

OFFICE OF OPERATIONS

OPERATIONS ORDER NO. 9

August 29, 2008

SUBJECT: OBTAINING ARREST WARRANT DURING BARRICADED SUSPECT STANDOFF

EFFECTIVE: IMMEDIATELY

PURPOSE: This Order requires Department personnel to obtain or attempt to obtain an arrest warrant for barricaded suspect situations occurring in the suspect's residence or other locations where the suspect has Fourth Amendment standing.

BACKGROUND: In a recent decision by the Ninth Circuit Court of Appeals (*Fisher v. City of San Jose*), the Court found San Jose Police Department's failure to obtain a warrant during a 12-hour stand-off with a barricaded suspect to be a violation of the Constitution. The Court determined that the violation was a matter of law because officers had failed to obtain or attempt to obtain a warrant during the 12-hour period Fisher was barricaded in his apartment. Despite the defense's efforts to justify a warrantless entry due to exigency, the Court specified that the following two prongs must be satisfied to fulfill the exigency requirement:

- * First, there must be a dangerous situation or compelling need to enter; and,
- * Second, officers must be unable to safely obtain a warrant due to time constraints.

Note: Both prongs must be met simultaneously to satisfy the exigency requirement and justify a warrantless entry. In the Fisher case, the Court believed that the second prong was not met for many of the entries.

The Court's warrant requirement applies when the exigency requirement is not met and officers effect, or attempt to effect, an arrest of a suspect barricaded in his or her home. This "seizure" can be in the form of actual physical entry by officers or police action that forces the suspect out of the residence (i.e. flash bang, gas, throw phone). The Court opined that forcing a suspect out of his/her residence by using police action is constitutionally equivalent to officers making physical entry into the suspect's residence. When the initial situation meets both prongs of the exigency requirement, then warrantless entry is justified. However, once either of the two

prongs dissipates, a good faith effort to obtain a warrant must be made prior to any additional entries.

Note: The term "entry" refers to either physical entry by officers or any police action directed at forcing the suspect out of his/her home.

PROCEDURE: An effort to obtain an arrest warrant shall be made when a suspect is barricaded in his/her residence or other location where the suspect has Fourth Amendment standing, unless both prongs of the exigency requirement are satisfied simultaneously. Once the location has been contained and either prong of the exigency requirement has dissipated, the following procedures shall be followed:

I. INCIDENT COMMANDER'S RESPONSIBILITIES. The Incident Commander shall:

- * Immediately provide a status report to the Area Watch Commander or his/her designee;
- * Ensure all necessary information is documented and available to facilitate/expedite warrant obtainment; and,
- * Ensure entry occurs after the process for obtaining a warrant has been initiated.

Note: If circumstances exist wherein a warrant cannot be obtained in a timely manner, Department personnel are justified in making a warrantless entry as long as both prongs of the exigency test apply.

II. AREA WATCH COMMANDER'S RESPONSIBILITIES. Upon being notified by the incident commander, the Area watch commander shall:

- * Immediately notify the Area detective commanding officer of the incident;
- * Once a responding detective supervisor has been designated by the Area detective commanding officer, notify the incident commander of the detective's name and estimated time of arrival; and,
- * If the incident meets Special Weapons and Tactics (SWAT) criteria for deployment, ensure that the appropriate notifications are made and provide a warrant status update to the SWAT Officer in Charge as soon as practicable.

III. **AREA DETECTIVE COMMANDING OFFICER'S RESPONSIBILITIES.** Upon being notified by the Area watch commander, the Area detective commanding officer shall:

- * Immediately assign a detective supervisor to respond to the incident command post; and,
- * Provide the Area watch commander with the responding detective's name and estimated time of arrival.

Note: During off-hours, the on-duty night watch detective shall be assigned as the responding detective supervisor. In the event an Area detective supervisor is not available, a detective from Real-Time Analysis and Critical Response Division shall respond.

IV. **RESPONDING DETECTIVE SUPERVISOR'S RESPONSIBILITIES.**

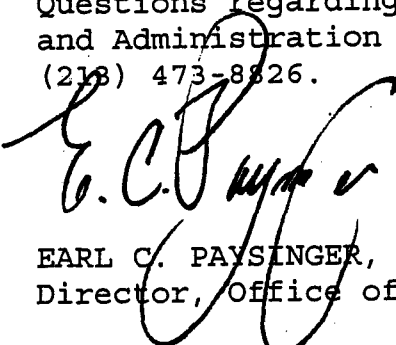
The responding detective supervisor shall:

- * Upon responding to the incident command post, gather all necessary information to obtain an arrest warrant; and,
- * Begin preparing the warrant for presentation to a magistrate.

All efforts/attempts at securing a warrant and all police actions directed at arresting the suspect, including the times of such activities, shall be documented in the Crime Scene Log, Form 03.11.04, or appropriate Incident Command System Form.

Questions regarding this Order may be directed to the Evaluation and Administration Section, Office of Operations, at

(213) 473-8826.



EARL C. PAYSINGER, Assistant Chief
Director, Office of Operations

DISTRIBUTION "A"