

MINUTES

Civilian Review Board
Sloat Room—Atrium Building—99 West Tenth Avenue
Eugene, Oregon

November 10, 2015
5:30 p.m.

PRESENT: Bernadette Conover, Chair; Eric Van Houten, Vice Chair; Maurice Denner, Steven McIntire, Chris Wig, Lindsey Foltz, Heather Marek, Civilian Review Board members; Mark Gissiner, Leia Pitcher, Vicki Cox, Police Auditor's Office; Sgt. Dale Dawson, Sgt. Ryan Nelson, Eugene Police Department; Jesse James, Stephanie Babb, Marlis Moats, Wanda Holloway, Daphne McBride Rayser, Jack Dresser, Jason McBride, Scott McElroy, Members of the Public.

ABSENT: None.

Ms. Conover convened the CRB at 5:30 p.m.

I. AGENDA AND MATERIALS REVIEW

Ms. Conover deemed the agenda approved.

II. MINUTES APPROVAL

Ms. Conover deemed that the minutes from October had not been completed; therefore their approval would occur at the next meeting.

III. PUBLIC COMMENT

Mr. Van Houten explained that the public comment period would be limited to three minutes per person.

Jesse James from the United Church of Christ began by stating that he had Asperger's syndrome and would need additional time to introduce himself, which was granted. He explained that he was targeted by the SWAT team and an armored car outside his house and at three separate addresses. He requested that there be a Presidential investigation into the death of Brian Babb.

Stephanie Babb spoke and explained that she was Brian Babb's little sister. She presented a bullet as evidence to the board. She also explained that her disabled mother, Wanda Holloway, was planning on providing public comment but would be late. The Board agreed to allow her to present when she arrived.

Marlis Moats provided details regarding the death of her nephew Brian Babb. She started by explaining that on March 30th she was called to come to the Babb residence. She explained that neighbors of Brian Babb had been ordered not to use their cell phones. She was told that Mr. Babb had been killed within minutes of the arrival of Police. Ms. Moats stated that Mr. Babb would have listened to the Police had they attempted to speak to him first. Additionally she expressed frustration that the board only heard testimony from the Police when making their determination. She also expressed sorrow that she had not been allowed to approach Mr. Babb when she arrived at

his house and frustration that his dead body was not covered, and laid in his doorway where it fell for hours. Ms. Moats also mentioned that the photographs she had did not show an assault rifle on the porch. She concluded that Mr. Babb would have calmed down and acted reasonably had he been given the chance.

Daphne McBride Rayser was called to speak but was not present. Mr. Van Houten asked Ms. Conover if it would be possible to take a break from public comments then move on to the remainder of the meeting and allow time for the remaining speakers to provide public comment when they arrived, as he felt it was important to hear all of the public comments.

Ms. Conover called for a break from public comments and then moved on to comments from board members and noted that public comments would be allowed later in the meeting.

IV. COMMENTS FROM BOARD MEMBERS, HUMAN RIGHTS COMMISSION LIAISON, AND POLICE COMMISSION LIAISON

Ms. Foltz and Mr. Denner had no comments.

Mr. McIntire said that the board needed to review the policies discussed at the previous meeting and present them at the next Police Commission meeting.

Mr. Van Houten said that he appreciated that Mr. Babb's family came to speak and that it was a good reminder of how impactful board decisions were on residents' lives.

Ms. Conover agreed with Mr. Van Houten's comments and stated the CRB is a reactive board whereas the Police Commission is a proactive Commission and that she was hopeful that the board's comments were considered by police commissioners.

Mr. Wig stated that he wanted to do something as community leader. He referred to the Auditor and Chief Kern's memo and stated that the board has started the work but needed to move forward.

Ms. Marek appreciated the public comments presented at the meeting and provided to the board via email. She said that she hoped the board would use the opportunity to discuss mental health concerns.

V. CASE REVIEW—Allegation of competency related to investigation of traffic violation, investigation of EPD employee failed to adhere to standards of duties.

Summary of Facts

- Officer A attempted to stop a vehicle.
- The vehicle eluded the stop and Officer A did not pursue.
- Office A called dispatch and described the vehicle as possibly stolen and stated that the vehicle hit the Officer's car.
- Officer B attempted a PIT maneuver when the vehicle was located.
- Officer A reported the hit and run.

Allegations

- **Performance** – Officer A did not provide an accurate report.
- **Competency** – Officer A failed to adhere to the standards of duty.

Recommended Adjudication - Adjudications sustained.

- Issues for CRB Discussion
 - Complaint Intake and Classification
 - Mr. Denner had no comments or changes to the 3 but wanted to know where the addition of the fourth came from?
 - Ms. Pitcher said that they had decided that something needed to be added.
 - Mark Gissiner said that they were debating between judgment and competency.
 - Mr. McIntire said that in the past practice and that it was good to see that it was added.
 - Mark Gissiner said that the decisions and mistakes were those of a rookie Police Officer, and were administrative mistakes expected of a newer employee but that there were different expectations for an employee with experience.
 - Mr. Wig said that there was no judgment in the books this month but that competency needed to be described.
 - Ms. Conover listed four components; judgment, thought process, communication, and action.
 - Mr. Denner said that he read the interview where the Officer concedes competency with regards to what was announced incorrectly over the radio.
 - Complaint Investigation and Monitoring
 - Ms. Foltz wanted to know why it took so long to review.
 - Ms. Pitcher answered that once allegations were adjudicated, it was held for administrative action. She said that they were supposed to review it in September but the City Attorney was not comfortable, even though they were done with the review.
 - Ms. Foltz said that it was a beleaguered process.
 - Mark Gissiner said that there was sensitivity in the due-process process. Sgt Nelson conducted the investigation.
 - Ms. Conover said that six months from the incident to the memo was standard.
 - Mr. McIntire said that the interview was messy and that the officers were answering questions before they were asked.
 - Ms. Conover said that it was wise to let the officers speak as it aided in the investigation.
 - Ms. Pitcher seconded that perspective.
 - Mr. Van Houten said that the complaint investigation monitoring was good.
 - Ms. Pitcher said that there was a lot of adapting.
 - Relevant Department Policies and Practices
 - Mr. McIntire said that the Officer's lights weren't activated and the Officer's car was unmarked. He asked what the policy was for a forcibly stopping a suspect's vehicle when the target vehicle wasn't speeding or driving at the time.
 - Sgt. Nelson said that given the proximity and time the suspect recognized that the Officer was attempting to stop the vehicle.
 - Mr. McIntire asked for clarification on the car's identification.
 - Sgt. Nelson stated that the first car had activated lights and that the suspect was knowingly fleeing making it appropriate for a second Officer to attempt to stop the suspect.

- Mr. McIntire asked if time was enough of a factor.
- Sgt. Nelson said that it was.
- Ms. Foltz wanted clarification regarding the amount of time being adequate given the unmarked car.
- Sgt. Nelson replied that as long as the Officer was certain regarding the suspect's vehicle it was a valid reason to use the maneuver but that in this case, it was not the type of maneuver they were trained for.
- Mr. Wig asked if the level of force used was appropriate for the situation.
- Sgt. Nelson stated that the amount of force used was minimal and that PIT training is generally conducted at 80 mph, and focuses on the landing point. In the case of a stolen vehicle it would have been appropriate.
- Ms. Conover clarified that this would only be true in the case of a trained Officer.
- Sgt. Nelson said that it would only be approved in the case of a trained Officer.
- Ms. Conover stated that the policy was reviewed when used in PIT maneuvers lowered to 35 mph with regards to pursuits, felonies were more likely to allow pursuits.
- Sgt. Nelson corrected her by stating that only violent felonies would allow pursuit and that did not apply to this case.
- Mark Gissiner asked if this was true even in the interest of apprehension.
- Sgt. Nelson stated that the forcible stop was outside of the pursuit policy.
- Ms. Foltz asked why the Watch Commander vehicle didn't have a dashboard camera.
- Sgt. Nelson didn't know why.
- Ms. Foltz expressed concern that dashboard cameras weren't required at higher levels of command.
- Mr. McIntire asked if a dash camera would activate when the lights were activated or upon impact.
- Sgt. Nelson replied that it would not activate in these circumstances.

***** **At this point the public comment period resumed.** *****

VI. PUBLIC COMMENT PART II

Ms. Conover stated for the record that the board was allowing for the public to sign up for public comment beyond the normal period.

Wanda Holloway thanked the board for the time they spent reviewing the case and said that she understood that it wasn't easy leaving their families. She apologized for her emotions. She wanted the board to know that there was a social relationship between the Officer that shot Mr. Babb and Mr. Babb's former wife. She stated that Mr. Babb's ex-wife worked in the same dental office that the Officer's sister-in-law worked in during the period of divorce and remarriage. She said that Mr. Stutsman took the primary lead when he should have stepped aside. She said that her son, Mr. Babb, had served three terms in Afghanistan.

Daphne McBride Rayser stated that she was not a cop hater but that on March 30th there was a fatal mistake. Not in Mr. Babb's decision to discharge a firearm in his home within City limits and not in his aiming the weapon at the Police Officer, but in calling his

therapist and asking for help. She asked the board why the CRB concluded no fault when the evidence was poor and lacking. She stated that Mr. Stutesman put people in jeopardy. She also stated that they could have reached out to Mr. Babb's family for help. She said that discharging a fire arm in City limits warranted a citation but that the Police response triggered Mr. Babb's PTSD. She concluded by saying that the Police protect and serve themselves first and that the safest person in Eugene killed her cousin.

Jack Dresser said that he had been asked to speak after he wrote an op-ed piece regarding the killing. He said that he wasn't sure what criteria the CRB used but described the board as incompetent. He explained that, based on his experience as an army psychiatrist, he viewed Mr. Babb as severely depressed and intoxicated at the time and that by arriving at his house in SWAT and counter attack vehicles the Police served as a trigger for Mr. Babb's PTSD. He said that the action was a reflection of the Police mentality. He concluded by describing the trainings officers receive and stated that of the 325 trainings only 3 were on the topic of communication and these were titled 'verbal judo' thus highlighting the obsession with force and compliance. He also noted that there was no training in psychology and respectful communication.

Jason McBride said that he couldn't add anymore than Daphne but that he didn't understand what right the Police had to force the situation to the point which it did. He emphasized that the action was only a misdemeanor and that Mr. Babb had the constitutional right to defend himself when he was threatened.

Scott McElroy read a letter written by Robin McBride. The letter stated that Mr. Babb was trying to get help from his counselor and that the counselor thought that only a couple of Police Officers would arrive to conduct a welfare check. She stated that Mr. Babb was a soldier and that the tactical squad triggered his PTSD.

Ms. Conover requested that all written comments be provided to the board in order to become part of the written record.

VII. BREAK - Ms. Conover called for a break at 6:40.

VIII. CASE REVIEW CONTINUED

- Policy and/or Training Considerations
 - Ms. Conover asked if there was audio available as it was more helpful than video alone.
 - Sgt. Nelson stated that there was audio available.
 - Mr. Van Houten wanted to know how often Officers mistakenly reported something over the radio or in a report.
 - Sgt. Nelson didn't know how often that occurred but he said that it was uncommon for an Officer not to correct themselves over the radio when the mistake was immediately known.
 - Mr. Denner said that the damage to the fleeing vehicle was fairly low given the height of the SUV. He asked if they had reconstructed the crash.
 - Sgt. Nelson said that they had not reconstructed the crash and that the contour of the push bumper explained the limited damage to the suspect's vehicle.

- Sgt. Dawson said that there was no injury and minor damage with the car still in place and an impact of less than 10 mph, therefore no reconstruction was warranted.
- Adjudication Recommendations
 - There was consensus by the CRB to agree with the adjudication recommendations.
- Additional Comments/Concerns
 - Mr. McIntire said that they did a good job utilizing the OODA loop in relying on individuals for information. He said that it was alarming when they couldn't.
 - Ms. Foltz agreed and said that someone rising to rank when they demonstrated a lack of judgment left her with an uneasy feeling.
 - Mr. Van Houten said that there was potential for harm from misrepresentation of actions from a suspect and that the event could have escalated from the response. He said it showed a troubling lack of insight.
 - Ms. Conover said that it wasn't the first case of a supervisor expressing lack of judgment and that the Officers on the streets needed to be able to trust their superiors. She said this was cause for great concern.
 - Mr. Denner inquired about the culpability of an Officer that files a complaint based on false information.
 - Ms. Conover said that someone swearing as to what they heard on the radio was different than swearing to the accuracy of what was said over the radio and that these were separate issues.
 - Mr. Denner asked about other crimes that were committed.
 - Sgt. Nelson replied that they were talking with the DA and that it was still a valid charge based on the citation that took place.
 - Mr. Wig said eight month gap from the time of the event might allow for something to fall through the cracks. He said that the Auditor's Office did a great job but that it shouldn't happen again.

IX. CASE REVIEW—The owner of a store called 911 for the theft of a bike and an E-cigarette. Two Officers pursued the suspect and attempted to arrest him which resulted in the discharge of a Taser on the fleeing suspect.

Summary of Facts

- Internally reported following discharge of a Taser on a suspect fleeing an Officer during an attempted arrest.
- Two Officers pursued a suspect into an alley after a store owner called 911 reporting a stolen bike and E-cigarette.
- An Officer ordered the suspect to stop and attempted to arrest him.
- A third Officer entered the alley from a building adjacent to the alley.
- Officer A drew a Taser gun and discharged it on the suspect.
- Medics were called to the scene.

Allegations

- Officer A violated policy by discharging a Taser into the back of a fleeing suspect.

Recommended Adjudication

- Sustained.

Issues for CRB Discussion

- Complaint Intake and Classification • Internally reported
 - Ms. Conover agreed with the intake and classification.
- Classification: Allegation of Misconduct

- Complaint Investigation and Monitoring
 - Mark Gissiner said every use of force is looked at by a supervisor, not just those that are complaint driven.
 - Ms. Conover asked what the lowest threshold was for use of force and if it was anything above passive resistance. She asked if Police Officers arriving to a call was considered use of force.
 - Sgt. Reynolds replied that use of force was defined in policy.
 - Mr. Wig said that he appreciated the write up by Sgt. Dawson. Everything was clear and concise and he understood what was meant.
- Relevant Department Policies and Practices
 - Judgment
 - Performance - Violation of Policy
 - Ms. Foltz said that the report of the suspect posing a credible threat was not consistent with the body camera footage and that it appeared that the suspect was running away, and that she was not happy the suspect was shot in the back.
 - Sgt. Reynolds said that one problem with the video footage is that it doesn't show the entire event, and that when a suspect is running towards you and turning a corner it can be perceived as a credible threat on the ground.
 - Ms. Foltz asked about the decision making process in discharging a Taser.
 - Ms. Pitcher stated that it could have resulted in the Officer on the ground otherwise.
 - Ms. Foltz stated that the Officer could have stepped aside and stopped the pursuit.
 - Ms. Marek agreed that Ms. Foltz had a legitimate point and that the result was brain bleed in the suspect.
 - Mr. Van Houten said he didn't think it'd be safe to take him down and that tripping him would be an appropriate use of force.
 - Sgt. Reynolds said that the Officers didn't know the identity of the suspect at the time.
 - Ms. Foltz clarified that because the Officers weren't certain of the identity of the suspect they were unable to determine the appropriate level of force.
- Policy and/or Training Considerations
 - Mr. McIntire said that sometimes officers forget to take the safety off their Tasers and if this had been the case the suspect would have been running toward the Officer when the Officer drew the Taser, thus posing a credible threat.
 - Ms. Pitcher stated that Officers are trained to conduct a safety spark test and let it cycle for 5 seconds.
 - Sgt. Compton demonstrated for the board using his Taser.
 - Sgt. Reynolds said that officers are required to carry 2 less than lethal weapons, one of which can be a Taser.
 - Mr. Denner stated that Officer A did what was expected and that he was impressed with the response to keep the airway open and call for medical help in a professional manner. He felt that once the suspect was incapacitated, they were safe.
 - Ms. Marek discussed the Taser policy and said that it takes into account the severity of the crime, the immediate threat, and resisting arrest. She said she was surprised that a suspect could be Tased if the crime from which they were fleeing

was a felony or sexual misconduct, some of which were nonviolent such as a fishing violation or public indecency. She said she would recommend using a Taser only for instances of imminent threat or when suspects were fleeing violent crimes, even though Tasers are considered less than lethal she emphasized that they are an intermediary use of force.

- Mark Gissiner asked if she considered them to be the equivalent of a firearm.
- Ms. Marek stated that she didn't know where the middle ground was.
- Mark Gissiner said that the use of fire arms may be allowed to subdue a violent, fleeing felon. He also expressed concern that when people are shot in the back with a Taser they fall leading with their heads, which can lead to serious physical harm.
- Ms. Marek said that when the threat was less severe a Taser can be appropriate but that there needed to be higher standards regarding the use of a Taser.
- Mark asked if she was recommending a more concise list to which Ms. Marek replied that she would like to see a better list of when it is appropriate to use a Taser.
- Mr. Van Houten stated that the use of a Taser would be justified when the suspect was a threat to the Officer and the community and Ms. Marek added that it wouldn't be justified when it was a threat to the individual upon which it was being used.
- Ms. Conover stated that she worked on the team that adopted the guiding policy and that she didn't recommend a detailed list as it could possibly lead to officers not carrying the Taser. She also said that Taser discharge rates in Springfield were much higher than in Eugene.
- Ms. Marek said that she didn't want to imply that the Taser was used inappropriately but that there was room for additional standards.
- Adjudication Recommendations
- Additional Comments/Concerns
 - Mr. Wig stated that it is unsafe and inappropriate to discharge a Taser into a person's back.
 - Ms. Conover stated that the back is a good place to discharge a Taser as there is a large target.
 - Ms. Foltz stated that both reports were carefully written and detailed.

Case Review Concluded at 7:30

X. Ms. Conover asked if there were any agenda items to be moved to the next meeting.

Ms. Marek asked to prioritize the discussion of audio recording the Civilian Review Board meetings. She said that the core purpose of the board is to increase transparency which is why she supports having the board meetings recorded.

Ms. Foltz agreed that transparency during the meetings was important and that if Officers are required to wear body cameras, the board should be held equally accountable. She said that the names of Officers could be edited out if need be.

Ms. Marek said that the recordings could increase interest and credibility.

Ms. Conover asked if people kept track of how often the audio was viewed on websites to which Ms. Foltz replied that it was a metric that could be tracked.

Ms. Cox mentioned that there had been 3-4 requests for minutes annually.

Ms. Conover was concerned that recording the meetings could lead to guarded conversations and it would put the board in a position to redact which could be seen negatively by the public. She did agree with the need for transparency.

Ms. Pitcher said that recording part of the meeting except for the case review was a potentially intermediary step that would increase transparency.

Mr. Wig said that the Auditors Report had the largest impact on the public and it was important to reach more people.

Mr. Van Houten said that people also wanted to know about the cases and that the board asked Officers to wear video cameras all day.

Mr. McIntire wanted to know if the board had the authority to make the decision.

Mark Gissiner said that the decision to record the meetings also depends on the time it took to redact confidential information.

Mr. Denner mentioned that an issue may arise with the Union when discussing confidential personnel files.

Mark Gissiner said there would be an issue with identifiable characteristics.

Ms. Conover said that consistency was imperative.

Mark said editing audio was likely easier than editing video.

Ms. Pitcher said it would be difficult to make the edited video seamless.

Mr. McIntire said that the edited results may be problematic for the public.

MOTION

Mr. Van Houten made a motion to audio tape the civilian review board meeting in its entirety.

Mr. Denner seconded the motion.

FRIENDLY AMENDMENT

Mr. McIntire made a friendly amendment that Staff review the feasibility of video editing.

Mr. Van Houten accepted the friendly amendment.

DISCUSSION OF AMENDED MOTION

Mr. McIntire wanted to know the cost of the process and how many people will see it.

Ms. Marek said that even if only a few people see it the process was valuable.

CHAIR CALLED FOR ACTION

Ms. Conover asked if the board wanted to move forward with a vote or wait for the additional information.

MOTION

Mr. McIntire made a motion to table the vote.

Ms. Conover seconded the motion.

DISCUSSION OF SECOND MOTION

- Ms. Marek said that they needed to complete the first motion before proceeding.
- Mr. Wig said that the second motion was an interjection to table to a date certain.
- Ms. Conover said that the vote could be tabled to next monthly meeting where there would be a presentation on the skills and time necessary to implement.
- Ms. Marek said that she wanted to have a detailed list of the facts necessary to make the vote.
- Ms. Conover clarified that the information to be provided would related to how many people would access versus the cost.
- Mr. McIntire said he'd like to know what the concerns might be.
- Ms. Conover wanted to know if anyone else was in a position to redact.
- Mr. Wig said there was no way to know.

VOTE TO TABLE THE INITIAL MOTION TO RECORD THE BOARD MEETINGS TO A TIME AND DATE CERTAIN

The vote to table the vote regarding recording the board meetings to the next meeting was confirmed 5 aye 2 nay. *The vote was tabled to the next Civilian Review Board Meeting.*

The board discussed when the next meeting would be held.

Mr. McIntire recommended January since it would take some time to gather the necessary information.

Ms. Conover agreed.

Mr. Van Houten recommended the 12th of January.

Mr. Wig said that he asked to resign from as the Human Rights Commission Liaison a few months ago. Ms. Marek said that she would serve in this position. The board voted unanimously to approve the change.

XI. AUDITOR REPORT

There were 45 complaints in October which was on pace to set a record. He said they were working on outreach to Latino communities. He said that the Department has reached out to grass roots organizations to start the conversation. He finished by saying that he requested facilities to install automatically locking doors for times when Auditor staff were on duty alone and they had to step away from the desk.

Ms. Conover said that they would present last year's summary to the City Council at the upcoming meeting.

IX. ADJOURN

The meeting adjourned at 7:55 p.m.

(Recorded by Cara Mico)