



SPECIAL REPORT

THE USE OF DEADLY FORCE AGAINST PAROLEE
DELVIN WRIGHT BY THE CALIFORNIA DEPARTMENT
OF CORRECTIONS AND REHABILITATION

OFFICE OF THE INSPECTOR GENERAL

DAVID R. SHAW
INSPECTOR GENERAL

BUREAU OF INDEPENDENT REVIEW

HOWARD E. MOSELEY
CHIEF ASSISTANT
INSPECTOR GENERAL

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SPECIAL REPORT

The Use of Deadly Force Against Parolee Delvin Wright by the California Department of Corrections and Rehabilitation

I. Summary

Last year, a parole agent for the California Department of Corrections and Rehabilitation (the department) chased and fired one gunshot at a dangerous parolee, Delvin Wright, during an arrest operation. The shot missed, no one was hurt, and the parolee was arrested. However, the operational tactics used by the parole agent before and during the shooting unnecessarily endangered the agent and several uniformed police officers, who were potentially in the line of fire, as shown in the attached graphic. Within 24 hours, the department cleared the parole agent of any wrongdoing based solely on the agent's account of the shooting, while ignoring numerous and conflicting outside police reports calling into question the agent's operational tactics. Subsequently, the department's own board of law enforcement experts reviewed the shooting and provided many important recommendations based on the incident. The department failed to respond to these recommendations for almost seven months and has yet to fully implement any responsive changes. In so doing, the department has fallen short of law enforcement agency standards for reviewing the use of deadly force. Moreover, the consequences of the department's failure to promptly review this deadly force incident and learn from the mistakes made during the incident create a significant risk that future arrest operations may be flawed, potentially endangering the lives of innocent bystanders and department employees.

II. Statement of Facts

A. The Use of Deadly Force Against the Parolee

On May 21, 2007, at about 10:20 a.m., a department parole agent and a police officer, who were members of the joint Police and Corrections team (the PAC team), received information that a black male known as "Ray" was armed with two guns and driving a stolen white Ford F-150 to a local hotel to purchase methamphetamine. The PAC team police officer knew "Ray" to be the street name of parolee Delvin Wright, who was out

of compliance with his parole. Minutes after receiving this information, the two PAC team members arrived at the hotel and waited across the street for the parolee to arrive.

1. Other law enforcement officers respond to provide assistance.

While they waited, the PAC team police officer made a radio request for support from other police officers, and the officer instructed them to meet out of sight at a nearby market. After hearing the radio transmission, seven police officers in full uniform driving marked police vehicles responded to the market and waited for further instruction from the PAC team police officer.

Department parole agents from parole units 1 and 2 also heard the radio transmission and offered to assist the PAC team police officer. The parole unit 1 assistant supervisor received permission from the parole unit 1 supervisor for the assistant supervisor and a subordinate parole agent to participate in the arrest operation. The parole unit 1 supervisor instructed them to use their body armor and state-issued equipment, and to keep her updated. The assistant supervisor and the parole agent then drove to the scene and parked their car west of the hotel. On arrival, they notified the PAC team parole agent of their location and maintained communication with their unit 1 supervisor throughout the operation.

A parole agent from parole unit 2 arrived on the scene and joined the PAC team members in the backseat of their vehicle. Though the parole agent did not notify his own parole unit 2 supervisors of his presence on scene, he notified the assistant supervisor from parole unit 1, who was the highest-ranking parole agent on scene, that he was present to participate in the operation.

Another parole agent from parole unit 2, the parole agent who ultimately fired his weapon, also called and offered to assist the PAC team police officer, who directed the parole agent to the market where the uniformed officers waited for further instructions. The parole agent did not notify his parole unit 2 supervisors or the highest-ranking parole agent on scene that he was taking part in the operation. The PAC team parole agent became aware of this agent's participation while the operation was underway and believed that the other parole unit 2 agent in the PAC team vehicle was in contact with him. At this point, five parole agents were participating in the arrest operation: the PAC team parole agent, two parole agents from parole unit 1, and two parole agents from parole unit 2. All were dressed in plainclothes.

Most of the parole agents and uniformed officers involved in the operation did not know one another. Therefore, meeting at the market provided an important opportunity for the uniformed officers to become familiar with the plainclothes parole agent, who ultimately fired his weapon. In fact, the parole agent who fired his weapon said that he met at the market because he wanted the uniformed officers, whom he had never met or worked with before, to recognize him as a parole agent. He did not want to become, in his words,

“an accident.” However, the parole agent did not ensure that all the uniformed officers recognized him. Two of the officers did not recall anyone other than uniformed police officers at the market, and another officer stated definitively that he did not see any parole agents there. The four other parole agents participating in the arrest operation did not meet at the market or attempt to visually identify themselves to the uniformed officers before the operation.

2. The PAC team establishes the arrest operations plan and communications regarding the plan.

This lack of familiarity among the participants could be dangerous if a plainclothes parole agent confronted the parolee during the operation and the uniformed officers did not recognize the parole agent as a law enforcement officer. To avoid such a risk, the plainclothes parole agents were told to conduct surveillance on the hotel grounds without alerting the parolee to law enforcement’s presence. When the parolee left the hotel room, the parole agents were to tell the PAC team members which direction the parolee was heading. Then the uniformed officers, who were waiting out of sight, were to move into the area and arrest the parolee. The parole agents themselves were to avoid confronting the parolee.

The uniformed officers were clear about their role. Most of the officers reported that the PAC team police officer said he would advise them when the subject came out of the hotel room so they could move in and take the subject into custody. The PAC team police officer also made clear over the radio to the uniformed officers that the parole agents, since they were dressed in plainclothes, would not be involved in the arrest of the parolee.

Four of the five parole agents on the scene clearly understood their role in the operation; however, the parole agent who fired his weapon apparently did not, or did not follow the PAC team police officer’s directive. The PAC team police officer and the two parole unit 1 agents explained that the parole agents were clearly advised to wear plainclothes over their protective vests so they could conduct undercover surveillance on the hotel grounds. The PAC team police officer also told the parole agents numerous times to act as eyes and ears only, and that they were not to chase the parolee because there were uniformed officers all over the place. The PAC team police officer stressed these instructions to the parole agents because he did not want agents coming from the hotel shooting in the direction of uniformed officers coming toward the hotel, or vice versa. According to the PAC team police officer, “My comment to the parole agents was, if we have to exchange gunfire, I don’t want you guys in the line of fire because we would be shooting each other.”

Similarly, the PAC team parole agent explained to the two parole unit 1 agents that the parole agents “would tell us that he was out [and] which way he was going, so that we could call the marked units in and allow them to make the arrest, because of the weapons

that might be involved, and the fact that [the parole agents] weren't wearing raid vests so they weren't really identifiable as parole agents." The highest-ranking parole agent on scene told the other parole unit 1 agent that "under no circumstances are you to engage the suspect," because these were the instructions broadcast over the radio. Even the parole unit 1 supervisor, who was not on scene, understood that the parole agents were just there for surveillance and that they had been instructed to refrain from arresting anyone.

The initial parole unit 2 agent sitting in the vehicle with the two PAC team members fully recognized that the plan called for the uniformed police officers to make the arrest. He heard these instructions repeatedly conveyed to those participating in the operation. The parole agent who fired his weapon, however, later said he never received instructions about whether to arrest the parolee or to allow the uniformed officers to do so. He further said that although he was in communication with the parole unit 2 agent in the PAC team vehicle, he was never told that the plan called for the uniformed officers to make the arrest and that parole agents should refrain from doing so. Yet the PAC team police officer stated that he provided the parole agent who fired his weapon with specific directions to "not chase this guy." The parole agent denied receiving this information. Since the parole agent who fired his weapon never notified the highest-ranking parole agent on scene or his parole unit 2 supervisors of his presence at the operation, and since he did not speak directly with the PAC team parole agent, no one in the department's chain of command was able to ensure that he received the necessary instructions.

3. The parole agent chases the fleeing parolee and fires his weapon, and the parolee is arrested.

The PAC team members watched the parolee arrive at the hotel alone in the stolen truck, park in the southeast corner of the hotel parking lot, and walk to a hotel room that was out of sight. The uniformed officers waited east of the parking lot where the parolee parked the truck. Most of the parole agents provided surveillance from the perimeter of the hotel, and a parole unit 1 agent and the parole agent who fired his weapon walked the hotel grounds. The parole agent who fired his weapon, like the parolee, is a black male who was wearing plainclothes.

Eventually, the parolee and another unidentified black male left the hotel room. The parole unit 1 agent relayed this information to the highest-ranking parole agent on scene and the PAC team members. The PAC team police officer informed the uniformed officers that the parolee was headed to the truck and to move to the hotel to make the arrest. The uniformed officers began to converge on the scene, heading toward the parolee's vehicle and moving toward the parolee who was approaching the vehicle from the opposite direction.

The parole agent who fired his weapon gave the following account of the events surrounding the shooting:

Almost immediately after leaving the hotel room, the parolee walked past the parole agent toward the truck. The parole agent followed the parolee, who twice glanced back nervously over his shoulder at the agent, then started to flee. The parole agent yelled, “Stop, state parole!” twice as he started chasing the parolee and pulled the badge that was hanging around his neck out from under his shirt. The parolee continued to flee toward the truck and in the direction that most of the uniformed officers were coming from. The parolee then pulled out a handgun, turned toward the parole agent, and pointed the handgun at him. The parole agent quickly fired one round from his handgun at the parolee before the parolee could shoot at him. The round missed the parolee, but he momentarily stopped, looked at the parole agent, dropped his handgun, and continued to flee from the hotel. The parolee scaled a five-foot chain link fence surrounded by bushes, but he was quickly arrested when he landed at the feet of uniformed officers with their guns drawn in the direction of the parolee and the parole agent. The officers then took the parolee into custody without further incident.

4. Other officers offer conflicting accounts of the shooting.

Other accounts of the shooting conflict with the accounts provided by the parole agent who fired his weapon. One uniformed officer saw the parolee running with a gun in his hand, then the parolee quickly extended his arm with the gun parallel to the ground as he threw it. The officer heard a gunshot after the parolee pulled out the handgun but before the parolee climbed the fence. The officer also stated that had the parolee held his handgun for “a split second longer,” he too would have shot at the parolee. The PAC team police officer saw the parolee run toward the fence and pull a handgun from his waistband, but rather than pointing it at the parole agent, he saw the parolee throw the handgun to the ground by extending his arm outward from his shoulder. The PAC team police officer did not hear a gunshot or see the parole agent draw his own handgun.

Other accounts flatly contradict the account provided by the parole agent who fired his weapon. One of the uniformed officers, who was on the other side of the fence that the parolee was fleeing toward, said that the parolee did not point his handgun at the parole agent. That officer and his partner stated that the parole agent did not fire until after the parolee had scaled the fence and landed at the feet of uniformed officers. The officer was also confident that the parole agent did not see the officers as he fired in their direction; in fact, the officer was worried that his partner may have been shot. Despite having a shot fired in their direction by someone meeting the description of the other black male with the parolee, the officers did not fire back at the parole agent because they thought they recognized him from the market, even though he was not clearly identifiable as a law enforcement officer.

Another officer stated that the parolee never pointed the handgun at the parole agent and that the agent did not fire until after the parolee had started to climb the fence. Like most of the uniformed officers, this officer was headed toward the hotel parking lot when he saw “two black male adults in the parking lot, one chasing the other.” The officer did not know the parole agent and stated that the agent was wearing nothing to identify himself as a law enforcement officer. The officer explained that when he heard the gunshot he immediately turned around to get out of the line of fire.

5. The evidence is collected, and the suspects are interviewed.

Soon after the parolee was apprehended, the other black male seen leaving the room was also arrested at the hotel. He admitted to being in the room with the parolee and two females, but he denied using drugs or seeing the parolee carrying any weapons. Parole agents searched the now-empty room, where they found a broken methamphetamine pipe and marijuana residue.

The uniformed officers recovered the parolee’s handgun, which was loaded with a round in the chamber and four additional bullets in the revolver’s cylinder. The weapon was identified as stolen. The officers searched the parolee, and in his pants pockets found six baggies of a green leafy substance and a glass tube fashioned into a methamphetamine smoking pipe containing residue. The parolee also had a credit card that was not in his name and a room key on his person. The officers searched the truck that the parolee drove to the hotel. Inside were a BB gun replica of a handgun, a VCR/DVD machine, three gold watches, jewelry, an MP3 player, a knife, a DVD player, seven cell phones, and an electronic palm notebook.

The parole agent who fired his weapon and the PAC team police officer interviewed the parolee at the police station. The parolee admitted that the truck was stolen and that he possessed the keys to the truck. When asked about the handgun, the parolee asked for an attorney. During a later interview by the department’s Office of Internal Affairs, the parolee claimed that the parole agent who fired his weapon was not identifiable as a law enforcement officer and never yelled at him to stop. He said that he never pointed his handgun at the parole agent. He also said that there were two officers in front of him, who ducked when the shot was fired in their direction; the two officers then asked each other who was shooting toward them. The parolee further stated that after he asked for an attorney during his interview at the police station, the parole agent who fired his weapon kept pressuring the PAC team police officer to continue asking about the handgun. The parolee recalled that the PAC team police officer finally said to the parole agent, “If he don’t want to talk, he don’t want to talk.”

On July 5, 2007, the parolee was sentenced to 32 months in state prison after pleading guilty to being a felon in possession of a firearm.

B. The Department's Initial Response

On May 21, 2007, the parole district administrator called the parole unit 2 supervisor to inquire about a report of a parole agent who fired his weapon. At the time, the parole unit 2 supervisor had not even heard about the arrest operation, much less the shooting, even though she had been in the office that day. As the supervisor of the parole agent who fired his weapon, she responded to the scene. Once there, she verified that the scene was secure, the parolee was in custody, and no one was injured. She gathered oral reports from the parole agents and ordered them to prepare written reports. She also ensured that the fired weapon was secured for inspection according to department protocol.

The department's Division of Adult Parole Operations did not notify the Office of Internal Affairs of the shooting, as required by department procedure any time an employee uses deadly force on duty, until May 23, 2007. Therefore, the Office of Internal Affairs first learned of the shooting two days later, effectively thwarting an important on-scene response by investigators. The department also failed to promptly notify the Office of the Inspector General's Bureau of Independent of Review (the bureau), as required by policy.

C. The Bureau's Initial Response

The bureau could not respond to the scene because the department failed to promptly notify the bureau of the shooting, as required by department procedure. Like the Office of Internal Affairs, the bureau did not receive notification of the shooting until two days after it occurred.

III. The Department's Review of the Shooting

A. The Department's Use-of-Force Review

The department's Division of Adult Parole Operations quickly reviewed the shooting and found the parole agent's use of deadly force within policy. On the day of the incident, the parole unit 1 supervisor collected written reports from the five involved parole agents and compiled a summary of the incident. None of the other four parole agents saw or heard the fifth parole agent fire his weapon, so the summary was based entirely on the account by the parole agent who fired his weapon. The Division of Adult Parole Operations did not request or collect written reports from the police officers.

The following day, May 22, 2007, the parole unit 2 supervisor completed a use-of-force review of the shooting. In her review, she found that the parole agent's actions during the

use-of-force incident complied with department policy, procedures, and training. She stated that his actions were “appropriate and commendable” and that “[n]o corrective action is necessary.”

On May 23, 2007, the parole district administrator read the supervisor’s use-of-force review and agreed with all the conclusions. He agreed that the parole agent’s actions before, during, and after the incident complied with policy, procedures, and training, and he found that “no follow-up action is necessary to correct policy, procedure or training violations.” The district administrator reported his findings in a letter to his superior, the regional parole administrator, stating that he “did not discover any significant lack in the use of correct policy or procedures” and that the parole agent used “excellent judgment.”

The department did not identify any criminal or administrative misconduct during its use-of-force review. This review was completed before the bureau was even notified of the incident, so the bureau was denied an opportunity to monitor the review process.

B. The Investigation by the Deadly Force Investigation Team

Normally, when a department law enforcement officer uses deadly force, the deadly force investigation team, which consists of special agents from the Office of Internal Affairs, will conduct both criminal and administrative investigations into the incident. However, department policy allows the department to relinquish the criminal investigation if an outside law enforcement agency has assumed responsibility for conducting it. In this case, the Office of Internal Affairs indicated that it was told by the department’s regional parole administrator that the police department had assumed responsibility for the criminal investigation. Unfortunately, the Office of Internal Affairs later discovered that the information it received was incorrect, and the police department had actually declined to conduct a criminal investigation. Consequently, there was never a criminal investigation into this use of deadly force.

However, the Office of Internal Affairs did open an administrative investigation into the shooting. Unlike most investigations conducted by the Office of Internal Affairs, a deadly force investigation does not stem from an allegation of misconduct, but rather is a routine investigation that should occur every time deadly force is used. The purpose of such an investigation is to gather facts to examine whether the use of deadly force complied with the department’s policies and procedures.

Though the investigation in this case was hampered by the department’s delayed notification, which prevented an immediate on-scene response by the deadly force investigation team, the Office of Internal Affairs’ investigation itself was thorough and complete. The investigation was finished on November 19, 2007, and forwarded to the department’s Deadly Force Review Board for review, as required by policy.

The bureau monitored the investigation after receiving notification of the shooting. Because of the excellent cooperation from the investigator assigned by the Office of Internal Affairs, the bureau was able to review the evidence and reports, attend interviews, and later visit the scene of the incident.

C. The Deadly Force Review Board

Department policy provides that the Deadly Force Review Board (the board) examine all incidents involving the use of deadly force by employees to determine whether the use of force complied with policies and procedures; to make recommendations regarding the need for policy, training, or equipment modifications; and to make recommendations regarding the need for an investigation into potential misconduct arising from the deadly force incident. The board consists of law enforcement professionals from outside the department, department representatives, and the bureau's chief assistant inspector general.

After receiving the investigative report, the board considered this case during its meeting on December 14, 2007. The Office of Internal Affairs investigator assigned to the case appeared before the board and presented an overview of his investigation. The investigator also responded to several questions posed by board members.

On December 18, 2007, the board submitted its report to the department. The board found that the parole agent complied with the department's use-of-force policy when he "discharged his handgun to defend himself against a wanted person who was armed with a handgun and apparently preparing to fire at him." However, the board went on to make four recommendations, three of which are discussed in this public report.

First, the board urged the department to use this incident as a training opportunity to improve its operational tactics, especially related to field communications, the need to designate a commander for parole agents on scene, and the role of plainclothes parole agents among uniformed officers in multi-agency operations. The board noted the inherent risks in the parole agent's decision to chase the parolee and stated:

He was not known by some of the police officers on the scene, his attire did not identify him as a law enforcement officer, he did not initially display his badge, and two black men had been seen leaving the hotel room at the same time. It seems evident that the uniformed officers could easily have concluded that [the parole agent], who is a black man, was that second person and was a principal in the suspected drug transaction. [¶] In addition to any increased risk to [the parole agent], his decision to pursue the [parolee] culminated in gunfire that resulted in added peril for police officers on the scene. At least two officers were fairly close to [the parole agent's] line of fire.

The board further commented that “risks created by incompatible communications, the inclusion of plainclothes personnel, the lack of recognition and familiarity with each other, and the absence of a comprehensive tactical plan were significant and must be avoided whenever possible.”

Second, the board faulted the department for failing to ensure that there was a criminal investigation into this use of deadly force. Although the board recognized that policy allows a local law enforcement agency to conduct the criminal investigation, it pointed out that the department took no steps to ensure that the police department had actually assumed responsibility for a criminal investigation. In fact, despite the regional parole administrator’s representation, the police department had “refused at the outset” to conduct the criminal investigation. Therefore, the board recommended that deadly force investigators be assigned to conduct both criminal and administrative investigations into these incidents and that these investigators be diverted from the criminal investigation “only when it is clear that the local law enforcement agency is actively investigating the matter.”

Third, the board suggested that the department evaluate the appropriateness of supervisors reviewing use-of-force incidents before any substantial investigation has been completed. In this case, the parole supervisors relied solely on the parole agent’s own account of the shooting to conclude that his actions were proper and his judgment was “excellent.” The board took issue with this use-of-force review because the department failed to consider other reports of the incident that demonstrated that the parole agent “violated the directives of the person understood to be in charge of the scene and, thereby, contributed to the very risk factors that [the plan] was trying to avoid.” To avoid the substantial risk of reporting inaccurate conclusions, the board suggested that in the future the department “limit such preliminary reports to incident notifications and assurances that required administrative procedures have been accomplished,” but wait to conclude whether the use of force was appropriate until the investigation is completed.

On January 22, 2008, the department approved the board’s findings. On March 10, 2008, the Office of Internal Affairs sent a letter to the director of the Division of Adult Parole Operations requesting a response to the board’s recommendations, which explained:

The Department has the following process to bring resolution to DFRB [Deadly Force Review Board] recommendation[s]. In order to address the concerns raised by DFRB, please forward to me a written response to the issue[s] listed. If you disagree with their recommendations, please explain your position. If you agree with their recommendations, please provide an explanation and plan for addressing the issue[s]. Your comments will be attached to the case file and used as part of the Department’s ongoing commitment to review the use of deadly force and make any necessary changes.

On March 18, 2008, the bureau met with representatives of the Division of Adult Parole Operations to request a response to the board's findings. However, it was not until July 9, 2008, almost seven months after the board's report was issued, that the Division of Adult Parole Operations provided its response.

D. The Department's Response

In the response, the Division of Adult Parole Operations agreed with the three recommendations discussed above and set forth the steps it intends to take to address each recommendation. In regard to using the incident as a training opportunity to improve operational tactics, the Division of Adult Parole Operations is developing lesson plans, which include coordinating arrests with local law enforcement agencies. The Division of Adult Parole Operations will also review the use-of-force and tactical training provided to parole agents. To address the criminal investigation issue, the Division of Adult Parole Operations is revising policies to clarify the responsibilities of ensuring a criminal investigation is completed and notifying both the Office of Internal Affairs and the bureau when deadly force is used. Finally, to evaluate the appropriateness of supervisors reviewing use-of-force incidents before any substantial investigation has been completed, the Division of Adult Parole Operations has done the following: scheduled training for supervisors and administrators on critical incident reporting to ensure that procedures are followed and thorough investigations are completed; begun the lengthy process of reviewing a strategy to use field supervisors; and initiated a review of deadly force reporting procedures.

Although the board identified operational issues related to the incident, the department found no administrative misconduct during its review. Accordingly, the department imposed no disciplinary action against any of the parole agents involved in the operation.

IV. The Bureau's Review

The bureau agrees with the department's decision not to impose administrative discipline on the parole agents involved in the arrest operation. In short, this is not a case that warrants disciplinary sanctions. However, the incident and its subsequent review present an excellent opportunity for the department to improve its law enforcement field operations.

It is standard and accepted practice for law enforcement agencies to review procedures, tactics, and training to ensure the safety of future field operations after any one of their law enforcement officers fires a deadly weapon. Regardless of the appropriateness of the shooting, every field operation can be improved, and the best time to identify areas of improvement is while the incident is fresh in the participants' minds. Therefore, to be effective, this review should be conducted promptly after the incident.

Yet, in this case, the only prompt action taken by the department was to rush through a superficial review of the incident that hurriedly cleared the parole agent of any wrongdoing and praised his “excellent judgment.” This rushed analysis, however, was based solely on the parole agent’s own account of the circumstances justifying his use of deadly force. The department was aware of, but failed to consider, outside police reports. Many of these reports questioned the propriety of the shooting and pointed to broader flaws in the parole agents’ communication and tactics used during the operation.

In every other regard, the department hindered internal and external efforts to meaningfully review the shooting and use it as a basis for future improvement. The department’s Division of Adult Parole Operations prevented a timely response to the scene of the shooting by the Office of Internal Affairs and the bureau when it failed to immediately notify either agency of the incident, as required by department policy and procedure. Once a thorough investigation and review of the shooting was completed, the department ignored repeated requests to promptly respond to its own board’s reasonable suggestions with a detailed plan of action to swiftly correct specific mistakes noted in this incident and improve future operations. The department has an excellent process in place for reviewing uses of deadly force, but the value of that process is not fully realized when the department fails to heed the resulting recommendations in a timely manner.

To fully realize the benefits of this deadly force review process in the future, the department must take two important steps. First, the department must ensure that the review process is properly initiated by immediately notifying the Office of Internal Affairs and the bureau of every discharge of a deadly weapon by a department employee. When the Office of Internal Affairs and the bureau receive immediate notification, an on-scene response is possible, and a more comprehensive review of the deadly force can be accomplished. Second, after the review process is finished, the department must evaluate the issues raised by the investigative report, the bureau’s monitoring, and the board’s findings. More importantly, the department should promptly implement any reasonable recommendations resulting from these reviews. Effectively implementing the reasonable recommendations resulting from the review process is the only way to improve future field operations and guarantee better safety for not only the department’s law enforcement officers, but also outside law enforcement and the public.

This case provides the department with the opportunity to improve its law enforcement field operations and its review process by fully implementing the board’s recommendations. The department should also heed a fourth recommendation made by the bureau regarding the post-shooting interview process.

A. Parole field operations should be guided by clear policy that ensures proper communication, command control, and arrest procedures.

First, the board urged the department to consider this shooting as a training opportunity to improve the tactics it uses in field operations. In particular, the role of plainclothes parole agents should be clarified and improved when agents work among uniformed personnel in multi-agency operations and communications. The bureau shares this view.

In this case, it was not clear that any of the on-scene parole agents were in command of the other parole agents. There was nothing in the record to suggest that the parole agents all understood that the PAC team parole agent, or the highest-ranking parole agent on scene, was in charge and that they were to report to and receive instructions from that person. Although the PAC team police officer was leading the operation, an outside law enforcement officer cannot effectively assume this role because such a person is not part of the supervisory chain of command over state parole agents. Every operation should clearly designate someone who is in charge of all the involved department employees, and each person who responds to participate in an operation needs to understand that he or she must report to this commander for instructions.

The danger caused by the lack of a commander in this case was compounded by both the shooting parole agent's failure to notify his own supervisor that he had responded to the scene and the evident failure of the other parole agents at the scene to convey important instructions to him. The upshot of this case was that the PAC team police officer, who is outside the department's chain of command, was the only person to convey the message to the parole agents to refrain from attempting to arrest the parolee. The fact that the shooting parole agent said he never received that message only underscores the importance of having a person clearly designated as the commander and tasked with reinforcing important communications throughout the field operation.

Even without clear direction to refrain from attempting the arrest, plainclothes parole agents should be reluctant to make arrests in circumstances that involve multi-agency field operations with uniformed officers. Because parole agents conduct their business in plainclothes with little to identify them as law enforcement officers, they are in danger of not being recognized as law enforcement. This danger translates into a significant risk of mistakenly being shot by suspects, members of the public, or other officers. Accordingly, the department should adopt a policy governing its parole agents and other sworn officers. This policy should clarify the following: plainclothes parole agents should always assume that they are not identifiable or recognized by other responding officers; plainclothes parole agents should always make clear their non-uniformed response to an incident by notifying every uniformed officer taking part in the operation of their presence; and, when circumstances permit, plainclothes parole agents should allow uniformed officers to make arrests.

In this case, the absence of proper communication, a clear commander for the parole agents, and clear arrest procedures all combined to create a significant risk to the lives of the parole agent and the responding officers. That danger was heightened because the uniformed officers were notified that the parolee was with another black male suspect whom none of the uniformed officers knew. Moments later, those same officers saw a black male, whom many of them did not know or recognize, running with a handgun behind the parolee. Some of the officers said that the parole agent was not wearing a visible badge or anything else identifying him as a law enforcement officer. Fortunately, the officers did not mistake the parole agent for the other suspect and shoot at him.

The danger that the uniformed officers might mistake the parole agent for a threat was compounded because some of the officers perceived the shot to have been fired in their direction, which was probably true. One uniformed officer specifically noted that, though he initially thought he was being fired on, he did not return fire because he thought that he recognized the shooter from the market before the operation. But not all the officers recognized the parole agent as a member of law enforcement. One uniformed officer thought that he was being fired upon by two “black males” running with guns, neither of whom wore anything identifying them as law enforcement officers. It is simply good fortune that this officer did not return fire.

Nevertheless, the parole agent should have avoided testing the limits of his good fortune. It was not necessary to chase the parolee in these circumstances. Uniformed officers were waiting nearby, ready to arrest the parolee. Though it is impossible to know for sure, had the parolee been initially confronted by numerous uniformed officers, rather than chased by one plainclothes parole agent, the parolee may not have attempted to draw his handgun. In short, had the parole agent followed the arrest operations plan, he may have been able to avoid the need to use deadly force, thereby avoiding the risk to himself and the uniformed officers.

Moreover, any time a plainclothes law enforcement officer gives chase, the suspect has an easy excuse that he did not recognize his pursuer as an officer and that he would have yielded to an officer wearing proper identifying clothing. Not only can this excuse be used as a defense against criminal charges for resisting arrest, it often forms the basis for civil lawsuits and attempts to reap financial benefits against law enforcement officers and agencies. Indeed, this is precisely what occurred when the parolee made clear during his Office of Internal Affairs interview that he was interested in making money out of the incident by suing the department.

Had there been a clear, on-scene commander established among the parole agents, this person could have ensured that each parole agent understood the instructions and that each parole agent was recognizable to the other uniformed police officers. This commander could have then provided proper authorization for parole agents to participate in the operation, after ensuring that it was safe for the agents to do so, or could have determined to use the agents only in a support role. Unless emergency circumstances

demand it, no department law enforcement officer should take part in this kind of operation without clear approval from his or her supervisor and an on-scene commander.

After agreeing with the board's recommendation regarding operations, the Division of Adult Parole Operations indicated it is developing lesson plans that include coordinating arrests with local law enforcement agencies and reviewing the use-of-force and tactical training provided to parole agents. However, it remains unclear whether the department will adopt a policy that (1) designates an on-scene commander for parole agents in these types of operations, (2) ensures parole agents will make themselves known to all other officers in an operation, and (3) clearly outlines the proper role for plainclothes parole agents when uniformed officers are available to make the arrest. Moreover, the department has only stated that it is developing training on multi-agency operations and has not indicated the topics to be included. Finally, the department has promised to review the training provided to its parole agents, but it has not identified what it will look for in this review, nor has the department committed to a timeframe for making any necessary modifications to the training.

B. Internal affairs must ensure that a criminal investigation is completed every time an employee uses deadly force.

The bureau also agrees with the board's recommendation that the Office of Internal Affairs should ensure that a criminal investigation is initiated every time deadly force is used. In this case, the Office of Internal Affairs was told that the police department had assumed responsibility for conducting the criminal investigation. The Office of Internal Affairs later found out that the police department had declined at the outset to conduct any such investigation. Had the Division of Adult Parole Operations or the Office of Internal Affairs taken the simple step of contacting the police department to request written verification of its information, the misunderstanding could have been easily corrected so that a proper and timely criminal investigation could have been conducted.

In its response to the board's recommendations, the Division of Adult Parole Operations indicated that it will revise its policy to make clear that the regional administrator is responsible for ensuring a criminal investigation is conducted into a parole agent's use of deadly force, and that the Office of Internal Affairs and the bureau are to be notified of deadly force incidents. Again, this response does not fully address the issue identified by the board. The duty to notify the bureau and the Office of Internal Affairs has been in effect for quite some time, and the bureau has routinely provided the department with training and memorandums regarding this issue. Moreover, the issue here is not simply notification but ensuring that a criminal investigation is conducted. Although the regional administrators can assist in pursuing this end, the ability and responsibility to conduct a criminal investigation rests with the Office of Internal Affairs. Thus, it is imperative that the Office of Internal Affairs' policy mandates a criminal investigation into all deadly force incidents and allows parole agents to be diverted from a criminal deadly force investigation "only when it is clear that the local law enforcement agency is actively

investigating the matter.” Furthermore, the bureau recommends that the Office of Internal Affairs obtain such confirmation in writing.

C. The department should begin its review of deadly force only after internal affairs and the board have finished their reports so that the department may consider and implement any reasonable recommendations.

The board suggested that the department evaluate the appropriateness of supervisors reviewing deadly force incidents when no substantial investigation has been completed. The board’s concerns are well founded. In this case, the Division of Adult Parole Operations’ use-of-force review of the shooting was cursory and inadequate.

The review was rushed through in a single day without any apparent reason. More importantly, the department seemed unconcerned that it failed to consider in its review the reports of the uniformed officers, many of which contradicted the parole agent’s version of the events. One senior parole supervisor said that he felt that he had an accurate understanding of the incident and did not need to consider the police reports because he “did not need any more corroboration” for his conclusions. But it is hard to understand the source of this confidence since no other parole agent saw the parolee draw his weapon or the parole agent fire his weapon; thus, even among parole agents, the agent’s account was not corroborated.

Had the parole supervisors reviewed the police reports, they would have learned important information relevant to their evaluation of the use of force. They would have learned that the arrest operation suffered from poor planning in that the uniformed officers and the parole agents did not all know one another because all the participants did not meet before the operation. They would have learned that the uniformed officers were waiting around the perimeter of the hotel to converge on the scene to arrest the parolee. They would have learned that the parole agent chased the parolee toward the area of the oncoming uniformed officers and fired in their direction. And they would have learned that several uniformed officers reported that the parole agent had not fired at the parolee until after the parolee had climbed the fence and landed at the officers’ feet. In short, a reviewer of all the available reports may have concluded that the parole agent’s chase and discharge of his handgun were dangerous and possibly unnecessary. To some, the department’s hurried conclusion regarding the parole agent’s “excellent judgment” may even suggest a greater effort to shield parole agents from criticism than an effort to determine the facts of what occurred, improve future operations, and ensure public safety.

In fact, the department’s commendation of the operation stands in stark contrast to many of the views of the involved parole agents and officers, who recognized room for improvement in future field operations. The PAC team parole agent suggested that it

might have been better if the parole agent had just walked the other way because he ended up running across the parking lot with his handgun drawn while uniformed officers were coming from the opposite direction. Moreover, three uniformed officers all later agreed on the need for plainclothes parole agents to take better steps to identify themselves as law enforcement officers before confronting or chasing a suspect during a joint operation. As one officer noted, the parole agent should have put on a vest identifying himself as a law enforcement officer so other officers would not accidentally shoot him. One of the other parole agents later reflected that the situation could have easily resulted in an exchange of gunfire from the responding uniformed officers. Because their lives are on the line, the parole agents and officers themselves understand the need for thorough review of any field operations and do not shy away from suggesting improvements that could save lives in the future. The department should take its cue from its own parole agents and these officers by engaging in a similar evaluation of ways to improve future operations.

In its response, the Division of Adult Parole Operations again agreed with the board's recommendation, but it falls short of implementing the recommendation. Specifically, the Division of Adult Parole Operations has not issued any directive that reviews of the use of deadly force will not be conducted until after substantial investigation has been completed, nor has it committed to doing so. Instead, the department indicates that it is rethinking timelines and reporting mandates, providing training regarding critical incident reporting, and pursuing a strategy to put in place field supervisors that "will take years to fully implement." Although these efforts may eventually yield some improvement in the review of deadly force incidents, this plan of action does not specifically address the deficiency noted by both the board and the bureau.

D. The parole agent should not have been involved in the interview of the parolee.

The parole agent who fired his weapon should not have been involved in the interview of the parolee after his arrest. There is an inherent risk that the law enforcement officer who has discharged his weapon will try to use the interview of the suspect to justify the use of deadly force. In this case, the parole agent participated in the interview. The parolee told the Office of Internal Affairs that the parole agent wanted the PAC team police officer to continue asking the parolee about the handgun, even after the parolee had requested an attorney. Had the questioning continued, the criminal case against the parolee could have been jeopardized. Therefore, it is imperative that the department ensure that its law enforcement officers do not participate in the interview of a suspect against whom they have used deadly force.

V. Conclusion

The department should take advantage of the process it has adopted to conduct a timely and meaningful review of any use of deadly force. The Office of Internal Affairs' investigative report, the board's report, and the bureau's monitoring activities all provide the department with valuable information to help it improve field operations.

Unfortunately, the department has not fully taken advantage of these resources by delaying its response to the review for almost seven months, by providing a response that does not fully address the reasonable recommendations arising from the review, and by not yet implementing any changes to ensure improvement in its tactical operations and review process. The bureau urges the department to employ the standards of the greater law enforcement community by seriously reviewing its field operations and promptly implementing any reasonable recommendations before its failure to do so causes harm to a law enforcement officer or member of the public.

Attachment

Approximate Location of Parole Agent, Parolee, and Police Officers Involved in Shooting Incident on May 21, 2007

