



**CITY OF OAKLAND
OAKLAND POLICE COMMISSION**

Meeting Minutes

Thursday, June 14, 2018

6:00 PM

Special Meeting

East Oakland Youth Development Center
8200 International Blvd., Oakland, CA 94621

I. Call to Order
Ginale Harris

The meeting started at 6:10 p.m.

II. Roll Call and Determination of Quorum
Ginale Harris

Commissioners present: Mubarak Ahmad (arrived 6:28 pm); José Dorado, Ginale Harris, Regina Jackson, Mike Nisperos, Edwin Prather, and Thomas Smith (arrived at 6:30 pm). Quorum was met.

Alternate Commissioner present: Maureen Benson.

Alternate Commissioner excused: Andrea Dooley.

Counsel Meredith Brown.

III. Welcome and Open Forum (2 minutes per speaker)
Ginale Harris welcomed and called public speakers.

R. Jackson thanked everyone for attending the first community meeting of the Oakland Police Commission. We are in the East Oakland Youth Development Center (EOYDC).

Camille Batiste, incoming freshman at USF. She is a participant and youth instructor at EOYDC. She spoke about her experience growing up – born and raised in East Oakland. She didn't have close interaction with police officers. Her first memory of officers was when Oscar Grant unfortunately died. While growing up, she was taught that people aren't born bad – they don't have the tools or the resources to utilize their goodness or to perform their best. By inviting officers to come in and speak at the agency and having discussions helps her. She said that the officers that walk down the street are just like everyone.

Assata Olugbala spoke about the officer-involved shooting on March 11, 2018 of Joshua Pawlik. The only thing she knows about this gentleman was that he was 32 years old and white. He was lying on the ground. The fire department had to be called because someone observed him on the ground and when the fire department arrived, it was believed that he had a weapon near his body. The police came in and that is where it ends. She is aware that in San Francisco whenever there is a police shooting, a certain number of days after that shooting, there is a public meeting held

with the community where the police attend and give information to the public about that shooting, as much as they can. We have no information about Joshua Pawlik. She suggested that something must happen that whenever there is a police shooting information is made available so that transparency and accountability begins the process. Ms. Olugbala requests that the Commission do what it can for Joshua Pawlik and hope that people will embrace this young man. If something happened to him that was irresponsible by the police on their part, let's hold them accountable.

Rashidah Grinage thanked Commissioners for coming to the "Meet and Greet" the Police Commissioners on June 9 at St. Elizabeth's School. Ms. Grinage reported that the feedback was very positive. They enjoyed hearing about each of the commissioners as a person and why you wanted to serve. They enjoyed the interaction and the way the commissioners responded to their concerns. On behalf of our Coalition who sponsored the event, we want to let you know that it was a great success and we hope that you benefited as well.

Gene Hazzard spoke about process and the City Charter [referenced Sections 305(e), 503, and 604(b)(10)]. He asked that the Commission seek assistance to determine clarification of these Sections. He left written information with the Commission.

Lorelei Bosserman, member of the Coalition for Police Accountability, encouraged everyone to contact members of the City Council before the June 19 meeting and attend the meeting (re Enabling Ordinance). In particular, advocate for the suggestions that you have made for change in the Enabling Ordinance (especially who your legal counsel reports to). She will attend and encourages others to attend.

Mary Vail regarding the process (IG; reporting relationships between Agency Director, IG, Counsel, Commission, etc.). She asked everyone to show up to the City Council meeting on Tuesday, June 19.

Rodney Horn regarding bridging the gap between the police and the community. What more can we do to reach out to the youth who are the future?

IV. Approval of Draft Commission Meeting Minutes for May 24, 2018

Thomas Lloyd Smith will offered the draft minutes for approval by the Commission.

a. Discussion

E. Prather referenced ITEM 4, Page 1, Item IV(a), Lines 1 and 2 that - E. Prather be corrected to E. Prather – It should read "T. Prather be corrected to E. Prather."

Chair T. Smith joined the meeting.

b. Public Comment

No public comment.

c. Action

MOTION (E. Prather) to approve the Minutes subject to the correction and seconded (J. Dorado). The vote was Aye: 7 (Ahmad, Dorado, Harris, Jackson, Nisperos, Prather, and Smith); Opposed: 0; Abstained: 0. The motion passed unanimously.

V. Training: Legal Rights of Civilians When Dealing with Police

Presenter: John L. Burris, Attorney-At-Law

Recognizing widespread confusion about citizen rights, this presentation thoroughly details the legal rights of civilians when dealing with police. The presentation also addresses issues of racial profiling, rising incarceration rates, and civil rights litigation, particularly in the context of police misconduct, and racial and sexual discrimination. John Burris has practiced law for more than 40 years. He is known for his work in Civil Rights with an emphasis on police misconduct excessive force cases raising federal questions under Federal Code Section 1983.

a. Discussion

Chair T. Smith introduced John Burris. After his presentation, Mr. Burris will take questions by Commissioners. Then we will open questions to the audience.

Mr. Burris thanked everyone for inviting him this evening. He reported that he started/moved into public prominence on this issue based upon a shooting death of a 14-year-old boy. It set the tone – it resulted in the Citizens’ Police Review Board coming into being. He has been addressing issues of police misconduct throughout the state ever since then and he has been very active in Oakland and San Francisco. He feels like there is unfinished business here for him. He wants to ensure that the people of the community are beneficiary of constitutional policing. That is extraordinarily important to him. Down through the years he has seen the harm that results from it; he has represented over a thousand people in his career, a lot of individuals, a lot of pain, and a lot of issues that he has come to grips with.

Mr. Burris said that where you are is a continuation of that process and in bridging the gap if you will, narrowing the gap between the community and the police and finding the accountability differently by putting it in the hands of the public body which is extraordinarily important. Efforts have been made throughout the country in various ways and no perfect situation has developed yet but you as a body are in the process of perhaps moving toward a more perfect balance of a relationship between the public body and oversight and the community and the police. Obviously, the police have to be in a position where they feel that they are receiving a fair objective evaluation of their conduct, but at the same time they should know that if they do step out of line and they are within reach, that they will be held accountable. That will be up to you.

Mr. Burris stated that what he is charged to do is try to give you some insights into what various kinds of legal issues that are presented, most of which he has been dealing with in his entire career. He will go through some of the legal issues, civil rights issues and then along the way he will talk about how those issues manifest themselves onto an ongoing, day-to-day basis.

Mr. Burris reviewed PowerPoint slides relating to his presentation.

He spoke about the following:

First Amendment – Freedom of Assembly

Fourth Amendment – Arrest, Non-Lethal Force, Deadly Force,

Searches (Automobile, Persons, Home)

State Law (False Imprisonment, False Arrest, Battery)

Police Defenses – Qualified Immunity

Police Officers’ Bill of Rights

Mr. Burris offered to respond to questions by Commissioners.

M. Ahmad regarding cases that stand out (Alan Blueford and Gary King - unarmed) in which officers should have been found guilty and they were not; Mr. Burris responded that A. Blueford was armed. He does not want to discuss cases; he is here to provide information to help you understand your evaluations and responsibilities as Oakland Police Commissioners.

E. Prather mentioned items the Police Commission is tasked with: critically look at general orders, rules engagement, operating procedures of the police department, researching issues, and making suggestions on changes to those things – these are quite a daunting task and to do it year after year. A great area to review - Any police department's dealing with the mentally challenged because a lot of departments around the country are struggling to catch up with developing intelligence on an issue and developing their orders, etc. Do you have any suggestions on identifying the issues that we want to start with and bringing that critical analysis together?

Mr. Burris said that the Police Commission's job is a challenging one. He reported that when he and Jim Chanin got the Riders (*Delphine Allen v. City of Oakland*), it caused the Oakland Police Department to rewrite their policies. To do that, we hired experts; the City had their experts. We hammered out new policies and procedures. I recognize that even though I have countless cases, I have not been involved in the actual writing of it and more importantly I needed to have the perspective of the police in making these decisions. I can only say to you that you need to have an expert in the areas that you want; you need to have someone who has real experience in it. I will tell you one thing that I appreciated was – there are some real talented/smart people in OPD. I would talk to them about policy they have because but it doesn't hurt to get their perspective. You need to have someone who has real expertise available to you on a consulting basis; someone who can testify in court. You will need the educational process that you go through to get up to speed. I gave you foundational information. When you rewrite general orders, you cannot just do it. You must find out if those orders are best practices. There are general practices that exist nationwide that you can get. Oakland doesn't necessarily deal with best practices from another department. You want to be able to have someone available to assist you when you want to tackle an issue (policy - how to deal with the homeless - people under the influence of alcohol or drugs – are there any differences). These are subject matters that you can identify that you want to have an impact on, ultimately you will make decisions on things that come before you but also if you are in oversight you must get information from the police department or issues that come up in public forum regarding items about OPD.

Mr. Burris suggested reading by Ron Davis's (21st Century Policing Report) from the Department of Justice. He was most concerned with profiling and how do you identify people, police misconduct, and what do you do about it. I wanted to track information to me on these kinds of instruments. The issue you should be concerned about is racial profiling and police stops. Ridiculous stuff. You could look at that. We need to change the policy on towing people's cars.

The purpose of the story of the Ferguson Police Department. The department was using traffic violations to fund the City and they would do it on the back of the poor people who did not have any money. So, people would be going to jail – they lost their jobs. Take a look and see if those kinds of problems exist – economic based problems. There are things to do. Get into a round table and figure out from everybody what is the thing that you see in your family members. Then you go look to see if that is a subject or a policy or practice of some kind and maybe you can do

something about it. You are getting a voice from the people – they are the ones being stopped, etc.

R. Jackson said she is very interested in homeless protocol and how African-Americans have been handcuffed. Mr. Burris reported that the case has been a real challenge. Racial profiling – dealing with the data, analyze profiling question of who gets stopped, who gets searched, which is a huge issue. The big issue that we are working through is a computerized prime system (tracking). Consistency of discipline we have had a lot of conversation about. Look to see if the use of deadly force was proper or not. The attitudes are changing – functions of leadership. Lying officers in court was another aspect. There had been constant thinking about these issues and efforts made. There are a lot of materials/reports on the Riders case (2003 to present); reading if you need to get grounded.

Dr. Jennifer Eberhardt, Professor, Department of Psychology Stanford University, has helped with the scientific analysis on the stop data collected on the cars. It took over ten years to get reliable data – police officers were scared of data; we could never get consistent data. The first year, 2014, was when we got consistent data and from then it has been push and pull all the way.

G. Harris said that she is interested in the Police Officer's Bill of Rights, which she believes is the one single common denominator that is the reason behind not being able to hold the police officers accountable, not only in Oakland but in a lot of cities in our nation. She has been reading articles and is interested in changing the Police Bill of Rights. She believes we must fight to hold police officers accountable. She would like to start change somewhere. Mr. Burris said that is State law and means it is a political process. We must have legislators, the executive branch, who are willing to change. The police unions have immense power. It is a challenge.

M. Nisperos asked if a copy of Mr. Burris's PowerPoint Presentation could be sent to the Commission. It was agreed that it would be sent.

b. Public Comment

Assata Olugbala regarding Commission's role as participants on the Disciplinary Committee. You concluded that this role is going to play a role in determining conduct of officers, etc. to some extent. The Agency and the Police Chief will create a decision on the officers' misconduct. The Agency will render a decision if there was misconduct. If there is a difference of opinion and they can't agree, then it goes to three members of this body to weigh in and make a final decision. The problem is they can only look at the document created by the Agency, the document created by the Police Chief - they have no ability to create interviews or look at other documents. How effective can they be with that limited capacity to look at the evidence? Mr. Burris said that he can't answer that question. He said this is a new commission. I think you are moving in the right direction. You must do it. The voters of the community voted for it so you have an obligation to try and make it work. There may be flaws in the process that you will figure out over time that this is not something that works.

Rashidah Grinage regarding how far to the rear are we with AB931 (Weber) that changes the rules about the use of force. How important do you think having that legislation will be in terms of each jurisdiction being able to prosecute police officers for deadly force when it was unnecessary and could have been prevented.

Mr. Burris said that the concept is an important one.

Wallace Bey said that he was looking over procedures, etc. Conduct of the police officers – doesn't say anything about prosecuting them. Racial profiling is real. Probable cause is real. I want to understand what do we have to do to ensure our human rights. What can we do to hold police accountable to their oath of office? Mr. Burris said the process you are doing here now is the next step in that process of having an Oversight Commission. The issues of holding people accountable and having them prosecuted is not in our hands. Each individual DA's office or the Attorney General can bring those charges/make those decisions. You are right, it is frustrating, it puts you in a position where you have no recourse.

Lorelei Bosserman expressed interest in the car searching rules. She did not know that you could say no. Must the police tell you that you have a right?

Mr. Burris said that was a huge issue in Oakland that the officers must ask permission to search. They may search your car anyway; you can take notes, etc. and then it becomes a legal matter. Ms. Bosserman mentioned that she has seen police in Oakland pull a car over and talk to the people a long time, and then the driver of the car will get out and go to the trunk and open the trunk – do they have to do that? I have seen that they talk to the people for a long time and the people will leave the car and the police will stay there with the car and open the doors, and go inside and search the vehicle after the people left. Mr. Burris said that the ransacking of cars becomes an issue – on consent, have some data on how many cases were searched without consent. Cell phone videotaping of police conduct – you have the right to do it, however you cannot interfere with the police. If you record oral conversations, that is different – you may have to get permission. If they smash the cell phone, etc., you have the right to a lawsuit.

VI. Community Police Review Agency Complaint App

Interim Director Anthony Finnell will provide a demonstration of the Community Police Review Agency App that increases officer accountability by enabling members of the public who observe police misconduct to quickly and easily file a complaint against OPD officers.

a. Discussion

Mr. Finnell reported that the CPRA app went live May 1. It is a mobile app that you can access from any local device and it allows the community to file complaints of police misconduct at any time. It will allow you to upload videos and photographs of incidents. He is now accessing the App through the City of Oakland website. Ms. Grinage passed out forms earlier and he will make sure that everyone has them later. It includes the App web address, etc.

Mr. Finnell then gave a live online demonstration of the CPRA App. It is self-explanatory.

T. Smith asked about the review/response time for resolution of the complaint. Mr. Finnell reported the initial intake will usually take from 30-45 days. Once the Intake Technician has completed their initial review, it comes to him. The complaint will either be resolved based on the information they received or it will be assigned to an investigator for further investigation. We are working to complete all

investigations within 180 days (typically now we are completing them in 270-300 days). The statutory expiration date is within one year or one year of CPRA knowing of the offense.

M. Nisperos said that it seems to me that the only way you can determine if the officer is not performing well is if when you take the complaint and there was no response to service that you at least investigate when the dispatcher was issued to see what the time difference is when the officer received the dispatch and when the officer responds, and moving on from there.

M. Nisperos said last time we discussed this I said that in the sense of fairness that on the CPRA page that we should also have a place where citizens who are satisfied with the service that they received should be able to make comments. Has that been considered. It has been considered – he will speak with the police department about creating similar App to receive compliments of the officers; the agency is set up is to conduct investigation for misconduct. We may have to have further discussion if that is the proper place to put receipt of compliments for the officers. The recommendation may be that it be put on the Police Commission App or the Police Department's page as opposed to the Agency's page. The Commission needs to decide where you want to put that information. R. Jackson asked that Interim Director Finnell make a recommendation at the next meeting to the Commission.

Mr. Finnell reported that the dispatch will go out by its priority; prioritized on most serious run. A report run or run to dust for prints is going to take longer than a run in progress. They get them all at once but they are prioritized by urgency, severity, category the dispatch uses. It is not an officer related issue; it is more a manpower or prioritization matter. G. Harris asked who prioritizes/pools those complaints when there is a police shooting and you call and they never show up. Mr. Finnell stated he was unsure.

J. Dorado asked about the App having a button that goes to Spanish and other languages. Mr. Finnell reported that it must go through the City Equal Access Department. They sent him an email today regarding that and unsure when it will be done. We are still processing through the App to work out small/minor bugs and once that is done, we will convert information to other languages. That is on our list.

M. Benson thanked Mr. Finnell for the work involved in the App and increased access, particularly for youth. First a question to you around capacity and then pose to the Commission to what degree can we set up some beta testing. R. Jackson and I have been doing some work in the community and have identified multiple groups of youth, at many middle and high schools, and one comprehensive group that has been working with Brooklyn that is already engaged with OPD. She would like to talk to the Commission and create possibility of having some beta testing done by the youth because this App can be substantial for that age group.

b. Public Comment

M. Contreras asked if it is true that it takes 45 days before an investigation gets started. Mr. Finnell stated no, it is not 45 days before an investigation is started. M. Finnell explained the process – When a complaint is received it is given to the Intake Technicians and they pull all PDRDs, information and they review that, etc. and a summary is provided to him.

M. Contreras gave an example that he was stopped, officers went through his trunk and he said no, and he complained. He said, "You are telling me that in two weeks

you are going to get back to me and tell me that there is an investigation. When do I hear that my complaint is going somewhere?” Mr. Finnell said you will receive a letter from him within 45 days that we have looked at all the information and will provide you a response or if it gets assigned to an investigator for further investigation, you will get a letter from him stating which investigator it has been assigned to and then they will reach out to you for additional statements/evidence, etc. and advise you of the progress at that point.

Rashidah Grinage asked do folks who use the App get a confirmation that you have received their complaint? Mr. Finnell said yes. How long does that take. Mr. Finnell said that is immediate and we will begin investigating. Ms. Grinage commented that like everything else we do; it is only as good as folks know about it. The City has a dismal record of not publicizing anything that has to do with civilian oversight. That has been going on for decades and we have been complaining about it for decades and there is no promise of any improvement. The Coalition does everything they can do - it is on our website, posted on our social media, fliers circulated. Everyone must do their part to allow folks in the community to know that this APP exists. I am hoping that your Outreach Committee as well as our Outreach Committee can make some inroads and it wouldn't be a bad idea to challenge the City and say “look we have come up with this, this is innovative, it is important, it will help us do the work we have been assigned to do, will you please do a press release or have Council members put it in their newsletters to their district – we have to be very assertive about this or this will be the best kept secret.

VII. Ad Hoc Committee to Update Rules of Procedure

The Ad Hoc Committee tasked with updating the Commission's Rules of Order will report its progress and recommendations to the Commission.

a. Discussion

E. Prather reported that at the last meeting we briefly discussed the progress of our Ad Hoc Committee on Rules and Procedures. We discussed a change that was made to the Rules of Order and we were unable due to timing issues to provide those documents. Those documents are in your packet today – they include a redline version of our original Rules of Order and there is also a new draft of the Code of Conduct document. I think I speak for the Committee when I say we still need these documents as working drafts; a couple of days ago we were exchanging emails regarding potential tweaks, language, modifications.

The ad hoc committee provided these documents to the Commission and to the public as an update. The Rules of Order – adoption very early in our creation was important so that we had Rules to abide by and Rules that governed the way we operate. Adopting for this Amendment as well as for the Code of Conduct will take more time. I would prefer not to rush and that the Rules will develop over a couple of meetings; this is a second time in that we had this at least on the Agenda where we are discussing them. The Ad Hoc Committee is very interested in hearing public comment and comments from Commissioners and having this continued dialogue. He asked M. Nisperos or G. Harris if they had anything to add.

M. Nisperos said that he and E. Prather agree with everything said. It is important that I have been provided the draft that you worked very hard on with the assistance of the Vice Chair and myself. I am anxious to hear the feedback of the community as well as the other Commissioners. G. Harris had no comments.

M. Benson mentioned the use of the word respect and there were some other words

in the document that she struggles to understand how they could be measured. She invites a review on how do we create measurable words.

R. Jackson said about measurable around words or at least defining better what the terms mean. There is a Public Ethics Code conduct and perhaps there is an opportunity for us to look at so that in creating our own that we make sure that we do not miss some real nuggets that are already out there. I do appreciate that the legalese approach or the harder approach is an important doctrine to start from. It will take some time but this is a great first draft.

E. Prather thanked Commissioners for comments. A quick reminder on the creation of this document. These documents, a lot of this language comes from a review of Code of Conducts from numerous agencies across the country. It is on the spectrum on the heavier worded side. We did consider City of Oakland, City of San Francisco, and other agencies not having to do with police oversight (PUC, other regulatory bodies) on procedures and policies. There is an art to it to have terms that are not artfully defined. It is not meant to be a rule you break; it is meant to be a Code of Conduct that means something that you personally follow. The document can be changed – put out a version that we feel very comfortable with. If other Commissioners have comments or the public, to please send them to the Ad Hoc Committee (Vice-Chair Harris, Commissioner Nisperos and myself). He will review all comments/edits. We will continue to evolve this document. R. Jackson stated that she will be suggesting enforcement.

M. Benson said that we need a process if there is an allegation or someone has violated the Code of Conduct. She suggested more lead time for agendas and an Ad Hoc Committee for agendas.

Counsel M. Brown regarding the process for the Rules of Procedure – will there be a first and second meeting once there has been a determination as to the final version? T. Smith said it is something that we can consider but at this point we are still going through gathering feedback, etc. and no decision has been made so far.

R. Jackson inquired when we need to get those comments (Commissioners and Community) in for the next discussion; a deadline to work against. E. Prather said that as of now, there is no deadline. T. Smith said to send comments as you have them. He will have the Committee consider a target date. G. Harris said the document is a working document in regards to comments. She said that T. Smith sends out things that he asks members for on the agenda so it is like a deadline before we submit the agendas and that will give us time to discuss things.

b. Public Comment

No public comment.

c. Action, if any

None.

VIII. National Association for Civilian Oversight of Law Enforcement Annual Conference, St. Petersburg, Florida

The Commission will determine whether to approve the attendance of certain Commissioners and Interim Director Finnell at the National Association for Civilian Oversight of Law Enforcement (NACOLE) Annual Conference in St. Petersburg, Florida, from September 30 to October 4. Those approved to attend the conference

shall be reimbursed for their travel and conference expenses in accordance with City of Oakland policy.

a. Discussion

T. Smith stated that we have several commissioners who would like to attend and Mr. Finnell requested to go. He asked Commissioners who will attend to raise their hands. He asked Commissioners to review Item 8 in the packet. He asked Commissioners and Mr. Finnell for comments. He asked for a motion.

Mr. Finnell reported that J. Dorado expressed an interest and he will amend the paperwork to add him. He has information on T. Smith, G. Harris, R. Jackson, and E. Prather. He added that if it is approved, this can go through the process, he will still need the vendor paperwork and tax related paperwork from each Commissioner within the next 3-4 weeks.

b. Public Comment

No public comment.

c. Action

MOTION that we accept the report and approve the attendance of the Commissioners listed as well as Commissioner Dorado to attend the National Association of Civilian Oversight of Law Enforcement Annual Conference September 29 – October 4, 2018 in St. Petersburg, Florida (M. Nisperos) and seconded (E. Prather). The vote was Aye: 7 (Ahmad, Dorado, Harris, Jackson, Nisperos, Prather, and Smith). The motion passed unanimously.

In regards to Mr. Finnell's attendance, her concern is that she sees a problem with him attending the conference and presenting as if he is the person doing the oversight. She has a problem with that.

Mr. Finnell reported that before he answers, he wants to be clear which conference do you want to speak on. T. Smith said the Annual Conference. Mr. Finnell said that he will not present; he is an Executive Officer with NACOLE (Treasurer of the Board). He is required to attend. T. Smith said that we will deal with this issue in the next Agenda Item.

MOTION whether Interim Director A. Finnell will be approved or not approved to attend the National Association of Civilian Oversight of Law Enforcement Annual Conference September 29 – October 4, 2018 in St. Petersburg, Florida (R. Jackson) and seconded (M. Ahmad). The vote was Aye: 6 (Ahmad, Harris, Jackson, Nisperos, Prather, and Smith); Opposed: 1 (Dorado); Abstained: 0. The motion passed.

IX. National Association for Civilian Oversight of Law Enforcement Regional Training and Networking Event, Seattle, Washington

The Commission will determine whether to approve the attendance of Interim Director Finnell at the National Association for Civilian Oversight of Law Enforcement (NACOLE) Regional Conference in Seattle, Washington on June 28, 2018. If approved to attend the conference, he shall be reimbursed for his travel and conference expenses in accordance with City of Oakland policy.

a. Discussion

T. Smith said Mr. Finnell would like to attend the NACOLE Regional Training in Seattle. He said there is a question of Mr. Finnell's activities. T. Smith asked Mr. Finnell for this information. Mr. Finnell stated that it is two-fold. As a Director of oversight and as an Executive Officer of NACOLE. T. Smith asked for the title of the presentation. Mr. Finnell responded that it is Policing and Oversight in Sanctuary Cities. He will be on a four-person panel.

T. Smith asked G. Harris if she has a follow up question. G. Harris stated that it sounds like a commissioner should presenting not Mr. Finnell because he does not do oversight the commissioners do oversight. Her question to Mr. Finnell is, "What are you going to be presenting on?" Mr. Finnell said that he will present on the policies that OPD has and how that plays into policing and to addressing the issues that come from federal government as it relates to sanctuary cities – what we do and how we investigate allegations that may arise from either not properly following the policy or misinterpretation of the policy and how all that plays out not only in Oakland but also all of California. T. Smith said to G. Harris if that answers her question. G. Harris said that it does.

R. Jackson suggested that for future conferences, Mr. Finnell provide a narrative of the role, subject, and the presentation so that the Commission be fully informed about the limitations and perspective he is coming from. In the future, it would be good to have a Commissioner and Mr. Finnell address an issue. This being a national event, it makes sense for Mr. Finnell to attend if you are speaking on the policies and frameworks that Oakland is using for sanctuary cities.

b. Public Comment

Lorelei Bosserman said she is upset that some people are giving Mr. Finnell a hard time for seeking to attend the NACOLE event when it is totally related to what he does (investigations, oversight, etc.). The fact that he wants to go is a good sign and that he is involved in NACOLE already is a good sign.

c. Action

MOTION that Interim Director A. Finnell attend the National Association of Civilian Oversight of Law Enforcement Regional Training and Networking event in Seattle, Washington on June 28, 2018 (R. Jackson) and seconded (M. Ahmad). The vote was Aye: 5 (Ahmad, Jackson, Nisperos, Prather, and Smith); Opposed: 2 (Dorado, Harris); Abstained: 0. The motion passed.

X. Adjournment

MOTION to adjourn Jackson and seconded Nisperos. The vote was Aye: 7 (Ahmad, Dorado, Harris, Jackson, Nisperos, Prather, and Smith); Opposed: 0; Abstained: 0. The motion passed.

T. Smith thanked the East Oakland Youth Development Center for hosting the first Commission/Community meeting.

The meeting was adjourned at 9:02 pm.

Oakland Police Oversight Commission
East Oakland Youth Development Center
June 14, 2018

Presented by John L. Burris

First Amendment---Freedom of Assembly

Congress shall make no law.....restricting the freedom of speech or the right of the people to peaceably assemble

- First Amendment protection includes the right to peaceful assembly, however the right is not absolute. Government can impose reasonable restrictions on time, place, and manner of peaceful assembly. Can not restrict content of
- The First Amendment does not protect speech where there is a clear and present danger of riot, disorder, or interference with traffic on public streets, or other immediate threats to public safety or order. Speech that incites imminent lawless action or violent action will not be protected.
- Police may only break up a demonstration if people are not adhering to the time, place, and manner restrictions. A gathering may be dismantled if there is a clear and present danger of riot, disorder, interference with traffic on public streets, or other immediate threats to public safety. Papineau v. Parmley, 465 F.3d 46, 56-57 (2d Cir. 2006).
- Orders to disperse are governed by Cal. Pen. Code § 416, which makes it a crime for refusing to disperse upon lawful command. The officers must provide a reasonable escape route,
- The Ninth Circuit has found excessive force where police failed to ensure protestors heard the police order to move and wearing riot gear violently shoved, struck with clubs, and fired pepper spray at protestors. Moss v. United States Secret Service, 711 F.3d 941 (9th Cir. 2013).

Fourth Amendment

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Detention/Seizure

- The Supreme Court has held that, a seizure occurs when a reasonable person would not “feel free to decline the officer’s requests or otherwise terminate the encounter.” Fl. v. Bostick, 501 U.S. 429 (1991).
- Reasonable suspicion has been defined as something more than a “hunch” but less than probable cause. Reasonable suspicion must be supported by articulable facts. United States v. Sokolow, 490 U.S. 1 (1989).
- **Terry Stops-** police may briefly detain a person for investigative purposes, so long as the officer has reasonable suspicion the person is involved in criminal activity or was involved in a reported crime. The investigative stop must be supported by articulable facts. A limited frisk of the detainee’s outer clothing may be conducted if there is reasonable suspicion the detainee is armed and dangerous. Terry v. Ohio, 392 U.S. 1 (1968).

Fourth Amendment -- Arrest

Arrests- An arrest occurs when the police take a person into custody for the purposes of criminal prosecution or interrogation. Police must have probable cause for arrest to bring a suspect to the police station against the suspect's will for questioning or fingerprinting.

- Probable cause exists, where an officer has within his knowledge reasonably trustworthy facts and circumstances sufficient to warrant a reasonably prudent person to believe that the suspect has committed or is committing a crime for which arrest is authorized by law. Beck v. Ohio, 379 U.S. 89 (1964). A detention for an unreasonable period of time can turn into an arrest.

Fourth Amendment –Non Lethal Force

Use of Force- An officer may use reasonable force to prevent escape, responding to force, threat of bodily harm . Specifically, use of force is justified where there is probable cause that there is a serious threat of harm. The threatened harm may be an imminent threat of a weapon or probable cause that a past crime was committed with serious physical harm. The force used must be reasonable Graham v. Connor, 490 U.S. 386 (1989). Every department including Oakland have general orders, training manuals, Peace Officers Standards and Training “POST” that establishes standards for using force

Weapons used by Police:

- Batons
- Flashlights
- Tasers
- Canines
- Pepper Spray
- Bean bag
- Pepper spray
- Carotid hold
- Compliance holds

Fourth Amendment—Deadly Force

Deadly Force- Deadly force may only be initiated if reasonable under the circumstances.

- Deadly force, use of gun or any weapon that cause death or bodily injure can be used when an officer or another person is threaten with immediate of loss of life or great bodily injury Scott v. Harris, supra.
- Fleeing suspect: It is unreasonable for an officer to shoot a fleeing burglar who refused to stop when ordered to do so and there was no evidence that the suspect was armed or posed a threat of danger to the police or others. Tennessee v. Garner, 471 U.S. 1 (1985).
- Determining whether the officer's use of deadly force was reasonable under a given set of circumstances requires a balancing of interests, where the government has interests in public and officer safety, in addition to effective law enforcement, and the individuals' interests in the right to life. Officer are trained to stop the threat and generally shoot center mass.

Fourth Amendment: Searches

Automobile

A stopped automobile by police constitutes a seizure of the driver and passengers. A car may not be stopped unless there is at least reasonable suspicion a law has been violated. Brendlin v. Ca., 551 U.S. 249 (2007).

If stop lawful can order everyone out of car. Permitted to search anyone in car on probation or parole

Car search interior of car if observation of contraband in plain sight e.g. drugs, weapons which can lead to search drug

During stop can create danger by reaching in under seat, glove compartment or "furtive movements"

Car can be searched for inventory purposes when driver is being arrested and car is towed.

Driver can refuse consent if officer wants permission to search

Fourth Amendment - Searches

Persons

Terry vs Ohio allows for pat down of a person when stopped by the police without a warrant if the officer has reasonable suspicion that the person is armed. Commonly referred to as "Stop and Frisk". Reasonable suspicious must be supported by articulable facts.

A search of person is permitted as an incident to an arrest

A person probation or parole is subject a search of their person for any reason or no reason

Sobriety check points can be set up and can serve as a bases for detention

Fourth Amendment Searches

Home

- Valid search of home requires a warrant signed by a judge
- If no search warrant and there is probable cause and exigent circumstances and in “hot pursuit” of suspected serious felon
- Search warrant should include name, correct address, items, name of person looking for.
- Search warrant should indicate time for the search,
- Warrantless entry can be made to prevent destruction of evidence
- Warrantless entry can occur pursuant to a safety check, emergency services

State law- False Imprisonment

False imprisonment occurs when a person is unlawfully detained without legal process. The cause of action begins accruing immediately following the false arrest and the arrestee may file suit at that time.

- Under Cal. Pen. Code § 236, false imprisonment consists of two elements. First, the offense occurs when restraint is not authorized by law and, thus includes unauthorized taking of person into police custody. People v. Brock, 220 Cal. App. 2d 605 (1963). Additionally, unreasonable delay in bringing an arrested person before a magistrate would constitute the confinement as false imprisonment. Kangieser v. Zink, 134 Cal. App. 2d 559 (1955).
- An officer charged under Cal. Pen. Code § 236, will not be held liable for false imprisonment where arrestee is briefly detained in handcuffs and confined to the patrol car while the supervisory officer is evaluating a given situation. Uganda Knapps v. City of Oakland, 647 F. Supp. 2d 11129 (N.D. Cal. 2009).

State Law- False Arrest

A valid claim for false arrest arises where a person is arrested without a warrant and without probable cause to believe the person committed or was committing a crime.

- The claim is valid even if the officer's actions were not flagrant or malevolent. Joseph v. Rowlen, 402 F.2d 367 (Cal. 1968). Specifically. False arrest is the unlawful restraint of a person's liberty, such that the person is held against their will or is taken into custody without consent or legal justification to do so.
- Probable cause is a complete defense to false arrest.

State law- Battery

Battery by a peace officer is recognized in California, where an individual claims an officer harmed her using unreasonable force to execute an arrest, to prevent her escape, or to overcome her resistance.

The person did not consent to the use of force and the person was harmed by the force; and the officer's use of unreasonable force was a substantial factor in causing the plaintiff's harm.

- Determining whether an officer used unreasonable force requires consideration of the nature of the crime, whether an immediate threat of harm existed and whether the individual actively resisted arrest. Where an officer has engaged in unreasonable force, a valid claim of battery may be asserted against the officer.
- The use of reasonable force by an officer is governed by Cal. Pen. Code § 835(a), and the duty of individuals to submit to arrest is governed by Cal. Pen. Code § 834(a).

Police Defenses- Qualified Immunity

Qualified immunity protects government officials from liability where the elicited conduct violated the constitutional rights of an individual while the official was acting under color of state law.

- Although qualified immunity protects government officials extensively, the Court and the Ninth Circuit have found situations in which the immunity is appropriate and situations which it is not.
- California law regarding absence of government immunity for false arrest is governed by statute, Cal. Gov. Code § 820.8. The statute focuses on the nature of the alleged tort, rather than the nature of the governmental duties performed by the defendant. Asgari v. City of Los Angeles, 15 Cal. 4th 744 (Cal. 1997).
- Qualified immunity is analyzed by considering two questions. First, whether there was probable cause to arrest, and second, whether it is reasonably arguable that there was probable cause for the arrest (whether reasonable officers could disagree about the legality of the arrest such that the arresting officer would be entitled to qualified immunity). Rosenbaum v. Washoe County, 663 F.3d 1071, 1076 (9th Cir. 2011).
- Substantively, qualified immunity is available when a reasonable officer would not have known his actions would violate a constitutional right that was “clearly established” at the time of the incident.
- For a person to prevail against qualified immunity defense, the person must show the police exceeded reasonable bounds, infringed on constitutional rights of the individual, and produced some injury or damage.

Police Officers' Bill of Rights

- Public Safety Officers Procedural Bill of Rights Act-

Cal. Gov. Code § 3302- No officer shall be prohibited from engaging in or required to engage in political activity.

Cal. Gov. Code § 3304- No officer shall be subjected to punitive action or denied promotions because of lawful exercise of rights afforded.

- Police are permitted to lawfully take photos and videos of events open to the public. California's right to privacy, however, prohibits state and local police from maintaining unnecessary information about people.

Police Officers' Bill of Rights

Cal. Gov. Code § 3303- Conditions under which an officer investigation may be interrogated

- Conducted at reasonable hour
- Officer informed of command officer in charge of interrogation prior to being interrogated
- Shall be informed the nature of investigation
- Interrogation shall be for reasonable time
 - Shall only be subjected to press with consent of officer
- No existence of coercion or undue influence during interrogation
- Statements made by the officer during interrogation are not prevented from admissibility in a civil action
- Interrogation may be recorded
- Immediate informing of constitutional rights if criminal offense is charged
- No temporary reassignments

Cal. Gov. Code § 3307- No officer shall be compelled to submit to a polygraph test against his will; no discipline for refusing to take such test.

Cal. Gov. Code § 3308- No officer shall be required or requested to disclose personal items unless required by state law or legal procedure.

- Personal items include property, income, assets, sources of income, debts or personal expenditures

Cal. Gov. Code § 3309- No officer shall have his assigned storage locker be searched unless it is in his presence or with his consent; valid search warrant permits search

- no department shall deny or refuse any officer the protections afforded
- Superior court has jurisdiction
- Injunctive relief shall be rendered if superior court finds public safety department to have violated this provision



The End