



Police Commission administrative disapprovals matter

When you are involved in a categorical use of force, it starts a chain reaction. First, of course, is the Force Investigation Division interview the night of the use of force. Then, there's the restriction from the field until you are cleared by Behavioral Science Section and the Chief hears about your shooting at the 72-hour briefing. Then, about nine months later, there is a Use of Force Board. FID makes a presentation of the investigation to the Board, and the Board makes a recommendation to the Chief of Police. This is the first place that Administrative Disapproval may appear in your life. The Chief views the Board's recommendation and makes his own recommendation to the Police Commission. Most of the time, he follows the Board's recommendation. The Police Commission then views the Chief's recommendation and makes the final decision on whether the use of force is in policy or not. Most of the time they follow the Chief's recommendation. And then sometimes, they don't.

When they don't, it is usually because the use of force has gone political. That means the professional protestors have been marching around with "murderer" signs and filling the two-minute public speaking sessions in front of the Commission meeting with profanity and disruption. The media is usually joyfully joining in with the criticism.

The Police Commission doesn't resist political pressure well; witness the overturning of the Chief's recommendation in the Africa OIS, the overturning of the Chief's recommendation in the Ezell Ford OIS and the overturning of the Chief's recommendation in the Norma Guzman OIS. All subjects of activist and media focus.

Why does the Commission's decision to label a use of force Administrative Disapproval matter? The most immediate and personal reason is that it forces the Chief to consider discipline against the officer even when he has determined that the officer has done nothing wrong. Fortunately, discipline rests solely with the Chief of Police under the City Charter, so one of his options is to give the officer "extensive retraining" rather than suspension days. However, as one of the Commissioners stated on TV, "We write the Chief's rating." Regardless, the Administrative Disapproval remains in the officer's personnel package, staining his or her record.

But there are other consequences. For one thing, it gives credence to the argument that the officer has acted outside the scope and course of his or her employment. That raises the question of whether or not the City will defend the officer in a lawsuit.

It is said that 60 percent of officer-involved shootings with hits end up in civil court, with the Department and the involved officers being sued. Generally, the City Attorney will represent an officer in such lawsuits because the officer is in the scope and course of duty when the force is used. The interest of the City and the officer are one. The force is justified.

However, this dynamic changes when the Police Commission has declared that the officer's use of force was Administratively Disapproved. This classification opens the issue of the possibility that the officer was not acting in the course and scope of his or her duty. The City Attorney now has a theoretical conflict because if the officer is not acting in course and scope, then the City is not liable, but the officer as an individual is. The officer is now in the position that the City Attorney, who represents the City of Los Angeles, must choose between showing that the officer is out of course and scope, thereby reducing the chance of City liability, or fighting for the officer, thereby increasing the chance of City liability. That is called a conflict of interest

The City Attorney usually handles this problem by rejecting the officer's request for City Attorney representation and providing the officer, at City expense, with alternative counsel. The bad news is that in order for the officer to get the alternative counsel, he or she is required to sign a waiver that states that the City can refuse to pay any damages ordered against the officer. The officer either signs or must hire his or her own attorney with personal funds. The good news is that the case usually settles, and the waiver is not enforced by the City.

A case in point describes the problem and what a Police Commission's political Administrative Disapproval puts officers through and how long the process takes.

In 2010, officers in the elite Special Investigation Section (SIS) were involved in an officer-involved shooting. It was not necessarily surprising, because the SIS Unit's common duty is to follow known robbers around to catch them in the act of committing armed robberies, and then arresting them. Surprise! They get in more shootings than your typical officer.

SIS has gone through major media attention in past years due to the number of shootings the unit has been involved in, as they followed armed robbers, armed kidnappers and other highly dangerous suspects. They are assigned the worst of the bad actors out there, and they are highly trained in tactics.

In this instance, they were tasked with following a suspect who was thought to be committing a string of armed robberies. Sure enough, the suspect drove to a business location, went inside and exited a short time later. The SIS crew sent one officer inside to see what happened. Armed robbery was the answer—the suspect used a gun. Having that information in hand, the unit used its impressive tactic to jam a suspect in a vehicle and prevent a pursuit (not described here for obvious reasons).

After loudly identifying themselves to the suspect, they ordered him out of the vehicle. The suspect ignored their orders and dug around inside the vehicle, coming up with a handgun, which he pointed at one of the officers. This was a bad decision on his part. The SIS officers opened fire, one officer firing three shotgun rounds. The back window of the suspect's car shattered with what the officers believed to be the suspect firing. The officer who fired three rounds fired three more.

The suspect then made a good decision and opened the door to surrender. He was severely wounded but was taken into custody and lived to file a lawsuit. The officer who fired the six shotgun rounds lived to watch his use of force be ruled out of policy. A seven-year odyssey had begun.

The night of the shooting, no gun was found. The suspect's car was impounded by Scientific Investigation Division for examination. During the examination, a hidden compartment was found in the dashboard of the vehicle, and in that compartment was a revolver. The revolver had an expended round in the chamber under the hammer. It was also noted that the suspect had delayed getting out of the car for a full five minutes before he surrendered, giving him plenty of opportunity to stash the gun in the compartment.

The Use of Force Board found the use of force to be in policy. The Chief found the use of force to be in policy. Then it got to the Police Commission. The media published articles about the number of shootings that SIS had been involved in as a group and the fact that the officer had personally been involved in another shooting a month before. Three members of the Commission ruled the first three shotgun rounds to be in policy and the last three shotgun rounds to be out of policy. They opined that the second set of shotgun rounds were out of policy because it was not reasonable to believe that the suspect had fired the weapon at the officers and, therefore, they were not immediately in danger of great bodily harm. Clearly a political decision that ignored a spent cartridge under the hammer of the suspect's gun.

It took the common sense of a jury to bring things back to reality. However, the immediate result was that the officer had his outstanding record stained by an Administrative Disapproval. Then when the inevitable lawsuit came in, the City Attorney refused to defend him and provided him with paid alternative counsel. The plaintiff's attorney was allowed to present the Police Commission's Administrative Disapproval determination to the jury as evidence that the officer was in the wrong.

In the end, the jury ruled in favor of the officers. Not guilty. When polled for the reason for their decision, the jury foreman replied with stunning common sense that whether the suspect was holding the gun during the last three shotgun rounds or not, the officers were reasonable in believing that he was armed because the suspect had a lot of time to surrender and did not.

The end result is that this odyssey had a happy ending because a lot of dedicated people came to the officer's defense and put in hundreds of hours of preparation. No thanks to the Police Commission, but many thanks to City Attorneys Cory Brente, Alternate Counsel Pete Ferguson, and their crew of investigators. League members can be thankful that these people exist.

As this article went to press, another shining example of the results of the Police Commission's inability to stand against public pressure presented itself. The City Council approved \$1.5 million in the Ezell Ford officer-involved shooting. Recall that Ford was a gang member who was stopped by two LAPD officers and who attacked them, nearly getting control of one of the officer's guns before Ford was shot in self-defense. Again, the Chief determined that the use of force was in policy, and the Police Commission overruled the Chief, determining that it was not. The City Council voted to pay the \$1.5 million to settle the case. Two City councilmembers voted against the settlement. A quote in the press is telling.

Councilmember Englander is quoted as saying, "I believe the vote to support the settlement was the right thing to do. I just couldn't support it. Englander called his vote 'symbolic.' I wanted to send a message to our officers that I believe they acted within the scope of their training and their experience. Englander said he also believed the City would have 'done much worse financially' had the case gone to trial, particularly because the Police Commission found that one of the officers who shot Ford was unjustified in using deadly force."

Yes. Police Commission Administrative Disapprovals matter.

Be legally careful out there.