



Police Review Commission

## POLICE REVIEW COMMISSION ACTION MINUTES

South Berkeley Senior Center  
2939 Ellis Street  
Berkeley, California

Date: Wed., January 11, 2006  
Time: 7:30 p.m.

**NOTE: Please disregard the minutes distributed at the January 25, 2006 meeting. These minutes have been revised.**

1. ROLL CALL 7:32 P.M.  
  
Chairperson: Commissioner Chung  
  
Commissioners Present: Kidd, Radisch, Ritchie, Sherman, Smith, Wafer and White  
  
Commissioners Absent: Herrera  
  
PRC Staff: Dan Silva and Victoria Urbi  
  
BPD Staff: Lieutenant Hester and Sgt. Murray

2. PUBLIC COMMENT
  - a) Terry Kalahar, a concerned citizen and a Berkeley Mental Health (BMH) employee (not representing BMH), asked the PRC to recommend changes to the current 5150 policy, which requires that police assist 5150 calls. The California Welfare Code section 5150 allows mentally ill persons to be detained, who are considered gravely disabled or a threat to themselves or others and that determination can be made either by a mental health professional or a police officer.

Berkeley's policy should be similar to that of San Diego, Los Angeles, Alameda and San Francisco: "The San Francisco Police Department (911) is to be called only

when a situation impends serious bodily harm, or is life threatening or a weapon is being used.” These counties do not use police in standard 5150 calls and they allow mental health professionals to handle the situation, because:

- (1) It is wasteful for police resources.
- (2) It corrodes trust between communities and mental health professionals, particularly communities of color.
- (3) It perpetuates the myth that mentally ill people are violent.

On January 25, 2006, Mr. Kalahar will speak to the BMH Commission to request a change in policy. He was not present to complain about the police, but to allow them to do the job, for which they were hired to solve and prevent crimes and not do a job suited for mental health professionals.

Commissioner Radisch asked Lt. Hester about the current BPD policy on 5150. Lt. Hester stated that if police feel an issue could escalate into a serious crime or a danger to a person, the police would send an officer.

Commissioner Radisch asked whether an officer would automatically respond to a 5150 call. Lt. Hester confirmed that it would be automatic.

Mr. Kalahar stated the BMH policy is that every 5150 call requires police assistance. Berkeley is the only agency in California that has its own mental health department. The current ambulance company requires that people be searched before they go inside the ambulance.

Commissioner Sherman asked if a citizen is concerned about 5150 behavior, their option is to call 911 and was not aware that there is some other option other than 911.

Mr. Kalahar confirmed this is the case, but the citizen should also have the option to call the Police Non-Emergency number.

Commissioner Smith asked what Mr. Kalahar’s supervisor thinks of the policy and he stated the policy is under review. Commissioner Smith stated this issue is not within the purview of PRC, whose function is to hear complaints about officers. We would have to do more research.

Commissioner Ritchie stated this is exactly the type of issue the PRC should be considering and half of our responsibilities is to propose policy statements and work with city departments if necessary.

Commissioner Radisch stated his son is a Child Protective worker in San Mateo County, where police are present anytime he goes out on calls and his son feels more comfortable when the police are present.

Acting Officer Silva stated that the Commission could not take action that night. Mr. Kalahar’s statement is under “Public Comment.” It seems to him that Mr. Kalahar

has yet to have a meeting with Mental Health and the Police Department and if he is successful with these departments, he can return and recommend the policy before the Commission.

Commissioner Ritchie indicated that if Mr. Kalahar can keep the PRC updated and forward information to the PRC, Mr. Silva will provide the information to the Commissioners.

- b) Zachary Running Wolf Brown is a Native American leader in the Bay Area. Since he ran across the country from police when working on Mamia Abu Jamal's case, he has been constantly harassed by a series of police departments and they have been "tag teaming" him. He has been arrested forty-three (43) times in forty-six (46) months. An officer with badge number 121 illegally detained him.

Acting Officer Silva asked if it was Mr. Brown's intention to file a complaint and Mr. Brown said, "Yes." Mr. Brown was advised to come into the office on January 12th and file a complaint.

Commissioner Wafer stated that he has known Mr. Brown since the fourth grade and if there were a Board of Inquiry on his case, he would have a conflict of interest.

- c) Jeff Arcunas wanted to find out if there is a review commission set up to deal with the campus police, because they are harassing people. A U.C. Berkeley police injured him on a routine traffic stop, tore his ACL and caused other damages.

Acting Officer Silva stated PRC does not have jurisdiction or subpoena power over U.C. officers. If there is overlapping officers who dealt with his incident, we can investigate the BPD officers.

Commissioner Ritchie stated that the U.C. Police is under the jurisdiction of the Regents of the State. Mr. Arcunas asked why the U.C. police share facilities with the BPD. Lt. Hester stated that the U.C. police pay the City a flat booking fee of \$1500 a month.

Commissioner Sherman recalled that he has known Mr. Kalahar for several years, will keep in contact with him, and will report back to PRC. He believes this issue deserves consideration.

### 3. MINUTES APPROVAL

- a) Approval of the November 9, 2005 Minutes.

Commissioner Smith stated on page 3, under new business, "Cure Brown Act," the second sentence concludes with a thought that is opposite with actually what was being done. Commissioner White wished to address that paragraph since the words came from him.

Commissioner White edited the sentence to: "He stated that the Commission should move forward and rescind the meeting, however, he thought this was a great opportunity **for** the

Commissioners to meet with the City Attorney to defend themselves for their need of independent **counsel.**”

Commissioner Smith pointed out that on the last sentence of page 3, it should read, “Commissioner Chung announced that the motion **died for lack of a second.**”

Commissioner Ritchie adopted the amended motion. Commissioner Wafer seconded. The motion passed unanimously.

4. PRC OFFICER'S REPORT (For Discussion or Action)

- a) Presentation from Lisa Caronna, Deputy City Manager. Acting Officer Silva announced that Deputy City Manager Caronna was ill and unable to attend the PRC Meeting. She requested to postpone her appearance until the next PRC Meeting. Commissioner Ritchie asked if the Chief was coming to the next meeting and Acting Officer Silva confirmed that he planned to attend.

Commissioner Radisch asked what Deputy City Manager Caronna planned to discuss. Acting Officer Silva stated she would discuss the matter of the Brown Act violation. Commissioner Radisch stated that is a presumption and other Commissioners said, “The alleged violation.” Acting Officer Silva stated he understood what he is saying, but he is only communicating what Deputy City Manager Caronna told him.

Commissioner Ritchie requested if Deputy City Manager Caronna could come to the meeting after that meeting since they would be discussing items with the Chief. Acting Officer Silva stated he would ask her.

- b) **New Filings:** #2094 Ronald Curtis, #2095 Theodore Bolton, #2096 Christine Keyser (policy), #2097 Charles Jackson, and #2098 Cecil Jackson.
- c) **Boards of Inquiry** scheduled: #2054 Lisa Rock on 1-12-06; #2071 Diane Arsanis on 1-23-06, and #2067 Elliot Cohen on 1-30-06.

At the second PRC meeting this month, Acting Officer Silva will provide the February Board of Inquiry schedule.

- d) Update on Staffing. Acting Officer Silva introduced Investigator Urbi, who he worked with at the Citizens’ Police Review Board in Oakland, CA.
- e) E-mail from Sgt. Andrew Murray, Internal Affairs Bureau informing about Officer E. Wilson’s military assignment extension. PRC Case #2049 Calvin Morris.
- f) Letter to Calvin Morris regarding item (e) right above.

Acting Officer Silva stated we contacted Mr. Morris. Officer Wilson was sent to Afghanistan and he has been rerouted to Iraq for approximately one year. Acting Officer Silva stated, "In all good conscience, I don't think we should wait another year." Since this case was a late file, the officers would not be required to participate in a Board of Inquiry.

Acting Officer Silva initially presented this case for an administrative closure, which the Commission denied.

Commissioner Sherman stated that based on what Officer Wilson is going through, he does not wish to pursue this case any further.

Commissioner Smith moved to place this case in Administrative Closure, seconded by Commissioner Sherman.

Investigator Urbi announced that Sergeant Curtin is a second officer.

Acting Officer Silva pointed out that since it is a late file, subject officers are not required to attend the hearing. Commissioner Radisch stated that we have had hearings without officers present and asked if one subject officer is available, how could we close a case. Acting Officer Silva moved Sergeant Curtin as the subject officer because when this case was before the Commission, Mr. Morris stated that the sergeant was present at the scene and did nothing.

Commissioner Radisch moved to schedule whatever of the case remains. Commissioner Kidd seconded the motion.

- g) Recommendation for Administrative Closure, PRC Case #2091 – Judith May.

Commissioner Ritchie moved to close and seconded. The motion passed unanimously.

- h) Report of Findings on Board of Inquiry, PRC Case #2053 by Complainant Richard Berkeley.
- i) Commissioner Attendance Report for Six-Month Period: July 1<sup>st</sup> through December 31, 2005.
- j) *(New Report)* 2005 Annual Commission Attendance Report.
- k) Information regarding Commissioner Leaves of Absence and Request for Excused Absence Form.

Commissioner Smith observed on the "Commissioner Request for Excused Absence: Religious and Cultural Holidays," that there is St. Patrick's Day, but no St. Valentines Day. She urged the Commissioners to contact their council members and urge them to amend Section 3.02.030.

- 1) Letter from Complainant Carol Denney regarding PRC Case #2066.

Acting Officer Silva advised that unless an officer is a current member of BPD, we do not have jurisdiction over him or her. The findings report with regard to Officer Emelson is pending. The Chief indicated that Officer Regnary's lack of employment with the department had nothing to do with Ms. Denney's complaint.

5. BPD CHIEF'S REPORT

Berkeley Police Department Representative.

Lt. Hester stated that the Chief placed three recently hired officers in orientation this week. Officer McDougal, a lateral from U.C.P.D., was sworn in last Thursday. There is pending the hiring of three new parking enforcement officers. They are up to strength on their public safety dispatchers (PSD) and community service officers (CSO). The Chief stated he plans to attend the next business meeting regarding the ABC programs.

Commissioner White asked about the investigation of changing the dispatch system. Lt. Hester stated the BPD is looking at a new system right now. Andy Greenwood will work strictly on the record management and CAD systems work better, to help the officers track different events and update their records management capability. They have had a lot of problems with this in the past. A change will occur some time this year.

6. COMMITTEE REPORTS (For Discussion or Action)

PRC Subcommittee update regarding the Berkeley Police Department's Mutual Agreements, Understandings and Policies 2005 publication.

Chairperson Chung met with Mark Schlosberg regarding the Mutual Aid packet. She will send an electronic mail to the subcommittee on his suggestions. Mr. Schlossberg will send an electronic mail to the subcommittee on the draft proposal.

Chairperson Chung stated the NACOLE Conference was a good experience in terms of seeing other civilian review board models. The New York board received 6,800 complaints last year and 125 investigators. She appreciated the historical background of this Commission. Chairperson Chung will type her notes and provide packets and brochures to the Commission at the next meeting.

Acting Officer Silva stated Janet Reno was the keynote speaker and she talked about Taser Guns, which BPD does not use.

Acting Officer Silva stated that the PRC should move the Mutual Aid packet forward. In Santa Cruz, two undercover officers were found to attend political meetings. The Police Department admitted that the officers were at the meetings to ensure public safety. This is not necessarily occurring in Berkeley. It would be good to discuss these issues, so that any covert police activity considered to be appropriate by the department, can be discussed with the Commissioners ahead of time.

PRC Subcommittee regarding PRC Regulations and possible revisions.  
This will be ready to submit to BPD and Police Officers' Association for their input and subsequent discussions.

7. OLD BUSINESS (For Discussion or Action)

***Tabled PRC Policy Issues:***

Glennel Givens Officer Involved Shooting Case.  
Policy Issues Regarding Treatment of Homeless People.  
Redaction of Records – Review of General Order Draft.

8. NEW BUSINESS

a) Cure Brown Act Violation from meeting on September 28, 2005.

Acting Officer Silva stated this will be discussed by Deputy City Manager Caronna.

Chairperson Chung asked how many cases the Administrative Law Judge have reviewed. Acting Officer Silva stated six cases. He will bring the report at the next meeting.

Commissioner Radisch asked if there is only one Administrative Law Judge who reviews the PRC cases, because he has only seen one name. Acting Officer Silva stated there is only one Judge and this was in the contract. Commissioner Radisch asked if this was the intent of the City and if there is any basis for challenge or is this a contract the City makes without the Commissioners' input.

Commissioner Radisch stated if they are running up against the same thing and their findings are being reversed, they have no input into who is on the Panel or who the judge is going to be. Commissioner White stated the City Manager would review the process after six months. Chairperson Chung stated this would be a good opportunity to discuss with Deputy City Manager Caronna at the next meeting.

Commissioner Wafer (?) asked if they could bring a quarterly report of the Caloca appeals hearing report.

Commissioner White would like to see in the packet the quarterly or half yearly report on pepper spray usage. Acting Officer Silva stated they could request that from BPD.

Commissioner White stated he is interested in the PRC spearheading the re-emergence of BAYPON, the Bay Area Police Oversight organization. He also asked when the next NACOLE Conference would take place. Chairperson Chung stated NACOLE would be in Idaho.

Acting Officer Silva stated that staff prepared a Council item to add \$40,000 to the Caloca appeals budget to cover expenses. Investigator Urbi clarified the report was to amend the current budget to add \$15,000, so this could bring us to the end of fiscal year 2006 in order to continue doing the Caloca appeals. This report will be before the City Council on Tuesday, January 17.

9. COMMUNICATIONS

See attached.

10. ADJOURNMENT

Commissioner Radisch moved to adjourn the meeting and Commissioner Kidd seconded the motion. The motion passed unanimously.