

August 6, 2020

Dale Oliver, Ph.D.  
Professor of Mathematics  
Humboldt State University  
1 Harpst Street  
Arcata, California 95521-8299



Re: Letter to Community Law Enforcement Leaders Dated June 19, 2020

Dear Dr. Oliver and esteemed faculty and staff at Humboldt State University:

I received your thoughtfully composed and heartfelt letter concerning the safety and wellbeing of HSU's students of color. I agree we must acknowledge and own our county's history of racial tension and violence. It is also an ugly and deplorable truth that pockets of racism still exist in Humboldt today. This is unacceptable and we must all work together to effect meaningful change.

Our students of color should feel safe, welcome, and accepted in our county. While this will take a sustained community-wide commitment, and we each have a role to play, our law enforcement agencies shoulder great responsibility to lead and safeguard these efforts. I want you to know that under my leadership, the Eureka Police Department is committed to equitable policing and to building partnerships, understanding, and trust with our *whole* community.

Regarding the practices you requested be undertaken by City Police and County Sheriffs throughout Humboldt County, I have prepared the following responses:

1. *Track all complaints about use of force by police officers in Humboldt County, and make those records publicly accessible.*

Confidential police personnel records are controlled by the California Public Records Act (CA Gov't Code section 6250, et seq.; "CPRA"). Penal Code section 832.7 designates as confidential the contents of peace officer and custodial officer "personnel records," or information "obtained from these records." This information generally may only be obtained in court through a discovery process called a *Pitchess* motion, pursuant to Evidence Code sections 1043 and 1046. Penal Code section 832.8 defines "personnel records" as "any file maintained under" a peace officer's name "by his or her employing agency and containing records relating to...personal data...medical history...employee benefits, employee advancement, appraisal, or discipline, complaints or investigation of complaints..." and other information the disclosure of which would constitute an invasion of personal privacy.

However, effective January 1, 2019 with the passing of SB 1421, the following peace officer or custodial officer personnel records and records maintained by any state or local agency

are no longer confidential and shall be made available for public inspection pursuant to the California Public Records Act (also see Penal Code section 832.7, subdivision (b)).<sup>1</sup>

- (A) A record relating to the report, investigation, or findings of any of the following:
  - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
  - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
- (B) Any record relating to an incident in which a sustained<sup>2</sup> finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- (C) Any record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer or custodial officer directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence.

Other records relating to employee complaints and discipline are generally exempt from disclosure. In other words, we currently do not have the option to make these complaint records publicly accessible. The disclosure of peace officer personnel records in violation of Penal Code section 832.7 may constitute a crime under the terms of Government Code section 1222. Disclosure may also expose the Chief of Police and department/City to lawsuits and civil penalties. Additional, California peace officers have additional rights and protections under the Public Safety Officers Procedural Bill of Rights Act.

For those interested, you can read about a local example of a police misconduct record released under the new transparency law (SB 1421) in a series of articles in the North Coast Journal beginning with “Light into Dark Places” (August 29, 2019).<sup>3</sup>

*2. Establish a Citizens Review Board in Humboldt County, to review cases where the validity of the use of force by City and County officers is disputed.*

EPD is currently the only local law enforcement agency with a citizens advisory and review board. EPD’s Citizens Advisory Panel (CAP) was established in August 2015 by former Chief of Police Andrew Mills. I continued and expanded upon the CAP with my appointment to Interim Chief of Police in July 2017. “The CAP serves as a mechanism for meaningful communication and interaction between EPD, the Chief and the community.” (Watson 2020)

The purpose of the CAP is to give oversight, counsel, support, guidance, and recommendations to the Chief of Police for the purpose of improving transparency and fostering strong relationships with the whole community we serve. The CAP also serves as another layer of review and accountability for the Chief and department. As requested by the

---

<sup>1</sup> [https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=832.7.&lawCode=PEN)

<sup>2</sup> “Sustained” means a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, as applicable, following an investigation and opportunity for an administrative appeal pursuant to Sections 3304 and 3304.5 of the Government Code, that the actions of the peace officer or custodial officer were found to violate law or department policy.

<sup>3</sup> <https://www.northcoastjournal.com/humboldt/light-into-dark-places/Content?oid=15067605>

Chief of Police, the CAP may examine the police budget, training, policy and procedures, and may also review certain complaints, officer-involved shootings, in-custody deaths and other police actions that result in the death of a person or great bodily injury, as permissible by law. It is the objective of the CAP to advocate for policies which promote fair and humane policing and also ensure the safety of citizens and police officers.

Following a presentation about our CAP during the regular Eureka City Council Meeting on August 4, 2020, I am working the City Attorney to draft a new ordinance formally establishing a more permanent Eureka (police) citizens advisory and review board with members representing a cross-section of our community and reporting back regularly to City Council. You might find it interesting to know that California currently has only 33 police review entities out of over 500 law enforcement agencies.<sup>4 5</sup>

3. *Enter negotiations with police unions to end qualified immunity practices and establish malpractice insurance that is not funded by taxpayers.*

This is a frequently misunderstood concept and abolishing qualified immunity would be a mistake in my opinion. Qualified immunity is not a benefit provided exclusively to peace officers. It is important to note that Qualified immunity also extends to government officials and employees performing discretionary functions, including mayors, council members, city managers, county administrators, and department heads and school teachers.

A local public employer such as a county, city or district *cannot* change the application of qualified immunity for their employees. The elimination or modification of qualified immunity can be accomplished by Congressional legislation or by changes in current case law by the United States Supreme Court in future decisions.<sup>6</sup>

Officers do not have absolute immunity and they can be held liable when they violate a clearly established constitutional right. Officers and public officials need qualified immunity to carry out their jobs. Police officers in particular perform crucial duties that often require split-second decisions in stressful circumstances that are tense, uncertain and rapidly evolving. Removing qualified immunity could lead to officers being hesitant or unwilling to act when it is most needed. Removing qualified immunity would also expose police and other public officials to unwarranted lawsuits in which judges and juries could second-guess split-second decisions. This could lead to significant costs for cities, police officers, and other public officials.

4. *N/A (Directed to the Arcata Police Department regarding the Josiah Lawson investigation)*
5. *We whole heartedly support any initiative by Humboldt County officers to avail themselves of implicit bias training and wear body worn cameras.*

Already done and done! EPD was actually an early local leader in the adoption of officer-worn cameras. We implemented body worn cameras (BWC) in 2016 including a mandatory use policy. Officers are required to turn on and use the cameras when responding to calls for service including all enforcement and investigative stops and field interviews etc. Our current BWCs are 4 years old and at the end of their service life. We placed an order for 42 new

---

<sup>4</sup> City of Santa Barbara Council Agenda Report on Civilian Police Review Systems, July 3, 2020

<sup>5</sup> According to the US Bureau of Justice Statistics' 2008 *Census of State and Local Law Enforcement Agencies*, the state had 509 law enforcement agencies employing 79,431 sworn peace officers.

<sup>6</sup> <https://www.rlslawyers.com/demystifying-qualified-immunity/>

body worn cameras during the first week of June 2020 (at a cost in excess of \$80,000). Once these new BWCs arrive, we will have top of the line cameras along with a new, upgraded digital storage system.

EPD is giving all of our members additional training on procedural justice and implicit bias far above and beyond what the California Commission on Peace Officer Standards and Training (POST) requires every two years.<sup>7</sup> In 2018, I sent a police Sergeant and Field Training Officer to an instructor course on Principled Policing which includes procedural justice, implicit bias, and history of police-race relations as topics among others. The core training curriculum and materials were created by the California Department of Justice and P.O.S.T. with the assistance of Stanford University professors. EPD now has trained instructors within our department.

We've held three classes so far (the full class is 8 hours long and facilitated) and are scheduling another one soon. Our goal is for all members of our Department, not just police officers, to receive this additional training. Over 36 members have had the training so far. We also held a workshop with an abridged version of the class in November 2019 where we invited a diverse group of citizens to attend, experience the training, and provide input to our instructors to help shape the course so it better aligns with the needs and diversity of our local community.

EPD has emphasized de-escalation training for a few years now and it has become part of our training and culture.<sup>8</sup> On May 14th and 15th, 2019, local law enforcement agencies participated in a one-and-half-day train-the-trainer course for defusing critical incidents which was hosted by the Eureka Police Department. 36 students from a dozen agencies participated. The course of instruction, ICAT (Integrating Communications, Assessment, and Tactics), is a new and innovative approach to de-escalation and use-of-force training. ICAT provides first responding law enforcement officers with the tools, skills, and options they need to successfully defuse a range of critical incidents. During the training session, highly experienced ICAT trainers led an in-depth discussion and demonstration of how to implement the ICAT training program at our agencies. This hands-on exploration covered topics including: Critical decision-making, crisis recognition, tactical communications, operational tactics, and realistic scenario-based training exercises and video case studies. EPD has since held additional formal de-escalation training courses with our officers (on July 9, 2020 and November 1, 2019) and will continue to do so (the next course is scheduled for August 10, 2020).

EPD is also extensively partnered with DHHS in local Crisis Intervention Team (CIT) training with members both instructing and participating in this vital training. EPD Officer Ryan Swanson was awarded Humboldt CIT Officer of the Year for 2019.

I hope you find the above information helpful and encouraging as we join together to provide a safe and inclusive environment where *all* students feel welcome and protected.

Sincerely,

Steve Watson  
Chief of Police, Eureka

---

<sup>7</sup> <https://kymkemp.com/2018/10/10/eureka-police-officers-participate-in-procedural-justice-and-implicit-bias-training/>

<sup>8</sup> <https://kymkemp.com/2020/07/15/epd-held-de-escalation-and-tactical-communication-training-last-week/>