



PUBLIC RELEASE

April 5, 2018

PICNIC DAY 2017

On Saturday, April 22, 2017, at approximately 3:30 P.M., three Davis Police Officers working on Picnic Day were traveling on Russell Blvd in an unmarked police vehicle when the officers encountered a large group of people in the roadway. The officers stopped and a physical altercation ensued that resulted in the arrest of several participants. Additionally, summary preliminary incident information was released to the public on the Monday following Picnic Day, April 24, 2017, at 3:45 p.m. along with the request for anyone who had witnessed or who had video of the incident to contact the Davis Police Department.

By mid-morning Tuesday April 25, 2017, the press began contacting the Davis Police Department for additional information regarding the incident and for a response to claims by involved parties/witnesses who reported to the media new and differing accounts of the incident. The media reported general claims were: (1) that the police officers instigated the incident; (2) the officers were unrecognizable as the police because they did not identify themselves and were in plainclothes driving an unmarked police vehicle; (3) there was racial bias involved; (4) the force used in the arrests was excessive; and (5) the preliminary release of information put out by the Police Department on Monday April 24, 2017, at 3:45 p.m. was inaccurate.

At that point in time, it was apparent to the Department there were conflicting accounts of the incident. As with any situation involving the use of force by officers, and pursuant to the Department's existing protocol, an internal review was initiated to evaluate the situation and determine whether there was compliance with the law and Departmental policies and procedures.

On April 25, 2017, at 1:00 p.m. a witness came to the front counter of the Police Department and provided detectives with a "dash cam" video that captured a broad visual field and depicted important details of the actual incident that occurred on Picnic Day. The Police Department notified the media that a witness turned over the video on April 25th.

On May 10, 2017, the Police Department publically released the "dash cam" video because the video showed there were many witnesses to the incident present that may have cell phone video of the incident. The desire was that additional witnesses would come forward with additional information and/or videos.

Due to the nature of this incident, and the public/media interest and allegations, the Police Department ordered an outside, independent investigation to determine whether there was any misconduct on the part of the involved police officers. The City Attorney's Office initially hired former Sacramento County Sheriff John McGinness to conduct an internal affairs investigation, but he withdrew shortly after being hired and ultimately played no role in the resulting investigation.

The Police Community Advisory Board (CAB) provided input regarding potential investigator candidates, after which the City Attorney's Office retained McGregor Scott to conduct an investigation to determine whether there was any misconduct and/or violations of Departmental policy relating to the Picnic Day incident. At the time, McGregor Scott was a partner with Orrick, Herrington, and Sutcliffe, LLP and a former United States Attorney for the Eastern District of California¹ and District Attorney for Shasta County. As soon as Mr. Scott was formally retained, he and his investigative team immediately began the internal investigation.

The Scott Investigation Team reviewed a considerable volume of evidence, including but not limited to video recordings of the altercation, video and audio recordings of police interviews of witnesses and participants in the altercation, statements that witnesses provided to the media, police reports and Davis Department Policies. Also, in addition to visiting the intersection where the altercation occurred, the Investigation Team separately conducted its own interviews. These included interviews with thirteen individuals who witnessed the altercation, including two of the five individuals arrested for their actions during the altercation, all three of the Department officers directly involved in the altercation, and five additional Department officers with knowledge relevant to the altercation. The Investigation Team also sought interviews with the other three individuals arrested for their actions during the altercation, as well as thirteen other percipient witnesses, but all of them either never responded or declined to meet with the Investigation Team. The Investigation Team also received personnel complaints making specific allegations of misconduct.

On a parallel path, the Yolo County District Attorney's Office reviewed all pertinent reports and evidence and made an independent decision regarding filing criminal charges against involved parties. Each of the charged individuals pled no contest to a felony charge of resisting arrest, with a deferred entry of judgment for one year if they complete a restorative justice program and avoid new convictions, and a misdemeanor charge of simple battery. The Police Department is currently working with the Yolo County District Attorney's Office regarding any potential involvement in the restorative justice component of the agreement.

Because the investigative report is considered a personnel investigation, the wholesale release of that report is not possible. However, under California Penal Code 832.7(e)(1) a police agency is required to provide written notification to the complaining party of the disposition of the complaint. Consistent with state law, the Department will release information to the complaining parties.

¹Mr. Scott was reappointed as the United States Attorney for the Eastern District of California shortly after he completed the investigation.

The City manager hired Michael Gennaco as the Interim Independent Police Auditor on January 19, 2018, to fill the vacant role until such time that it is filled on a permanent basis. Mr. Gennaco was immediately tasked by the City Manager with conducting a review of the investigative report prepared by Scott Investigation Team. Mr. Gennaco has reviewed the internal investigative report, video evidence, tape recordings of interviews, the criminal investigation, and other documentary evidence related to the incident. The Independent Police Auditor report is being released to the public under separate cover on a City Council agenda. Mr. Gennaco's report contains policy recommendations, many of which have already been implemented, or are under review by the Department.

This incident has provided the Davis Police Department with an opportunity to review systems, policies, and practices related to training and tactics to ensure they are in line with best practices throughout the nation. Specific actions taken by the Davis Police Department following this incident include, but are not limited to:

- The Department revisited its policy regarding the use of plainclothes officers and unmarked vehicles. A revised policy was issued last May, 2017, and expanded the circumstances under which Davis police personnel must wear various types of uniforms that make them more-readily identifiable as law enforcement officers². The revised policy further requires unmarked vehicles used in plainclothes assignments to be equipped with a forward-facing red light that must be activated when the vehicle is involved in enforcement action. The Department also took action to equip all unmarked vehicles with forward flashing blue lights, which specifically identifies the vehicle as a law enforcement vehicle, as opposed to only a red light that signifies any emergency vehicle under California law. The Department also purchased police car markings that can be put on or taken off of unmarked cars used for special functions, such as Picnic Day, where there are not enough regular marked patrol cars for all assigned personnel.
- The Department crafted a new policy clarifying the operational circumstances under which undercover officers may be deployed, including administrative oversight and review³.
- The policies restrict circumstances when undercover officers may directly take enforcement action or use force. Such circumstances are limited to situations when an officer acts to protect themselves or another person from imminent injury or harm.
- The Department revised its uniform requirements to ensure that, absent emergency circumstances, officers are clearly identifiable as law enforcement officers.
- The Department has implemented a thorough process regarding the confirmation of information received at any incident scene from officers or witnesses prior to including that information in public/press releases. The amended Department Policy specifies the Department will release public information as promptly as circumstances allow without partiality in an as objective manner as possible. Any initial release of information will be notated that it is a preliminary release of

² <http://cityofdavis.org/home/showdocument?id=8758>

³ <http://cityofdavis.org/home/showdocument?id=8778>

information and subject to change upon further investigation⁴. In an effort to ensure accuracy, written releases shall be released only following review by the supervisor of the specific incident or the involved officer(s) and after at least two department administrators have approved the release⁵.

- The Department has adopted a “foot pursuit” policy and addresses the role of plain-clothes/undercover officers in foot pursuits and supervision⁶.
- The Department supplemented its existing training guidelines to include additional emphasis on de-escalation strategies and interpersonal communication skills for sworn staff. Full-day, live de-escalation scenario training was conducted late summer 2017.
- The Department consulted with Yolo County District Attorney Jeff Reisig regarding the expanded use of restorative practices as an alternative to regular judicial proceedings in the Picnic Day incident and appropriate cases, including some felonies, moving forward.
- The Department has met with UC Davis Police leadership regarding Picnic Day planning and coordinated law enforcement efforts for Picnic Day 2018.

In addition, the Department anticipates the following future steps and activities:

- The Department will engage the City Council in discussion regarding whether current policies and practices related to dealing with the large Picnic Day crowds continue to serve the City or whether there is a need to take other measures to limit or manage the impacts of large gatherings that have caused problems even for those hosting parties.
- The Department will continue to accomplish the tasks laid out in the Davis Police Department’s Strategic Plan⁷ that are complementary to oversight, transparency, accountability, diversity and reducing conflict, including:
 - Implement and train department members in the concepts and procedures of “Procedural Justice.”⁸
 - Appoint a committee consisting of Department and community members tasked with reporting to the Police Chief on implementing recommendations from President Obama’s Task Force on 21st

⁴ At times, when public information is released, initial information may be later determined with the benefit of additional information to have been inaccurate; however, for transparency sake preliminary information is often shared during the early stages of an incident. As investigators obtain a more thorough understanding of the situation as the investigation progresses, additional information to correct and clarify any previous inaccuracies will be provided in a timely manner.

⁵ <http://cityofdavis.org/home/showdocument?id=9137>

⁶ <http://cityofdavis.org/home/showdocument?id=9139>

⁷ <http://cityofdavis.org/city-hall/police-department/administration/strategic-plan>

⁸ Procedural justice concerns the fairness and transparency of the processes by which decisions are made. Hearing all parties before a decision is made is one step towards creating a process that may be characterized as procedurally fair. Departmental evaluations will be adjusted to reflect importance of procedural justice and annual surveys and complaint analysis will be used to determine whether they are impacting public perceptions of the Davis Police. Supervisor training occurred in January 2018. Training will continue throughout 2018.

Century Policing⁹. This includes working with the community, the City Manager and the City Council on implementation of appropriate police oversight.

- Beginning July 1, 2018, collect required data in the Racial and Identity Profiling Act of 2015 and annually post data from the previous year on the Department website.
- Beginning 2018, annually post civilian personnel complaint and use of force data from the previous year on the Department website¹⁰.
- When appropriate, allow community members to watch and/or participate in certain police officer trainings (use of force/de-escalation scenarios).
- Develop strategies to reduce the specter of biased policing (e.g., develop methodologies to involve front-line personnel in casual, non-enforcement interactions with diverse components of the community; work with expert(s) in the field of unconscious bias (consultant/facilitator) to create and conduct a refined and innovative unconscious bias training curriculum for Police Department personnel, etc.) and continue to require all personnel to participate in formal unconscious bias training within six months of being hired and receive periodic refresher training. The last unconscious bias training occurred last month and several members of the Human Relations Commission attended.

Training and Needs

The police department has trained all sworn personnel in crowd control management. However, traditional crowd control techniques are not always helpful in reducing conflict at large parties or where crowds start moving, especially if they aren't associated with a particular location or common event. Importantly, this year, sworn officers will receive training in de-escalation crowd control techniques (soft crowd control) and communication. Supervisors and administrators will also participate in the training so there will be proper oversight in situations requiring crowd management.

A funding request for FY 18/19 has been submitted to purchase the latest type of force option simulator (~\$50,000), which includes many de-escalation and crisis intervention scenarios. Live scenario training is excellent, but it takes significant time and resources to get each officer through just a few scenarios. A simulator can be used often and in conjunction with roll-call training. Communication and force de-escalation is a perishable skill; it requires significant and continuous training to get officers comfortable with handling stressful, dynamic encounters in a variety of ways.

Moving Forward

The period of time that has transpired from the beginning of this investigative process, and the lack of early and clear communication to the community around timing and expectations, was regrettable. Clear communication, early and often, are necessary to ensure transparency and trust. Furthermore, it is critical that investigations of incidents are carried out utilizing best practices with appropriate oversight and input

⁹ <http://noblenational.org/wp-content/uploads/2017/02/President-Barack-Obama-Task-Force-on-21st-Century-Policing-Implementation-Guide.pdf>

The final report contains several dozen recommendations for implementation. Not all recommendations are pertinent to Davis or California law enforcement. Some recommendations will require funding to implement. The Task Force will make recommendations to the Police Chief regarding implementation priorities and methods.

¹⁰ Information will be posted following Council discussion on this report.

as to scope of the investigation. In the future, the Department, in conjunction with the Independent Police Auditor, will timely and effectively communicate to the community the expectations of the investigative process, what information/report will be released, and the expected timing thereof.

The City and the Davis Police Department recognize the significance the Picnic Day incident has had on our community. Staff understands the challenges we face as we work together to heal our community and those involved in the interaction, build trust and move forward. The Davis Police Department and I, as the Police Chief, must acknowledge when mistakes are made, when violations of policy occur, and make efforts to correct public information when it is determined to be inaccurate.

In this instance, certain decisions and resulting acts by some of the officers involved in the Picnic Day incident did not meet the highest standards of conduct and service we expect from members of the Davis Police Department particularly regarding the decision to move close to the crowd in an unmarked vehicle without using a red light; the use of inappropriate language by one of the officers; and that two of the officers while in the van were not initially identifiable as police officers. These factors played a role in the initial confusion regarding whether the officers in the van were the police. The actions are regrettable and I apologize for these breaches of Departmental policy and the impact that it had on those involved in the incident and our community.

As earlier stated, at times, when public information is released, initial information may later be determined to be incomplete or even inaccurate; however, for transparency's sake, preliminary information is often shared during the early stages of an incident. As the investigation progresses and investigators obtain a more thorough understanding of the situation, any conflict with the initial information shared and the verified facts may cause the public to question the integrity of the Davis Police Department based on the conflicting information initially released.

In this instance, some of the information released to the public following the picnic day incident was determined to be inaccurate, poorly worded and/or not objective, none of which are acceptable. The initial press release is retracted in its entirety. The release has been removed from the police department website.

I apologize that inaccurate/misleading information was released in this incident and not timely corrected by the Office of the Police Chief. Ultimately, it is the responsibility of the Office of the Police Chief to determine that only accurate and pertinent information is released. After this incident, the Department has taken several steps to ensure that any future releases be properly vetted for accuracy and will make public notifications if preliminary reported information is later determined to be inaccurate. Moving forward, the need to release information and to be transparent following critical incidents will always be balanced with the desire to have only objective, pertinent, vetted information released.

Lastly, the vision of the City and the Davis Police Department is to model and pursue excellence by partnering with our community; investing in our employees to maintain the highest level of professionalism; being a leader in procedural justice, enacting restorative practices, and embracing our

role as guardians of the community. We will continue to actively engage our community and work together to achieve that vision. We look forward to that engagement.

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