

Gudiel, Frankie

From: Yadi [REDACTED]
Sent: Tuesday, May 03, 2022 5:51 PM
To: Community Police Oversight Commission
Subject: Public Comment - Pasadena CPOC meeting 05/5/22
Attachments: Public Comment - Pasadena CPOC - 05-5-22.pdf

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Hi,

Please find attached my public comment for the May 5, 2022 Pasadena Community Police Oversight Commission meeting, agenda item 9. AB 481 Military Equipment.

Thanks,

Yadi
(Attachments: 1)

Pasadena Community Police Oversight Commission

Meeting date: May 5, 2022

Agenda item 9. AB 481 Military Equipment

Over 70 civil rights and service organizations throughout California sent a coalition letter recently to elected officials in cities and counties across the state urging city councils like Pasadena's to fully implement AB 481, the new state law on military equipment used by California law enforcement agencies.¹ AB 481 addresses the use of tank-like armored vehicles, assault rifles, tear gas, rubber bullets, drones, and other equipment by local law enforcement agencies in our communities.

Dozens of use policies and ordinances proposed so far are incomplete and fall short of the transparency needed for civilian decisions about the large range and volume of military equipment used by law enforcement across the state.

Lexipol's boilerplate policy template used by Pasadena PD does not adequately meet the requirements outlined in AB 481:

- Pasadena PD is one of a very few outliers who has chosen to classify assault rifles as 'standard issue' and has omitted them from the policy.
- When is the use of this military equipment authorized? When is it not authorized?
- What are the clearly defined procedures for documenting the use of military equipment?
- Who will deployments be reported to and how will records be kept?
- Is this military equipment for 'anti-terrorism' or anti-protests or what? Having large events in Pasadena doesn't preclude it from having a comprehensive policy around the use of this equipment or give an excuse to have this equipment at all.

Several studies show that police departments that acquire military-grade equipment are more likely to use violence.² One study shows correlations between law enforcement acquisition of more military equipment leads to more local residents who are more likely to die in encounters with police and sheriffs.³

I reject any proposed use policy that does not fully comply with AB 481, and its intent for transparency accountability. Anything short of that is an infringement against our civil liberties.

Name: Yadi

Pasadena resident

Pasadena Community Police Oversight Commission

Meeting Date: May 5, 2022

Agenda Item: 9. AB 481 Military Equipment

¹ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB481

² https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf

³ https://www.afsc.org/sites/default/files/2022_Equipped_for_war_CA_copy_print.pdf

Questions to ask about AB 481 policy and ordinance:

- Would the proposed policy prohibit any uses? The policy should spell out any uses that are prohibited. Does the policy require that: “All uses that are not authorized by this policy are prohibited?”
- Review the costs and quantities of equipment in the proposed use policy. Is the city or county getting expensive or large amounts of military equipment at the expense of unmet community needs (mental health services, school closures, housing)?
- Is it ever appropriate to use military equipment against residents? If so, when?
- Does the policy define authorized *uses* of the equipment - that is, in what situations it can be legally used - or only *users* - who can use the equipment? AB 481 requires the policy to define *authorized uses* but some police agencies do not define which “uses” are authorized, only proposing which officers (“who”) are authorized to use it.
- Will use be authorized during First Amendment assemblies (i.e. protests, rallies, etc.)? What is the impact of deploying military equipment on the right to peaceful protest?
- Do any of the use policies name situations for authorized use but with language like “including but not limited to” these situations? If so, this has the effect of authorizing any and all uses, since the listed situations are only examples.
- AB 48⁴ (different from AB 481) limits police use of teargas and rubber bullets during protests. Does the proposed use policy fully incorporate AB 48’s required restrictions on the use of teargas and rubber bullets?
- Will uses of equipment, including planned uses such as SWAT deployments to serve warrants, be authorized when children or other vulnerable populations are present?
- Given how even the display of military equipment can be interpreted as aggressive, how will communication with mentally ill or non-English speakers be conducted? How will an officer determine that a community member is able to understand law enforcement or is physically able to respond prior to deployment of military equipment?
- Does the use policy exclude or prohibit use of military equipment for public relations purposes or activities, such as bringing an armored vehicle to a fair or school?
- For planned uses of equipment, what alternatives will be considered? For example, for an arrest warrant, will arrest outside the home, if children and other uninvolved persons might be present, be considered? Will arrest outside the presence of vulnerable persons be evaluated and prioritized?
- For planned uses of equipment, what information must be gathered beforehand? Does the information gathered address not only risks to officers, but risks to community members, including trauma and property damage, from deployment of the equipment?
- Does the use policy govern when weapons or equipment are *deployed*, or only when *force is used*? AB 481 requires policy governing all *uses*, not just *uses of force*.
- If the use policy refers to another policy or general order, such as a use of force or firearms policy, does the referenced policy describe specifics of authorized uses? Are all policies

⁴ https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220AB48

referenced in the military equipment policy on an accessible web page linked to the military equipment use policy?

- How will authorized uses distinguish between subjects who are unarmed, armed with a firearm, or with another object?
- Do costs for equipment include costs of initial and ongoing training of officers in its use? If not, how much does that training for use of the military equipment cost, initially and annually?
- Many departments record uses of force, but as a matter of policy do not register deployments of military equipment. Since AB 481 requires an annual report on uses of military equipment (whether or not force is used), how will the department ensure that deployment of the equipment is documented?
- Does the use policy identify a process for community members to submit complaints, concerns or questions about the use of military equipment, and how the law enforcement agency will respond in a timely manner, as required by AB 481?
- Does the use policy identify “mechanisms to ensure compliance with the military equipment use policy, including which independent persons or entities have oversight authority,” as required by AB 481?

Further information on the effects of police militarization:

- [Equipped for War: Exposing Militarized Policing in California](#)⁵, AFSC, 2022.
- Anna Gunderson, et. al., “Counterevidence of Crime-Reduction Effects from Federal Grants of Military Equipment to Local Police,” [Nature Human Behavior](#),⁶ 2020.
- Jonathan Mummolo, “Militarization fails to enhance police safety or reduce crime but may harm police reputation,” [Proceedings of the National Academy of Sciences](#)⁷, September 11, 2018 (37) 9181-9186.
- Edward Lawson Jr., “Police Militarization and the Use of Lethal Force,” [Political Research Quarterly](#),⁸ 2018, 1-13.
- Casey Delehanty, et.al, “Militarization and police violence: The case of the 1033 program,” [Research and Politics](#),⁹ April-June 2017, 1-7.
- [War Comes Home: The Excessive Militarization of American Policing](#)¹⁰, ACLU, 2014.

⁵ https://www.afsc.org/sites/default/files/2022_Equipped_for_war_CA_copy_print.pdf

⁶ <https://doi.org/10.1038/s41562-020-00995-5>

⁷ <https://www.pnas.org/doi/10.1073/pnas.1805161115>

⁸ <https://journals.sagepub.com/doi/full/10.1177/1065912918784209>

⁹ <https://journals.sagepub.com/doi/full/10.1177/2053168017712885>

¹⁰ https://www.aclu.org/sites/default/files/field_document/jus14-warcomeshome-text-rel1.pdf

Attachment: Email from Adriana Bautista for
CPOC Regular Meeting 2022-05-05 item # 7

Dear Community Police Oversight Commissioners,

Los Angeles County District Attorney Gascon's investigative findings in the report entitled "Fatal Officer Involved Shooting of Anthony McClain, Pasadena Police Department" is a disservice to the family of Mr. McClain and to the state of justice in LA County, as it does not allow a fighting chance in revealing whether Officer Edwin Dumaguindin (Badge #1928) may be held accountable for wrongful homicide of Mr. McClain.

Edwin Dumaguindin shot McClain twice as he fled a traffic stop as the passenger of a stopped vehicle on August 15, 2020. McClain died later that night due to blood loss from one of the fatal gunshot wounds, yet the body of this report reads as if McClain is on trial.

Gascon's report released March 31, 2022 concludes that "there is insufficient evidence to prove beyond a reasonable doubt that Dumaguindin's decision to use deadly force was unreasonable."

However, the same report reveals shocking information regarding evidence that remains held hostage from the public by the Pasadena Police Department, including Officer Connor G. Duncan's Body Worn Video (BWV). The report covers a wide range of both direct and circumstantial evidence, however, it derives its conclusion based-off of circumstantial evidence which may also be referred to as "indirect" evidence.

According to CALCRIM No. 224 :

"Circumstantial evidence does not directly prove the fact to be decided, but is evidence of another fact or group of facts from which you may logically and reasonably conclude the truth of the fact in question...

Both direct and circumstantial evidence are acceptable types of evidence to prove or disprove the elements of a charge, including intent and mental state and acts necessary to a conviction, and neither is necessarily more reliable than the other. Neither is entitled to any greater weight than the other. **You must decide whether a fact in issue has been proved based on all the evidence.**"

The conclusion of the report shows a bias in Gascon's office to weigh some of the circumstantial evidence as being more important than other circumstantial and direct evidence to the point where a massively important discrepancy in investigative procedure was tucked away in the footnotes.

Three reasons why we should not believe or settle for the DA's report:

1. **The DA overlooks evidence tampered with by PPD on the day of the murder.**

Duncan's Body Worn Video (BWV) : The report reveals that after taking a brief cell phone call, Duncan turned off his Body Worn Video (BWV) while walking North on Raymond for about 44 seconds. When Duncan immediately turned his BWV back on, he had already recovered the

gun that McClain allegedly threw. This points to seriously concerning intent for this PPD officer, and perhaps others, to obstruct a clear recording of evidence on the scene of Dumaguindin's crime that should be further investigated and forced to be made public.

Duncan's BWV has still not been made public although it is mentioned in footnote #35 on page 13 of the DA's report. Although the D.A.'s report makes note of this alarming interference with evidence in footnote #35, the report does not elaborate on this in the body of the report, nor does it reflect on the impact this interference has with the integrity of the evidence collected.

The fact this information is tucked away in a footnote and not even in the body of the report is troubling. So troubling, that it can be considered negligent at best and may even be a willing "throw away" of a police cover-up, which would tie the DA Gascon's office into the role of being a willing participant of coverup.

The evidence that was evaluated in the D.A.'s report makes a biased effort to prove Dumaguindin's innocence based on circumstantial evidence provided by the Pasadena Police Department's shoddy investigation, and there is no serious investigation of the concerning elements that surround this case, even though several pieces of evidence are admittedly called "curious" or "concerning" in the DA's report itself.

Officer Duncan's intent to turn off his own BWV at a crucial moment during an officer involved shooting may point to his own need to be charged for, at the very least, the following charges:

- Penal Code 134 PC - preparing false evidence,
- Penal Code 135 PC - destroying evidence, are serious violations of law

2. The DA report assumes Anthony McClain had a gun in his hand as he ran away based on circumstantial evidence AND makes no effort to investigate more direct evidence that would prove otherwise.

According to the Cornell Law School's Legal Information Institute, "*Circumstantial evidence is Indirect evidence* that does not, on its face, prove a fact in issue but gives rise to a logical inference that the fact exists. Circumstantial evidence requires drawing additional reasonable inferences in order to support the claim.

For instance, circumstantial evidence ... can include suspicious timing, ambiguous statements, different treatment, personal animus, and other evidence can allow a jury to reasonably infer [intent]."

The DA based their belief that Anthony McClain possessed a weapon 100% on circumstantial evidence, based on a video analyst's view of a barely visible shadow under his hand in 6 frames, which is less than half a second of real time, and based on McClain's "movements" which, the report claims, suggest he was holding a gun after he turned around to look over his shoulder. There was no analyst hired to evaluate McClain's "movements", however, the report

uses this circumstantial evidence as the pillar and only piece of evidence they do not later dispute or put into question within the report. **The report never claims that the gun recovered was McClain's for certain, as there is no direct evidence that links McClain to the gun.**

The report states there were *at least five* DNA contributors, making the sample unsuitable for interpretation due to its complexity, however, Anthony McClain's was the most prominent DNA to be located on the recovered gun.

While Officers Duncan and Mulrooney provided DNA samples to PPD Detective Brian Bulaon, Officer Dumaguindin, through his attorney, declined. Furthermore, the D.A.'s report states, "Dumaguindin's participation in the search for a firearm that may have been discarded following an officer-involved shooting in which he was the shooting officer is concerning. Also concerning is Dumaguindin's refusal to voluntarily provide a DNA sample that could be used to exclude him as a contributor to the DNA located on the recovered firearm."

The LA District Attorney claims they are unable to obtain a search warrant that would order Dumaguindin to submit DNA sample without sufficient evidence to establish probable cause Dumaguindin committed a felony; however their office overlooks any probable cause by focusing the investigation on unsubstantiated claims based on circumstantial evidence that McClain's movements and behavior exhibited he was not just possessing a firearm but intended to use it against Dumaguindin. They make this case and draw this conclusion, even while simultaneously questioning the same circumstantial evidence within the same report. Due to this dynamic, reading the report is like seeing a snake that eats its own tail.

There is plenty of evidence that is questionable, concerning, or, as the DA wrote in regards to Dumaguindin's refusal to submit DNA, "curious", which could be further brought to light in a court with further investigation, witnesses, and evidence.

For example, Duncan took a brief phone call as he walked North on Raymond, before making the decision to turn off his BWV. Who was he speaking with? Phone records should show us who he was speaking to, and radio transcripts could show who was in touch with whom on the scene of the investigation. BWV records from officer Mulrooney's vest (who was Dumaguindin's partner that evening) redacted some of the speech between officers that may reveal discussion of the incident that would be useful towards the probable cause of the accused's guilt, as it may shed light as to whether the other officers thought he was acting within reason.

Also of interest is the cell phone Anthony McClain is known to have had on him that same evening. The report states it was found the next day in the impounded vehicle belonging to the driver who was referred to as Witness 1. If the Pasadena Police Department truly believed Anthony McClain to be an armed assailant, why was the cell phone of an alleged assailant not collected as evidence immediately? Especially if they were searching the area so closely, how could a cell phone be overlooked, and when it was discovered, what was the condition of that phone?

3. The DA uses CALCRIM Nos. 505, 507, and 224 to discredit that a jury be able to review the case.

For DA Gascon to throw away an entire case based on "insufficient evidence" when the 30 page report is crawling with evidence to the point that a vital piece of evidence is thrown away in a footnote is UNACCEPTABLE.

Since there are serious red flags as to the integrity of the investigation, which are even admitted in the body of the report, this case is absolutely deserving of being heard in a court trial.

DA Gascon press charges now, as your office may now be involved in a cover up.