

WHAT REAL POLICE ACCOUNTABILITY LOOKS LIKE:

THE "120 SHOTS" INCIDENT

AND THE LOS ANGELES SHERIFF'S DEPARTMENT RESPONSE

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NOTE

Shortly after this report was completed but before it was released, the Office of Independent Review (OIR) of the Los Angeles Sheriff's Department published its own report on the incident, The May 9, 2005 Compton Shooting: The Public Report by the Office of Independent Review (July 2005).

The OIR report provides considerable detail about the response of the LASD to the incident, including aspects that are not covered in this report.

The author of this report has decided to release it as originally written. Anyone interested in the subject should read the OIR report as well as this report.

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THE INCIDENT

On May 9th, 2005 Los Angeles Sheriff's Department Deputies (LASD) fired 120 shots at a motor vehicle driven by a man they believed to be a criminal suspect. The deputies believed the man may have been armed a potential threat their lives.

The public reaction to the shooting was swift and negative. A video tape recording of part of the incident was broadcast internationally and many media accounts referred to it as a "debacle." Residents of the Compton community of Los Angeles where the incident occurred denounced the LASD. Compton is an extremely poor community, where the population is about 55 % Latino and 40% African American. Both local and national civil rights leaders called for a federal investigation of the incident.

The suspect's vehicle matched the description of one involved in a previous shooting, although he was eventually found to be unarmed and probably not involved in the previous incident. Struck by two bullets and hospitalized for about two weeks, he was subsequently arrested and charged with driving under the influence of drugs and evading the police.

By the morning of May 10th, the "120 shots" incident appeared to be simply the latest in a long history of police shooting incidents. The basic elements are now familiar: an apparent over-reaction by police officers to an African American suspect and an unnecessary use of deadly force.

The subsequent response of the LASD, however, was very different from the standard police shooting incident scenario. This report describes that response and comments on its larger significance for police accountability.

THE RESPONSE

The response of the LASD to the "120 shots" incident included three steps that serve as a model for real police accountability.

** Through their attorney, LASD Deputies apologized to the community for the incident.¹

** In less than a month, Sheriff Lee Baca instituted a new use of deadly force policy specifically addressing shooting a moving vehicles.²

** Within one month, Sheriff Lee Baca disciplined 13 deputies for their role in the incident.³

THE SIGNIFICANCE OF THE RESPONSE

The response of the LASD is extremely significant in several respects.

- ** No one can recall rank and file officers ever apologizing to the community for a shooting or use of physical force incident.
- ** The speedy revision of the LASD shooting policy represents an effort by the organization to learn from controversial incidents and to revise policy to prevent similar incidents from occurring in the future.⁴
- ** The disciplinary actions against the involved deputies was both speedy and transparent.
- ** The LASD response reflects the impact of citizen oversight on the department. The LASD has two oversight agencies, the Office of Independent Review and the Special Counsel.⁵

BACKGROUND AND CONTEXT

The response of the LASD to the “120 shots” incident needs to be seen in the larger context of the history of police accountability.

Shootings and alleged use of excessive force have been a major controversy in this country for over 50 years. That controversy has been primarily one of race and ethnic relations. People of color have been the primary victims of police misconduct.⁶

The allegations of discrimination voiced by people of color consists of two components. First, that they are the victims of unjustified shootings and excessive use of force; and second that the police have failed to respond to their concerns and have neither investigated controversial incidents thoroughly or disciplined officers guilty of misconduct.

APOLOGIZING TO THE COMMUNITY

The apology to the community by the officers involved in the incident represents an

unprecedented step in terms of acknowledging the impact of police actions on affected communities.

To be sure, the officers did not acknowledge any wrongdoing. They also spoke through their attorney and not individually. Nonetheless, the gesture of apologizing for the impact of their actions was genuine. Even though the officers did not themselves speak, they appeared at the press conference and did not hide behind an impersonal press release.

The idea of apologizing to the community, moreover, came from one of the deputies and not from their attorney or the LASD.

Additionally, Sheriff Lee Baca promptly appeared on local and national television and candidly discussed the incident. He also went to several community meetings, walked the street where the incident occurred accompanied by the Rev. Al Sharpton, and talked with neighborhood residents.

One of the major sources of tensions between the police and communities of color has been the very strong sense among community residents that the police never admit that anything bad happened. Over the decades this has created a sense that the police are insensitive, do not listen, and do not care about community concerns.

The so-called “code of silence,” under which individual police officers not only refuse to acknowledge any mistake but in many cases refuse to cooperate with investigators has long been recognized as one of the greatest obstacles to police accountability.⁷ By acknowledging that a mistake occurred the LASD deputies involved in this incident should be commended for taking a courageous and important step forward into a new era of police-community relations.

LEARNING FROM CONTROVERSIES

By swiftly revising its use of force policy, the LASD embraced one of the most important new developments in police accountability.

Traditionally, controversial force incidents were investigated in a narrow criminal law / disciplinary framework. Investigators asked only whether the officer(s) involved violated the criminal law and/or violated department policy. The answer was either yes or no. If yes, the officer(s) should be prosecuted or disciplined. If the answer was no, the case ended.

Law enforcement agencies with a strong commitment of accountability today recognize that they can – and should– learn from controversial incidents. A force incident

can and should be studied to see if the department can make any changes that would help to prevent similar incidents in the future.⁸

These changes might include revision of department policy (or even the development of a policy where none exists) to provide officers with better guidance in handling incidents of this sort, changes in training for officers, or new procedures to ensure better supervision on the street. An investigation might determine, for example, that the department has a policy on these kinds of situations but does not offer sufficient training over it. Or, an investigation might find that officers need retraining over the policy and the kind of incidents involved.

In fact, the Office of Independent Review (OIR) within the LASD had been developing a revised policy to address the issue of vehicle-related shootings for almost a year. The 120 shots incident provided momentum and a bit of urgency to a process that was already underway. In this process representatives of the OIR met with the Sheriff and departmental executives about the issue and received strong support to proceed with the revised policy. Once a proposed revision was finalized, LASD held “meet and confer” meetings with two unions representing peace officers and then swiftly implemented the changes.⁹

The role of the OIR in this process is explained in more detail later in the section on citizen oversight.

A third response focuses on the officers involved. A sophisticated Early Intervention System (EIS) is capable of determining whether any officer has a record of incidents reflecting questionable judgment in critical incidents.¹⁰ Following the 120 shots incident, LASD commanders accessed the department EIS to determine whether any of the officers involved had histories of involvement in similar situations or disciplinary records that indicated a need for special intervention.

The new LASD policy was criticized by at least one group in the news media, although those comments were apparently based on a reporter’s second hand account of the policy and there was a more favorable response once the actual policy was studied.¹¹ The important point is that there is room for debate over this and every policy covering critical incidents. Law enforcement agencies should continually reexamine their policies. It is naive to think that potential problems will be solved by a one-time “fix.” The ongoing debate should take several forms. First, law enforcement agencies themselves should continually reexamine their policies. And as recommended above, any and every controversial incident should be studied to see if some change in policy, training or supervision is needed. Second, the community should be a part of this reexamination process.

PROMPT AND OPEN DISCIPLINE

Almost as surprising as the apology by the LASD deputies was the promptness and openness of the discipline they received. Just one month after the original incident, eleven deputies were suspended for between 2 to 7 days. Another deputy was suspended for 15 days.

Comparing this case with a videotaped beating by Los Angeles Police Department (LAPD) officers a year earlier, the Los Angeles Times headlined a story on the "Different Speeds for Wheels of Discipline" in the two departments.¹²

Not only was discipline speedy but it was open. In many communities, law enforcement agencies do not release information about disciplinary actions. In some agencies, the union contract forbids public release of such information.

The lack of prompt and open discipline has long been a source of discontent in people of color communities. The long delays create the impression that the department is dragging its feet, and by implication is not serious about discipline. The lack of openness creates the impression that the department is covering up its refusal to discipline officers.

It should be noted that prompt discipline was possible because the deputies involved agreed to cooperate with the investigation. Under an existing settlement agreement, they could have asserted a right to delay cooperation until possible criminal charges were settled. And in most jurisdictions, internal administrative discipline is postponed until possible criminal charges have been resolved. Most of the deputies in this incident, in fact, allowed OIR representatives to sit in on their interviews with internal investigators.¹³

The willingness of the deputies to cooperate says something important about the culture of LASD. Evidently, the deputies --who were represented by their union attorney -- concluded that it was best to cooperate in this matter rather than aggressively assert every legal right they were entitled to. Across the country, the typical scenario involves officers under investigation using every possible means to thwart or delay investigations. These actions reflect often bitterly hostile relations between management and the rank and file. They also have a damaging effect on community perceptions of the department in question. The cooperation of the LASD deputies in this matter clearly suggests a different attitude, a sense that cooperation is in the best interests of the department, the community, and the officers themselves. This is a development of major significance.

THE ROLE OF CITIZEN OVERSIGHT

The response of the LASD to the 120 shots incident, which was so different from the traditional response of law enforcement agencies to shooting incidents, reflects the impact of citizen oversight on the department.

While many law enforcement agencies bitterly oppose any form of oversight, the LASD is closely monitored by two oversight agencies: the Special Counsel and the Office of Independent Review.¹⁴

The Special Counsel was created in 1993 as an outgrowth of the 1992 Kolts Report on the LASD. Under a contract with the Los Angeles County Board of Supervisors and directed by Merrick Bobb, the Special Counsel has examined a wide range of administrative and policy issues within the LASD and issued 19 reports since 1993. Originally created to help reduce the cost of civil litigation against the LASD, Bobb and his staff have examined anything and everything that might impact the department. The Special Counsel's reports are readily available on the web (www.parc.info) and create a new degree of openness and transparency. In several instances, these reports have brought to light problems and data that were embarrassing to the department. The openness and candor, however, create a climate in which organizational change can occur.

In 2001 Sheriff Lee Baca established the Office of Independent Review (OIR). Staffed by six attorneys and directed by Mike Gennaco, a former Assistant U. S. Attorney, the OIR also investigates incidents and issues that involve potential misconduct by deputies. It also publishes periodic reports and posts them on the web (www.laoir.org).

The existence of two oversight agencies has contributed to developing a climate of accountability in the LASD in several different ways.

First, there is a direct effect as both the Special Counsel and the OIR recommend specific policies or revisions of existing policies to address problems that have been identified. The Special Counsel, for example, has closely examined the canine unit and recommended a number of administrative changes. The result has been a precipitous drop in the number of citizens bitten by LASD canines.

As mentioned earlier, the OIR had begun to review the issue of shootings at vehicles about a year before the 120 shots incident. Reviewing shooting incident files, one OIR staff member noticed a disturbing pattern of vehicle shootings. This led to a deeper review of incidents, discussions among OIR staff, consultation with the LASD training unit, research on policies of other law enforcement agencies, and the drafting of a revised policy. The 120 shots incident provided momentum for this process and, at the direction of Sheriff Baca, brought it to a speedy completion.

Additionally, OIR staff members attended all of the community town hall meetings held in response to the incident where they were able to explain the LASD investigative process. It is possible that this independent perspective on shooting investigations helped to reduce tensions in the Compton community. Finally, OIR staff met with the media to discuss in detail the results of the internal investigation of the incident.

Second, the existence of two oversight units has, in ways that are difficult to measure, created a climate of accountability within the LASD. Over the years, LASD commanders and deputies have grown accustomed to close scrutiny by non-sworn investigators and to having the results of their investigations released in public reports. Traditional police culture has embodied secrecy, resistance to outside inquiry and hostility to criticisms by outsiders. The existence of the Special Counsel and the OIR builds a very different culture, one of responsiveness and openness.

Third, the publicly available reports of both the Special Counsel and the OIR create a climate of openness and transparency in the eyes of the community. Ordinary citizens, elected officials and media personnel can read about what is going on inside the LASD. It's all there: problems that have been identified, changes that are recommended, the implementation of those changes, and the results in terms of officer performance. This represents a radical departure from the traditional closed culture of American policing.

CONCLUSION

The response of the Los Angeles Sheriff's Department to the 120 shots incident of May 9, 2005 was very different from the traditional police shooting incident scenario. The LASD acted promptly and openly to address community concerns, revise its policies to prevent similar incidents, and to discipline the officers involved.

Several factors contributed to this response. Most important was the leadership of Sheriff Lee Baca who addressed community concerns personally, brought the policy review to completion, and disciplined the officers involved.

Institutionally, the LASD had in place an accountability mechanism, the Office of Independent Review, that was already working on a revised policy that directly related to this incident. And it should be noted that the OIR was created at the initiative of Sheriff Baca.

It is also extremely noteworthy that by publicly apologizing to the community the deputies involved took an unprecedented step and set a new standard for officer accountability.

The response reflects a general culture of openness and responsiveness in the LASD,

one that is quite different from the traditional “circle the wagons” and deny any wrongdoing response. In the end, this is what real police accountability looks like: acknowledging mistakes, promptly and openly imposing appropriate discipline, taking immediate preventive steps, having in place a process for identifying problems and initiating corrective measures. This is a style of accountability that other law enforcement agencies can and should emulate.

1. Jeremiah Marquez, "Apology in L.A. Shooting Rare From Police," *Los Angeles Times*, May 31, 2005.
2. Andrew Blankenstein, "Sheriff Alters Vehicle Shooting Policy," *Los Angeles Times*, June 9, 2005.
3. Associated Press, "13 Los Angeles Deputies to be Punished for 120 Shots Fired at Car," June 10, 2005.
4. This process is described in Samuel Walker, *The New World of Police Accountability* (Thousand Oaks: Sage, 2005).
5. Walker, *The New World of Police Accountability*. Samuel Walker, *Police Accountability: The Role of Citizen Oversight* (Belmont: Wadsworth, 2001).
6. The long history of the controversy can be traced from the Kerner Commission report, National Advisory Commission on Civil Disorders, *Report* (New York: Bantam Books, 1968), to the more recent Jerome H. Skolnick and James J. Fyfe, *Above the Law* (New York: The Free Press, 1993) written in the wake of the Rodney King incident.
7. "Code of Silence," in Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States* (New York: Human Rights Watch, 1998), pp. 68-71.
8. This point is forcefully made in the PARC report on use of force in the Portland, OR, Police Bureau: Police Assessment Resource Center, *The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths* (Los Angeles: PARC, 2003). Available at www.parc.info.
9. Interviews with OIR staff.
10. Samuel Walker, *Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide* (Washington, DC: Department of Justice, 2003). Available at www.ncjrs.org and www.cops.usdoj.gov.
11. Blankenstein, "Sheriff Alters Vehicle Shooting Policy."
12. Amanda Covarrubias and Andrew Blankenstein, "Different Speeds for Wheels of Discipline," *Los Angeles Times*, June 11, 2005.
13. Despite the enormous importance of police unions and collective bargaining agreements in policing, there are no detailed studies of their impact on policing and disciplinary practices.
14. Oversight agencies are discussed in detail in Walker, *The New World of Police Accountability*.