

MINUTES

Civilian Review Board
McNutt Room—Eugene City Hall—777 Pearl Street

March 13, 2012
6:30 p.m.

PRESENT: Tim Laue, Chair; Bernadette Conover, Steven McIntire, Snell Fontus, George Rode, Eric Van Houten (arrived at 5:32 p.m.), Debra Velure, members; Vicki Cox, Mark Gissiner, Ms. Pitcher, Police Auditor's Office; Lt. Scott Fellman, Lt. David Natt, Eugene Police Department.
ABSENT: None.

I. EUGENE MISSION TOUR

II. DINNER FOR BOARD MEMBERS

Mr. Laue convened the CRB at 5:30 p.m.

III. AGENDA AND MATERIALS REVIEW

There were no adjustments to the agenda.

IV. MINUTES APPROVAL—February 14, 2012

Ms. Conover, seconded by Mr. Rode, moved that the February 14, 2012 minutes be approved as submitted. Mr. Laue deemed the minutes approved.

V. PUBLIC COMMENT

There was no one who wished to offer public comment.

VI. COMMENTS FROM CHAIR, MEMBERS AND CRB REPRESENTATIVES TO THE POLICE COMMISSION AND HUMAN RIGHTS COMMISSION (HRC)

Mr. Laue welcomed Ms. Pitcher back.

Ms. Conover did not attend the March 8, 2012 Police Commission meeting. The commission scheduled a retreat for May 5, 2012. She suggested the CRB identify items to forward to the Police Commission for inclusion in the commission's work plan.

Mr. Laue stated CRB members toured the Eugene Mission earlier this evening. He was impressed with the Mission's transformation, noting it was more open and welcoming than it had been in the past. Jack Tripp, the Executive Director, stated Eugene Police Department (EPD) officers were at the Mission

several times a week and 100 percent of the officers were sensitive and patient, and performed well. Mr. Tripp noted the growth of homeless women with children had been exponential.

Mr. Fontus said the Mission did good work and he had been impressed with his observations during the tour. He said the Mission accepted donations of clothing, appliances and furniture.

Mr. Rode expressed disappointment there was no facility for single men with children in the community. The Mission served approximately 11,000 meals per month for less than \$4,000, with the support of food donations. He had been impressed with the new Eugene Mission Executive Director on a previous visit. He attended the Police Commission March 2012 meeting. One guest at the meeting was there to share peace and encouraged being kind to our fellow human beings, and another guest who had filmed a police situation had been detained and was very unhappy. Kids FIRST staff gave a presentation on their work. The commission discussed the appointment process for new members.

VII. AUDITOR'S REPORT

Mr. Gissiner said there had been three officer involved shootings since he came to the City, two of which involved .223 rifles. When he reviewed complaints, it was important for him to understand how the weapons operated. He recently visited the range to observe the rifles in use. He suggested the CRB should visit the range if it decided to review an officer involved shooting case. He had discussed the trespassing issue with City Councilors. EPD issued about one trespassing citation every 24 hours and there were approximately 3,000 trespassing letters on file in at EPD. Ms. Pitcher was preparing the Police Auditor annual report. Complaints for 2011 were up about 20 percent over 2010. Use of force complaints were down to 15 in 2011 from 40 in 2010. The U.S. Department of Justice (DOJ) National Institute of Justice recently published a report on use of force complaints which the Police Auditor's office would compare to Eugene's data. The number of internally generated complaints from EPD to the Auditor's office had increased. He reviewed several cases the CRB could consider reviewing. He observed Eugene was unique in that the number of complaints was going up, whereas historically, the number of complaints decreased in other jurisdictions. He added there had been numerous complaints about the party patrol in the past, but there had been no complaints filed since the start of the current school year. He attributed this to an improved search and seizure policy, word of mouth communication among the student population, initiatives on the part of the University of Oregon (UO), and internal City changes.

Mr. Van Houten inquired if there was a nationwide repository of police auditor reports. The National Association for Civilian Oversight of Law Enforcement (NACOLE) had tried to establish a system several years ago, but had not been able to secure funding from the DOJ.

Mr. Laue directed CRB members to a letter in the agenda packet from Mr. Swaggart who had requested the CRB review his case. He noted the file was available for review by CRB members in the Police Auditor's office. The CRB could make a decision at the April meeting.

VIII. AUDITOR'S POLICY CONCERN: *Medical care of prisoners refused from Lane County Jail*

Mr. Gissiner stated the CRB had an opportunity to suggest improvements in policies related to the Lane County Jail. He described a situation in which an officer took a prisoner to the Lane County Jail for a misdemeanor offense. When at the jail, the prisoner complained about injuries. The prisoner was

assessed by the nurse who told a Sheriff's Deputy that she would not take the prisoner because of the prisoner's complaints about the injuries. This information was conveyed to the police officer who subsequently issued the person a citation and released him. Mr. Gissiner was concerned about line officers making medical decisions. The current policy did not provide direction on what officers should do if the nurses at the jail refused to accept people transported to jail. He preferred that officers speak directly with the nurses and consult on whether paramedics should be called to evaluate the prisoners to determine whether they should be transported to the hospital, released with citations or the police supervisor should be contacted. Mr. Gissiner had reviewed policies in place in other jurisdictions and found few policies which addressed this issue. There is a short policy statement indicating that officers are to provide access to medical treatment for all prisoners who need or claim to need such care.

Lt. Fellman said the current EPD policy did not clearly outline what should occur if the prisoner had committed a more serious crime. In practice, officers consulted with supervisors. If prisoners were transported to the hospital, EPD posted guards. He was in favor of the officer and nurse speaking directly.

Mr. Gissiner opined the nurse was refusing to accept the injured prisoner because the jail did not have the medical capability to treat the prisoner's injury or illness and the prisoner needed to go to a medical facility. The policy was not clear on how to manage the medical transport, and was left to the officer's discretion.

Mr. Laue suggested the Police Commission may want to discuss this issue at its May 2012 retreat.

Mr. Laue invited Lt. Natt to join the CRB at the table. Lt. Natt asserted police officers were not trained to be EMTs. In a situation with prisoners who claimed to be injured or ill, he issued a citation and called the paramedics to evaluate the prisoner and make a decision on whether the prisoner needed medical attention.

Lt. Natt iterated most of his experience with the jail refusing to accept prisoners was related to chronic alcoholism for which the jail did not have the capability to accept prisoners who would become medical complications during incarceration without detox treatment. He asserted officers made decisions based on the totality of the situation and they needed to be allowed to use their common sense to assess individual situations and make appropriate decisions.

IX. BREAK

The CRB took a break.

X. CASE DISCUSSION

Mr. Laue welcomed Lt. Natt who was the weekend night watch commander, and who had completed the investigation on this case.

Summary: Officers apprehended two individuals involved in a fight. One individual alleged that the officers used excessive force. He also alleged that they caused an injury to his head.

Ms. Pitcher provided a PowerPoint presentation and the staff report. She stated the case started with a fight reported at the corner of Broadway and Willamette Street. Officers contacted the reporting party and another person at the scene. The officers established probable cause, handcuffed the reporting party and guided him to the car. The video showed the reporting party walking. He subsequently fell repeatedly. After being placed in the vehicle, the reporting party repeatedly banged his head against the window and Plexiglas divider. She noted the impact of the reporting party banging his head sounded like a violent impact on the recording. At that point, the officer ordered the reporting party out of the vehicle and ordered him to get on the ground. The video showed the reporting party getting on his knees. The officer then ordered him to lay down on the ground. Officer A's hand was on the reporting party's left shoulder and the video showed contact but it appeared the hand was attempting to guide the reporting party to the ground. It did not appear that Officer A struck the reporting party. The reporting party fell forward and hit his head. A witness and his family observed the interaction and were contacted as part of the investigation. The reporting party accused the officer of pushing him and asked for CAHOOTS to come and get him. Officers called paramedics who treated the head injury at the scene. The reporting party went to the Police Auditor's office where his complaint was heard and photographs taken.

Allegation:

Allegations of excessive force and performance were investigated. The Board may also wish to discuss policy implications relating to violent behavior in the back of police cruisers.

Recommended adjudications

Ms. Pitcher said the incident was classified as an allegation of misconduct. One allegation of performance was Officer A did not perform appropriately in managing the care of the subject. A second allegation was the officers and sergeant on the scene used excessive force during the arrest. After the investigation, both the chain of command and the Police Auditor recommended the performance allegation be sustained. There should have been more care of the subject while he was handcuffed since he had shown he could not balance well and it was not unexpected that he could fall. There was no evidence that the officers used excessive force against the reporting party and the allegation was recommended to be unfounded by the chain of command and the Police Auditor's office.

- ***Complaint Intake and Classification***
 - There were no comments on Complaint Intake and Classification.
- ***Complaint Investigation and Monitoring***
 - Mr. Rode said the investigation appeared to be thorough and fair. It was good to have an unbiased witnesses.
 - Mr. Laue thought the investigation was thorough. There was a lot of supportive video. The interviews with the witnesses were well done and there did not appear to be leading questions.
- ***Relevant Department Policies and Practices***
 - 901.1—Use of Force.
 - 1101.1.B.9—Performance.
 - Mr. Fontus thought this was the most timely investigation that the CRB had reviewed. He did not know why there had been two extensions.
 - Lt. Fellman opined the extensions may have been in the adjudication process related to the collective bargaining process.

- Mr. Gissiner noted the number of people working in Internal Affairs (IA) had remained the same while the number of allegations was up 50 percent compared to 2010.
 - Ms. Conover asked why two of the videos which contained no pertinent visual information although there was some audio, had been included in those reviewed by the CRB.
 - Lt. Natt stated he never excluded any evidence from an investigation, inane or not, to ensure there was no perception that evidence had been excluded.
 - Ms. Velure asked why the CRB was looking at the performance policy. She inquired if there was a policy on positive control and a duty to protect the safety of the person in custody.
 - Lt. Fellman stated for general performance issues, there was policy language that said officers were responsible for people in their custody. The issue was what was expected of officers. Judgment, performance and care in custody had been discussed, and performance settled on.
- ***Policy and/or Training Considerations***
 - There were no comments on Policy and/or Training Considerations.
- ***Adjudication Recommendations***
 - ***Performance***
 - Mr. Van Houten appreciated hearing how that the officer recognized he could have performed differently and that he could have done something differently so that the reporting party may not have been injured.
 - Ms. Conover appreciated the forthrightness of the officer.
 - Mr. Laue said it was good to see that reports written by the officers at the time of the incident were very helpful.
 - Mr. Rode said the reports appeared to be thorough.
 - ***Use of Force***
 - Ms. Conover agreed the use of force was unfounded.
 - Mr. Van Houten agreed the use of force was unfounded.
- ***Additional Comments and/or Concerns***
 - Mr. Laue asked what officers needed to do when a person was potentially hurting themselves in the back of a police vehicle. He asked for the perspective of the officers.
 - Lt. Fellman said officers had several options depending on the totality of circumstances, starting with trying to talk the person out of the behavior. If talking to the person was not effective, officers then used force options which meant physically removing them from the car, restraining and immobilizing them, and putting them back in the car. Often, the restraints were uncomfortable and the person's behavior changed. In extreme situations, officers would have to call a medic unit that would put the person in a stretcher, tie the person down with four point restraints, and transport the person in an ambulance. There were dangers of the person hurting themselves in the vehicles, and getting someone who was thrashing around out of the back seat of a vehicle hazardous for the person and the officer. If officers identified behavior as excited delirium, where the body was burning itself out, it was medical emergency, with a potential for death. Officers were trained to contact the paramedics who would transport the person to the hospital as a Code 3 emergency.
 - In response to Mr. Gissiner, Lt. Fellman said pepper spray was an option if they were fighting and a danger to themselves or others. As with other force decisions, the totality of circumstances needed to be taken into consideration when using pepper spray.

- In response to Mr. McIntire, Lt. Fellman said Tasing a person was an option if the officer could articulate there was an immediate risk of serious physical injury. Again, as with other force decisions, the totality of circumstances needed to be taken into consideration when using a Taser. Lt. Natt added if the use of the Taser fit the policy and training for the use of the Taser and the officer could articulate it within the force factors that the Supreme Court had given and EPD policy dictated, the Taser could be used.
- Lt. Fellman, reading from the Taser policy said, “The Taser will not be discharged against a handcuffed or secured prisoner absent overtly assaultive self-destructive or violently resistive behavior that cannot be reasonably addressed by other less intrusive and readily available means. Officers discharging the Taser against a restrained individual shall consider using the Taser in dry stun mode...and only to the extent required to gain control of the person.”
- Mr. Laue observed that reasonable under the totality of the circumstances was not judged by a reasonable person, but is judged by another law enforcement professional or police officer.
- Lt. Natt added Graham vs. Connor said reasonable under the totality of the circumstances was the reasonable officer standard. In response to Mr. Laue, Lt. Natt acknowledged he was satisfied the tools available to the officers were reasonable under the totality of circumstances when dealing with scenarios where people were a danger to themselves or others. He added EPD transport times were generally shorter than those of the Lane County Sheriff’s Office, and officers generally arrived at the jail within ten minutes of putting a person in the vehicle. After arriving at the jail, jail staff engaged in verbal de-escalation to achieve compliance to get people out of the vehicle. Once in the sally port, if jail staff did not like what they saw, they would use their policies and procedures to deal with the person. The jail staff video taped arrival of vehicles in the sally port.
- Mr. Rode stated his biggest concern was how much time was spent on someone who was under the influence and blatantly not telling the truth. In this case, the CRB found something the officer could have done better. He was bothered by the fact that dealing with exaggeration or untruth was expensive.
- Mr. Laue said police had the authority to use force under certain circumstances. Police investigating the actions of other officers was a wise investment of community resources.
- Lt. Fellman said the department had considered undertaking some research to determine what the cost of different police actions was. He did not want the department to be discouraged from the very thorough review it undertook as long as the cases appeared to be reasonable to investigate at the onset. IA had two missions: ascertain the truth of the matter; and, assure the integrity of the investigation. If that was done, the community knew the officers had acted with integrity.
- Lt. Natt said the resources devoted to investigating a case also provided learning opportunities for the citizens, the officers, and the community. He stated the officers were pro investigation. When allegations came to the department the vast majority of officers wanted the truth to come out in the investigation.
- Mr. Laue averred the sustained rate for the EPD investigations was higher than most other departments of its size. He added a benefit was the Police Auditor’s office completed the intake and classification, and determined what would be investigated, which was important.
- Lt. Fellman said as a result of conversations with Mr. Gissiner about head injuries specifically related to this case, this issue was discussed at defensive tactics training.

XI. ADDITIONAL COMMENTS

Lt. Natt stated he was completing his rotation in IA. He thanked CRB members for their service to the community. He averred the CRB's work was very important and was going very well, due in part to the time the CRB members gave to the process. It was important to the community, the City government and the officers. He encouraged the CRB to keep doing what it was doing and using resources to ensure that the process was right. He thanked the CRB for what it had given back to him as an investigator and as a police officer in this community.

Mr. Gissiner commended Lt. Natt as a top IA investigator.

XII. TRAINING STRATEGY PROPOSAL FROM CHAIR

Mr. Laue directed CRB members to the training proposal he had provided. Following a brief discussion, a tour of the forensics facility was tentatively identified as the April 2012 training opportunity.

XIII. CASE SELECTION TOPIC FOR APRIL MEETING

Mr. Gissiner said reviewed possible cases for the April 2012 meeting. A racial profiling case was tentatively identified for the April meeting.

XIV. ADJOURN

The meeting adjourned at 7:55 p.m.
(Recorded by Linda Henry)