

CITY OF EUGENE

Eugene Civilian Review Board Annual Report

2018



EUGENE CIVILIAN REVIEW BOARD 2018 ANNUAL REPORT

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Introduction

Ordinance 20374 which enables Eugene's Civilian Review Board, requires the Board to "...prepare and present an annual report to the city council that:

- (a) Summarizes the civilian review board's activities, findings and recommendations during the preceding year;
- (b) Assesses the performance of the police auditor...; and,
- (c) Evaluates the work of the auditor's office, including whether the office is functioning as intended." [ORD 20374; 2.246 (7)]

Eugene's Civilian Review Board (CRB) is designed to provide transparency and help ensure public confidence in the police complaint process. The Board evaluates the work of the independent Police Auditor, and reviews complaints to provide a community perspective about whether complaints are handled fairly and with due diligence.

This annual report contains a summary of the work that the Civilian Review Board (CRB) undertook in the year 2018. As set forth in the ordinance, case reviews and assessment of the police auditor and the auditor's office are included in the case summaries. As in years past, the bulk of this report centers around the cases reviewed by the CRB. While detailing the allegation, setting forth the issues discussed and outlining (briefly our discussions and findings) this report only touches on the work that we have put into our job.

Our meetings are open to the public and provide an opportunity to review the complaint process and hear input from members of our community. Discussing complaints in public allows the community to learn about the complaint intakes, classifications, investigations and determinations as they are discussed openly and critically. We are committed to maintaining the confidentiality of the involved parties. It also allows members of the public that have filed complaints to ask the board for review of their case at a future meeting.

In our reviews, full, open, and, at times, lively discussions have occurred. We hope that we have reflected the tenor of all parts of the community when we have these discussions. This means at times we have disagreed with findings, but we have attempted to the best of our abilities to be cordial and respectful of varying points of view. However, we must also be respectful of those who are not there whether it be the complainant or the officer of the alleged police misconduct in question. This requires a balance to the confidentiality to which we have all agreed to as a board member and the expectations of transparency in order for there to be public confidence in the system. This balance is an ongoing discussion of both procedure and performance. Our meetings are open to the public, yet rarely attended. We have detailed minutes, but some members expressed a preference for audio or video recordings.

We strive to balance the actions of an officer (performance) with the expectations of action of the officer (written policy). We believe that we have, as in years past, found a way to balance transparency with confidentiality. There was open discussion that remained respectful of individual personnel matters.

To this end, the Office of the Police Auditor (OPA) was integral in examining the issues at hand and in presenting the cases each month. As you will see in the case summaries and reviews set forth in this report we, the CRB, could not do our job as well as we do if it were not for the excellent work by Internal Affairs and the Police Auditor's office. The Auditor's Office and EPD saw about a 10% increase in complaints compared to 2017. We see no one variable that causes increases or decreases to occur; however, an approximately ten-year span shows complaint trends of 330-390 annually. Many of the complaints are customer service oriented. We are hopeful that with proposed increases in funding and staffing, EPD may be better able to address the customer service demands of our community.

In the spring of 2018, the City welcomed new Police Chief Chris Skinner. Chief Skinner engaged on several occasions with the CRB and we appreciate his energy, knowledge and abilities to move the Eugene Police Department forward in reaching the goals and objectives for 21st century police departments. We also appreciate the services of Interim Chief David James who served as Interim Chief after the departure of Chief Pete Kerns in early 2018.

Training and the use of body-worn cameras have improved the ability of Internal Affairs and the Auditor's office to more precisely see the events unfold in a situation where there is a question about an officer's conduct. Members of the CRB also watch the recordings and listen to the audio. Our reviews are improved by this technology. However, we are cautiously aware that the cameras record from a limited perspective (that of the officer). A person who believes that they were not treated properly is describing their experience from the opposite or adjacent perspective of the officer's camera.

This year we continued to see the benefits of the BlueTeam software program which allows for tracking of uses of force allowing both EPD and OPA the chance to know quickly when a use of force has been used and can be reviewed without delay or the need for a citizen complaint. This does require that the Auditor and Deputy Auditor review approximately 180-200 more incidents in addition to the complaints received. BlueTeam review and the accompanying report, plus the body-worn cameras enhance and provide clarity to the review process.

In addition to service complaints and case reviews, the CRB engages in continuous learning associated with police practices, civil rights, constitutional-based policing practices, and interactions with vulnerable communities. Just as each case brings forth a new issue, so too does the continuing learning by board members of community services that impact the job of the EPD. The efforts in continuous learning prove beneficial to the Board's overall approach to its mission by ensuring a comprehensive understanding of relevant processes and community factors influencing various decision makers and affected parties.

The Board also considers and discusses current policies and practices and whether revisions seem appropriate. These policy concerns are sent to the Police Commission and the Police Chief through the CRB's appointed representative to the Police Commission. We also welcome an observer from the Human Rights Commission, and as much as possible have a member who attends their monthly meeting.

The Auditor's office conducted outreach to the community through the work of staff. A community public safety forum entirely in the Spanish language is being organized in North Eugene for the Latinx community, for May 2019. In addition to members of the OPA staff, other community groups will table and provide information. Bilingual officers will be available to respond to questions and city officials from fire, emergency management and the Human Rights Office will also participate. An effort will be made to provide radio and internet broadcast of the event, so information can reach a broader audience. The CRB also invited a representative of the Latino community to discuss issues directly with the board in one of our training sessions.

We had departures of Chris Wig, Heather Marek and James Hargreaves from the Board which reduced the number of members to five. We expect to return to the seven-member board with the next City of Eugene Boards and Commissions cycle in early 2019.

We appreciate the support of the City Council, Mayor, the Office of the Police Auditor, the Eugene Police Department, the Eugene Police Employees Association and other community organizations over the past year. The members of the Board are proud to participate in a process that continues to evolve and allows the community to glimpse into the "whys" of police work and the officers present are able to hear comments from community members in a thoughtful, and we hope, helpful forum.

Sincerely,

Maurie Denner
2018 Board Chair

Steve McIntire, Esq.
2018 Board Vice-Chair

Civilian Review Board Members Serving in 2018

Current Members:

Steven McIntire is Vice President of Administration and General Counsel for SELCO Community Credit Union. He earned his B.S. in business from Linfield College and his law degree from the University of Oregon. He has served on numerous community boards; Oregon Eye Clinic Independent Review Board, Oregon State Board of Bar Examiners, and CASA among others.

Maurice A (Maurie) Denner lives in south Eugene and is a retired elementary principal. He has a BA in English and an MA in Education from the University of Oregon. Maurie is a graduate of the Eugene Citizen's Police Academy, served on the Chief's Forum under Chief Cooke; and he was an original appointee to the Police Commission. Maurie's interest in law enforcement grew out of work in Oakridge that established a Police in the Schools cooperative arrangement. Maurie retired from 4J in 2004 and worked part time for Looking Glass Youth and Family Services until February 2014.

Rick Roseta has practiced as a trial lawyer in Eugene for over 40 years. Most of his practice has included the defense of in malpractice cases brought against them. Early in his career he handled matters involving State, County and City police conduct. He has tried over 400 civil jury trials to conclusion. He has served as a Circuit Court Judge Pro Tempore, primarily handling cases in Lane County Juvenile Court. He currently serves on the Board of Volunteers in Medicine, a non-profit provider of health care for uninsured, underinsured and underserved members of the Eugene-Springfield community. Rick obtained his BS and JD degrees from the University of Oregon.

Carolyn Williams is a lifelong Eugene resident - aside from her service as a Peace Corps Volunteer teaching English in Azerbaijan. She is an educator who received her BA in English from Oregon State University and her MAT from Pacific University. Her focus and passion as an educator is cultural competency, as well as literature and history.

Lindsey Foltz is a Eugene native, returned after a few years in Central Oregon and 2 years of Peace Corps service in Bulgaria. She has experience working as a Human Rights Analyst for the City of Eugene, a small business owner and is currently a Graduate Employee at the University of Oregon completing her PhD in anthropology.

Past Members:

Chris Wig served for several meetings in 2018 but then moved to Springfield, Oregon, disqualifying him from membership on the CRB.

Heather Marek served for several meetings in 2018 but resigned to serve the Oregon Court of Appeals as a Law Clerk.

James Hargreaves served for several meetings in 2018 but resigned for personal issues.

Mission Statement

It is the mission of the Civilian Review Board to provide fair and impartial oversight and review of internal investigations conducted by the City of Eugene Police Department into allegations of police misconduct, use of force and other matters that have an impact on the community. The Board will strive to build trust and confidence within the community and to ensure that complaints are handled fairly, thoroughly and adjudicated reasonably. The Board will encourage community involvement and transparency in order to promote the principles of community policing in the City of Eugene.

2018 Overview

The CRB is required to meet four times a year. The CRB met eight times in 2018, all public meetings.

The Board (with the help of the Office of the Police Auditor) identified policy concerns and communicated such to the Police Commission and the Eugene Police Department. In 2018 our representative to the Police Commission, Steven McIntire, worked vigorously in providing policy recommendations to the Police Commission. Chairman Denner was our representative to the Human Rights Commission, providing valuable insight to the CRB on some of the concerns expressed by the Human Rights Commission related to policing issues.

Training

CRB members were polled to determine what training they wished to receive in 2018.

The CRB was involved in seven training sessions, as depicted below:

Training topics:

- Discussion of the Police Executive Research Forum (PERF) organizational evaluation of EPD.
- After action review of the first Public Safety Forum in Spanish organized by Beatriz Hernandez of the Auditor's Office held at Camino del Rio Elementary School in northwest Eugene.
- Training on EPD's new code of conduct policies and procedures.
- Requirements and policies on the State of Oregon's community care taking laws and statutes.
- Update on Oregon House Bill 2355 concerning all traffic and person stops to better identify issues surrounding racial profiling in stops and contacts.
- Presentation from Ms. Toby Rates, Executive Director of the Autism Society of Eugene.
- Presentation of the annual reports of the CRB and the Auditor's Office, respectively
- Oregon Public Records laws.
- Viewing and discussion of the film: "Under the Bridge: Criminalization of Homelessness."

We have an engaged and thoughtful civilian review board that invests considerable personal time to participate in and evaluate the police oversight processes in Eugene. They are the community's

representatives who analyze the internal administrative personnel processes of EPD and the external monitoring and complaint intake processes of the Auditor's office. The CRB continually strives to have open and transparent discussion of cases brought before it and provide policy and training recommendations within the confines of the Oregon Public Records Laws and the hundreds of exemptions that exist in Oregon Public Record law. The CRB consistently meets more than the minimum requirements of the ordinance. At most meetings, the entire board is present. The CRB must evaluate difficult personnel and policy issues that impact community members and sworn police personnel. They have been complimentary, critical, inquisitive and decisive. It is an honor and privilege to serve the community of Eugene. In 2018, Eugene's system of civilian oversight continued to evolve and develop. We look forward to continuing our work and we are committed to improving our processes in service of the community.

Case Review Summaries

In preparing for a case review, Board members have complete access to the Internal Affairs investigative file. These materials include call logs, correspondence, body-worn camera video, in-car videos and digitally recorded interviews of complainants, officers, witnesses and others with potentially relevant information.

Board members review file materials, the fact-finding report prepared by the Internal Affairs investigating officer, along with the Adjudication recommendations of the Auditor, the Supervisors and the Chief of Police. During our reviews, the IA investigator is available to answer questions about the complaint investigation. The Lieutenant who supervises Internal Affairs is also available to answer questions regarding department practices, policies and procedures.

The Board follows a case review process delineated in its Policies and Procedures Manual. The Board reviews each case by evaluating and commenting on the complaint handling through the following steps:

1. Auditor's case presentation.
2. Complaint intake and classification.
3. Complaint investigation and monitoring.
4. Relevant department policies and procedures.
5. Policy and/or training considerations.
6. Adjudication recommendations.

Civilian Review Board Case Summaries 2018

FEBRUARY CASE REVIEW: ALLEGATION OF OFF-DUTY MISCONDUCT

Summary of Facts

- The Auditor's office was contacted by a Reporting Party (RP), who complained that Officer A had engaged in a "road-rage" incident with him while off-duty and out of uniform.
- The incident occurred in Springfield. According to the RP, Officer A had approached the vehicle that RP was a passenger in, "pounded" on the window, and cursed and shouted at the driver, identifying himself as an EPD officer.
- RP stated that RP then exited the vehicle, and Officer A verbally confronted him.
- At some point, Officer A returned to his vehicle, and RP claimed that Officer A struck RP with his vehicle (at a slow rate of speed) as he left the scene.
- RP called 911 during the incident, and Officer A called the non-emergency line. Springfield Police responded and took a report. They did not issue citations or take enforcement action related to the incident.
- RP was evaluated at the scene by medics, but they did not transport him to the hospital. He visited the ER later in the day; ER personnel determined that he had no visible injuries or broken bones (though RP complained of pain and nausea).

Allegations

- 1) **Unbecoming Conduct:** Officer A was involved in an off-duty incident wherein he identified himself as a Eugene Police Officer. During the incident, Officer A conducted himself in a manner that reflected negatively, and brought discredit to, himself and the Eugene Police Department.

Recommended Adjudications

- 1) **Unbecoming Conduct**
 - Auditor's Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Sustained**
 - Chief: **Sustained**

Issues for the CRB:

- 1) **Intake and Classification**
 - A member mentioned another possible allegation; lack of judgment.
 - Another member mentioned unbecoming conduct was perceived as understated; and wished there was a more serious allegation.
 - Three members agreed with unbecoming conduct classification.
 - Two board members objected to how the situation was reported to the chain of command. Ms. Pitcher said policy required officers to report if they were arrested or indicted. Under current EPD policy, it was not required for officers to report contact with other police departments.
- 2) **Investigation and Monitoring**

- Most board members agreed the case was straightforward, thorough, and held all relevant information needed. Officer A admitted to his offense
 - A member wondered if there would be a different result had the Auditor's Office followed up with witnesses instead of EPD. Ms. Pitcher said ordinances allowed the auditor to participate in the investigation and explained IA witness interviews were done a little differently for each witness. A board member thought it was good to have a strong working relationship with IA.
- 3) **Relevant Department Policies and Practices**
- a. 1101.1.B.25 Unbecoming Conduct
- A member wished there was a policy where EPD officers had to report contact with outside agencies to their supervisors. The importance of holding people in power to a higher standard than civilians was also mentioned by another member.
 - A question was asked about policy for officers out of uniform and whether they were supposed to intervene in traffic violations when off duty. Ms. Pitcher stated that although not equipped, they may take action if a crime is committed in their presence or in an emergency.
 - A conversation was had about whether officers who were the subject in a case or investigation should tell their boss, and whether the expectation went against the notion of innocent until proven guilty.
 - Ms. Pitcher added that officers must obey all laws and they must immediately notify their supervisor if charged with a felony or a Class A misdemeanor.
- 4) **Policy and/or Training Considerations**
- The fact that Officer A felt he could not talk to his supervisor brought up a climate issue within EPD for a board member.
 - A board member felt there should be training for when, why, and how an officer should intervene.
 - A member recognized that reporting all involvement with law enforcement was a balancing act. It's important to manage officers and minimize risk, but they are also private citizens and not perfect.
 - Another board member still felt strongly about reporting, regardless of there being a charge. Without a specific policy requiring officers to inform supervisors, incidents could go under the radar for years.
- 5) **Adjudication Recommendations**
- CRB members agreed with the adjudication recommendations of sustained.
- 6) **Additional Comments or Concerns**
- The fact that Officer A admitted his mistake and expressed he learned from the situation was appreciated by a board member.
 - Officer A's actions of stepping out of the car continued to be questioned, since most people would simply honk. A comment was made that Officer A could not expect someone to believe he was an officer simply because he stated he was.
 - RP's inaccuracies were also mentioned, as well as EPD's neutral narrative on what happened.
 - Mr. Gissiner mentioned that Officer A not receiving a citation might be perceived as preferential treatment from SPD, though a board member wondered what he would be cited for.

- Members provided ideas for possible charges: such as disturbing the peace, or disorderly conduct and menacing. Ultimately, they conjectured that the Springfield city prosecutor would have trouble proving whether Officer A hit RP intentionally or pounded on his window.

MARCH CASE REVIEW: ALLEGATION OF UNSATISFACTORY PERFORMANCE DURING A WELFARE CHECK

Summary of Facts

- Officer A was dispatched to a welfare check of a person living in a garage. The witness reported that the person was not answering his phone. He also had previously expressed concerns about the other residents at the location, and that the other residents had left the location when they learned police were responding.
- Officer A looked through a pedestrian door leading to the garage. He saw a plastic swimming pool wrapped with bindings on top of a hand truck. He did not examine the pool, and briefly looked around the ground floor of the residence before clearing the scene.
- Three days later, EPD responded after a murder victim was found by a family member. The victim was found wrapped in the swimming pool. The investigation showed that the victim had been there during Officer A's welfare check.
- This complaint was internally reported, and the investigation was suspended until the homicide case was closed.
- Officer A stated in his interview that he felt he took necessary steps to conduct a welfare check and that he had received no information that led him to believe there was a violent crime victim at the scene.

Allegations

- 1) **Unsatisfactory Performance:** Officer A failed to take appropriate action when he was dispatched to this welfare check.

Recommended Adjudications

- 1) **Unsatisfactory Performance**
 - Auditor's Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Sustained**
 - Interim Director: **Sustained**

Issues for the CRB:

- 1) **Complaint Intake and Classification**
 - a. Internally reported classification: Allegation of Misconduct
 - Ms. Pitcher clarified that the complaint was submitted internally, and the matter was discussed with the employee as soon as it was discovered (even though the internal investigation was suspended pending the outcome of the related criminal investigation).
 - Board members agreed with the classification.

- A member asked why the internal investigation was put on hold pending the homicide investigation. Ms. Pitcher explained that doing both investigations simultaneously and repeatedly talking to witnesses could disrupt the criminal investigation.
 - A few members questioned why the case was being reviewed by the CRB since it appeared there was no threat to the public. Ms. Pitcher stated that this continued level of performance would potentially affect the community and that the main question was what the purpose of corrective action was, since the department could not impose any action without an investigation and due process.
 - A board member clarified that the supervising sergeant said the adjudication was not based on the pool and the body. The sergeant took issue that Officer A did not follow procedures they were taught with how to do a welfare check, including a walkthrough of the house.
 - Overall, the discussion had a lot to do with hind sight. Looking back, there were a lot of red flags; but when looking at the picture the officer took of the pool from where he saw it, the pool did not look like a body.
- 2) **Investigation and Monitoring**
- a. Investigation suspended during criminal investigation and prosecution.
 - A member stated that in order to illustrate what Officer A did and did not know, an interview with the person who made the telephone call would have been helpful to clarify those facts.
 - The thoroughness, speed, and strong interview questions of the investigation despite having a significant amount of time pass were commended by several members.
- 3) **Relevant Department Policies and Practices**
- a. 1101.1.B.9 Unsatisfactory Performance
 - A board member said thoroughness coaching was needed, but he was glad to hear there was some debrief closer to the incident than the final adjudication.
 - Another board member wondered if there was a welfare check policy or a command directive. He was told there was not. He then wondered if it was included in a training. A Sgt. added that welfare checks were just investigations, and officers were trained to investigate.
- 4) **Policy and/or Training Considerations**
- Lack of thoroughness (i.e. not checking upstairs and two other rooms on first floor) was a primary concern due to poor judgement.
 - A member asked whether Officer A would have been trained on welfare checks and investigations at the Department of Public Safety Standards and Trainings (DPSST). The IA Lt. confirmed it would take place at the regional academy and that they would also be assigned a training officer who would be with the officer in training for four months at EPD.
- 5) **Adjudication Recommendations**
- CRB members were satisfied with the adjudication.
- 6) **Additional Comments/Concerns**
- A board member mentioned how in hind sight situations were always 20/20. He stated that looking at the photos himself, he would not have known there was a body. He was glad there was concern aside from just finding the body, since he understood how it could have happened.

APRIL CASE REVIEWS: INCIDENT REVIEWS AND INQUIRIES

(Comment: Service and Policy Complaints, Incident Reviews and Inquiries filed with the Auditor's Office or EPD are classified by the Auditor and reviewed by direct supervisors and approved by command staff. The Auditor's Office reviews the final supervisor memos and notifies the complainant of the outcome. Annually, the CRB reviews a selection of Service Complaints.)

Complaint #1: Incident Review

- Reporting Party contacted the Auditor's Office after he was denied access to his grandson while the child was at the hospital. The Reporting Party (RP) stated that an EPD officer denied him access despite a valid power of attorney form that the RP has related to the grandson's medical care. The RP also complained that the child was released to foster care rather than to his care following treatment.
- Internal Affairs reviewed the Body-Worn Video, related police reports, and the RP's paperwork. IA's investigation showed that the child had been admitted and transported to a different hospital, which was why the RP was unable to visit the child at the hospital.
- The involved officer investigated the incident as child neglect, and therefore DHS was contacted. DHS was the decision maker regarding placement of the child following treatment, not EPD.
- The investigator attempted to contact the RP, but was unsuccessful, and the complaint was closed.

Decision making:

Most board members agreed that the officer treated the grandfather in a respectful manner and made a reasonable attempt to explain the situation. Ms. Pitcher noted that in child neglect cases, officers are sometimes unsure of whose care the child should be in, so she could understand them being hesitant to give out information when they could only rely on what people were telling them. Members discussed the protocols for when incidents involve DHS and how the university district hospital staff took the lead in the situation.

Complaint #2: Inquiry

- A supervisor observed an injury on a CAHOOTS employee; the supervisor learned that the employee had been the victim of an assault (suspected to be a bias crime) and that the employee had concerns about how the incident was handled by responding EPD employees.
- The supervisor entered the incident in BlueTeam; it was classified as an Inquiry and forwarded to the EPD employees' supervisor for follow up. That supervisor reviewed body camera footage of the investigation, reviewed police reports, spoke to the involved employees, and then contacted the RP with his findings.
- The supervisor found that the employees had not violated policy with their investigation, and that their determination that the incident was mutual combat, rather than a bias crime, was not inappropriate. However, the supervisor found that some of the employees had misled the RP regarding the outcome of the investigation, which was "unnecessary and ... counterproductive." The involved employees were coached on that point.

Decision making:

There was a general consensus from board members of the miscommunication in this case, despite not being in violation of policy. The ability to view body-worn camera video helped members understand the incident and easily identify which statements were true or not true.

Mr. Gissiner pointed out there were four officers tied up in the case, which was an example of where police departments could possibly be re-engineered and some members agreed. The extremely well-written memo from a new sergeant was also commended by a member.

Complaint #3: Incident Review

- RP called the Auditor's Office and stated that an EPD employee had shoved his son during a walk out at his son's school. RP was also upset at the EPD employee's tone and language towards his son (i.e., threatening arrest).
- The complaint was forwarded to a supervisor for follow up. The supervisor reviewed body-worn video from the employees who were present, as well as the related dispatch records. The supervisor also spoke with the principal of the school, who gave some background information on the incident.
- The supervisor reviewed his findings with the Auditor, who agreed that there was no evidence of a policy violation. The Auditor contacted the RP, and the complaint was closed.

Decision making:

The majority of board members thought the situation was handled well by the officer, considering it could have escalated quickly. A discussion about school policies took place, and members learned the officer was likely not involved in the decision to not let the student back in. School protest policy states that doors can be locked, and children can return inside once they are calm and ready to have a discussion, therefore, the officer was only following the school's decision. A board member mentioned the need for school resource officers and how he liked the separation of forces.

Complaint #4: Inquiry

- RP contacted the Auditor's Office with a complaint that EPD employees had taken her to the hospital on a mental health hold. She felt that the way they treated her was abusive and that they used excessive force during the contact.
- The preliminary investigation included review of body-worn video of the contact.
- The preliminary investigation showed that the officers had not violated policy and had acted within their obligation under Oregon's community caretaking statute to take RP to the hospital.
- The Auditor's office contacted the RP with their findings, and the case was dismissed (no policy violation) and closed.

Decision making:

A board member agreed that there was no policy violation. She expressed appreciations for how Mr. Gissiner addressed the woman in his letter – he showed a lot of empathy and respect. Another member echoed that body cameras were helpful since if someone were to only hear the audio, they would have thought she was being hurt. The officers were doing a good job of keeping her from hurting herself and them. While not a criticism of EPD, Mr. Gissiner stated that the call was held for 16 minutes and took another 8 for officers to show up, which was a bit too long. A member stated it didn't seem right to involuntarily take RP to the hospital and leaving her with

the bill, while another member agreed but pointed out the situation could have turned potentially dangerous. A member stated that EPD far exceeded national best practices in terms of handling crisis situations and that he had a lot of empathy for the workers of CAHOOTS and the officers in the scenario.

Complaint #5: Inquiry

- Two EPD employees arrested the RP on a warrant. The RP complained to a supervisor that one of the employees poked a wound on his wrist with the handcuff point.
- The supervisor spoke with the the RP and the involved employee. He also looked at the wound on the RP's wrist.
- The employee stated that he had not noticed the wound until he moved a bracelet on the RP's wrist and that he had not intended to poke the wound. The supervisor observed that the scab on the RP's wrist was intact.
- The supervisor took photos of the RP and his wrist and entered the complaint into BlueTeam.
- Our office reviewed the complaint and closed it as handled by the supervisor.

Decision making:

Members thought the case was handled well and appreciated seeing what it looked like when everyone did the right thing. The officers documented the wound, because if it had been poked, the situation could be seen as use of force. The supervisor also took the extra step to be prepared for review, which was appreciated. A board member commented it was helpful to sample service cases and see how they are being handled by the chain of command. It was why the public demanded an auditor and a review board years ago; it was good to see some day to day activities.

MAY CASE REVIEW: ALLEGATIONS OF EXCESSIVE FORCE, DISCOURTESY, AND UNCONSTITUTIONAL ARREST

Summary of Facts

- Officer A witnessed a man push a woman to the ground in a parking lot. Officer A contacted the woman (Reporting Party 2) while other officers detained the man.
- Reporting Party 2 (RP 2) tried to walk away from Officer A and stated that she had fallen.
- Officer A ultimately informed her that he was investigating something, and she was not free to go; he also instructed her to sit on a nearby curb.
- Officer A asked RP 2 for her name several times; he later switched to asking for her ID. RP 2 accused the officer of pushing her.
- Reporting Party 1 (RP 1) approached the scene and was stopped by Officer B.
- Eventually, Officer A told RP 2 to shut up. He then stated, "Give me your ID, or you'll be arrested for interfering." He repeated this statement and then grabbed RP 2's wrists and ultimately placed her in handcuffs.
- Officer A continued to ask for RP 2's name and reiterated that if she did not give him her name, she would go to the jail and be arrested for interfering.
- Officer A placed RP 2 in the back of his patrol car. Someone on scene offered to help her with her shoe, and Officer A stated "No, she didn't have to take it off."
- Officer A asked RP 2 about weapons or contraband, and then asked if she wasn't going to answer him. She stated that she did not understand English. Officer A responded: "Yes you do, you answered tons of questions that I asked you in English." RP 2 later asked Officer A if she could

ask him a question. Officer A replied: “You can’t ask me anything if you don’t understand English, right?”

- RP 2 was eventually taken to the jail and lodged for interfering.
- Meanwhile, Officer B was interacting with RP 1. She was asking what was happening, and he initially attempted to explain, but the conversation was not constructive. Officer B ordered RP 1 to walk away, and she replied that she wouldn’t.
- As RP 2 was being taken into custody, RP 1 began yelling and telling the officers to stop. Officer B told her to stop and stated that she was interfering with the police.
- RP 1 moved towards Officer B’s right side. She stated: “Don’t touch me” and Officer B repeated his order for her to walk away. Officer B then began to physically move her away from the location of the arrest (which appeared to be approximately 5 feet behind him).
- Officer B and RP 1 moved together approximately 15 feet (with RP 1 moving backwards), at which point Officer B pushed RP1 and she fell backwards.
- RP 1 was eventually cited for interfering.
- A supervisor was called to the scene to intake the Reporting Parties’ complaints.
- The interfering charge was dismissed within 24 hours.
- The woman also came to the Auditor’s Office, where we conducted another intake interview.

Allegations

Officer A:

- 1) **Courtesy:** that Officer A was discourteous to Reporting Party 2 during her detainment and arrest.
- 2) **Search and Seizure** – that Officer A violated Reporting Party 2’s constitutional rights when he arrested her and lodged her at the jail.

Officer B:

- 1) **Use of Force** – that Officer B used excessive force when he pushed Reporting Party 1.

Recommended Adjudications

Officer A

- 1) **Courtesy**
 - Auditor’s Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Within Policy**
 - Interim Director: **Sustained**
- 2) **Search and Seizure (changed to Constitutional Rights)**
 - Auditor’s Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Within Policy**
 - Interim Director: **Sustained**

Officer B

- 1) **Use of Force**
 - Auditor’s Office recommendation: **Within Policy**
 - EPD chain of command recommendation: **Within Policy**
 - Interim Director: **Within Policy**

Issues for the CRB:

Officer A:

1) **Intake and Classification**

a. **Classification:** Allegation of Misconduct

- A board member did not have concerns about intake and classification; however, she was curious about search and seizure policy and if it was adequate. Ms. Pitcher recalled search and seizure policy discussed seizure of persons as well as things, but the policy focused a lot on whether there was a search warrant and seizure of items. To her, the constitutional rights policy seemed more applicable for seizure of people. Additionally, she thought wording could be improved within the section around constitutional rights.
- A member had an issue with intake, and said the situation started as an event that should have been entered into BlueTeam because there was report of an injury. The report was not taken or not submitted by the supervisor; however, he believed the issue was dealt with. Then, the summary dismissed allegations against both officers as unfounded and was approved by a lieutenant and captain. Another said he didn't know enough about internal processes, but he agreed and was struck that the case made it all the way to the acting chief before anyone caught it.
- Clarification was asked on when to enter something into BlueTeam and Mr. Gissiner said use of force and claimed racial profiling were automatically entered. The board member clarified the reporting party complained about hitting her head.
- A board member said intake and classification did not occur at the supervisor level where he believed it should have. Ms. Pitcher said there was discussion around whether the sergeant's actions should be addressed as a performance issue or misconduct.
- A member said the case was classified as a search and seizure, but it was an arrest case. He thought the analysis concerning the search and seizure was unhelpful. Another member said stops and arrests were technically search and seizure cases for seizure of a person and clarified the constitution protected people from unreasonable arrest. The first board member said to him search and seizure meant the ability to go look for and take something as evidence. The other member agreed but clarified there were two different types of seizure. Mr. Gissiner said the two areas were blended in the policy manual when they should have been bifurcated.
- Ms. Pitcher said there were multiple policies that could have been relevant. To her, a search and seizure policy should include arrests. Current EPD search and seizure policy focused on items and did not really address arrest. There was a separate arrest policy, but again, Ms. Pitcher found wording problematic. Ms. Pitcher thought the blanket constitutional rights provision seemed more applicable. A board member said for purposes related to the court, search and seizure protected individuals from evidence wrongly seized.
- Several members agreed that it did not matter as much what the classification was, because it was clear something was handled inappropriately and there was a gray area (possible unlawful arrest).

2) **Investigation and Monitoring**

- Members mentioned how there were lots of reports from various people, and how the IA Sergeant did a good job of organizing facts.
- The sergeant's report was initially rejected from the Chief; within a week, Ms. Pitcher's memo was delivered and gave legal framework to the case. A board member did not have a problem with what IA did, but thought it was enhanced with Ms. Pitcher's analysis.

- A board member thought the Auditor’s Office handled the case well. She liked the analysis and shared that even after being a member on CRB for a while, she was still learning how internal investigations worked.

3) **Relevant Department Policies and Procedures**

- a. 1101.1.B.7 Courtesy
- b. 322 Search and Seizure
- c. 1101.1.B.6 Constitutional Rights
 - A board member said there was an accusation against Officer A of not being courteous. With respect to search and seizure, the policy was fairly straightforward. Mr. Gissiner said he thought there was an opportunity to tighten the search and seizure policy, and a member suggested discussing the policy at Police Commission.
 - A member thought policies and practices seemed inconsistent, when compared to the similar April 2018 case. She noted in that case, the report said alcohol could heighten emotions, so they removed a female from a potentially dangerous situation and she wondered why police officers did not do same thing for RP2 in this case. She pointed out a memo from January 25, 2018, that said constitutional rights would have been a more relevant policy. Ms. Pitcher explained it was up to the Chief whether they wanted to change the original policy violation listed or not.
 - Another member thought she understood the issue with the search and seizure policy, but she also thought it fit with the case. Another member agreed with Ms. Pitcher and thought an important distinction was that the situation started out as detaining a victim/witness to get information and was not seizure at that point. The police had a right to temporarily detain someone to get information, and that was different than seizing them. The member thought Ms. Pitcher provided a proper constitutional analysis.

4) **Policy and/or Training Considerations**

- Ms. Pitcher’s memo recommended a training on legal developments around what constitutes interference; something that a board member thought was a good idea. She was concerned about the way Officer A spoke about the altercation between RP 2 and the man; he seemed to have a mindset that as a victim of violence, RP 2 was a suspect of criminal activity simply because she was involved in the incident. She added it was particularly important when interacting with folks who may be immigrants and thought that competency training on domestic violence and immigrants would be beneficial.
- Another member stated that after reviewing the case, he came away from the situation with a sense that Officers A and B did not understand the law around interference or around disorderly conduct. As Ms. Pitcher pointed out in her memo, the Oregon Supreme Court made it clear that people cannot interfere by being resistive to officer’s inquiries. It took a physical action to actually interfere with what an officer was doing. RP 2 clearly did not fall into the category that Officer A was trying to put her into, and she also clearly did not fall into disorderly conduct either. There were specific requirements, and her actions were not close to statute. He thought both officers were completely off base, and that led him to question whether EPD as a whole understood what the statutes required. He got the sense the policies were catchalls when something happened. The laws were not catchalls – they had very specific requirements, which RP2 did not meet. There was need for training around those particular statutes.

5) Adjudication Recommendations

- A board member thought the adjudications came out correct, but the way EPD reached them was unfair to the citizens and the officer who made a mistake in the field.
- Another member said context was important; the case law was meant to protect defendants. He disagreed with the use of the case law to indict police officers for the actions in the field, when what they were doing in cases was trying to protect the defendant.
- He cited the State of Oregon v. McNally Case (2017) and said passive resistance was decided by juries, not officers. He thought for the CRB to consider whether passive resistance should be considered by police officers was an inappropriate use of the CRB powers. In addition, he had issue with whether or not the CRB should talk to the city prosecutor about why she did not file charges. What should be taken into consideration was what the officer knew at the time, and what he thought happened that night. He added the Chief did not consider the case in context; cases cited in the adjudication all regarded traffic stops. He vehemently disagreed with the Chief's adjudication, and respectfully disagreed with Ms. Pitcher's analysis that there was a violation.
- Ms. Pitcher had a similar concern around State of Oregon v. McNally (2017) when writing her analysis. Her central concern was she would not look at the case and see probable cause for interfering. A board member pointed out she was not a reasonable police officer, and did not think she could substitute her judgment.
- A member said the Police Auditor and the CRB had a role to look at conduct and help the department do a job day to day. He asked the other board member what type of analysis they should do and what would be helpful to the department. The other board member said criticism of the police officer for what he thought was a reasonable arrest wasn't helpful, as it was a question that should be decided by a court. Another board member disagreed and believed one thing officers were expected to do was to have substantial knowledge of law and what constitutes various offenses while they were doing their job.
- A board member commented that juries decided facts, but what constituted reasonable suspicion or probable cause was a question of law. She said what could constitute interfering with a police officer was a question of law as well, not only the jury. She commented that even though these kinds of cases came up in motion to suppress evidence, search and seizure was only one way to vindicate evidence.

Officer B complaint:

There was a question on the use of force, because, as Officer B approached RP1, she put out her hand and touched him on the vest. He swept her hand away, put his hands on her shoulders, and she fell to the ground, which brought use of force into the case.

1) Intake and Classification

a. Classification: Allegation of Misconduct

- CRB members thought intake and classification was done appropriately

2) Investigation and Monitoring

- A board member thought investigation and monitoring was done well. She said RP1 went to urgent care and had a concussion, so she thought good follow up was done.

3) Relevant Department Policies and Procedures

- 800 Use of Force
 - Several members mentioned it being a close call. It did not look like Officer B intentionally pushed RP to ground, but he wondered if it was necessary to push her so hard. Another member said he was likely trying to create space for conflict.
- 4) **Policy and/or Training Considerations**
- It was reiterated that it appeared neither officer knew the statutes. Everyone on the board thought it was a training issue.
- 5) **Adjudication Recommendations**
- A member concurred there was insufficient evidence, since it was not apparent in the video that there was a safety risk by RP1. She wasn't surprised the woman had a concussion because she was pushed hard. She did not think the excuse of officers being hurt in the same parking lot before was a valid excuse.
 - Another member felt RP1 overstepped her bounds and may have given up some protections she would have had if she had been compliant.
 - The reiteration of Monday morning quarterbacking at several meetings was brought up by another member. She added she had no qualms with Monday morning quarterbacking, as it was part of the responsibility of CRB. She tried to understand the police perspective but did not think CRB members were ultimately trying to put themselves in the officers' shoes.
 - A board member said that in the past, the CRB discussed the importance of immigrant communities being comfortable with police. Prior in the meeting, she brought up a couple issues around domestic violence and why someone may not want to approach police, but she also thought it was important to think about other reasons why someone may not want to cooperate, such as immigration status. For individuals with different citizenships, it could have much different consequences. Rather than a criminal record, it could be deportation. She thought those were important things to be mindful of when officers were interacting with people in order for police to be most effective and for community members to view them as a resource instead of a threat.

SEPTEMBER CASE REVIEW: ALLEGATIONS OF UNSATISFACTORY PERFORMANCE AND UNTRUTHFULNESS

Summary of Facts

- Supervisor A was acting as watch commander when an incident occurred that was later determined to be an out-of-policy pursuit. Supervisor A, listening to the incident over the radio, believed as it was occurring that it was a failure to yield. As they did not believe it to be outside of policy, they did not terminate the pursuit.
- Supervisor A informed Supervisor B (higher on the chain of command) of the incident as soon as it was over. Supervisor B told Supervisor A to run the incident by the Emergency Vehicle Operations Supervisor (EVOC), (Supervisor G). Supervisor B did not ask them to enter the incident in BlueTeam.
- Supervisor A met with Supervisor G later that day; they looked at radio traffic and dispatch records. ICV was not yet available.

- Three weeks later, Supervisor B emailed Supervisor A and directed them to enter the incident into BlueTeam as a pursuit. Supervisor A did so. Supervisor A stated in that BlueTeam entry that they had not watched the ICV.
- Approximately six weeks after the BlueTeam entry, Supervisor B initiated this investigation into Supervisor A.

Allegations:

- 1) **Unsatisfactory Performance:** that Supervisor A failed to recognize the involved incident as a pursuit.
- 2) **Unsatisfactory Performance:** that Supervisor A misrepresented the purpose and scope of Supervisor B's request that Supervisor G review the incident, and further misrepresented Supervisor G's assessment when entering the incident into BlueTeam.

During the investigation, the following allegation was added:

- 3) **Truthfulness:** that Supervisor A was untruthful during the administrative interview when they reported that they did not watch Officer H's ICV recording prior to entering the incident into BlueTeam.

Mr. Gissiner provided commentary on why CRB is involved in this case, noting that the case must be classified if it is to be investigated. He also said that truthfulness is a very serious allegation.

Recommended Adjudications:

- 1) **Unsatisfactory Performance:** incident was an out of policy pursuit.
 - EPD chain of command recommendation: **Sustained**.
 - Auditor's Office recommendation: **Sustained**, but not with wording of the allegation as is.
 - Chief of Police: **Sustained** (but did not address language change).
- 2) **Unsatisfactory Performance:** communication with and regarding Supervisor G's review.
 - EPD chain of command recommendation: **Sustained**
 - Auditor's Office recommendation: **Unfounded**
 - Chief: **Sustained**
- 3) **Truthfulness**
 - EPD chain of command recommendation: **Insufficient Evidence**
 - Auditor's Office recommendation: **Insufficient Evidence**
 - Interim Director: **Insufficient Evidence**

Issues for the CRB:

- 1) **Intake and Classification**
 - a. Internally reported and initiated by Supervisor B
 - b. **Classification: Allegation of Misconduct**
 - A board member clarified the incident was internally reported. Mr. Gissiner stated the first and second allegations were written by Supervisor B, but he can't confirm they wrote the last report.
 - Several members expressed difficulty plugging the facts into the allegations. They inquired as to whether there was a template or guidance on determining an allegation, to which Mr. Gissiner responded that he had no involvement in writing the allegations

since it was an internally-reported complaint that caused no harm to the public property/persons.

- Another member noted that there is not a policy that requires an officer to recognize a vehicle pursuit. He said there is not enough evidence to sustain based on how the allegation was written. Mr. Gissiner stated that the officer had provided cryptic information to the watch commander, who made the decision to not name it a pursuit, at that time.
- Someone asked if a watch commander can see ICV in real time and Mr. Gissiner replied that they cannot.
- A board member said that in listening to the audio for the first allegation, it seemed like a reasonable decision, given the information at the time. He stated the first allegation could have been failure to follow 814 Vehicle Pursuit Policy. The second allegation was a failure to communicate. He explained that both Supervisors A and B left the initial meeting misunderstanding each other completely that it did not seem like either attempted to clarify what was expected.

2) **Investigation and Monitoring**

- Members commended the IA sergeant in putting the information together, despite the amount of people involved and interviewed, especially given the delay in starting the process.
- A board member also agreed it was a very good investigation. He added that it seemed like the investigator allowed Supervisor B to become too much of an advocate, which was inappropriate.
- Another member said that it was good the Auditor's Office got this case to the CRB quickly, given the complexities.

3) **Relevant Department Policies and Procedures**

- a. 1101.1.B.9 Unsatisfactory Performance
 - b. 1101.1.B.29 Truthfulness
 - c. 407 Watch Commander
 - d. 814 Vehicle Pursuit Policy
- A board member said that there is an opportunity to clarify the chain of events on the training of the Vehicle Pursuit Policy. He noted that an officer who has since retired was contacted as part of the investigation and they supported Supervisor A on how the policy was interpreted. He explained that since there was difference in the interpretation of the policy, there is opportunity for clarity.
 - The IA Lt. said that EPD doesn't allow pursuit of property crimes for non-violent offenders. She explained that Supervisor A did not get all the information from the officer and made an initial decision based on that limited information. After that, Supervisors A and B had a conversation and they disagreed on the policy.
 - The IA Lt. shared that the in-car video is available when the car docks. She said it should have been reviewed if Supervisor A had looked at video.
 - A member asked if there is a policy to review ICV in this situation and the IA Lt. answered that the policy is to review everything in BlueTeam. However, this incident wasn't entered in BlueTeam at the time.
 - Another member said that it seemed like a failure to conduct the after-action event. He explained that there is a purpose in a supervisor being able to call on or off a pursuit. He stated that supervisors should recognize when coaching is required.

4) **Policy and/or Training Considerations**

- Members agreed that this case provided an opportunity to look at how EPD prepares and designates people into supervisory roles. A board member stated that someone familiar with the watch commander role was interviewed and asked about what training was required, and that they answered it was mainly based on experience, and very little training. He noted that this was a case in which someone was underprepared for the role they were given.
- Trainings for both Supervisors were suggested, including trainings on leadership, watch commander role, vehicle pursuits, and BlueTeam.
- A member asked who could make a request for EVOC to do a pursuit review when staff enter something into BlueTeam. An IA Analyst replied that any supervisor can request an EVOC supervisor to look at something and give an opinion. She added that it can be done informally before it goes to BlueTeam and that informal discussions happen routinely.
- The analyst added that the pursuit policy does say that a supervisor should enter it and the EVOC supervisor should review it through BlueTeam. She explained that the question here was that it hadn't been entered as a pursuit yet.

5) **Adjudication Recommendations**

- A board member felt the first allegation asked the wrong question and found it unfounded. The second allegation was a communication breakdown and ambiguous instruction. He stated that it did not rise to the level of misrepresentation; he found it unfounded. In the third allegation, he found insufficient evidence. He explained that there was no concrete evidence, just speculation.
- Another member agreed with the above-mentioned board member. He said there would have been other allegations associated with the first one, but they were not stated. The use of untruthfulness was also questioned, given how serious the allegation was.
- A member felt it was the responsibility of Supervisor A to know when to punish or coach and that coaching may have led to a different attitude and outcome. He concluded that a higher level of leadership is needed up the chain of command and that this case felt borderline vindictive.

6) **Additional Comments or Concerns**

- A board member noted that this case went down a path that was unnecessary and another member thanked the investigators for their professional analysis.
- Mr. Gissiner stated that he typically tries to keep a distance from internal investigations. He asked the CRB their opinion on his involvement when allegations are poorly written.

OCTOBER CASE REVIEW: ALLEGATION OF DISPARATE TREATMENT, LACK OF KNOWLEDGE OF THE LAW, AND UNSATISFACTORY PERFORMANCE BY AN EPD SUPERVISOR

Summary of Facts

- Supervisor A responded, along with several officers, to a call reporting a fight in the street. Supervisor D (an employee from another agency) was first to arrive on the scene. He saw several people pointing at Reporting Party and observed a second male nearby who was bleeding from his head. Supervisor D detained RP in handcuffs before EPD employees arrived.

- The investigation on scene established that the RP had been trespassing on private property when he was confronted by Involved Party E, who was clearly intoxicated and visiting the location.
- Involved Party E and the RP exchanged words, and at some point RP threw trash on the ground of the common area of the apartment complex. Involved Party E exited the apartment and chased RP as RP attempted to flee on a bicycle.
- Involved Party E caught up to RP and assaulted him, a short distance from the initial location. E also threw RP's bicycle to the ground, damaging it.
- RP and E both sustained injuries from the incident.
- Crisis Assistance Helping Out On The Streets (CAHOOTS) treated E at the scene, but the RP was not.
- RP repeatedly asked for medical attention, but Supervisor A denied it. The RP complained of back, neck, and hand injuries. The RP was told to leave the area and walk to the hospital if he needed treatment.
- Because the RP was trespassing at the time he encountered E, Supervisor A decided to release both subjects without enforcement action. Supervisor A directed employees not to complete a police report.
- The RP went to the Auditor's Office to complain of his treatment from Supervisor A. The RP's medical records showed that he was treated for finger fracture, finger sprain, and a suspected concussion.

Allegations

- 1) **Unsatisfactory Performance:** that Supervisor A refused to summon medical attention to an involved party after a fight.
- 2) **Professional Police Contacts:** that Supervisor A failed to take law enforcement action based on the homeless status of the victim.
- 3) **Unsatisfactory Performance (Knowledge of the Law):** that Supervisor A failed to accurately interpret ORS 161.225 (Physical Force in Defense of Premises).

Adjudication Recommendations:

- 1) **Unsatisfactory Performance:**
 - Auditor's Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Sustained**
 - Chief of Police: **Sustained**
- 2) **Professional Police Contacts**
 - Auditor's Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Unfounded**
 - Chief: **Unfounded**
- 3) **Unsatisfactory Performance (Knowledge of the Law)**
 - Auditor's Office recommendation: **Sustained**
 - EPD chain of command recommendation: **Unfounded**
 - Chief: **Sustained**

During the adjudication process, the Chief added (and sustained)

- 4) **Unsatisfactory Performance** – that Supervisor A failed to conform to the standards of his rank in ensuring a thorough and fair investigation of the involved incident.

Issues for CRB

1) Complaint Intake and Classification

a. Classification: Allegation of Misconduct

- A board member expressed that he would like to see a lack of courteous behavior added as a type of allegation.
- A second member voiced he had no problem with the allegations and the way they were assigned. He noted that this case brought up a reoccurring question about what a supervisor is supposed to do, and he thought the Police Chief reaffirmed that more was expected from a supervisor.
- Someone noted that the fourth allegation cleared up things that were difficult to get into with the second allegation and wondered if there was a protocol review being done by the Chief. Mr. Gissiner stated that the Chief is still learning nuances to this system and felt as though the second allegation was a strong indictment of Supervisor A's behavior.
- A question was made about a formalized way to add a fourth allegation and Mr. Gissiner replied that he did not know if it would be formalized. He added that there was no union to challenge the addition of a fourth allegation in this case because it involved a supervisor.
- A board member asked if there had been an in-service on S.T.O.P.'s and the IA Lt. confirmed that there had been.

2) Investigation and Monitoring

- A member mentioned he thought some of the questions in the investigation went beyond objective fact-finding and put the supporting officer in an awkward position to answer questions about a supervisor.
- There was also concern that there was not an effort to investigate where the conflict took place, which person struck the first blow, and how much time had transpired. A member suggested that a better investigation could have been done by the supervisor on the scene and noted that there was no attempt to identify witnesses.
- Mr. Gissiner replied that there was no investigation, which is why no witnesses were contacted. He added that once Supervisor A determined that Party E did not cause the cut on RP's face, Supervisor A made the decision not to investigate.
- A board member stated that UO Police should be required to have body-worn cameras, and any police in the City of Eugene should have to go through an auditor's process.
- A suggestion was made that instead of asking someone directly if they were biased, they be asked open-ended questions. The board member explained that there was other evidence of biased treatment, but the phrasing of the interview questions was not helpful. She highlighted that S.T.O.P.'s policy does not include protections for homeless people because homelessness is not a protected class.
- Mr. Gissiner was asked if it was protected in Eugene's ordinance. A member replied that socio-economic status and homelessness are not protected, but source of income is. She added that bias against homeless people is something the city tracks, but that there are no additional criminal charges added in such cases.

3) Relevant Department Policies and Procedures

- A suggested good practice would be for officers to tell CAHOOTS about all injured people when they arrive.
- A member wondered how to contextualize the call volume referenced in the investigation given that it was used as a rationale for how Supervisor A handled the situation. She asked if the call volume was considered in the investigation and the IA sergeant replied that it was considered.

4) **Policy and/or Training Considerations**

- A board member wondered if the RP was treated unequally because they were homeless or because they had difficulty communicating and paying attention. He asked if there was a policy about people who have trouble communicating and Mr. Gissiner replied he had not seen a training specific to difficulty communicating, but he believed it was clear in this case that there was a neurological disorder.
- A member agreed that it was clear there was a neurological disorder but felt as though the different treatment became clear when Party E admitted to the assault and was then treated differently.
- A statement was made about the amount of force available to both sides and how it changed as time went on, which made it difficult to critique Supervisor A. Supervisor A made the decision to clear everyone from the scene, which is why not everything is known about this case. After reviewing the whole sequence in terms of credibility, Mr. Gissiner felt that RP was very credible.
- Another member wondered what the minimum requirements of investigations were, including the expectations of someone taking over a scene and filing a report. He questioned whether there was confusion between the supervisor and officer about who would file a report, and who had the authority to determine what constituted mutual combat. They then referred to the fact that Supervisor A had said RP was not in custody even though RP was in handcuffs.
- Mr. Gissiner stated that Chief Skinner recognized this as an issue as well, and that this particular case showed a new supervisor put in during a busy time without proper training.

5) **Adjudication Recommendations**

- A board member appreciated the Police Chief adding a fourth allegation since she felt dissatisfied that it was not determined RP was treated differently because of their homeless status. She highlighted they were detained, not allowed to press charges, and the language used by others that characterized unhoused people as dangerous. She would rather the second allegation say there was insufficient evidence than unfounded.
- Another member thought saying that Supervisor A refused medical attention was not accurate, and that it should instead say they failed to provide medical attention. He agreed with the Auditor that the second allegation was not based on homeless status but was instead based on RP's inability to communicate. He noted that Supervisor A should have delegated responsibility to other officers to investigate what happened.
- Yet another member sustained the first allegation. He agreed that the second allegation lacked sufficient evidence and stated that Supervisor A was clearly discourteous.

NOVEMBER CASE REVIEW: ALLEGATION OF EXCESSIVE FORCE RELATED TO USE OF OC SPRAY

Summary of Facts:

- Officer A responded to a report of a suspect who had allegedly broken into a vehicle and stolen a phone. The victim was following the suspect and had called it in.
- Officer A found the involved subjects – the suspect, followed by the victim and a witness – and exited his patrol vehicle. Officer A stated that he ordered the suspect to stop walking and sit on the ground. The suspect did not immediately do so, and Officer A pulled his OC spray from its holder and sprayed the suspect.
- The incident was captured on body-worn video, but given how quickly the incident evolved, the camera only captured video (no audio).
- Officer A's sergeant and lieutenant reviewed the incident (per the use of force reporting policy) and determined that it was within policy. The captain believed the use of force was possibly outside of policy, and this investigation was opened into the incident.

Allegations:

- 1) **803 Oleoresin Capsicum Aerosol:** that Officer A's use of OC spray against the suspect was outside of policy.

Recommended Adjudications:

- 1) **OC Spray:**
 - EPD chain of command recommendation: **Within Policy**
 - Auditor's Office recommendation: **Within Policy**
 - Chief of Police: **Within Policy**

Issues for CRB:

- 1) **Intake and Classification**
 - a. Internally reported
 - b. **Classification:** Allegation of Misconduct
 - All board members thought the classification seemed appropriate.
 - A member said the case was timely, in regard to the discussion at Police Commission. In the case at hand, Officer A announced the intent to use pepper spray and the subject didn't appear responsive. He didn't have trouble with the classification, but it raised the question of when use of force began.
- 2) **Investigation and Monitoring**
 - The use of body-worn cameras and how they simplified the oversight process was mentioned, though members wished there was also audio. The angles of the camera, however, allowed members to see everything the officer was doing, which seemed to line up with the officer's testimony.
 - The IA Lt. added Officer A was late in activating the video; he should have hit the button as he was pulling up.

- The IA Lt. also said EPD was transitioning from an old in-car video system to a new system which would activate all other cameras in the area (i.e. for other officers, in cars etc.). Currently, about 70% of EPD's fleet was upgraded.
- A board member asked for the rule regarding when activation was to be done. The IA Lt. replied at any investigative contact.

3) **Relevant Department Policies and Procedures**

- A board member saw some confusion in the wording of the policy. For her, the most important part of the policy was that protesters weren't being pepper sprayed when choosing to exercise their first amendment right. She thought that was the intent behind the policy, and that the case at hand was not in the same context. She suggested it would be good to harmonize wording ("passive" versus "static" resistance), but the overall intent was clear.
- Another member didn't have other issues with the policy, but he hoped policies around protesting remained on Police Commission's radar. Another board member thought the policy provided a lot of protection to protestors.
- A member said that within the case interview, a sergeant stated he considered the situation "ominous" and wondered if the language was out of another policy. Ms. Pitcher said EPD used to train on the use of force continuum. "Ominous" was one way of looking at a force situation and officers were not trained on the same continuum anymore.

4) **Policy and/or Training Considerations**

- Several members mentioned de-escalation as a training consideration since the officer was only on scene for 10 seconds before using the OC spray.
- Some members thought the use of OC spray was safer since the subject could have crossed traffic. Others pointed out that without knowing the verbal exchange, it was hard to determine since the subject appeared to be complying with orders.
- While hindsight is always 20/20, a member thought the officer's overall performance was okay.

5) **Adjudication Recommendations**

- All members agreed the adjudication was within policy and appreciated Ms. Pitcher's thorough memo and the Chief's comments.
- Ms. Pitcher said de-escalation was discussed a lot during the case, specifically around the tools available to the officer. Tackling and use of a Taser were actually much less safe than the use of pepper spray. Although the video was jarring, out of everything available to the officer, he chose the safest option. A board member noted there were bystanders very close by who could have been affected by whatever option chosen.
- A board member commented that all the subject's behaviors fell into a different context when he saw the officer search the subject and meth was found; it created challenges for the officer and for bystanders.
- Another member added that the case exemplified the value of the CRB and the Police Auditor. At first, she thought the officer's actions were totally unreasonable, but after review and going through the process, they did appear within policy.