries for some additional bill that may be of interest.

#### AB 516

Current law authorizes a peace officer and specified public employees, as an alternative to removal of a vehicle, to immobilize the vehicle with a device designed and manufactured for that purpose, if, among other circumstances, the vehicle is found upon a highway or public lands by the peace officer or employee and it is known to have been issued 5 or more notices of parking violations that are delinquent because the owner or person in control of the vehicle has not responded to the appropriate agency within a designated time period. This bill would delete the authority of a peace officer or public employee, as appropriate, to remove or immobilize a vehicle under those circumstances.

#### AB 277

Would create a program under which the length of a parolee's period of parole would be reduced through the successful completion of specified education, training, or treatment programs, or by participating in volunteer service, while adhering to the conditions of parole. The bill would make this program inapplicable to a person who is required to register as a sex offender. The bill would also increase the 50-mile travel restriction for a parolee who successfully participates in the program, subject to certain restrictions. The bill would require the Department of Corrections and Rehabilitation and the Board of Parole Hearings to adopt regulations to carry out the program.

This is now a "two year bill." It will remain in the house of origin but may be reintroduced in the second year of the two-year legislative session (2020)



## AB 1071

Would establish an evidence-based policing pilot program within the Department of Justice to gather data and analyze data on the efficacy of evidence-based policing programs. The bill would require the department to convene a task force to design a pilot program that would operate in 3 cities or counties, as specified, would provide training to management and supervisory police personnel on the implementation of evidence-based policing, as defined, and would gather crime-related data from those cities or counties for a period of 2 years during which evidence-based policing practices are implemented.

Another two-year bill.

## AB 1555

Would require a law enforcement agency that operates encrypted police radio communications, or a joint powers authority that operates encrypted police radio communications on behalf of a law enforcement agency, to provide access to the encrypted communications to a duly authorized representative of any news service, newspaper, or radio or television station or network, upon request. By imposing new duties on local law enforcement agencies, the bill would impose a state-mandated local program.

Two-year bill.

## SB 136

Current law imposes an additional 3-year sentence for each prior separate prison term served by a defendant where the prior and current offense was a violent felony, as defined. For other Felonies, current law imposes an additional one-year term for each prior separate prison term or county jail felony term, except under specified circumstances. This bill would delete the provision that requires an additional one-year term. The bill would make additional technical, non-substantive changes.

## SB 545

Would require a person, upon the person's first criminal conviction for driving under the influence, to install and maintain an IID for a specified period of time. The bill would delete those provisions authorizing a restricted license in lieu of an IID for first offenders.

## SB 625

Current law prohibits a passenger in a motor vehicle being driven upon a highway from drinking any alcoholic beverage or smoking or ingesting any cannabis product. Current law exempts passengers in any bus, taxicab, or limousine, as specified, from this prohibition. This bill would instead exempt the ingestion of cannabis products by a passenger in bus, taxicab, or limousine only if there are no passengers under 21 years of age present and the driver is sealed off from the passenger compartment, as specified.

## Supplemental Information to the Legislative Update

This is a special supplement to the Legislative report with information about AB 392 (Weber). I have included the summary description and the history on the bill so that we can all see how it is progressing through the legislature including the votes. Italicized type are the latest amended language. If the bill makes it to the Governor and he signs it into law it will take effect on January 1, 2020.

Existing law authorizes a peace officer to make an arrest pursuant to a warrant or based upon probable cause, as specified. Under existing law, an arrest is made by the actual restraint of the person or by submission to the custody of the arresting officer.

Existing law authorizes a peace officer to use reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Existing law does not require an officer to retreat or desist from an attempt to make an arrest because of resistance or threatened resistance of the person being arrested.

Under existing law, a homicide committed by a peace officer is justifiable when necessarily committed in arresting a person who has committed a felony and the person is fleeing or resisting such arrest.

Existing case law deems such a homicide to be a seizure under the Fourth Amendment of the Constitution of the United States, and as such, requires the actions to be reasonable.

This bill would redefine the circumstances under which a homicide by a peace officer is deemed justifiable to include 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.*

The bill would also affirmatively prescribe the circumstances under which a peace officer is authorized to use deadly force to effect an arrest, to prevent escape or to overcome resistance

06/19/2019Read second time. Ordered to third reading. 06/18/2019From committee: Do pass. (Ayes 6. Noes 0.) (June 18).

06/12/2019Referred to Com. on PUB. S.

05/30/2019In Senate. Read first time. To Com. on RLS. for assignment.

05/29/2019Read third time. Passed. Ordered to the Senate. (Ayes 68. Noes 0. Page 2068.)

05/28/2019Withdrawn from committee. Ordered to third reading.

05/24/2019Re-referred to Com. on RLS.

05/23/2019 From committee chair, with author's amendments: Amend, and re-refer to Com. on RLS. Read second time and amended.  
04/10/2019 From committee: Do pass and re-refer to Com. on RLS. (Ayes 6. Noes 2.) (April 9). Re-referred to Com. on RLS.  
03/28/2019 Re-referred to Com. on PUB. S.  
03/27/2019 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.  
02/15/2019 Referred to Com. on PUB. S.  
02/07/2019 From printer. May be heard in committee March 9.  
02/06/2019 Read first time. To print.

Pete Downs is our Vice President for Legislative Affairs. He welcomes your questions. Please email him at [downs@crpoa.org](mailto:downs@crpoa.org).

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NOTICE OF ANNUAL MEETING OF MEMBERS  
CALIFORNIA RESERVE PEACE OFFICERS ASSOCIATION

To all Members of the California Reserve Peace Officers Association: The Annual Meeting of Members will be held at noon, Thursday, August 22, 2019, at the

Grand Hanalei Ballroom  
Crowne Plaza Hotel  
2270 Hotel Circle North  
San Diego, California 92018

The purpose of the meeting shall be:

1. To receive and consider reports on the condition and business of the Association;
2. To afford the members an opportunity to be heard and question the officers and members of the board of directors;
3. To consider and act upon such other business as may come before the meeting.

Signed,

*Ed Jones*

Ed Jones  
Secretary

## THE ULTIMATE FOOT PURSUIT

The 35<sup>th</sup> running of the Baker-to-Vegas Challenge Cup Relay went in the records book last March. The 120-mile run has 20 legs, from four to ten miles each, with an elevation change of nearly seven thousand feet. Nearly 300 law enforcement teams from across the nation and as far away as Belize participated this year making the race truly an international event.

The Belize National Police team edged LAPD coming in first overall and in the Open Category with a time of 12:49:44.

The race was the vision of LAPD coppers Chuck Foote and Larry Moore and is now run under the auspices of the Los Angeles Police Revolver and Athletic Club, Inc. (LAPRAAC).

The first Challenge Cup Relay start line was located on CA 127 at Baker High School. The finish line was on NV 160 at the intersection of Blue Diamond, 119 miles away and 13 miles short of Las Vegas.

At the conclusion of the first race all 19 teams gathered at the finish, about 400 people standing around in the desert, with LAPD Chief Daryl Gates presenting the awards.

Over the years since then, hundreds of thousands of cops have run across the desert. The original ideals of the race continue: teamwork, camaraderie, physical fitness and competition. The event has seen explosive growth. The number of teams has increased from the initial 19 in 1985 to the nearly 300 competing today. Entry categories have also expanded to be more inclusive.

Teams are scheduled to run in flights, depending upon their projected finish times, starting hourly commencing at 0800 hours.

The race is an opportunity to bond, fraternize and have some fun, and gives those of us who run one more reason to maintain a physical fitness program.

Mark your calendars for the 36<sup>th</sup> Baker-to-Vegas, slated for April 4<sup>th</sup>, 2020. Race headquarters will be at Rio Hotel & Casino.

Stay fit, stay strong - and stay safe out there.



## Which One of Us is the REAL Cop?

Posted by Jim Donahue | Mar 19, 2018 | CopWorld | 2 |



### THERE ARE TWO SIDES TO EVERY COIN

My first days in uniform were spent in the role of a reserve officer. I keenly felt what it was like there. In more recent times, I have earned my full certification as a police officer. I am now in a role that previously I could only observe and contemplate. Now, I have experienced it.

Today, I want to make a plea for cohesiveness, for unity, for compassion and for an attitude of encouragement among and across all law enforcement disciplines. Today, I believe there is no longer room for one segment or another proclaiming themselves to be the REAL cops where all others are somehow in a second-place position.

In order to be clear, I want to define the words “reserve” and or “auxiliary” police officer because they have widely different meanings, depending on where one travels in the U.S. For purposes of this writing, the terms reserve and auxiliary are synonymous and will be used interchangeably.

A *reserve officer* identifies a person who derives the bulk of their income in a field other than that of being a police officer.

It may be a young person who works a day job as a laborer, a professional who practices his/her skill elsewhere, it may be anyone who gets their paycheck elsewhere but donates their time and other resources to law enforcement activities.

It may also be a career officer who has retired and wants to stay connected and in the mix, but not full-time. Some of these folks see the role of reserve as an entrance point into a law enforcement career. Others simply want to give something back to their community. No matter the motivation, the result is that they usually pay for their own training, their own gear, and donate their time for free.

Career officers, on the other hand, are the professionals who have chosen law enforcement as their career. It is how they earn a living to support themselves and their families. In most cases, they have earned a state certification, attended an academy, and have attained all of the accomplishments associated with being a "full time" or career officer.

Enough housekeeping. Now to my point.

## WHO IS DOING THE WHINING?

### *The Career Cops*

My former department had a large contingent of reserve officers. Most of the career guys appreciated the help. There were a few career cops, however, who constantly ran their mouths about the reserves:

- "Those guys are stealing my overtime."
- "They don't know what they are doing and when ever they are on a call with me, I must worry about covering for their stupid mistakes."
- "I don't trust them. I just can't count on them being there when I need them and that they will do the right thing."

A few of the career guys seemed to just lay in waiting for one of the reserves to make any small mistake and they would blow it all out of proportion.

### *The Reserves*

As a member of the reserve unit, I was required to attend a weekly meeting/roll call. The list of complaints coming from the reserves regarding the career cops was steady:

- "They treat us like second-class citizens. "
- "We get no respect; they are rude to us."
- "Our tactics are better than some of those guys: they are ill-mannered with citizens, lax, and complacent on officer safety."
- "They are so arrogant, acting like they are better than us."

## FACTS OF LIFE

Cops live by labels: rank, groups, etc. Their minds put a label on everyone they encounter. Members in the department can be a sergeant, a lieutenant, part of the narc squad, a reserve, one of the administration, and so forth. Members of the public whom they don't know are generally put under the heading of "asshole." (Which is unfortunate)

We humans allow labels to affect how we behave. As a reserve cop, if I've been hung with the label of *second-class*, then I will probably behave in a way that matches the expectation by deferring to anyone who isn't considered second-class.

If I'm a career cop and consider the reserves to be poorly trained or unpredictable, then I will unavoidably filter every interaction with a reserves through that filter. I am likely to be hyper-critical of reserve so that an action from a reserve would bring my criticism while the very same action from a career cop would not.

If we can successfully get past those labels, we tend to judge one another individually based upon demonstrated performance in areas of honesty, ethics, capabilities, and consistent performance.

The best example: the FNG hired in an agency will be judged by the old-timers only after they have seen him in action. It is when the old-timers know, first-hand that the FNG can be counted upon that he will be accepted.

That's understandable and acceptable.

We can no longer afford to discount or diminish entire groups of people because of the label they carry.

I am not suggesting that flaws or deficiencies be ignored – far from it.

I recently finished a book by Kevin Gilmartin entitled, "Emotional Survival for Law Enforcement." It was awesome and enlightening. It described some of the cops that I've worked with. Gilmartin describes the "Victim Mentality:" bitter, disengaged, angry, constantly complains, and looks for things to be pissed-off about.

Gilmartin must have been describing the union VP in my last agency. It fit him perfectly. And, when it came to reserves, Mr. VP was never at a loss for something to complain about. But then, Mr. VP was never at a loss. When a complaint was needed, old John was "Johnny on the spot."

There were many reserves that felt down-trodden by him and resented him, in return.

## FROM BOTH SIDES

A career officer has worked very hard to earn his place. He has attended an academy, and passed a state exam. He has been scrutinized by many and gone through the arduous application process. He puts his life on the line at least 40 hours each week - and usually more. His personal life has often been sacrificed for the job.

Everything he does is under microscopic examination. A serious mistake can end his career - in fact, it can end his identity as he knows it. That's a level of performance pressure that few people feel in their careers, yet a career cop lives with it every day.

Are there a few bad apples in the lot? A guy who slipped through the selection process, who curries favoritism with the chief, hides from calls in his area, behaves like a slug, kisses the right asses, and who will stab a fellow officer in the back without hesitation is in our midst.

Thankfully, those guys are few in number. Most of us recognize them for what they are and keep a safe distance.

Reserve officers see their lot in life differently. While working a regular job, they have spent the time (and often money) to get the required training to be a reserve cop.

In most cases, they have spent a few hundred or maybe a couple of thousand bucks to get "geared-up." They genuinely want to help and make a meaningful difference for their community, their agency, and the cops with whom they work.

They arrive to work after they've ended their regular paying work day. They willingly take the bullshit jobs, i.e. directing traffic, booking prisoners, running errands for the dispatchers, babysitting flares, and the like are their role. They realize that these tasks must be done and because a reserve cop handles them, the career cops can attend to the more important stuff.

Depending on the agency, the frequency with which they get into the mix with the career guys on calls varies widely. But, the reserves stand at the ready to backup their brothers, when needed. They are putting their lives on the line and they know that reserve cops get killed in the line of duty, too.

Reserve officers have been appropriately termed *CITIZEN PATRIOTS*. They share a common heritage with the early settlers of our country who fought the good fight and did it for free, because it was the right thing to do. Amen.

Are there problem children here, too? You bet. Some agencies are very lax in the selection process. Those agencies don't realize that a team of volunteers must be managed differently than a team of cops who are paid.

There are reserves that are there only so they can carry a gun and badge for bragging rights or other equally wrong motivating reasons. While a reserve may get training at the outset, anything beyond that is unpredictable and usually little more than a laughable waste of time.

## SO, WHAT DO WE DO NOW?

As an individual cop, how can you affect the relationship between career and reserve cops? The list is pretty short: your attitude, your dedication to the job and doing the right thing, your perseverance, and your demeanor. You can decide to be the best cop you can possibly be, no matter what role you play.



I've taught in reserve academies for many years. I've heard recruits lament about the discord between reserves and career officers. My response has been consistent: If you want to be treated like a cop, act like a cop. Perform dependably and consistently. Adhere to the Code of Ethics. Act like you mean it from your heart. Be there for your brothers and don't ever fail them.

REMEMBER ALWAYS: There are NO unimportant jobs.

### WE ARE BEING OVERWHELMED

Today, there are more demands than ever before. There are more bad guys, and they have better weapons and are better practiced than any adversary we've faced in the past. There are terrorists who would do us great harm on a national level. There are active shooters who threaten us at the core - our children in schools. Our agencies have smaller budgets.

Most patrol crews are running short.

If all that weren't bad enough, asshole lawyers (some of them) are seeking wild liability awards from our employers. Reacting as expected, decision makers who are above us on the food chain are being guided more by their desire to avoid liability than on choosing the best course of action.

We now need every able-bodied hand on deck. Period.

### AS A CAREER COP, WHAT CAN YOU DO?

If you're a career officer, consider becoming engaged in your agency's reserve program. If your agency doesn't have a method for volunteers to help, you might want to suggest starting one.

Some years ago, I drafted a business model that laid out how a department could create a reserve program from scratch. It has been successfully put to use many times over. If you'd like a copy, send me an email requesting it and I'll send it along.

Offer to review and suggest improvements for the selection and training processes for reserves. That will ensure you get the best available talent.

### AS A RESERVE COP, WHAT CAN YOU DO?

Volunteers are motivated differently than you. They are excited about being a cop. They want to make a viable contribution and they need different kinds of rewards than you.

If you're a reserve officer, make sure that you're tuned-in to the needs of the career guys. Stand shoulder-to-shoulder with them. Don't let some jackass administrator put a wedge between you. You live and die together.

Help to improve the selection and in-service training programs. The best reserve programs are those that train career and reserve officers together, side-by-side. That keeps everyone operating in lockstep. Maybe you can make that happen where you are.

Realize that for your career brothers, this job is their livelihood. Any threat to it threatens the well-being of their families.

When you are in uniform, take the job as seriously as a heart attack. You are not there for a walk in the park. You are doing the one job where people want to kill you because of the clothes you are wearing. Yes, I said, "kill you." Remember that.

Finally, remember that some of the career officers have become emotional wrecks. They are assholes at home just the same as they are at work. Don't take it personally when they grouse about, "reserves." These guys grouse about everything. Tune them out.

## CONCLUSION

The debate about who is the REAL cop needs to end. We can spend our time debating Sigs vs. Glocks.

We are under siege.

Our resources are limited.

We live in a country that was born of volunteers and those volunteers continue to be at the core of its strength. If you doubt that, just look at our military. God bless them all.

Volunteers need to take the job seriously. Our existence depends upon it.

Career officers need to focus on encouraging, supporting, and assisting in the development of volunteer talent - rather than attacking it.

There is plenty of work to go around. The world is full of bad guys and there is no sign that the supply will grow short anytime soon.

The bottom line, this all about saving just ONE life.



# 2019 CRPOA Awards Announcement and Criteria

The California Reserve Peace Officers Association is proud to announce the Annual Awards Program for 2019. We invite you to nominate a deserving member of your organization for one of several recognition awards.

The awards will be presented at our Annual Awards Luncheon to be held at 12 noon on Friday, August 23, 2019 at the Crowne Plaza Hotel in San Diego, CA. The luncheon is held in conjunction with ARPOC 2019, the Annual Reserve Peace Officers Conference, which offers 24 hours of POST approved training.

Do not miss out on an opportunity to honor a deserving individual within your organization. Reserve peace officers, search and rescue members and volunteers in policing as well as reserve coordinators are all eligible.

Review the award nomination information to determine which award is best suited to your nominee. Along with the Award Nomination Application, a letter of nomination must be submitted detailing the nominee's qualifications and accomplishments. Documentation supporting the nomination letter should be included. Questions can be forwarded to [nancy@crpoa.org](mailto:nancy@crpoa.org). Nominations must be submitted no later than July 6, 2019.

We look forward to receiving your nomination.

## Award Criteria

*\*Please note, in 2013 the CRPOA Board of Directors voted to modify the time restriction on awards to three years. You may now submit nomination for events which occurred up to three years ago. The Board will also consider exceptions for older events on a case-by-case basis.*

## Award for Valor

For an act of conspicuous bravery in the line of duty, performed in conscious disregard of peril to the officer. To be awarded, all of the following criteria must exist:

- The bravery exhibited must be above and beyond that expected in the line of duty.
- Failure to take such action would not justify censure.
- The risk to the officer's life actually existed and the officer was able to perceive the risk and disregard it.
- The objective was of sufficient importance to justify the risk.
- The officer accomplished the objective or was prevented from accomplishing it by incurring serious injury or death.

Notes:

- *The criteria for this award include consciousness of the peril and the disregard thereof.*
- *Thus, merely finding oneself in the middle of a perilous situation and having to take action to get out of it would not qualify.*
- *There is no limit to the number of qualifying awards.*

- May be awarded to a reserve peace officer, search and rescue member or volunteer in policing.
- The nominee does not need to be a CRPOA member.
- The act must have occurred between June 1, 2016 and May 31, 2019, inclusive.\*

#### Award of Honor

Presented to the family of a reserve peace officer, search and rescue member or volunteer in policing whose life was given in the line of duty due to the action of a third party.

Notes:

- This award recognizes supreme sacrifice in the line of duty. It does not require that the officer knowingly placed himself or herself in a perilous situation nor does it require an act of heroism in order to be awarded. It does require the action of a third party in causing the death.
- There is no limit to the number of qualifying awards. In an appropriate case, an Award for Valor and an Award of Honor could be made for the same action. - May be awarded to a reserve peace officer, search and rescue member or volunteer in policing.
- The decedent need not have been a CRPOA member.
- The death must have occurred between June 1, 2016 and May 31, 2019, inclusive.

#### Reserve Officer of the Year, Search and Rescue Member of the Year, and /or Volunteer in Policing of the Year

Awarded to the nominee excelling in all the qualifications for the Meritorious Service Award which place the reserve officer/search and rescue member/volunteer in policing clearly above all other candidates.

Notes:

- Only one qualifying award shall be made each year for each of three categories: reserve peace officer, search and rescue member and volunteer in policing.
- The nominee must be a general member of CRPOA on the date the nomination is received.
- The qualifying actions must occur prior to May 31, 2019.

#### Meritorious Service Award

For especially meritorious service to the department in a duty of great responsibility. The duty may be either assigned or self-initiated. Superior performance of the normal duties of the position will not alone justify the award.

Considerations for the award include all areas of:

- Outstanding performance of the officer's duties either in a single act or over time
- Extraordinary level of assistance to the reserve unit and/or the department
- Extraordinary level of service to the community;
- Training or teaching within the department
- Longevity with the department.

Notes: - The nominee must be a general member of CRPOA on the date the nomination is received.

- There is no limit to the number of qualifying awards.
- The qualifying actions must occur between June 1, 2016 and May 31, 2019, inclusive\*.

#### Distinguished Service Award

For distinguished service by a reserve officer, SAR member or volunteer in policing. Considerations for the award include one or more of the following:

- Distinguished service either in a single act or over time
- Substantial assistance to the reserve unit and/or the department
- Substantial service to the community
- Training or teaching within the department
- Longevity with the department

Notes:

- The nominee must be a general member of CRPOA on the date the nomination is received.
- There is no limit to the number of qualifying awards.
- The qualifying actions must occur between June 1, 2016 and May 31, 2019, inclusive.\*

#### Award of Appreciation

For distinguished service to the members of the California Reserve Peace Officers Association. Considerations for the award include:

- Distinguished service to the Association either in a single act or over time
- Substantial assistance or contribution to the Association

Notes:

- There is no limit to the number of qualifying awards.
- The qualifying service must occur between June 1, 2016 and May 31, 2019, inclusive.\*

#### Coordinator of the Year

Presented to the coordinator of reserve peace officers, search and rescue members or volunteers in policing who excels in:

- Displaying a strong commitment to the unit
- Dedication to the enhancement of the professionalism and training of the unit members
- Promoting a positive image of unit members within the department and the community
- Demonstrating efforts to use unit members in non-traditional roles or assignments

Notes:

- The nominee must be a full-time employee of the department in which he or she serves as the coordinator of a reserve peace officer, search and rescue or volunteer in policing unit.

- The nomination must be made from within the unit supervised by the nominee. It may not be made by the department or by another full-time employee of the department. Supporting letters from the department are encouraged.
- Only one qualifying award shall be presented.
- The qualifying service must occur prior to May 31, 2019.

## General Notes

### Important note to nominators:

Nominators for any CRPOA award shall be:

- A chief executive of a law enforcement agency; or,
- A full-time officer who serves as a reserve coordinator; or
- A General Member of the Association.

When submitting a nomination please review the awards criteria thoroughly to assure that your nominee meets the criteria. You may submit a nomination for the highest possible award for which you believe your nominee meets the criteria. The Awards Committee may determine that your nominee qualifies for the category nominated or may select the nominee to be recognized in a different category. For example, a candidate nominated for Reserve Officer of the Year might receive that award, or may be honored with the Meritorious Service Award or other qualifying award.

Nominations packets **must** include:

- An application, completed and legible.
- A letter of nomination summarizing the qualifications of the candidate for a specific award.
- Documentation supporting qualifications, such as awards, certificates, commendations, letters.
- Nominators must also assure that information provided for contact for award notification is current.

**Incomplete nominations packets may not be considered; however, the Awards Committee will notify nominators of incomplete nominations.**

Nominations must be sent to the Awards Committee at:

- California Reserve Peace Officers Association, P.O. Box 1238, Pacifica, CA 94044
- Or scan and e-mail your nomination packet to [nancy@crpoa.org](mailto:nancy@crpoa.org).
- If you do not receive confirmation of receipt of the nomination packet by the Awards Committee within 2 weeks of mailing or emailing documents, contact Nancy Elam by email or phone immediately.

Any questions about the nomination process can be forwarded to Nancy Elam, Awards Committee Chairperson by email at [nancy@crpoa.org](mailto:nancy@crpoa.org) or by phone at 408-309-8756.

**The deadline for the receipt of nominations is July 6, 2019**



JACKIE LACEY  
DISTRICT ATTORNEY

LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE

# ONE MINUTE BRIEF

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NUMBER: 2019-14 DATE: 05-29-19 BY: Devallis Rutledge TOPIC: Miranda Warning Exceptions

ISSUE: In what four instances are Miranda warnings not necessary before custodial police interrogation?

In the usual case of custodial police interrogation, Miranda warnings are prerequisite to obtaining a fully-admissible statement. *Miranda v. Arizona* (1966) 384 US 436, 445. But over the years, four exceptions to this general rule have been recognized.

- (1) Presence of the suspect's attorney. "The presence of counsel, in all the cases before us today, would be the adequate protective device necessary to make the process of police interrogation conform to the dictates of the [Fifth Amendment] privilege. His presence would insure that statements made in the government-established atmosphere are not the product of compulsion." *Miranda*, at 466. "It is generally accepted that if the attorney was actually present during the interrogation, then this obviates the need for the warnings." 2 W.R. LaFave, *Criminal Procedure*, § 6.8(a), p. 800 (3d ed. 2007) (collecting cases). See also *Roberts v. US* (1980) 445 US 552, 560-61; *Brady v. US* (1970) 397 US 742, 754; and 1MB 2012-11.
- (2) Emergency exception. No warnings are required before custodial questioning to neutralize an immediate threat to public safety or officer safety, or to assist in the rescue of an imperiled person. A "reasonable need to protect the police or the public from any immediate danger" outweighs the need for Miranda warnings. *New York v. Quarles* (1984) 467 US 649, 657 and fn. 8 (unwarned questioning to locate a firearm discarded in a busy store). See also *People v. Davis* (2009) 46 Cal.4th 539, 591 (questioning to rescue a kidnap victim "while life hangs in the balance" is not subject to Miranda) and 1MBs 2010-06, 2009-11. This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed. LADA ONE-MINUTE BRIEF NO. 2019-14 PAGE 2

- (3) Covert interrogation. Miranda warnings are designed to neutralize compulsion to confess that presumably emanates from a suspect's realization s/he is confronting custodial police interrogation. Therefore, warnings are unnecessary when the custodial suspect is unaware s/he is talking to an undercover police officer, and therefore does not experience that compulsive atmosphere. "Where the suspect does not know that he is speaking to a government agent, there is no reason to assume the possibility that the suspect might feel coerced. ... We hold that an undercover law enforcement officer posing as a fellow inmate need not give Miranda warnings to an incarcerated suspect before asking questions that may elicit an incriminating response." Illinois v. Perkins (1990) 496 US 292, 299, 300. See also 1MBs 2005-14, 2012-01.
- (4) Prior contemporaneous warning and waiver. If the suspect was given an adequate Miranda warning by any officer, from any agency, on any case, within the previous 24 hours of custody, and if s/he gave an implied or express waiver (and has not invoked), no new warning, waiver or reminder is necessary before subsequent questioning. "A Miranda warning is not required before each custodial interrogation; one warning, if adequately and reasonably contemporaneously given, is sufficient." People v. Braeseke (1979) 25 Cal. 3d 691, 701-02. See also Wyrick v. Fields (1982) 459 US 42, 48 (holding that the passage of 2 hours after a warning and the suspect's waiver "would not have caused him to forget the rights of which he had been advised and which he had understood"); Colorado v. Spring (1987) 479 US 564, 576-77 (no new warning required when interrogators switched questioning from a firearms violation to a murder); and see cases collected in 1MB 2005-03, ruling that new warnings were not required after intervals ranging up to 40 hours, or after changes in interrogating officers or agencies or the crimes under discussion.

BOTTOM LINE: Miranda warnings are not prerequisite to full admissibility of statements obtained during custodial police interrogation (1) if the suspect's attorney is present with him, (2) for questioning limited to neutralizing an imminent threat to public or officer safety or rescuing a victim from danger, (3) for undercover questioning, or (4) following a reasonably-contemporaneous warning and waiver.

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DISTRICT ATTORNEY

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NUMBER: 2019-15 DATE: 06-27-19 BY: Devallis Rutledge TOPIC: BAC from Unconscious Driver

ISSUE: Can a blood sample be taken from an unconscious DUI suspect without a warrant?

In *Schmerber v. California* (1966) 384 US 757, the US Supreme Court held that no warrant was required to draw blood from a DUI arrestee when the pressing needs of handling the involved traffic crash constituted an exigency that made a warrant application impracticable. In *Missouri v. McNeely* (2013) 569 US 141, the court said that the natural dissipation of alcohol in the body is not a per se exigency (to prevent the imminent destruction of evidence) that always excuses the warrant requirement. What if the DUI suspect is—or becomes—unconscious before a breath sample can be obtained or express consent can be given for a blood draw? Might this situation be a sufficient exigency to excuse the warrant requirement?

Gerald Mitchell was in a drunken stupor with a PAS reading of 0.24% when arrested in Sheboygan, Wisconsin, for DUI. At the station, he was too lethargic for a breath test and lost consciousness while being taken to a hospital, where blood was drawn at the officer's request. He later moved to suppress this BAC evidence as the result of a warrantless, nonconsensual search. The trial and state appellate courts denied this motion, and he was convicted. The US Supreme Court has now issued opinions in the case (4+1 to 3+1).

The plurality opinion said that "in cases involving unconscious drivers ... the need for a blood test is compelling, and an officer's duty to attend to more pressing needs may leave no time to seek a warrant." Taken together, the dissipation of blood-alcohol evidence in the body and the driver's unconsciousness will generally constitute a sufficient exigency to excuse the warrant requirement: This information was current as of publication date. It is not intended as legal advice. It is recommended that readers check for subsequent developments, and consult legal advisors to ensure currency after publication. Local policies and procedures regarding application should be observed. LADA ONE-MINUTE BRIEF NO. 2019-15 PAGE 2

"Thus, exigency exists when (1) BAC evidence is dissipating and (2) some other factor creates pressing health, safety, or law enforcement needs that would take priority over a warrant application. Both conditions are met when a drunk-driving suspect is unconscious, so

Schmerber controls. With such suspects, too, a warrantless blood draw is lawful. ... Thus, when a driver is unconscious, the general rule is that a warrant is not needed.”

Mitchell v. Wisconsin (2019) 588 US \_\_\_, No. 18-6210, Slip opn. at 12, 16, 2 • After setting out this general rule, however, the plurality added an exception: When the driver is unconscious, police “may almost always order a warrantless blood test...” but “We do not rule out the possibility that in an unusual case a defendant would be able to show that his blood would not have been drawn if police had not been seeking BAC information, and that police could not have reasonably judged that a warrant application would interfere with other pressing needs or duties.” *Id.*, Slip opn. at 19. Because one justice concurred only in the judgment and would have held that the natural dissipation of alcohol in the blood always creates an exigency that excuses the warrant requirement (Thomas, concurring, Slip opn. at 21), it may be argued that the exception agreed to by the plurality does not have binding precedential effect. See *Marks v. US* (1977) 430 US 188, 193, and 1MB 2009-15. (And even under the plurality’s exception, the defendant would have the burden of proving both components.)

To foreclose suspects from unjustifiably attempting to invoke the exception, law enforcement officers may consider documenting in arrest reports facts that show, where applicable, that medical personnel confirmed their independent need for blood samples for diagnostic or treatment purposes, and details of traffic crashes, injuries, or other exigent circumstances that prevented prompt application for a search warrant.

**BOTTOM LINE:** A search warrant is generally not required before taking a blood sample from an unconscious DUI suspect—especially where blood would also be taken for medical reasons, or where officers have other pressing duties to perform.

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# Welcome, New CRPOA Members!

March 1, 2019 to July 1, 2019

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Raymond A.	Ian M.	

# A Big Thank you...

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[Cop blue.com](http://Cop blue.com) - Which One of Us is the REAL Cop by Jim Donahue

[bakervergas.net](http://bakervergas.net) - The Ultimate Foot Pursuit

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Costa Mesa PD is recruiting energetic, team-oriented people to fill the below positions:

- Police Recruit
- Police Officer (Lateral & Academy Graduate)
- Reserve Police Officer
- Communications Officer (Public Safety Dispatcher)
- Police Aide

The City of Costa Mesa— just one mile from the Pacific Coast in the heart of Orange County—is one of California's most eclectic and vibrant cities. The city is home to South Coast Plaza, one of the nation's largest shopping centers, the South Coast Repertory theater, and the world-class Segerstrom Center for the Arts. Costa Mesa is also the capitol of the action sports industry and the headquarters for companies such as Hurley International, Volcom, RVCA, Rip Curl, and Vans.

Costa Mesa encompasses 16 square miles and has a diverse population of about 110,000. The City offers 28 parks, two municipal golf courses, 20 public schools and three libraries. Orange Coast College, Coastline Community College, and Vanguard University have their campuses in Costa Mesa. The Orange County Fair and Event Center is also within the city limits. Costa Mesa residents enjoy a mild Southern California climate and the City's location provides easy access to many of Southern California's major attractions including beaches, mountain areas, high and low deserts, Disneyland, Knott's Berry Farm, Palm Springs and Los Angeles.

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