

Darien Police Department

Monthly Report

April 2020



Protest – Riots – Opportunists

On May 25, 2020 in Minneapolis it is alleged that ex-Officer Derek Chauvin committed murder and ex-officers J. Alexander Kueng, Thomas Lane and Tou Thaoother aided in that murder. After the death of George Floyd and the beginning of numerous protests, some of which turned into riots, I responded to the situation by discussing my feelings of anger and sadness at the June 1st City Council Meeting regarding the George Floyd death. Mayor Marchese asked if I would write a summary emphasizing certain points I had discussed at the City Council meeting. This is the letter that was posted.

As a police chief, I am angered and saddened by the death of George Floyd. Law enforcement leaders must have the courage to denounce actions that tear at the very core of the communities we serve, our profession, our values and our principles. We must continue to build trust and respect with our communities.

The Darien Police Department is committed to keeping resident and businesses informed about the safety of our community and the steps we are taking to keep you safe. Please understand that each situation is unique and requires a unique police response. Each of our decisions is based on best practices; our officers have been trained and are held to the highest standards in carrying out these responsibilities in providing our residents with a safe environment.

The Darien Police Department will stand with principled protests like those in response to police brutality and the death of George Floyd. We will continue to protect essential First Amendment rights of free speech, peaceful protest and redress of grievances.

The anger most are feeling is a justified emotion. The black community is angered, those who support the black community are angered, and the police are angered. Though anger is a justified emotion and protests are a righteous response, riots are not. Two wrongs do not make a right. Having a justified feeling of anger does not mean we respond in an unlawful matter.

I believe there are three types of people in these groups: protesters, rioters and opportunists. The protesters know what happened is wrong and want to have a voice. They want justice and accountability so that what happened to George Floyd and many other black Americans never happens again. Protesters need to know what steps are in place or need to be in place to keep these incidents from occurring. I want the public to know that Darien Police are not trained to kneel on the neck.

We unfortunately also have rioters: individuals who just want to create harm and chaos. They may or may not care about the elimination of police brutality or about the death of George Floyd. They want to create chaos for a number of reasons. We should never lump rioters in with protesters. Protestors did not loot stores, burn businesses, injure officers or hurt bystanders– rioters did that!

The third type of person in these groups are the opportunists- A criminal element who are in the crowd to take advantage of others by stealing property.

Many say that protesters' message gets lost because of the riots and looting. However, we need to remember that not all protesters are rioters or opportunistic individuals. Protestors should be supported in their right to speak out against such illegal, immoral and unethical behaviors by an individual who swore an oath to God and Country to serve and protect. As a profession, we failed George Floyd.

We encourage you to follow the City of Darien and the Darien Police Department on social media for real-time updates. We are also working closely with local businesses to provide information that helps them make appropriate decisions about precautionary measures such as closing during civil unrest.

Thank you for taking extra precautions and doing your part to keep our community safe and welcoming.

Regarding public safety notifications, we will continue to give information about events via Twitter. We are now up to 1,554 followers and when those re-tweet, we are reaching many people. Due to the circumstances, officers are going to be very busy keeping the peace to be sending out a number of tweets and updates.

We appreciate the information that flows into us via e-mail or notification to the alderman who forwards the information to the police. The adage of see something say something is important. However, we also need to be vigilant in not spreading rumor and creating more problems than we already have to deal with appropriately.

My letter received a lot of positive comments and a few negative. The negative went in both directions. I was too forceful toward the rioters and not the police or I was too forceful on the police and not toward the rioters.

I believe what happened to George Floyd to be wrong. I believe that the protests were valid. I believe that the riots and looting were wrong. I don't believe me denouncing police brutality, me supporting the rights of the protesters and me believing riots are illegal, immoral and unethical are feelings that are in conflict with each other. Two wrongs have never made a right. I don't believe that we should condone the riots and looting in anyway and need to be forceful in saying such. It's easy to say I understand riotous behavior in the wake of the angry feelings. However, doing so tacitly supports the behavior and does not help the situation. Leaders have to be more courageous than that. We have to be very clear that riotous behavior is wrong. We have to be very clear that police brutality is wrong. We have to be extremely clear that racism is wrong and cannot be tolerated. As parents, hopefully, we don't send the message to our children that lashing out in a violent manner out of anger is appropriate, or we'll be waiting a lot longer for redress of errors. We need to teach our children about racism being wrong and though police, for the most part, respond appropriately there are times where they use too much force.

Many people have e-mailed either our mayor, alderman or myself directly regarding questions, comments, suggestions and concerns. I'm sure if one is thinking it many others have the same questions, comments, suggestions and concerns. I also believe that people who took the time to write truly want a safe community and a controlled, just, police department and should have a voice. It's important not to speak for, but allow those affected to be heard.

Adopt "Eight Can't Wait" Protocols

One letter asked that we adopt the #8cantwait.

Number 1 Require De-escalation

There are a number of instructors who teach de-escalation techniques and there are a number of definitions. The National Consensus Policy on Use of Force (2017) defined de-escalation as "Taking action or communicating verbally or nonverbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary." There are several guiding principles as well: listen, acknowledge, agree, apologize, clarify, choices & consequences, sequence of questions and suggestibility.

De-escalation has been a tool police departments have been utilizing to avoid physical confrontations, we continue to train in this to better our response options. It's gone by different names – verbal judo, manner of presence and verbalization techniques and others, but the concept is the same. The Darien Police Department has a history of being a highly trained department, we meet and exceed the required de-escalation training all departments are required to provide.

Number 2 Ban Chokeholds & Strangleholds

We have to realize when we decide to ban a technique and take a force option away the implications of that action. If I am in a situation where the utilization of a firearm is dangerous (e.g. shooting into a crowd), but have lawful authority to use deadly force¹ my options are limited. I can use the firearm and place many others at risk, I can allow the person using deadly force to commit a murder. These options are good. I can give a number of examples, but I'll give one. An Aurora officer was attacked. Because of the person on top of him beating him unmercifully the officer could not get to his gun all he could do was try to protect himself from the punches and kicks. He was eventually able to get a strangulation hold on the person to stop the attack. The officer was severely injured the attacker was not.

I don't know the number, but I would estimate that thousands people each year get strangled. There are people who train in the martial arts (judo, mixed martial arts, etc.) who are strangled each year during training and in sanctioned fights with no ill effects.

The more sound approach is to limit chokes and strangulations to an extremely high level – deadly force. In order to use that type of technique the officer would have to justify the use of deadly force. The Darien Police Department is very restrictive – to use it an officer has to justify deadly force.

¹ Deadly force is defined as injury that involves substantial risk of death, unconsciousness, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty."

Number 3 Require a Duty to Intervene

The three officers assisting with the “control” of George Floyd had a duty to intervene. The Darien Police Department policy requires an officer to intervene. The Darien Police Department duty to intercede policy states, “Any officer observing another officer using force beyond that which is objectively reasonable² under the circumstances shall intercede to prevent the use of unreasonable force. An officer who observes another employee use force that exceeds the degree of force permitted by law shall promptly report these observations to a supervisor.”

Number 4 Require Exhausting All other Means before Shooting

Most deadly force encounters are over in less than two seconds. A use of force decision is made in about .4 seconds. To require exhausting all other means, for example, presence, verbalization skills, empty hand control tactics, empty hand defense skills, some type of intermediate weapon (baton, chemical agent, electrical impedance, etc.) prior to deadly force obviously the officer cannot get that done in less than two seconds.

On the face of it, the concept makes a lot of sense. However, implementation may create a lot of harm to officers and to the public. When deadly force is justified and reasonable, officers are trained to use alternative tactics as long as the use of those tactics do not put the public or the officers at additional risk of great bodily harm or death. There has to be a lot more discussion on this bullet point beyond what we can do in this short response.

Number 5 Require a Use of Force Continuum

Force Continuums been used for 40+ years and the Darien Police Department utilizes one. The Darien Police Department goes way beyond a well-defined Force Continuum to define subject demeanor, subject resistance types, subject force continuum, subject / officer relationships and special circumstances to describe when, how and by whom force can be used when to escalate / de-escalate force.

Number 6 Require a Warning before Shooting

This is mandated by the US Supreme Court since Tennessee v. Garner in 1985.

Number 7 Ban Shooting at Moving Vehicles

As discussed earlier a ban may not be the best answer, but severely restricting an officer shooting at a moving vehicle is appropriate. For a long time a vehicle has been used as a weapon, in 2010 or so terrorists increased the use of a vehicle as a weapon of terrorism. Too many people have been killed and injured when a vehicle is used as a deadly weapon. Instead of implementing a ban on shooting at moving vehicles using very restrictive language like Darien Police Department has is more appropriate.

² A legal term from US Supreme Court case Graham v. Conner (1989 – Charlotte, NC.). This case gave guidelines as to when police can use force. The court was not all inclusive but said it is based on the reasonable officer perspective, determined by what was known at the time force was used (on-the-scene not 20/20 hindsight). The courts gave examples of Objectively Reasonable that included the severity of the crime at issue, whether the subject poses an immediate threat to the safety of the officers or others and whether he is actively resisting arrest or attempting to evade arrest by flight.

Number 8 Require Comprehensive Reporting

I have taught report writing for several years including an emphasis on report writing in regards to defensive tactics. One thing I always stressed was a US Supreme Court decision (I couldn't find it to cite) that basically said to police is if it is not in report the courts are going to believe it never happened. Meaning the police have to be extremely accurate and have complete details about the incident. Leaving out a detail places the officer in harm's way of a lawsuit, criminal charges, etc.

My Darien Experience

One of the responders to my letter discussed something that happened to them that they felt inappropriate. Details were omitted so I couldn't verify the incident, but I have no reason to doubt the person. However, the incident occurred 20+ years ago. My first thought was to bring up something more than 20 years in the past is not fair especially since a lot has changed in policing and in the Darien Police Department – only four of the 34 officers are still here from that time frame. However, I think there is an important lesson for police from this person's letter. The hurt caused by the officer at the time is still talked about 20+ years later. The impact of an officer good or bad lasts a long time. We cannot go back in time and make a change, but we can learn from the event that how we treat people will stay with them whether it was a positive or negative experience. I don't know, but I believe that this negative interaction with the police has been repeated to others. While in graduate classes for my Masters in Business Administration there were a number of conversations about how more people tell a negative story than repeat a positive story. In this time of a pandemic I think we've all learned how the virus transmits. As a profession we need to understand the same process for negative interactions – so let's do everything we can to give the public a positive experience. That's difficult because nearly every interaction with the police is typically during the person's worst times. Even more reason to be positive, best we can. I remember my first Field Training Officer (FTO) challenged me to get a thank you when issuing a ticket. As a new officer I thought that's a ridiculous proposition I'm giving a ticket that is going to cost the person \$50.00 (remember I started policing a long time ago) and the person is going to thank me? The FTO was right it isn't the redirection of being issued the ticket, it's how you treated the person. Parents redirect all the time and children (for the most part) still love their mom and dad.

Take the Pledge

One of the suggestions was to follow President Obama's pledge for those who have oversight of the police. There were four items, they included: review of police use of force policies, engagement of the community for input, report findings and reform police use of force policies. I'll review each of the four suggestions against what is / has been done at the Darien Police Department.

Number 1 Review Use of Force Policies

Each year officers have their performance for the prior year reviewed by their immediate supervisor. During that process a review of the use of force policy and other policies are mandated. Each year the command staff look at the Use of Force policy and take any action necessary. We train with our firearms frequently and qualify twice a year. During those qualifications use of force especially deadly force is reinforced. Officers go through defensive tactics training and again use of force policies are reinforced. During daily rollcall briefing frequently there are discussions on use of force. Every time an officer uses force it has to be documented and investigated. We

utilize a company by the name of Lexipol that constantly issues updates to policies based on new legislation, best practices, improved techniques, changes in case law, etc. These updates are promulgated and distributed. Officers have to verify that they received and understand the policy.

Number 2 Engage the Community

We, the police, can do more outreach. However, the community has to be willing to participate. We (police & community) must engage and work with each other to the best of our abilities. I work with a great organization Unity Partnerships. That organization has assisted in trying to promote interaction and having conversations with the police, but they too have had problems with getting people involved.

Number 3 Report Findings

We are transparent in that each annual report has the information on training by number of classes attended, number of hours trained and titles of classes. We provide information on use of force and performance complaints including citizen complaints.

Number 4 Reform

As stated above we take a lot of opportunities to look at our operations relative to the use of force and where appropriate make changes.

Policy Ensuring Violence is Not Police First Response

Such a wide open-ended question makes this a hard question to give a single relatively short answer. I think all the previous discussions and those to follow answer this question. This writer, like many others, talked about being unsettled, distraught and angry. There are times that deadly force and less lethal force must be the first response, other times there is enough reactionary gap to provide for de-escalation and other tactics.

Body Worn Cameras

The Darien Police Department does not have Body Worn Cameras. We utilize in-car cameras with mics. Many people think body worn cameras are the panacea. I think there is a good argument for body worn cameras, but there are many unanswered questions and relying on cameras may be problematic. Some restrictions to a video from a camera: they are not eye tracking, meaning the camera doesn't necessarily see what the eyes see (e.g. camera may miss what an officers sees or may see something the officer does not), some danger cues (e.g. resistive tension, etc.) are not recorded, the camera speed is different from speed of life. Cameras can video better in low light than the natural eye, the body may block the view, cameras record in two dimensions. Cameras allow for second guessing (slow motion, multiple views, etc.) unlike the real time the officer had to respond. Cameras have difficulty in determining depth of field, judge distance & peripheral vision. A person's perception, reaction time, judgment and decision making are not necessarily captured. The angle, lighting and other elements vary from one perspective to another. The costs for the cameras, storage, personnel for FOIA responses, etc. are a huge expense. There remains the need for a thorough investigation.

Now with that being said used properly I have seen the value of the cameras many times. We had a situation in Aurora where a motorcycle crossed the centerline and even though the officer drove over the curb and onto the front lawn of a residence the officer could not avoid striking the driver.

The friends of the motorcyclist who were driving on separate motorcycles told the deceased motorcycle driver's family that the police were chasing the motorcyclist before the crash. The attorney for the family immediately filed a do not destroy order for the video. We told the attorney not only will we not destroy the video you can see it now. The attorney took up the Chief's offer and immediately withdrew from the case due to the video evidence clearly showed no pursuit, it clearly showed the motorcyclist riding on one wheel when he saw the squad car approaching him from the opposite direction. In response the motorcyclist applied the brake slamming the front wheel down which caused him to lose control. On several occasions officers were accused of being rude, and other violations which the camera video and audio clearly showed where not true.

Many studies have indicated that the cameras have helped prove officer's correct behavior and performance. I'm sure cameras have also found inappropriate behavior, but to a much less extent.

An officer is required to use the video and there are a number of rules when it needs to be on when it can be turned off, failure to use it, failure to test it, etc. An officer will be held accountable for a violation of policy. Each case has to be weighed on its own merits. As a general principle if failure to use was not a "critical" matter (e.g. found during a routine audit, not a part of a criminal, or administrative investigation, etc.) most likely a written warning would be issued. A repeat offender or failure to turn on during a "critical" matter more stringent discipline would be in order. Obviously the investigation would have to bear out a conscious decision and not a mistake or technological problem.

Racial / Ethnic Composition

Of the sworn members 94% are white, 3% are Hispanic and 3% are Asian. The Police Department breakdown by sex is 85% male and 15% female.

No-Knock Warrants

I am unaware of any no knock warrants executed by the Darien Police Department. I've only been here a little over four years so I asked detectives and SWAT members if they knew of any. I was told by them that they too were unaware of any being issued. That does not mean they are not available as an option as I did not check with the DuPage County Judges to see if they would issue such a warrant. Also having served 17 years on the Aurora Police Department Special Response Team (Aurora's SWAT Team) I think there are arguments for a no knock search warrant for the safety of officers.

Citizen Complaints Especially Excessive Force Complaints

We are bound by the State law titled Uniform Peace Officers Disciplinary Act and the Collective Bargaining Agreement.

When a person believes an officer has committed a violation of policy or state law they can file a complainant. Typically the person would meet with a sergeant who will document the complaint. Have the person read and verify the complaint. The case will be given to a sergeant to investigate. If the complaint is sustained (factual) it will go to the deputy chief for a recommendation of discipline. If the discipline is suspension time or termination there are other due process that must be fulfilled. Once done the case goes to the chief who will make a decision on the level of discipline. After deciding the discipline the officer has due process, the ability to appeal the

decision or to file a grievance regarding the decision. The burden of proof is not like that of a criminal trial with guilt beyond a reasonable doubt the burden of proof is preponderance of the evidence.

Background Checks

We do background checks on all new hires including those from other police agencies. We do check their disciplinary file and looking at the totality of the situation will make a decision on the hire. I can tell you that as Chief of Aurora I notified the Illinois Law Enforcement Training and Standards Board (ILETSB) of officers who I terminated for various matters mostly for being untruthful and ILETSB returned the letter advising they do not collect the information. That was more than five years ago. I don't know ILETSB policy at this time.

The reader should also be aware why there is such a strict policy on integrity within police departments. In 1963 the US Supreme court decided a case Brady v. Maryland, commonly referred to as Brady. There were other cases decided along the same lines (Giglio). What the Brady case basically said was evidence that is exculpatory (favorable to the defendant in a criminal trial), such as knowledge of the veracity of a witness's (police) testimony, has to be given to the defense. Sorry for the legalese. What all that means is an officer who made untruthful statements in an administrative action (internal investigation), a police report or at trial has to be disclosed prior to trial starting. If the officer has ever been found to be guilty of a Brady violation the officer's testimony is of less value and most police departments do not keep the officer opting to terminate employment.