

MINUTES

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

January 12, 2016
5:30 p.m.

PRESENT: Bernadette Conover, Chair; Eric Van Houten Vice-chair; Steve McIntire, Maurie Denner, Heather Marek, Lindsey Foltz, and Chris Wig. Mark Gissiner, Auditor; Leia Pitcher, Deputy Auditor; Lieutenant Nathan Reynolds, former Professional Standards Lieutenant; Lt. Carolyn Mason Professional Standards Lieutenant; Sergeant Larry Crompton; Bonnie Souza, Human Rights Commission liaison. Majeska Seese-Green; Guest.

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 there were two sets of minutes to approve; for October and November.

MOTION

Mr. McIntire, seconded by Mr. Van Houten, made a motion to approve the October minutes as presented and the November minutes as corrected. Ms. Conover asked if there were any corrections to the November minutes. Mr. Van Houten noted that his name was misspelled in the November minutes. Ms. Conover noted a correction in Section 4, comments from board members, clarified that 'the police commission is a proactive commission' and clarified that the draft minutes did not include Mr. Gissiner's last name. Ms. Conover clarified that the friendly amendment was made by Mr. McIntire and both Mr. Van Houten and Mr. Denner seconded. Ms. Conover concluded by adding that the vote on the bottom of page 10 was unanimous. The minutes were approved unanimously.

III. PUBLIC COMMENT

Mr. Van Houten introduced Ms. Seese-Green, who was provided 3 minutes for public comment. Ms. Seese-Green presented on A Community Together (A.C.T), a nonprofit focused on civic engagement. As a representative of A.C.T, Ms. Seese-Green requested that the CRB record the meetings for better transparency. She gave her appreciation for the letter included in the Board packet from the Human Rights Commission. She explained that she understood that video recordings were more expensive but felt that audio recordings were a good compromise and said that there should be no extra cost for an audio recorder and it would be easy for people to access audio recordings. She concluded by emphasizing A.C.T's request to reinstitute audio recording at

CRB meetings and finished by saying that there were very few instances of participants providing the names of officer and the audio recording could be edited to remove names.

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

Lieutenant Nathan Reynolds, former Professional Standards Lieutenant, introduced Lieutenant Carolyn Mason and Sergeant Larry Crompton, and said that he and Sergeant Nelson rotated back to patrol assignments, he thanked the Board for having him.

Mr. McIntire said that he met with Ms. Pitcher and Mr. Gissiner regarding the Captain Babb case, and said that they made a spreadsheet of the discrepancies. He's going to discuss it at the following Police Commission meeting.

Mr. Denner thanked Lieutenant Reynolds.

Ms. Marek updated the Board on the Human Rights Commission November decision to submit a letter which supported the reinstatement recorded CRB meetings. She said that the HRC had been working on homelessness issues and met with the City Council. She explained the HRC commitment to the housing first campaign which focuses on getting people off the street. Ms. Marek explained that the connection between the Housing First campaign implicates police work in that than law enforcement will be a secondary or last resort. Ms. Marek added that the HRC was working with the national law center on homelessness and poverty as well as on policies which have the effect of criminalizing homelessness. She was hopeful that their work would lead to more effective ways of addressing homelessness. She informed the CRB that the HRC liaison, Ms. Souza, had requested the opportunity to comment or ask questions during meetings outside of the designated time. Mr. Van Houten asked if the agenda needed modification. Mr. McIntire said the liaison was allowed to comment and question during the meeting. Ms. Conover said this was what was done when [Snow] was present, and that each commission was different regarding protocol. She asked Mr. Gissiner to address the request, Mr. McIntire clarified that the liaison could speak during the public comment period, which Ms. Conover echoed and added that the liaison could also speak during the round table discussions. Ms. Marek clarified that Ms. Souza would like to comment during the entire meeting. Mr. Gissiner said that he would ask if the right was granted to one person without a statutory connection if that would that open the entire meeting to comment and questions. Ms. Marek added that Ms. Souza was voted in as liaison. Mr. Gissiner clarified by explaining that Police Commissioner was an official position and that he would gather information but that the Human Rights liaison position was not a statutory requirement. Ms. Foltz wanted to add the consideration to the agenda. Mr. Gissiner questioned the Board's ability to provide special consideration to one person and not others. Ms. Conover stated that the question had not come up and that they would need to research it further.

Mr. Van Houten thanked Lieutenant Reynolds and said that he looked forward to working with Lieutenant Mason.

Ms. Conover thanked the recorder for the detail provided in the minutes. She thanked Sergeant Nelson for his service to the Board and said that she appreciated his detailed reports which were always easy to read.

Mr. Wig thanked Lieutenant Reynolds. He said that he didn't think that the community knows about the purpose of the CRB and its role. He informed the board that Mr. Van Houten often

explain the CRB's role as the interface between the auditor and the public and Mr. Wig supported Mr. Van Houten's statements. He also explained his efforts in trying to get Mr. Gissiner and Ms. Pitcher to speak at local community groups and invited board members to discuss the auditor's role and the CRB's role to public groups.

Ms. Foltz said that as of January 1 there were new laws regarding racial profiling by the police. She discussed the Lane County Network for Immigrant Integration and the differences in recording procedures between the auditor's office and the state system. She wanted to know how recording procedures varied in Eugene versus the state and how auditor's office interacts with Immigrants. She also discussed the changes to the boards and commissions procedures and said that the Council changed the way it processes applications stating that all applications for the year would now be accepted between January and March. Recruitment would occur from that pool to fill positions for the entire year and opined that the applicant pool should be deep. She encouraged people to apply and said that the applications should open in a couple weeks.

Ms. Souza, Human Rights Commission liaison, thanked Ms. Marek for sharing her request with the Board. She said that she had asked Ms. Pitcher the same question regarding commenting during the meeting and had also met with Ms. Pitcher. She said she understood the Board's reservations and concerns regarding setting a precedent.

Ms. Conover cautioned the Board members regarding public meeting laws and said to be sure that when three or more members are convened together not to discuss board business in order to not violate public meeting laws. She asked Ms. Foltz about the recruitment procedure for boards and commissions. Ms. Foltz clarified that as she understood it, previously if there was a vacancy there would be midyear recruitment and appointment, while now recruitment will come from the pool she described earlier unless that pool was empty. Mr. Gissiner said that there was a different process for the CRB.

Training topics and brainstorming for upcoming year

Ms. Pitcher said that there were three topics that arose consistently in her work; use of force, driving, and discharging guns and presented these as ideas for future training.

Ms. Conover suggested returning to 2008-2011 agendas for additional topics and mentioned specifically the CAHOOTS presentation by Kathy Flynn, formerly from violent crimes, now at the University of Oregon, which provided a good presentation on the evolution of homelessness.

Ms. Conover suggested her presentation on 2014 cases could potentially provide training topics as well.

Mr. Gissiner suggested that Ms. Marek's discussion of the interaction between the homeless and the police could be included.

Ms. Conover suggested taking a tour of the Mission, to which Mr. Gissiner added a tour of the Buckley house would also be helpful. Ms. Conover concluded by recommending a jail tour.

Mr. Denner wanted to see training on the legal step between cause for a stop, cause for questioning, and the subtle move from suspicion, interrogation, to arrest. Ms. Conover added search and seizure legal training updates, Ms. Pitcher said that the District Attorney's office could provide a good contact for that. Ms. Marek informed Mr. Denner that the civil liberties defense center could provide valuable insight from the civil rights perspective.

Mr. Van Houten addressed Mr. Gissiner regarding the Blue team. He suggested that training for supervising officers had evolved with the advent of video/audio recording and suggested a training topic surrounding this to which Ms. Marek added the need to understand what type of technology was in use in Eugene. Ms. Conover suggested the Assistant Chief as a good contact for this topic. Ms. Pitcher suggested approaching the Police Union.

Ms. Marek suggested training surrounding the racial profiling law brought up by Ms. Foltz.

Mr. Denner suggested working with the Police Commission and the Human Rights Commission to develop public outreach surrounding individual rights \when stopped by an officer and asked a question. He said that the public often misunderstands their rights and that he would like to make public information available. Ms. Foltz said that the American Civil Liberties Union used to provide similar training. Ms. Marek added that the ACLU does still provide the training. Ms. Conover said that there was a need for balance, she said that multiple perspectives are needed in a training of this nature.

Ms. Pitcher suggested a training on Shelter Care and Kids First.

Ms. Conover said that most training was related to the cases the CRB had just seen and suggested looking at open cases and setting the agenda based on relevancy. Mr. Wig wanted to have a bank of training topics and suggested that the Chair choose the relevant topic.

Mr. Wig said that he was approached by members of communities of color who had been active in the campaign to start the CRB and that they would like to provide a history lesson.

Ms. Conover called for a break at 6:20 pm and reconvened the meeting at 6:30 pm.

V. CASE REVIEW—Allegation

Summary of Facts

- Officer A identified a potential DUI driver with a flat tire.
- Officer A approached the driver who was in the vehicle at the time.
- The suspect provided a name, which later was proven to be false.
- Officer A explained to the driver who was stopped in a parking lot that someone had called in regarding her situation; she was arguing with a man at the time Officer A engaged her.
- Officer A said if they didn't have warrants they could leave.
- Officer A did not find any evidence of intoxication and allowed her to remove items from her vehicle.
- The woman was in the passenger seat of the vehicle when the Supervisor of Officer A arrived on the scene.
- Officer A and the Supervisor discussed the situation at which point the Supervisor chose to reengage the woman after it was determined that she had provided a false name and prior record for petty thievery.
- There was a physical altercation on the hood of her vehicle and she was arrested.
- A supervisor reported that there was no probable cause of crime.
- Officer A also put in an incorrect code in the filed report.
- The woman later called to complain about the arrest saying that her civil rights had been violated.

- Lane County reviewed the case and determined that Officer A and the Supervisor had probable cause.
- Adjudications were all within policy.

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 said that it wasn't clear from the report when the charge was reclassified from use of force to search and seizure and asked if the search and seizure had always been included. Mr. Gissiner said that it had and it had been dropped after review of the In Car Video (ICV).
 - Mr. Denner noted that Internal Affairs recordings contained a time and date stamp and asked if the Auditor's office could easily add this to their recorded calls. Ms. Pitcher responded by saying that calls were entered into a database and the time and date they were received was included. There was a discussion regarding the quality of the information gathered when people know they are being recorded.
 - Complaint Investigation and Monitoring
 - Ms. Conover said that she didn't understand the process regarding the contact with the District Attorney. She said that the case went to the DA as it was starting to adjudicate. Mr. Gissiner said that he was fairly certain that the effort was initiated by the Union.
 - Mr. Gissiner said that this was a broad base type of charge and that his opinion is that the law can be overly broad and can be discretionary. He questioned whether or not the community cared about how many times someone was arrested for interfering with a police officer's investigation and wondered if these types of arrests were consistent with community values. He suggested that people probably cared more about arrests focusing on personal crimes.
 - Mr. Van Houten questioned Officer competency after reading the case and said that it was apparent from the recordings that the woman was distressed after arguing with her boyfriend at 3 in the morning, but that it was clear she was not inebriated. He stated that the event should have triggered contact with CAHOOTS and noted that her demeanor appeared fairly flat and calm until she was arrested, at which point she became agitated, but then immediately calmed down. He said that this behavior of appeasement signified that she was potentially a victim of abuse. Mr. Van Houten also said that Officer A never explained to her what she had done wrong. Mr. Gissiner noted that CAHOOTS closes at 3 am.
 - Mr. Gissiner said that in the interest of customer service the Officer could have helped her change her tire. He said that when she asked if she could change her tire she was told by Officer A to have at it.
 - Mr. Wig expressed surprise that it was a crime to provide a false name to a police officer. Mr. Gissiner and Ms. Conover both said that it was a crime to do so during an investigation. Mr. Wig said that from his understanding of the written report, he wasn't clear when the Officer discovered that she

- had provided a false name. Mr. Gissiner and Mr. Van Houten, both replied that the Officer discovered her name was false after calling dispatch.
- Mr. Gissiner asked the Board if he had included the Oregon court of appeals case pertaining to an Officer's right to information during an investigation. Mr. Denner replied that it had been included in the Board packet.
- Relevant Department Policies and Practices
 - Mr. McIntire was concerned about the implication of an Officer reengaging after an investigation was concluded. Mr. Gissiner clarified that the Officer's reengaged after they learned she had provided a false name. Ms. Conover stated that the break in engagement was not necessarily problematic since false information was provided while the investigation was still open. Mr. McIntire responded by saying that the Officer had concluded that the woman was not driving under the influence since she wasn't driving when he engaged her and she wasn't inebriated but only returned when he learned she had provided a false name.
 - Mr. McIntire inquired about the policy on threatening to use a TASER and whether or not that constituted use of force and whether or not that needed to be reported. Lieutenant Mason said that it was a reportable use of force but that she would need to check.
 - Mr. McIntire wanted to know why an Officer would mute their microphone and inquired about the policy dictating when a microphone could be turned off. Sergeant Crompton said that it is considered a tactical mute and that it was considered appropriate to mute conversations in order to inform newly arrived officers of the situation. Ms. Conover asked if the conversation was being broadcast to which Lieutenant Mason replied that it was not. Mr. McIntire said that although there may be times where muting a microphone would be appropriate, muting was often gratuitous and unnecessary, and if the Officers were following policy then the recordings serve as a defense for the Officer being recorded. Mr. Gissiner said that they have internal policies for recordings but no rules and standards. He used Tucson as an example where Officers are sanctioned if they fail to use body cameras more than twice in one year and said that the Eugene Police Department has no such definitive disciplinary matrix. He said that there had been two recent unrecorded use of force cases. Sergeant Crompton said that Officers also mute recordings to say things to another Officer out of anger and acknowledged that the Police Chief would advise the Officer not to say anything in this case. Mr. Denner suggested that Officer's should articulate the reason for muting their microphones and that discussion of non-work related matters was not a valid reason to mute a microphone.
 - Mr. McIntire inquired as to how often the Eugene Police Department used Municipal Code versus Oregon Statutes and Regulations. Ms. Conover said that cases were sent to municipal court first and Lieutenant Mason added that the EPD only used ORS in non-felony cases not covered by municipal code. Ms. Conover said that Eugene City code was consistent with ORS.
 - Mr. Gissiner said that he had never heard of an "Attempt to Locate" and that in his experience there was either a warrant or there wasn't. He said that although an ATL seems intended to provide the authority to detain a

person, he didn't understand how it was constitutional and that he would like the Police Commission to consider the matter. Ms. Conover asked Sergeant Crompton if he had experience with ATL's in his previous jurisdiction to which he replied that he did not. He said that reasonable suspicion allowed Officer's to detain a person. Ms. Conover thought that an ATL would allow Officer's to obtain more information from a suspect before an official charge after which they could obtain a warrant. Mr. Gissiner said that the use of an ATL to detain a witness was a stretch of the law and that he had never heard of the use of the mechanism in developed western nations.

- Mr. Denner said that the conversation between the Officer and the detainee was very rigid and officious where the Officer was talking about compliance, probable cause, and detainment which had the effect of putting her on the defensive. He felt like some officers were better at asking questions and obtaining information and that this might be an opportunity for training.
- Ms. Foltz said that she found the escalation of the situation after the arrival of the Supervisor particularly disturbing. Mr. Gissiner said that there were other ways to resolve the situation and that perhaps if he had helped her by changing her tire he could have obtained her name conversationally and could have been successful at getting the information he needed.
- Ms. Marek was confused by the ATL and had the sense that the Officer had already dispelled his suspicion for the stop, and that it wasn't clear why the Officer continued to detain the woman. She inquired about the guidelines for an ATL, regardless of the enforcement mechanism. She also asked if it was common practice to book a person with one charge and change the charge after the fact in order to justify the stop, a practice which could have dangerous implications. She also reiterated the issue of microphone muting especially given the concerns with Miranda Rights being investigated. She expressed general suspicion regarding crimes which occurred when people are arrested for doing something that wouldn't have happened if the Officer hadn't engaged the person in the first place or if they had deescalated the situation. She said she would like for officers to engage in behavior that doesn't perpetuate criminalization.
- Mr. Van Houten had a hard time separating policy implications and wanted to know what the difference was between detain and arrest. He said it was likely that most people wouldn't know the difference. He also wondered why, if it is a violation to drive a vehicle without identification in the car, didn't he ask for her identification. He suggested that the Officer wasn't asking for the correct information. He lamented that the situation involved three Officers and a Supervisor for a situation that could have been easily avoided. He said that he was extraordinarily disappointed in the case and felt that the Officer found a policy to justify the arrest after the fact.
- Mr. Gissiner asked if he needed registration to sit in a stopped vehicle and he was informed that he did not.
- Ms. Foltz was also concerned about the cost of towing the car.
- Mr. Gissiner was concerned about the psychological toll the woman faced after being segregated in the isolation unit.

- Ms. Conover echoed the concerns regarding the money spent as well as the continuation of Supervisors who were training Officers poorly.
- Mr. Van Houten said that Officer A was within policy but that the situation was escalated by the Supervisor.
- Mr. Wig said that the board members had covered everything that he wanted to contribute and added that the theme of the discussions the CRB had had for the past three or four months was a failure to deescalate.
- Ms. Foltz found it bothersome that the Board had to rely on the word of the Officers regarding the ORS reference mistake which seemed convenient.
- Ms. Conover said that there was no way to know if the Officer had asked another person in the DA's office in order to obtain the correct information and correct the report after the fact.
- Policy and Training Considerations.
 - Ms. Conover said that both the Officer and the Supervisor needed training.
 - Mr. Wig wanted to see a training regarding the difference between detainment and arrest.
 - Mr. Denner wanted clarification as to what point in the investigation did the Officer decide that the woman wasn't driving.
 - Ms. Marek wanted clarification as to what point the microphone was muted.
- Adjudication Recommendations
 - Mr. McIntire said that Officer A should have challenged the Supervisor and that Officer's aren't supposed to follow inappropriate orders. He disagreed with the adjudication in regards to the Sergeant.
 - Mr. Denner agreed with the adjudication in regards to following policy, but noted that the policy may not have been accurate.
 - Mr. Van Houten supported Mr. Denner's opinion and wanted to disagree with the adjudication recommendation and said that, from an employee and legal standpoint he didn't like it and that there were many policy issues. He felt that it was satisfactory where laws were concerned and that the Officer was let off on a technicality. He agreed with the adjudication.
 - Ms. Conover felt that the adjudication was wrong.
 - Mr. Wig felt that the adjudication was right.
 - Ms. Foltz said that she felt if it could be adjudicated differently it would have been and didn't know what recourse there was for her to disagree. Ms. Conover said that their recommendations inform the adjudicator that the Board views the case differently. Ms. Foltz asked if anything would be done differently if the entire Board were to disagree. Ms. Conover said that it could inform future cases. Ms. Foltz disagreed with the adjudication.
 - Ms. Marek stated that she felt it had not been adjudicated correctly and that the policy was flawed. She said that the suspect should have been left alone when the Officer dispelled concerns of the DUI.
 - Mr. Gissiner said that he agreed with Mr. Van Houten and he agreed with the adjudication. He said that this was one of the most disappointing exercise he had seen in 30 years and that it was on par with the man who plugged his cell phone in at a Bi-Mart which required 6 officers.
 - Ms. Marek added that her disagreement was from a community member perspective and that this is not what she wanted to see.

Case Review Concluded at 7:30

Discussion of audio/video recording

Ms. Pitcher said that she researched public records laws and confirmed that the Board could legally redact sensitive information and provide a publicly version as long as an original was retained. She said the Board must also look be cautious of pronouns and rank, and use ‘they’ rather than he/she. Mr. Gissiner said that they must be sure not to provide identifying characteristics of Officers.

Mr. McIntire requested statistics regarding the use of the minutes. Mr. Gissiner replied that there were no website counters to provide that information.

Mr. Wig asked if the Board had a motion on the table from the previous CRB meeting. Mr. McIntire formally withdrew his friendly amendment to the open motion.

Mr. Gissiner said that there were a variety of public records best practices; in New York City deliberations are private as compared to televised deliberations in open records states where the public also can receive the entire case file. He said that practices were often reflective of community desire. Ms. Marek said that the HRC letter spoke volumes.

Mr. Van Houten gave appreciation for the public turn-out and said that the Board should also consider cost and usage. He questioned how many people would use the audio recordings and said that people attended in person for high profile cases regardless. He said that the case they had just discussed was more alarming to him than the Babb case, which was very emotional.

Ms. Marek said that recording the meetings would aid in increasing transparency and that it could serve as an outreach tool

Mr. Denner discussed the issues surrounding gender, rank, teams, location, time/date and the concern of potentially limiting the conversation because of recording the discussions.

Ms. Conover said that recordings can be problematic because they provide only one angle. She used an example of an officer in Oakland reaching for TASER rather than his gun. She said recordings can stifle conversation because recordings can be edited. She also expressed concern about the HRC letter. She said she would not, as Chair, ask the CRB to draft a letter to the Police Commission to say ATL’s were not ok and she said that she didn’t think the protocol was appropriate. She said she didn’t feel like recording the meetings would get more people to engage but rather it would encourage complaints from social media to which Ms. Marek stated that that was a form of civic engagement. Mr. Wig interjected that, having been the liaison to the HRC, writing letters was common practice.

Mr. Wig added that he felt although the CRB is labeled as a Board he saw their role as an administrative tribunal and believed they should be held to that standard. Mr. McIntire corrected Mr. Wig by stating that the CRB doesn’t affect discipline outcomes in the same way a tribunal would.

Mr. McIntire said that the Board couldn’t accurately gauge public opinion and that he didn’t want to overburden the office. He requested that the Board audio record community impact cases only.

Mr. Gissiner said that the community was aware of the CRB although not everyone comes to the CRB. He said that the Eugene CRB takes more complaints than cities much larger than Eugene.

Ms. Pitcher questioned whether or not minutes recording would need to continue if audio/video recordings took place.

MOTION

Mr. Van Houten, seconded by Mr. Denner, made motion to table the discussion of recording the CRB meetings to a time and date certain.

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

The motion passed 5:2 with Mr. Wig and Ms. Marek voting against the motion. Ms. Conover clarified that the discussion would be resumed at the next regular meeting.

XI. AUDITOR REPORT

Mr. Gissiner said that he would provide the Auditor's report at the next regular meeting.

IX. ADJOURN

The meeting adjourned at 8:00 p.m.

(Recorded by Cara Mico)