

## MINUTES

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

January 10, 2012  
6:30 p.m.

PRESENT: Tim Laue, Chair; Bernadette Conover, Steven McIntire, Snell Fontus, George Rode, Debra Velure, members; Vicki Cox, Mark Gissiner, Leia Pitcher, Police Auditor's Office; Lt. Scott Fellman, Sgt. Terry Fitzpatrick, Sgt. Carolyn Mason, Eugene Police Department; City Councilor George Brown, guest.

ABSENT: Eric Van Houten, member.

### I. DINNER FOR BOARD MEMBERS

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

### II. AGENDA AND MATERIALS REVIEW

There were no adjustments to the agenda.

### III. MINUTES APPROVAL—November 8, 2011

Mr. McIntire offered the following correction:

Page 5, paragraph 6, the last sentence should read: The party patrol had generated ~~few~~ **fewer** complaints this year and there were ~~many~~ **more** complaints from drunk drivers at football games. Mr. Gissiner corrected that there had been few if any complaints about party patrol and that complaints from drivers leaving football games are up.

Mr. Laue deemed the minutes approved as corrected.

### IV. PUBLIC COMMENT

There was no one who wished to offer public comment.

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

Ms. Conover stated the Police Commission was scheduled to meet on January 14, 2012. At the December 2011 meeting, the Commission briefly discussed Occupy Eugene. A motion asking the Eugene City Council to revoke the camping ordinance failed.

Mr. Laue said a visit to the Eugene Mission would be scheduled for March 2012. The Kids First Program managed from the District Attorney's (DA) office was tentatively scheduled for February 2012.

## VI. CASE DISCUSSION

Ms. Pitcher reviewed the case with a PowerPoint presentation. The complaint was from the Lane County Sheriff's Office (LCSO) about the manner in which a Eugene Police Officer handled one of his arrestees. A citizen was taken to the Lane County Jail. While in the pre-booking room, the arresting officer took the citizen to the sally port and confronted him about his behavior in the pre-booking room. An investigator from the DA's office accompanied the officer and citizen in the event the officer needed assistance. The incident was taped. When first viewing the tape, it appeared the officer swept the citizen's feet while the citizen was handcuffed and searched him while he was on the ground. When the citizen was booked, he complained to the deputies that the officer had stepped on his finger and broken it. The deputies reported up the chain of command, which reported to the Eugene Police Department (EPD) which reported to the Police Auditor's office. The Auditor's office initially classified the allegation as Criminal Conduct. EPD conducted a criminal investigation that was forwarded to the DA's office which determined there was insufficient evidence. The Auditor's office amended the allegation to reflect administrative allegations/policy violations. An Internal Affairs sergeant conducted an investigation of the following allegations: Use of Force, Constitutional Rights, Conformance to Laws, Courtesy, Unbecoming Conduct and Truthfulness. Constitutional Rights and Conformance to the Laws were subsequently dropped after completion of the criminal investigation.

Following the internal investigation, the chain of command and Police Auditor recommended Use of Force be adjudicated as unfounded and the Chief agreed. The supervising sergeant found the Courtesy allegation to be within policy but the rest of the chain of command and Police Auditor determined it to be unfounded and the Chief agreed. All parties determined Unbecoming Conduct and Truthfulness to be unfounded.

*Allegation: Use of Force, Courtesy, Unbecoming Conduct, and Truthfulness.*

*Recommended Adjudications*

- ***Complaint Intake and Classification***
  - Mr. McIntire did not agree with the allegation of Criminal Conduct. The referral painted an unflattering picture. When breaking the report down, it appeared to reflect hearsay on top of hearsay. He inquired about how classification process evolved before the actual classification took place.
  - Mr. Gissiner, when initially viewing the video in real time, thought the incident looked serious. However, upon viewing the video slide by slide, the officer's action was not criminal conduct. He generally tries to review incident reports and any video prior to classifying allegations.
  - Mr. Rode had vacillated throughout his review as he considered various pieces of evidence. He determined that Officer A's conduct was not Criminal Conduct.
  - Mr. Laue said once there was a determination by the DA that there might be criminal conduct, the Auditor was limited in his investigation. He opined it was unfortunate this went down the criminal path.
  - Ms. Conover asked if this alleged crime occurred at the jail, why did the DA's office not investigate it?
  - Mr. Gissiner thought the DA wanted to explore whether or not Officer A's action constituted criminal behavior. Sometimes criminal cases were sent to an outside

agency for investigation. When it was initially determined to look at the case as criminal conduct, the internal investigation stopped.

- Lt. Fellman responded there were two issues to balance. The first was to ensure there was integrity in the criminal investigation and the second was balancing the rights of the employee. An employee accused of a crime had all the rights of any other citizen. If the internal investigation continued, and the employee was interviewed, no information acquired in that investigation could be used in a criminal investigation.

- ***Complaint Investigation and Monitoring***

- Ms. Conover asserted the interview of Officer A was open and honest during the criminal investigation and offered an honest assessment of the situation.
- Mr. McIntire was suspicious when he read the written materials. However, when he listened to the interviews, it was apparent Officer A was credible. Mr. McIntire appreciated the officer being candid. Mr. McIntire opined there were other issues involving this officer and the jail staff that influenced this complaint. He suggested the relationship should be reviewed by EPD and the LCSO.
- Mr. Rode said it was apparent that Officer A and the interviewing officer who conducted the criminal investigation had a long time professional relationship that diminished the credibility of the complaint.
- Mr. McIntire thought the first interviewer's questions were biased.
- Mr. Fontus asked why the investigation of a crime was being done by an EPD officer.
- Lt. Fellman said the EPD officer was a supervisor who had extensive experience in conducting investigations and he was responsible for employees' conduct and holding employees accountable for inappropriate behaviors. The seriousness of the allegation was a determining factor in the decision not to send the investigation to an outside agency. When investigations were sent to outside agencies, EPD lost control of the investigation. While this would remove the perception that EPD was trying to influence the investigation, an outside agency may place a lower priority on the investigation which could lead to delaying completion of the investigation. There was nothing worse for a police officer than being accused of a crime and delaying an investigation would be an insult against what the officers worked for. It was important for investigations to be completed in a timely manner. He said EPD had identified some training with supervisors during the two most recent internal investigations. It was important for interviewers to have appropriate rapport with people they interviewed. Mr. Gissiner pointed out that some cases are referred to outside agencies based on the seriousness of an incident and that the resources of the outside agency had to be evaluated in the context of ensuring that there was not overuse of these outside referrals.
- Mr. Fontus observed EPD determined whether or not to send an investigation to an outside agency based on the fact that the interviewer knew the officer as well as having had experience with the person arrested.
- Lt. Fellman explained that based on past experience, EPD believed Officer A would tell the truth. The department believed if Officer A had done something wrong, he would have acknowledged doing so. Combined with the weight of the accusation, the decision was made to conduct an internal investigation.

- Mr. Gissiner added his decision on whether to send the investigation to an outside agency was based on the weight of the allegation. Clearly, sexually related allegations or major crime investigations would be referred to an outside agency. The identity of the officer would have no bearing on his decision on whether to send the investigation to an outside agency.
- Mr. McIntire stated there was not enough evidence to support the allegations.
- Mr. Rode asked Mr. Gissiner if it appeared the arrestee's legs were not swept when he viewed the video frame by frame.
- Mr. Gissiner said the video showed Officer A demonstrated patience with the arrestee and braced the arrestee for a soft landing. He averred the system was broken, noting EPD had over 400 contacts with the arrestee.
- Mr. Laue noted being able to observe the arrestee's white shoes on the video was key to the investigation. He added he observed no follow through on the part of Officer A, and it was not possible to do a leg sweep without a follow through. In real time, it appeared to be a leg sweep. It would not have been possible to reach the conclusion that the sweep did not occur without the frame stop capability of the video program. There were also inconsistencies with the DA's investigator's report. Mr. Laue thought the monitoring of the investigation was good and he appreciated that some of the allegations changed, some were added and some dropped. The administrative investigation was well done. He understood this was not a pleasant experience for the officer. It was apparent from both interviews that Officer A was entirely credible.
- Mr. Laue said the original complaint from the LCSO referred to the compliant and the history, and he questioned whether that was beneficial to the case.
- Mr. Rode thought there were bad feelings towards Officer A from members of LCSO that should not have impacted the allegations.
- Lt. Fellman stated EPD sought to make decisions based on the alleged behavior rather than interpersonal relationships.
- Mr. Gissiner said insufficient beds at the jail contributed to seeing the same people repeatedly. Officers were put in the position of having to make decisions about whether people should be arrested or cited.
- Ms. Velure asked why this individual was being arrested. She cited that the lack of seriousness of the charge influenced her questioning whether this type of behavior by an arrested subject was worth the enforcement action. His companion was cited for the same charge and released. It appeared the arrestee was being harassed.
- Lt. Fellman said the goal of enforcement was compliance with the law. If compliance could be achieved by warning people or issuing tickets; that was what officers would do. However, this person did not behave when he drank, he became dangerous, he scared people and fought with people. The most effective way of influencing this person was to take him to jail.
- In response to Ms. Velure, Sgt. Mason said she knew both individuals involved and had similar experiences with them. The companion was compliant, was ticketed, did what she was told to do, and left. The arrestee wanted to consume the rest of his beer after being told to not to, thus continuing to commit a crime in the presence of the officer. The arrestee walked away from the officer after he had been arrested.

- Ms. Velure expressed concern that other more severe crimes were occurring in the community while Officer A was devoting time to this person standing on the street drinking a beer.
  - Lt. Fellman assured CRB members that officers would respond to other more serious crimes if they occurred. He added chronic, behavioral crimes had a significant impact on the people who lived in the area, particularly downtown, in the Whiteaker neighborhood, West University district and near parks which had this problem. EPD could not lock people up or send them to treatment to stop the behavior and ran out of options. One of the few options available to EPD was to interrupt the behavior and take the person to jail.
  - Mr. Laue stated the City of Eugene contracted with Lane County to provide jail beds for misdemeanor and quality of life crimes. They would not be available if the City did not contract for them.
  - Mr. Gissiner added the community was asking officers to make decisions that were beyond the scope of what would be expected under normal circumstances.
  - Lt. Fellman noted it was difficult to get this group of offenders to show up at court for arraignment much less a trial. There were approximately 10,000 open warrants in the EPD Records Section.
- ***Relevant Department Policies and Practices***
    - 901.1—Use of Force
    - 1101.1.B.7—Courtesy
    - 1101.1.B.25—Unbecoming Conduct
    - 1101.1.B.29—Truthfulness
- ***Policy and/or Training Considerations***
- ***Adjudication Recommendations***
    - Ms. Velure observed Officer A had special circumstances with this person which played into the final adjudication. When looking at the definition of Use of Force, she noticed the person was drinking a beer. She asked what the imminent threat was. She did not see the elements of Use of Force, she did not see the person trying to resist or not comply. The person was drunk and stumbled, but appeared to be going in the direction he was led. It seemed he was being compliant with the request. She asked if it could be verified if force was actually used. Assuming force was used, the person's behavior did not justify use of force, given that he was in a confined space and handcuffed. She suggested reasonable alternatives other than putting the person on the ground should have been considered. She added that the officer should be able to consider a person's history in determining to interact with him.
    - Lt. Fellman said the Use of Force policy was challenging to teach new police officers. The standard is what a reasonable officer (not a reasonable person) would do in the circumstances. The courts have said the officer had different knowledge and training than a non-officer, so it was appropriate for officers to make different decisions than others would. The officer could consider the seriousness of the offense, the risk of flight, and knowledge of the offender's past behavior. When watching the video for this case, reasonableness in use of force by a reasonable officer was taken into consideration. Subtle movements by the officer and the offender were not clearly visible in the video because of the

distance. General training was when suspects were intoxicated or in danger of fleeing, suspects were seated, because it was harder to attack someone or an officer when seated.

- Mr. Gissiner thought Officer A left himself somewhat vulnerable when searching the suspect. Officers can be hurt when they placed themselves in more vulnerable situations. Putting the suspect on the ground was consistent with standards anywhere when flight or injury were issues.
- Ms. Pitcher said when the DA's investigator joined Officer A when taking the suspect outside indicated to her that the investigator subjectively thought the suspect could be a threat.
- Mr. Laue understood how people reached the conclusion that the adjudication recommendation was unfounded for Use of Force based on the quality of the video, he concluded there was insufficient evidence.

- ***Additional Comments and/or Concerns***

- Mr. Fontus asked if EPD discussed the outcome of this case with the Lane County jail staff.
- Lt. Fellman understood there had been some conversations between the EPD supervisory chain and the jail staff, but he was not aware of the details. He would look into the matter.
- In response to Ms. Conover, Mr. Laue paid Lane County \$400,000 annually for the beds.
- Ms. Velure asserted that the community did expect officers to comply with EPD policies.
- Lt. Fellman added it was inappropriate for the criminal investigator to editorialize in their report.

## **VII. BREAK**

The CRB took a break.

## **VIII. AUDITOR'S REPORT**

Mr. Gissiner said Mr. Rode, Ms. Conover and Ms. Velure's terms expired in June 2012. He explained the application and reappointment process. Mr. Gissiner said complaints for 2011 were up approximately 20 percent over 2010. He reported the Human Rights Commission and the Police Commission were sponsoring a Hates Crimes Conference in 2013 and the CRB had been asked to be involved in the event. He was working on the annual report. The office submitted surveys to complaints soliciting information after the review process was completed, but not many were returned. He was considering contracting with Community Mediation Services to follow up on the surveys.

## **IX. TRAINING TOPIC FOR FEBRUARY MEETING**

The Kids First Program managed from the District Attorney's (DA) office was tentatively scheduled for February 2012.

## **X. CASE SELECTION TOPIC FOR FEBRUARY MEETING**

Mr. Laue proposed that CRB members review the November and December closed cases to select a case for review in February. Following a brief discussion, he suggested prisoner release from the jail for medical reasons was a possible topic. This may be an issue for Ms. Conover to take to the Police Commission for policy review.

#### **XI. ADDITIONAL COMMENTS AND INFORMATION**

Ms. Conover said the Police Commission was reviewing vehicle pursuit and the Downtown Public Safety Zone at the January 15, 2012 meeting.

Councilor Brown explained the City Council process for reviewing Police Commission recommendations.

#### **XII. ADJOURN**

The next meeting was scheduled for February 14, 2012.

The meeting adjourned at 7:20 p.m.

*(Recorded by Linda Henry)*