

## MINUTES

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

Sept. 14, 2016  
5:30 p.m.

PRESENT: Eric Von Houten, Chair; Lindsey Foltz, Vice Chair; Maurice Denner, Heather Marek, Steven McIntire, Chris Wig, Rick Roseta, Civilian Review Board members; Mark Gissiner, Leia Pitcher, Police Auditor's Office; Lt. Carolyn Mason, Eugene Police Department.

Mr. Van Houten convened the Civilian Review Board (CRB) at 5:31 p.m.

### I. AGENDA AND MATERIALS REVIEW

There were no changes to the agenda.

### II. PUBLIC COMMENT

Mr. Van Houten noted Heather Marek and Majeska Seese-Green would be recording tonight's CRB meeting.

Mr. Jack Radey spoke about a recent case where an officer was charged with a misdemeanor and subsequently resigned from the force. He asked why grabbing a handcuffed man by throat and throwing him to the floor was a misdemeanor rather than a felony. He noted that the officer in this case was no longer on the force but raised concern about the other officers present when the crime was committed. He wondered why they did not intervene and argued that this needed to be addressed. He concluded his statement articulating that something in the culture needed to change.

Ms. Kathleen Piper proposed that if there was a civil suit and city had to pay as result of an officer's conduct, perhaps those funds should be taken out of the police budget rather than the city's general budget.

### III. MINUTES APPROVAL— July 12, 2016

**Mr. Wig, seconded by Mr. Roseta, moved for approval of the July 12, 2016 minutes as submitted. The motion passed unanimously, 6:0.**

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

Mr. Wig stated that the Civilian Review Board (CRB) had talked many times about joining campaign zero, which were the policy proposals that came from the black lives matter movement. He urged the CRB to consider campaign zero as they discussed the current case.

Mr. Van Houten welcomed everyone back from the August break. He thanked Leia, Mark and Lindsey for presenting to the Eugene City Council in their work session. He responded to Mr. Radey's public comment. He stated that addressing other officers present during a crime was an

issue that the CRB discussed previously. The CRB members agreed that this was an issue that needed to be looked at further.

Ms. Foltz thanked Mr. Radey and Ms. Piper for their public comments. She suggested that the case Mr. Radey mentioned be reviewed by the CRB. She reported that the budget committee approved funding for 24-hour Cahoots service and the City of Springfield was also providing funding for Cahoots services into Springfield on a limited basis. Ms. Foltz stressed the importance of having mental health workers responding to mental health crises.

Ms. Marek was thankful for the public comments. She reported no updates from the Human Rights Commission (HRC) because there had not been meetings to attend recently. She reported that she had a school related conflict that caused her to have to leave HRC meetings early. She wondered if this would affect her ability to act as HRC liaison for the CRB. Ms. Marek reported that she planned to record CRB meetings. She thought it was important that there was a record of the meetings. She planned to put the recordings online at [www.tinyurl.com/crbaudio](http://www.tinyurl.com/crbaudio).

Mr. Van Houten suggested that the HRC liaison issue be added to the next CRB meeting agenda.

Ms. Foltz added that liaison position elections were planned for October.

Mr. McIntire expressed gratitude for the public comments. He reported that he attended the Police Commission meeting on September 8, 2016. He said he worked with the Police Commission to advance a number of policy concerns raised by the CRB and provided a brief summary of the discussion:

- Medical aid to suspects – Mr. McIntire suggested that this be a stand-alone policy.
- Communication with persons with disabilities, Policy 37 – This policy was reviewed.
- Promotion and demotion of supervisors – Mr. McIntire made a motion to have command staff present on this topic. The motion passed unanimously.
- Code of conduct on integrity, truthfulness, immoral conduct and insubordination - Mr. McIntire commented that these sections needed to be clarified and simplified in order to make them more meaningful. Mr. McIntire also introduced a motion to review the code of conduct with passed.

Mr. Denner commended Mr. McIntire on his work with the Police Commission. He reported that there was a note in open complaints regarding a 911 caller who was redirected because the issue involved the county Sherriff. He said someone posted an anecdote on Facebook that echoed this issue. Someone called 911 to report a despondent person on the railroad tracks near Northwest Expressway and was redirected to the sheriff's office. For Mr. Denner the issue was that emergency calls were not forwarded. He suggested that this issue be addressed.

Lt. Mason stated that the ability to transfer called existed. She was unsure why the callers in Mr. Denner's examples were not forwarded.

Ms. Pitcher asked that Mr. Denner forward information about the incident reported on Facebook to her.

Mr. Roseta thanks Mr. Radey and Ms. Piper for their comments and for their approach for speaking to the CRB. He said there was a need to have a community wide connection to mental health provision on the streets. He believed the case under discussion tonight could have been prevented if the correct tools had been used.

## V. CASE REVIEW

Ms. Pitcher offered a PowerPoint presentation entitled *Case Summary—Civilian Review Board—September 14, 2016* and facilitated a discussion on the case before the CRB.

### Summary of Facts

- RP's son turned his attention toward Officer A. Officer A stated that the son advanced towards him; RP2 stated her son did not advance. Officer A deployed his Taser. The Taser was apparently ineffective.
- When the son was within reach, Officer A punched him. Officer B did not see the punch, but stated that he did not believe the Taser was effective. Officer B placed RP2's son in handcuffs.
- Officer A stated that once he realized the son was in handcuffs, he retrieved his Taser, replaced the cartridge, and retrieved his ASP. He stated that he wanted to put the ASP back in his belt; he stated that he therefore struck the ASP on the deck repeatedly. RP1 (who had arrived on the scene) and RP2 both stated that this appeared to be an attempt to taunt the son and that it caused him to be more agitated.
- Supervisor D and Officer C arrived on scene. RP1 and RP2 alleged that RP2 was then thrown to the ground, and that Supervisor D then placed his knee in her back and slammed her head on the deck.
- Officer C stated that he observed Supervisor D give RP2 several commands to release her son (whom she was holding).
- Supervisor D physically separated RP2 from her son. Supervisor D stated in his interview that he attempted to pull her shoulder away and that the son became more agitated at this. Supervisor D then stated that he placed his arm between the son and RP2 and pulled her away; he stated that they both then fell to the ground.
- Supervisor D stated that the son then fell on top of him, and that it was not his intention to bring RP2 to the ground. Supervisor D stated that he did not place his knee in RP2's back or push her head to the ground.
- Neither Officer A nor Officer B recalled seeing how Supervisor D separated RP2 from her son or how they ended up on the ground. RP2 was arrested for interfering with police. Her son was taken to a medical facility on a non-criminal hold.
- RP2 was not charged following this incident; the City Prosecutor believed that the arrest was supported by probable cause.
- There was some discrepancy about whether RP1 was able to capture video of the incident. In-car video provided an audio recording of the contact, but the camera was not positioned where it could capture video of the contact.

### Allegations

#### **Officer A**

1. Use of Force: that Officer A used excessive force to effect the arrests of Reporting Party 2 and her son.
2. Professional Police Contacts: that Officer A violated the Professional Police Contacts policy by failing to provide equitable law enforcement services with due regard for the protected class status of those served.
3. Use of Taser: that Officer A violated the Taser policy when he deployed his Taser twice on Reporting Party 2's son and when he "painter" the Taser laser pointer on Reporting Party 1

#### **Officer B**

1. Professional Police Contacts: that Officer B violated the Professional Police Contacts

policy by failing to provide equitable law enforcement services with due regard for the protected class of those served.

**Officer C**

1. Use of Force: that Officer C used excessive force to effect the arrests of Reporting Party 2 and her son.

**Supervisor D**

1. Use of Force: that Supervisor D used excessive force to effect the arrests of Reporting Party 2 and her son.
2. Professional Police Contacts: that Supervisor D violated the Professional Police Contacts policy by failing to provide equitable law enforcement services with due regard for the protected class status of those served.
3. Unsatisfactory Performance: that Supervisor D, as the watch commander and on-scene supervisor, failed to conform to standards established for his rank or position and failed to take appropriate action.

Recommended Adjudication

1. **Officer A**

- a. Use of Force
  - i. EPD chain of command: Within Policy
  - ii. Auditor's Office: Within Policy
  - iii. Chief's Adjudication: Within Policy
- b. Discrimination
  - i. EPD chain of command: Unfounded
  - ii. Auditor's Office: Insufficient Evidence
  - iii. Chief's Adjudication: Unfounded
- c. Use of Taser
  - i. EPD chain of command: Within Policy
  - ii. Auditor's Office: Within Policy
  - iii. Chief's Adjudication: Within Policy

2. **Officer B**

- a. Use of Force
  - i. EPD chain of command: Within Policy
  - ii. Auditor's Office: Within Policy
  - iii. Chief's Adjudication: Within Policy

3. **Officer C**

- a. Discrimination
  - i. EPD chain of command: Unfounded
  - ii. Auditor's Office: Unfounded
  - iii. Chief's Adjudication: Unfounded

4. **Supervisor D**

- a. Use of Force
  - i. EPD chain of command: Within Policy
  - ii. Auditor's Office: Sustained
  - iii. Chief's Adjudication: Within Policy
- b. Discrimination
  - i. EPD chain of command: Unfounded
  - ii. Auditor's Office: Insufficient Evidence
  - iii. Chief's Adjudication: Unfounded
- c. Unsatisfactory Performance
  - i. EPD chain of command: Sustained

- ii. Auditor's Office: Sustained
- iii. Chief's Adjudication: Sustained

#### Issues for CRB Discussion

- Complaint Intake and Classification
  - Mr. Roseta thought the response was prompt. He felt staff's response to be satisfactory.
  - Mr. Denner was satisfied with the response in case classification.
  - Mr. McIntire stated two questions regarding the allegations: 1) Why was the lack of medical evaluation after taser deployment not part of the review. 2) Was there a policy that states officers should engage in de-escalation and if so why was this not directly addressed in the review for officers A, C and Sergeant.
  - In response, Ms. Pitcher stated de-escalation was addressed under Use of Force 300.2. Mr. Gissiner thought this was addressed. He said the first two officers initially engaged in activities that indicated de-escalation, but asking to turn off the lights seemed to agitate the man.
  - Mr. Wig reported that the auditor's office addressed this issue on page 7-12 on the auditors recommended adjudication.
  - Mr. McIntire clarified that he wondered why Officer A was not investigated on a failure to engage in de-escalation.
  - Ms. Marek wondered why mental health crisis response 4.18 was not implicated.
  - Mr. Denner added the allegations did not look at 4.18; they looked at use of force. He said one officer was operating under 4.18 and one officer operation under use of force.
  - Ms. Marek asked why aftercare 309 and 4.18 were not implicated.
  - Mr. Gissiner stated the use of force was investigated, rather than 4.18 because the officers believed they were responding to a call about violent behavior toward another person.
  - Mr. Van Houten disagreed, stating there was ample evidence that Officers A and B knew were responding to a person in a mental health crisis who may have acted violently toward another person.
  - Mr. Van Houten added that the nature of the complaint was around the bias and forced used.
  - Ms. Marek said the mental health response could not be disaggregated from the use of force because there was potential for escalation.
  - Mr. Wig said the greater historical and political context stipulated that the excessive use of force against and unarmed African American male took precedence over mental health concerns. That needed to be the primary area of investigation. He commended Chief Kerns for being proactive by sharing the evidence with the plaintiff as it became available.
- Complaint Investigation and Monitoring
  - Mr. Wig commended Sargent Nelson on a thorough investigation. He felt comfortable with the materials presented and the report. He asked if the son was tased a second time; the report said he was, but when the taser was analyzed it indicated a critical error and did not deploy a second time.
  - Mr. Denner said the son was tased twice.
  - Mr. McIntire thought there were three taser deployments.
  - Ms. Pitcher clarified that the first deployment was a test deployment at the beginning of the shift.

- Mr. Van Houten stated that the interviews were timely, fair and thorough. He presented three areas he believed the interviewer should have questioned more in depth:
  - Decisions to deescalate
  - Length of time of the incident
  - Implicit biases
- Ms. Foltz said the investigation was thorough. She echoed Mr. Van Houten’s comment, stating that time and implicit biases should have been investigated together. Investigating the series of decisions that go into determining when to escalate an interaction in order to end it quickly was important, especially when a person of color was involved; implicit biases were an important aspect in the line of decision making.
- Ms. Marek agreed. She said the investigation focused on overt discrimination but there could have been more investigation on implicit biases. She believed there was evidence that implicit biases played a role. She cited examples of the officers stating that the son “made a war cry” and “grew taller.” She said these comments dehumanized the son, indicating implicit biases. She added that everyone has implicit biases and it was important to explore them when these opportunities arose.
- Mr. McIntire did not have any comments to add.
- Mr. Denner was satisfied with the investigation. Regarding the Mr. Van Houten’s question about the length of time of the incident, Mr. Denner indicated that the confrontation began at 3:45 and resolved at 4:02. It was a very short amount of time. Mr. Denner stated that the size of space and the elevation intensified emotional responses.
- Mr. Gissiner clarified that the son’s voice was heard at 3:50 p.m., and at 3:52 Officer A yelled at the son to sit down or he would be tased.
- Mr. Roseta added nothing further. He thought the investigation was done well.
- Relevant Department Policies and Practices
  - Mr. Roseta stated that there was a concern about the difference between use of force and de-escalation and should be looked at further. He said he understood de-escalation to be aspirational and use of force to be codification of what should be done.
  - Mr. Gissiner emphasized that the standard for excessive force were clear, while the standards for de-escalation were still evolving.
  - Mr. Denner discussed an issue in practice. On Wednesday nights, including the Wednesday night under discussion, there were overlapping short shifts leaving few people to answer multiple calls. He said adequate supervision and leadership were necessary to make good responses to domestic calls.
  - Mr. McIntire stated that Officer C and Sergeant did not try to deescalate the situation, but rather attempted to command and control. He emphasized the importance of using Crisis Intervention Team (CIT) training skills. He asked about the taser testing process as the taser used in this situation indicated a critical error.
  - In response, Lt. Mason said the officer did a spark test at the beginning of the shift and got a reading indicating the taser was functioning correctly. Once this information was gathered, it was presumed that the taser was functional. However, an error could occur during the shift. The taser data could only be found when downloaded after the taser was deployed. She stated that all tasers were thoroughly checked quarterly.
  - Mr. McIntire asked if CIT training was tested and practiced regularly.
  - Lt. Mason said the Police force was attempting to use de-escalation practices in multiple different trainings. There was recently a 4-hour training on de-escalation, which included video reviews and small group discussion about different situations. She indicated that role-play would be encompassed into firearms training. She said the police force planned to make de-escalation training more robust.

- Ms. Marek suggested the use of stronger language in the policy that made de-escalation binding, but also allowed flexibility for urgent situations. She emphasized the importance of ongoing CIT practice.
- Ms. Foltz agreed with the concerns about de-escalation. Her main concern was if de-escalation was not effectively utilized it could often lead to a justified use of force. She asked what the policy was on arresting victims as she was concerned that the victim in this case ended up being arrested. Ms. Foltz expressed concern that the victim did not receive caretaking and medical attention. She said this could cause victim to feel less safe when calling emergency services, deterring her from calling again.
- Mr. Wig stated that probable cause did not replace discretion on whether or not arresting a victim served any kind of purpose.
- Mr. Van Houten asked if there was a procedure to determine which officer was the lead on a call. He said in the case under discussion there seemed to be a lack of communication between Officer A and B. He asked if officer A or officer B was the lead on this call.
- Lt. Mason said typically whomever dispatch sends to the call was the primary officer. Secondary officers were cover. She believed that officer B was the primary officer that was dispatched.
- Policy and/or Training Considerations
  - Mr. Wig was concerned that Officer A indicated he had good results yelling at people in mental health crises in the past. Mr. Wig did not believe this was a good intervention and that Officer A needed more training.
  - Mr. McIntire suggested there be more discussion and training around biases, including and expanding beyond racial biases.
  - Mr. Denner emphasized the importance of supervisor training. He believed there should have been more situational evaluation done by the officers. Someone should have taken the initiative to provide medical evaluation for all parties involved.
  - Ms. Marek elaborated on why implicit bias training would be useful. She said research finds that people tended to rely on unconscious automatic responses in times of stress. Therefore implicit bias training was particularly important because it helped provide people the tools to intervene in the moment. She said this training was particularly important for people in powerful positions. She added that implicit bias training should not only be focused on racial biases but different mental health backgrounds, as well.
  - Ms. Foltz emphasized the importance of early intervention. She believed that people tended to operate out of habit and that this was most likely not the first time the officers had reacted this way. She suggested identifying patterns in behavior and intervening with appropriate training.
  - Mr. Van Houten said there were cultural opportunities that were delivered to officers that were ignored. For example Respondent 2 and the son made references to their culture that were taken as threats which escalated the officers rather than taking into consideration the culture of the family. He said these were opportunities for understanding and consideration of biases.
  - Mr. Wig said it was important to note that the officer should have understood the potential interpretation of beating the asp police baton on the ground to close it.
  - Mr. Roseta clarified that the officer believed that he was removing a weapon from the scene.
- Adjudication Recommendations
  - Officer A
    - Use of Force

- Mr. Roseta agreed with the recommendations.
- Mr. Denner questioned some findings and results but supported the auditor's recommendations.
- Mr. McIntire agreed with the recommendations.
- Ms. Marek agreed with the recommendations and added that 4.18 should have been implicated.
- Ms. Foltz agreed with the recommendations.
- Mr. Van Houten disagreed with the recommendations. He believed this was an opportunity to use de-escalation.
- Mr. Wig agreed with the recommendations.
- Discrimination
  - Mr. Wig said believed that adjudication provided by the Chief was unsatisfactory. He thought the auditor's office was correct that was insufficient evidence for discrimination. He felt that the use of the word 'unfounded' was invalidating for members of the African American community.
  - Mr. Van Houten agreed with Mr. Wig's comments.
  - Ms. Foltz agreed with the previous comments. She added that it was impossible to determine that biases were the only motivation in police action, but to say that it was not at all involved was not realistic.
  - Ms. Marek agreed with the previous comments.
  - Mr. McIntire agreed with the auditor's recommendation.
  - Mr. Denner supported the auditor's recommendation.
  - Mr. Roseta agreed with the auditor's recommendation. He emphasized that the conclusion that there was insufficient evidence leads one to conclude that the case was unfounded.
- Use of Taser
  - Mr. Roseta said the use of taser was within policy.
  - Mr. Denner said the use of taser was not in policy. Medics were on scene who were not utilized.
  - Mr. McIntire believed the taser deployment was within policy, but the policy was violated by not having the medics check the person after the taser was deployed.
  - Ms. Marek agreed stating that the taser deployment was founded and added that 309.5 with aftercare was violated.
  - Ms. Foltz agreed with Ms. Marek's comments.
  - Mr. Van Houten believed that the use of taser was within policy.
  - Mr. Wig agreed with the previous comments and stated that the responsibility for aftercare was on the supervisor.
- Officer B
  - Use of Force
    - All CRB members agreed with the auditor's recommendation.
- Officer C
  - Discrimination
    - All CRB members agreed with the auditor's recommendation.
- Supervisor D
  - Use of Force



- Mr. Wig said he was unsatisfied with the recommendations presented by the Chief. He agreed with the auditor’s recommendation.
    - Mr. Van Houten, Ms. Foltz, Ms. Marek, Mr. McIntire, Mr. Denner and Mr. Roseta agreed with the auditor’s recommendation.
  - Discrimination
    - All CRB members agreed with the auditor’s recommendation.
  - Unsatisfactory Performance
    - All CRB members agreed with the auditor’s recommendation.
    - Mr. Gissiner added that he was concerned that there was no consideration for welfare of neither the potential victim of a violent crime nor an individual who was tased.
- Additional Comments/Concerns
  - **Ms. Foltz, seconded by Mr. Denner moved to extend the meeting for fifteen minutes. The motion passed unanimously, 6:0.**
  - Mr. Roseta asked for clarification on the assumption that there was bias. He argued that this was difficult to prove that there was racial bias.
  - Mr. Van Houten believed bias was involved but could not directly link it to race. He was concerned that one of the officers acknowledged going into the call thinking something was going to go bad. He referenced the officer comparing the son to a professional athlete and wondered if this terminology might not have been used if the son was not African American. He added that had the son been smaller or not in a mental health crisis, the outcome might have been different.
  - **Mr. Wig left at 7:33 p.m.**
  - Ms. Marek cited empirical evidence and research that black people are seen as more culpable and dangerous. In this situation, the ways the officers did not provide after care and medical attention, along with the dehumanizing comments that were made pointed to implicit biases as a factor in the officer’s actions.
  - Ms. Foltz cited the Kirwan Institute’s research on implicit biases. The research shows the entire population was affected by implicit biases, which were heightened when layered with multiple aspects of identities. In this case race, age, gender, size and mental health were factors that could have influenced implicit biases of the officers. She added that implicit bias training was important for people in power with guns. The Kirwan Institute research shows that training could make a difference in reactions based on implicit biases.
  - Ms. Marek emphasized that the acknowledgement of implicit biases as a factor provided an opportunity for more training.
  - Ms. Foltz commended Officer B’s empathy with the mother’s reactions in the situation. He was also the calmest in the situation. Ms. Foltz emphasized the importance of being able to empathize with another person with cross-cultural understanding.
  - Mr. Roseta agreed that the mother was ignored by all of the officers, aside from Officer B. He added that her action might not have been cultural, but rather due to the relationship between a mother and son.
  - Mr. Denner was concerned that the media and press focus on race and class overshadow mental health. He said we needed to address how to

appropriately respond to mental health crises. He suggested continuing to get Cahoots available and look for other resources.

**IX. ADJOURN**

The meeting adjourned at 7:47 p.m.

*(Recorded by Emily Mathis)*