



POLICE REVIEW COMMISSION SPECIAL MEETING MINUTES

Wednesday, October 25, 2006
7:30 P.M.

North Berkeley Senior Center
1901 Hearst Avenue, Berkeley

1. CALL TO ORDER AT 7:33 P.M. AND ROLL CALL

Present: Acting Chairperson Commissioner Sharon Anne Kidd
Acting Vice Chair Commissioner Sherry Smith
Commissioner Kamau Edwards
Commissioner Jack Radisch
Commissioner David Ritchie
Commissioner William White

Absent: Commissioner Tamyr Bryant
Commissioner Michael Sherman

PRC Staff: Victoria Urbi, PRC Officer
Maritza Martinez, Administrative Support

BPD Staff: Chief Douglas Hambleton
Lt. Daniel Lee
Sergeant Craig Juster

BPA: Officer Henry Wellington

2. PUBLIC HEARING: "THE FUTURE OF THE POLICE REVIEW COMMISSION"

On October 19, 2006, the PRC received a petition of eighty-four (84) citizens of the City of Berkeley requesting a special public hearing to discuss: "The Future of the Police Review Commission." Pursuant to B.M.C. Section 3.32.080, the PRC is required to hold a public hearing on the above matter.

3. CITY ATTORNEY'S STATEMENT

City Attorney's statement regarding the status of Commission proceedings, pending the court hearing on November 14, 2006 on the Berkeley Police Association's suit challenging the Police Review Commission proceedings.

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Manuela Albuquerque, City Attorney, stated that this issue has been ongoing since 2002 when the lawsuit was initially filed. She said the PRC serves as an advisory agency and it is not involved in the Berkeley Police Department's disciplinary action. This law affects agencies that are involved in disciplining officers and have access to their confidentiality, as is the case of County of San Diego Civil Service Commission. But the PRC is not involved in disciplining officers and therefore this law should not affect it.

There is a stipulation that was signed by the City Council, PRC, and the City Attorney, which orders the PRC not to release any public records and/or hold any public hearings until after the November 14 hearing takes place. She said, "On November 14, I am going to Court to fight this case."

Ms. Albuquerque stated, "The suit has been around for four years and all appeals are public records. We had many closed sessions. If it is public record I'll provide it. We don't discuss confidential legal advice. I want you to understand that police Chief Roy Meisner filed pleadings on our behalf to defend this (PRC) procedure. Sarah Reynoso and I are management legal lawyers – we discipline – we are on the opposite side of the Berkeley Police Association. The Chief disciplines police officers and he has a pleading at our side of this case. I told you what my arguments are. I think they are good arguments, but the judge could rule against us. And of course if the judge rules against us, we must have a public discussion about what you should do."

4. DIRECTOR'S REPORT

- a. Impact of Copley Press on other jurisdictions with the authority of civilian review of law enforcement (See Attachment I).
- b. Hearing models from other jurisdictions

5. INVITED GUEST SPEAKER, ANDREA PRICHETT, COPWATCH

Ms. Prichett circulated a petition to hold a public hearing and received over eighty (80) signatures from Berkeley citizens in order to hold this public hearing. Ms. Prichett was concerned about the presence of Chief of Police Douglas Hambleton at the PRC closed session meetings. She said, "How could a representative of the BPD be in a meeting where they are discussing strategies to protect the PRC?" She was also disturbed about the fact that the public had no representation in the closed meetings. She stated, "It is hard to believe that Chief Hambleton from BPD is not going to relate to BPA pertinent information discussed in the closed session. How can we trust them?"

Ms. Prichett also discussed the increasing hostility and use of force by Berkeley police officers. She feels the PRC should seek some independent counsel because the City Attorney, although she might have good intentions, is in conflict with the interests of the PRC. She feels there is a need for BPD to increase their accountability and openness to the public.

A Copwatch video was shown, where members of BPD officers were shown in action. Ms. Prichett stated, "It's about the right for the public to observe." She stated that the incidents occurred in the last two years, mostly in the South Berkeley area.

6. **PUBLIC COMMENT**

Approximately fifty (50) members of the public attended the hearing. Below is a partial list of the public comments:

Margot Wallace (Petaluma Copwatch) said, “Police need to be accountable. My concern is that this will set a precedent for other places. I want you all to know that you have support from people outside of your community.”

Jake Gelender (Berkeley Copwatch) stated, “The Copley decision has brought implications for California. Every case where a civilian review body is now going to court, is very significant for how Copley is going to be interpreted in the future. I think that Berkeley with this lawsuit has the chance to really stand up for something bigger. Berkeley is ready to really be active in forming what a post-Copley civilian oversight is going to look like. We have great concerns, specifically, the PRC needs independent counsel. Manuela Albuquerque’s basic conflict of interest in this, which Andrea pointed out - her job won’t benefit very much if there are a lot of cases of police abuse getting validated. Don’t just think about the future of the Berkeley police. You should be thinking about Los Angeles Police, the Oakland Police, and San Jose Police, because the more cases that fail where police commissions can’t argue successfully that they have a place in the state after the Copley decision, the more under threat we all are.”

Michael Titcomb (Copwatch) stated, “I just wanted to comment because I’m sitting right across from Chief Hambleton. And I saw him watching that movie and for someone who is involved in the disciplining of police officers, he didn’t seem all that interested in a police officer who is on camera admitting to violating official policy. And this is the same person that is sitting right next to the representative of the Berkeley Police Officer’s Association, and he knows this confidential legal strategy, and he is sitting right there talking to the guy. So I feel the PRC is really important. We can’t count on the police to police their own because they just won’t.”

Leroy Moore (KPFA Radio Copwatch) was disturbed about the Copley Press. He said, “I see cases like myself walking down University Avenue and being stopped by police. I would like to see if the police needs citizen’s training, other training, or discipline so this stuff won’t happen. They should be open to us because they say they provide public service – we are the public.”

Elizabeth Gill said, “I really feel the PRC has got to stay in existence because in all my thirty-five years in Berkeley in the immediate vicinity I remember seeing on 60 Minutes a segment about the Richmond Cowboys when the officers of the Richmond Police Department used to pull African Americans out of their cars and beat them. I also remember some big problem with the Police Department in the City of Emeryville. So, I really find the civilian review of law enforcement to be very helpful.”

Mark Schlosberg (ACLU and former Berkeley PRC Commissioner) stated that it is good the PRC is fighting this case. He said, “The Copley decision is a very bad decision... It will take some legislative change as well to deal with places besides Berkeley. I don’t think that the Commission is well served to just wait and not start planning for potential outcomes of the case, whether positive or negative. If the PRC wins and is allowed to continue, you should be thinking of how to improve the Police Review Commission process to make it more accurate and more effective. If the PRC loses, you will need to be planning about how to make the PRC Commission function under the

new law.”

Mr. Schlosberg stated, “Start thinking of the consequences of either outcome of the case. Who knows how long it’s going to take to get a decision. It would be in everybody’s interest for some planning for both potential outcomes to take place starting sooner rather than later.” He added, “If the City does lose and the Court rules that police commission records need to be confidential, I would recommend the process that still allows confidence to maintain examination of some officers, witnesses, even if it means a closed process rather than an open process with no officer and no information.”

Asa Dodsworth stated, “Torture has been legalized in this nation. Police Review has been criminalized. The cities of California are watching Berkeley. When we uphold police accountability, we uphold police accountability for the whole state. If Berkeley cannot do it, no other city will.”

Larry Silver stated, “...They are empowered as policeman, under law, to act in a certain way and when they fail to do their jobs, they are actually much more a threat to the community than actual criminals are, because they can manipulate the police reports and such. I think it is important not to just have a cool blue but to have the entire spectrum of colors of the prison shining on police force so that the code of silence that the police do have – that’s standard operating procedures – that way the community knows exactly who is doing their job and who is not doing their job.”

Dean Tuckerman said, “This is the good and strange times when everyone is losing their right to privacy except for the people we hire. Policemen work for us. We don’t work for them and it seems very strange. You can deal with questions of people that have been beaten up. Don’t give up. Don’t let the police state run you over. When the PRC began, I thought it would just be another bureaucracy and wouldn’t do much. I was wrong. The PRC, over the years, has done a lot and I hope it continues to do a lot and not give in to this mentality that is coming about.”

Jonathan Huang (Copwatch) stated, “The Police Review Commission and the police officers are a public service. We do not serve you. Earlier in this meeting I asked a very simple question, but very important question to the City Attorney, I asked, ‘Is the law always right?’ We should totally disregard what the law says. Why don’t we do what is truly right, because there have been many instances where the law has been totally wrong. For instance segregation, are you to say that because people broke the law they are wrong? Why don’t we say PRC ought to do what is right, not to do what is in the law. There are three specific points I like to make to the PRC:

First: to have independent legal counsel.

Second: that the Council, the PRC citizens of Berkeley could do everything possible to mold the City’s laws to what is right. If we do see injustice in the City, we have to do everything we can and make sure that the laws are just and moral.

Third: Copley set a precedent saying that the police officers have a right to privacy from public safety. I understand that police officers are citizens of Berkeley too, but their function is totally different from that of the citizen. They have tremendous power; tremendous discretion at their disposal and I think it is vital since they are tools of enforcing the law, which means that’s not always right.”

Steven DeCaprio said, “I encourage each and everyone of you to listen to the idea that there needs

to be a separate attorney that represents the Police Review Commission and talk to the City Council people about that because regardless of whether Manuela Albuquerque is going to do a good job or not, in her heart she really believes it, I don't question her. But the fact of the matter is this basic fact that most police abuse occurs in places that are poor. One of the reasons for that is because a police officer, the bad apple, knows that if he goes up into a rich neighborhood and shakes someone down or does something illegal, he is going to be caught, so they can go down to the low lands like the Oakland Riders did and take advantage of the fact that poor people don't have recourse in the law. Because a rich person can afford to hire an attorney, sue the police, sue the City, and then that police officer will probably get fired; so they know better not to do that and that's why most of the police abuse happens in the low lands."

Mr. DeCaprio stated, "And even the Supreme Court, when they created the exclusionary rule that says that police cannot use illegally obtained evidence against it. A person that is accused acknowledge that poor people, many of those who are the ones that end up in courts, cannot afford, after they are convicted, to sue the police for violating their fourth amendment rights... I think it is important because the PRC allows people that cannot afford attorneys, people that don't have a recourse in the law to say, 'Hey I wasn't arrested and I wasn't convicted, but I was abused or I was taken advantage of and come here and have open hearing and have investigators... Even if a person loses, they can go to court and then use that so a poor person can have something to take to Court and sue the cops just like a rich person. Manuela Albuquerque has a conflict of interest because she has to represent those cops."

Chris Morray-Jones said, "I applaud Copwatch for its work and for showing the video tonight. Some parts of that video were rather ambiguous – what was not ambiguous was the attitude of some a good many officers towards police accountability... I agree with the City Attorney that it is by no means clear that Copley decision means that PRC hearings have to be closed to the public. I applaud her and the City for taking on this case... So I hope that any discussion of what the PRC should do if the City loses this case is academic, but I also agree with Mark Schlosberg of the ACLU that it's something we should think about."

Mr. Morray-Jones stated, "I anticipate that there will be a statewide effort to amend the controlling statute. I see nothing at all in the Copley decision, even if hearings have to be closed to the public, that will prevent complainants who are under representative from participating fully in hearings and from cross-examining officers. We would ask the PRC to do three things: to continue to invest inquiry on individual complaints whether officers are required to attend, even if those hearings have to be closed; to preserve the right to full participation by complainants and require participation by subject officers; and if you do have, sooner or later, the goal will change."

Terri Compost said, "I feel disturbed with this decision and the idea that the police officers who are a public service have this right to privacy in their job activities. I want to thank the PRC for all the work that you have done. I would encourage the PRC to do well legally on this court situation and I think the citizens have responsibility to really be on top of this because it is frightening to imagine police review commissions disappearing everywhere and I applaud efforts to keep Berkeley PRC open and active. I would encourage it to continue on even while the court case is going... I am concerned with the conflict of interest with the City Attorney as well."

Aaron Aaron "For general background, the origins of police in the United States and the evolution of police in the United States started out from slave patrols. There is a very good book called Our

Enemies in Blue, which is about the social function of the police in defense of privilege and oppression. In a short range context, when a situation where the top levels of government of the United States have openly announced that they can carry out tortures, kidnapping, and murder just because they say so. And the closest ally of the United States internationally, the state of Israel, has included in its government a person who has expressed racist views that would have made him an embarrassment to the nazi party in Germany in the 1930s if he had said the same things about Jews then, that they are saying about Palestinians now. This is the context we are dealing with. I urge people to put this whole thing in this kind of political context and realize that every fight that we make to weaken the ability of the oppressors to arbitrarily oppress is part of the struggle against this what might be called fascism without a mask face. In this case, if they monitor well, the big police forces, they don't need gangs like in either Germany or Italy to impose fascism. They have low paid men in uniform to do it for them..."

7. ADIJOURNEMENT

Meeting was adjourned at 9:05 P.M.