

Police Shootings Reactive Window Dressing or Effective Reforms?

**By Craig Powell
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In July, Sacramento police killed a mentally ill, knife-wielding man on the streets of North Sacramento in a hail of gunfire, striking him 14 times, in an episode recorded by police dash cams and other video. Calls to police dispatchers had reported that a mentally ill man (he had soiled himself and was seen typing on an imaginary keyboard) armed with both a gun and a knife was observed loose on the streets, which, of course, triggered the highest degree of police vigilance. The shooting was preceded by an unsuccessful effort by police officers to run the man down with their squad car.

The Sacramento police department's response to the shooting was ham-handed, at best. It refused media requests to obtain multiple dash cam and other video of the episode, despite growing public pressure to release it. But once The Bee released a video of the incident weeks later that had been recorded by a private party, the SPD ended its stonewalling and released all of its videos of the episode within a matter of hours. What ensued was a growing chorus of calls, particularly, but not exclusively, from groups and individuals in the black community, for the city to adopt major reforms in how it handles police misconduct complaints.

City's Rapid Response to the Problem

On Sept. 20, Mayor Kevin Johnson appointed a council committee to research ways the city could upgrade police accountability and transparency. Three days later, the committee, headed by Councilmember Larry Carr, visited Berkeley to discuss its police review commission. (Berkeley, home of my alma mater, wouldn't have been my first choice as a place to look for sound local government policy.)

Our new interim city manager, Howard Chan, in office for just a few days and facing his first major crisis, hired a new assistant city manager, Arturo Sanchez, from the city of Long Beach to oversee the police and fire departments and to implement new police oversight procedures. One of the reasons Sanchez was hired was for his experience in overseeing police review commissions in Long Beach and, previously, in Oakland.

Indicative of the rush the city was in to respond to growing community outrage, the city conducted four public forums on police accountability, transparency and use-of-force policy over just three days in mid-November, a new land speed record.

At a crowded council meeting on Nov. 29, the city council adopted a broad set of reforms designed to address community concerns with police behavior.

First, the council did a major upgrade of the city's Office of Public Safety Accountability, which until now has been a quiet backwater of city government. The council assigned three new staffers to OPSA and increased its annual budget to \$600,000. It expanded OPSA's authority to

monitor the police. It also removed OPSA from the control of the city manager and placed it under the city council's direct control.

OPSA's job is to monitor how well the police department's internal affairs division handles investigations of officer misconduct complaints. It has full access to police files and investigative records, but it has no independent power to initiate or investigate such complaints. With the reforms, OPSA can now ask the city council to issue subpoenas should OPSA feel that internal affairs is going off the rails in an investigation.

The council also slightly recast the 1-year-old Sacramento Community Police Commission. It added the word "Review" to its name, but it did little to augment its previous powers, which were (and continue to be) to review police policies and recommend policy changes to the council. The commission will now be able to review quarterly reports from OPSA on pending internal affairs investigations, but the reports will be sanitized to conceal the identities of the parties involved.

The city council also changed the composition of the police commission. Currently, there is at least one police representative on the commission. Under the new rules, all current and former police officers will be banished. It will now be an 11-member "all civilian" body, which strikes me as unwise. Why wouldn't we want our police commission to have the benefit of a retired officer's perspectives on policing matters? Barring retired officers from serving as members also seems to increase the likelihood that the commission will adopt a more confrontational posture toward the police than if they had the input of a retired cop in their ranks.

Public Reaction to the Reforms: Too Weak

Every witness testifying at the Nov. 29 council meeting, save two, thought the reforms were weak and didn't go far enough, including representatives from Area Congregations Together, the ACLU, the Law Enforcement Accountability Directive, and Black Lives Matter. Their objections were that the revised police commission won't be independent (the mayor and council will appoint its members), it will lack subpoena power to conduct its own investigations into misconduct cases and it will have no power to impose discipline on officers it finds acted improperly. Those testifying thought the reforms offered by the council were, at best, a weak first step toward real reform.

Most councilmembers were sympathetic with such concerns but felt that their hands were tied by legal constraints. City attorney James Sanchez explained that under the city charter, only the city council and its committees have subpoena power and that a charter amendment would have to be approved by the voters to grant the police commission the power to issue investigative subpoenas.

To place a charter measure on the ballot would require citizens to gather signatures from well over 40,000 registered city voters, an expensive and time-consuming proposition. Or the city council could simply direct that a charter change measure be placed on a future ballot, much as it did with Measure L, the charter measure to create an independent redistricting commission, which was approved by city voters in the November election. But it was clear that the council has no appetite to take such action, at least for now. Otherwise, it would have approved placing such a measure on the 2018 ballot at its Nov. 29 meeting.

Sanchez also explained that state law would likely prevent the council from granting the police commission the power to discipline cops. State law strictly limits who can have access to police personnel and disciplinary records, a restriction broadened by the California Supreme Court's Copley Press decision in 2006.

A 2007 bill by then-Sen. Gloria Romero was designed to allow any charter city (like Sacramento) to release such records as they did before Copley. But when it came up for a hearing before the Senate's Public Safety Committee, its chair—Sen. Mark Leno, who supported increased police oversight—was abruptly removed from the committee and the committee room was flooded with police officers who opposed any efforts to water down their privacy rights. The bill died on the spot. Such is the political juice that police groups have in the State Capitol.

It was clear to this observer that, while it wouldn't say so, the council wants to keep to itself the power to conduct investigations into the handling of misconduct cases by the police's internal affairs division and had no intention of sharing it with a citizens' police commission anytime soon. I could also sense that the council has some trepidation about handing disciplinary authority over city police to a citizen commission. Historically, the Sacramento city council has, as a general rule, been quite resistant to sharing city power with others.

What was quite surprising about the council meeting was the complete absence of police officers, its union, the Sacramento Police Officers Association, or any command personnel from SPD. I imagine police shied away from dealing with the police-unfriendly crowd. Councilmember Angelique Ashby did note that the SPOA opposed the reforms.

(Note: Sacramento police department veteran Brian Louie takes over from police chief Sam Somers this month. Louie will serve as interim chief while the city searches for a new permanent chief, whom the city manager says should be appointed by April or May.)

Releasing Video of Police Shootings

The reforms would also mandate that any video of an officer-involved shooting be publicly released within 30 days of the shooting unless the city council decides to withhold it under certain narrowly defined circumstances. The police chief, for example, could ask the council to withhold release of video if he believes it would compromise a pending investigation. Frankly, I'm not sure such a provision is legal, as it arguably impinges on the exclusive executive powers and authority of the city manager under the city charter. And it certainly doesn't seem politically smart for the city council to put itself in the unpopular position of telling the community that they can't see a video of a police officer shooting somebody whenever the council must, for legitimate legal reasons, decide to withhold such videos from the public.

The National Narrative and Some Recent Research Findings

There is no issue in municipal government today more highly charged or more divisive than the matter of citizen deaths at the hands of police. Police feel under siege, both nationally and locally, by a powerful national narrative that the police are too quick to resort to deadly force in dealing with black citizens in high-risk, high-conflict settings. Meanwhile, a large number of African-Americans have lost trust in the police. They're angry by what they view as increasing numbers of racially biased, unjustified shootings of black citizens by police who are too often trigger happy.

A study by a Harvard professor released in July found no evidence of racial bias in police shootings even though officers were more likely to interact physically with nonwhites than whites, The Washington Times reported last summer.

The study, by the National Bureau of Economic Research, examined thousands of incidents at 10 large police departments in California, Florida and Texas and concluded that police were no more likely to shoot nonwhites than whites after factoring in extenuating circumstances.

“On the most extreme use of force—officer-involved shootings—we find no racial differences in either the raw data or when contextual factors are taken into account,” said Harvard economics professor Roland G. Fryer Jr. in the abstract of the paper. Fryer, who is black, told The New York Times that the finding of no racial discrimination in police shootings was “the most surprising result of my career.”

Future Flash Points

So what are the potential future flash points over the city's handling of police misconduct complaints?

Well, without subpoena power or disciplinary authority of their own, OPSA and the police commission will have a hard time challenging the findings of internal affairs or the disciplinary decisions of police brass. Unless OPSA can persuade the council to issue subpoenas, the most it can really do is try to embarrass the police department by issuing reports to the police commission and the council condemning an internal affairs investigation or a disciplinary action by police department brass. The police department will remain firmly under the control of the city manager.

A police department decision exonerating an accused officer could trigger so much community furor that it leads to political brinksmanship in city government: Would a city manager stand up and defend a decision by his police department and its internal affairs division not to fire an accused officer in the face of pressures from OPSA, the police commission and a politically sensitive city council to oust the officer? Or would a cautious city manager cave under such pressures to protect his own job, overrule the decision of his police department and fire the officer, even though it would likely damage the morale of police brass and line officers alike? It's not clear. One day we may just find out.

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