

# Police Review Commission: January 12, 2000 Summary

## 1. ROLL CALL

**Commissioners Present:** Bennett, DeBose, Martynn, Ritchie (7:35 PM) Sanchez-Resnik, Taylor, White (7:40 PM), Zellman

**Commissioners Absent:** Mar

**PRC Staff:** Barbara Attard

**BPD Representative:** Lt. Hambleton, Sgt. Ahearn, Sgt. Harris

## 2. PUBLIC COMMENT None

## 3. MINUTES OF THE DECEMBER 8, 1999 MEETING

Taylor/Zellman (Moved/Seconded), passed to approve minutes of the December 8, 1999 meeting with DeBose abstaining.

## 4. PRC OFFICER'S REPORT

a) **New Filings** Five new cases filed since the last meeting, sixty cases received last year.

b) **Boards of Inquiry** Upcoming Boards of Inquiry were discussed.

c) **Administrative Closure PRC Case #1787 Complainant Levinsky** (For Discussion or Action) Investigator Reagans discussed his attempts to contact Mr. Levinsky and the lack of a response. DeBose/Sanchez-Resnik (Moved/Seconded), passed unanimously to administratively close PRC Case #1787.

d) **Summary Dismissal of PRC Case #1789 Complainant Jerry Chin (For Discussion or Action)** Investigator Reagans discussed the issues of the complaint filed by Mr. Chin. The issues as described by Mr. Chin did not reflect officer misconduct. Sanchez-Resnik/DeBose (Moved/Seconded), passed unanimously to approve Summary Dismissal of PRC Case #1789.

e) **Summary Dismissal Request by Lt. Hambleton PRC Case #1784 (For Discussion or Action)** Lt. Hambleton had filed a request for summary dismissal of PRC Case #1784 based upon: 1) the issuance of a PRC investigative report that he believed did not meet the requirements of reports stated in the PRC Regulations; and 2) alleged lack of notice of the charges against him. Investigator Reagans discussed delays in the investigation, some caused by problems in bringing witnesses in for interviews—both complainant's witnesses and officer witnesses. Barbara Attard explained that the officer was advised of the charges within 20 days of receipt of the complaint. She also explained that if all interviews have not been completed and transcribed that the policy is that the interviews are not included in the report. There was further discussion of the issues, including whether there was bad faith on the part of the PRC staff in getting the information out in the report. Investigator Reagans stated that he intends to include regulations and reports in the Investigative Report in the future if transcripts and/or interviews are not completed.

**DeBose/Taylor (Moved/Seconded), passed unanimously to deny Summary Dismissal of PRC Case #1784.**

**f) Third Quarter 1999 Statistical Overview**

Barbara Attard presented the statistical overview noting that the number of complaints received at this point in the year was approximately equal to the number received at third quarter last year; however, the number of Boards of Inquiry was up from thirteen last year to twenty this year. Commissioner Martynn expressed concerns that the number of excessive force, discourtesy, and improper arrest, search, stop and detention allegations continued to be the highest categories of complaints received.

**g) Upcoming BAPON Meeting in Novato, Wednesday, January 19, 2000, Noon**

The upcoming meeting was discussed, four commissioners expressed interest in attending the meeting.

**h) Upcoming Commission Secretaries/Commissioner Training by City Clerk**

Barbara Attard informed the Commission that training for Commissioners is planned for February.

**5. BPD CHIEF'S REPORT None**

**6. COMMITTEE REPORTS (For Discussion or Action)**

Transgender Task Force Recommendations—Barbara Attard stated that the recommendations are being prepared for the February 8, 2000 City Council meeting.

Drug Task Force Update—No report this meeting

**7. NEW BUSINESS (For Discussion or Action)**

**a) Role of Representatives at PRC Boards of Inquiry (Discussion with CAPR)**

DeBose/Zellman (Moved/Seconded), passed unanimously to open public comment for discussion of this issue.

There was a lengthy discussion of the role of representatives at PRC meetings. Chris Daly of Community Advocates for Police Review (CAPR) brought this item to the attention of the PRC. Issues of concern that were raised were: Inconsistent treatment of representatives at Boards of Inquiry; whether representatives are allowed to make objections to questions asked; whether representatives are allowed to question complainants, witnesses and officers.

Commissioners, staff and members of the public participated in the discussion. Because the PRC is not a court of law, it does not follow formal rules of evidence and commissioners do have some latitude in running Boards of Inquiry. The following basic rules were agreed upon:

- The PRC Regulations should be followed consistently in all Boards of Inquiry.

- There are no notice requirements for representatives and representatives, attorney or not, should all have the same rights regarding representation.
- Representatives on both sides can object to a question, but the objections should be made to the Chair.
- Representatives should go over the process with their clients (particularly complainants and those new to the process) before the hearing so they know what to expect. Decisions should be made as to who will question parties, and who will make a closing statement should be made before a hearing in order to avoid confusion regarding this issue.
- Representatives should be allowed to: 1) Give an opening narrative or elicit their client's testimony by direct examination, or ask follow up questions following their client's opening testimony. 2) Conduct direct examination of witnesses. 3) Conduct cross-examination of opposing witnesses. 4) Give a closing statement in place of their clients, if their clients so choose.

It was agreed that reviewing the PRC Commissioner Orientation packet could be helpful in ensuring consistency in the process.

**DeBose/Sanchez-Resnik (Moved/Seconded), passed unanimously to close public comment for discussion of this issue.**

#### **b) Pepper Spray Changes**

Lt. Hambleton made a presentation regarding the change in pepper spray policy. He explained that the plastic seals that are now coming off were placed on the canisters by BPD because the department was unable to find an appropriate commercial product that had such seals on them. A problem resulted because officers have had difficulty removing the seals in emergency situations. In the incident that led to the change, an officer was bitten by a suspect during a struggle in which the officer was unable to remove the pepper spray seal.

After discussions with the City Manager, the City Attorney, and the City Council the decision was made to remove the seals from pepper spray canisters. The reason for the seals was to ensure proper reporting of pepper spray use. Reporting has not been an issue and it is the policy of BPD that if an officer uses pepper spray and fails to report it the officer will be terminated.

Commissioner Martynn expressed concerns that the PRC was not notified before changes were made in pepper spray. He reviewed the last pepper spray report and pointed out that in the majority of cases summarized the pepper spray was reported as not effective.

Commissioner Zellman stated that she asked that this be placed on the agenda because several people had approached her and were concerned because it appeared that the compromise that had been reached about pepper spray seemed to be being eroded behind closed doors.

#### **8. OLD BUSINESS (For Discussion or Action)**

##### **a) Governor Davis' Veto of SB 78, "Driving While Black/Brown" Bill PRC Public Hearing Update**

Barbara Attard stated that a media alert had gone out to get the forum on calendars in various newspapers. She asked for assistance from commissioners in getting the word out and in finding a moderator for the event. Commissioners made suggestions about contacting television media. Channel 25 will be televising the forum. The PRC Regular Meeting will start at 6:30 PM.

**b) War on Weapons**

Barbara Attard contacted ATF to follow up on their program for tracking weapons. Literature from the ATF website was presented in the meeting packet. The program focuses on weapons used in youth crime. Lt. Hambleton stated that it appeared that the program would be most effective if done regionally because it appeared to track weapons back to dealers.

Commissioner Taylor stated that he would like to possibly have someone from ATF make a presentation on the subject at a future date. Commissioner Martynn asked that staff contact the state to determine how many guns are registered in Berkeley.

**Martynn/Taylor (Moved/Seconded), passed unanimously to ask that the Berkeley City Council establish a policy that BPD destroy all BPD weapons no longer in use, rather than selling or exchanging them.** Lt. Hambleton stated that it is the policy of BPD to destroy weapons, however many years ago outdated or unusable BPD weapons may have been turned in to manufacturers for new ones.

**Martynn/Zellman (Moved/Seconded), passed unanimously notify the Berkeley City Council that the PRC supports the efforts of the Mayor and Council to control guns in Berkeley through the "Guns into Art" program.**

**c) PRC/Internal Affairs Statistics**

Internal Affairs (IA) Boards of Review were discussed. Weldon Rucker represents the City Manager's Office on the Board of Review at this time. Several points of the Internal Affairs General Order were discussed.

Commissioner Martynn expressed concerns that the police chief often makes decisions on discipline before the PRC has completed its hearings and before there is a response from the City Manager. There was a discussion of the regularity of City Manager responses to PRC findings. Commissioner Martynn requested clarification on whether complainants are notified in all Internal Affairs complaints. Commissioner White asked for a flow chart about the process. This item will be placed on the agenda for the first meeting in February. Lt. Hambleton stated that Departmental Representatives at PRC Boards of Inquiry inform the Chief of Police of PRC findings the day after the Board.

**d) Proposed Alternate Payment Plan for PRC Commissioners**

This item was held over to the first meeting in February.

**e) The Pete Wilson "Gang Violence and Juvenile Crime Prevention" Initiative Follow-up**

Barbara Attard stated that the Berkeley City Council passed the resolution opposing this initiative at the January 11, 2000 City Council Meeting.

**9. COMMUNICATIONS**

- Commissioner DeBose requested that at the next meeting the Commission ask Council to send a letter to Mayor Brown of Oakland reminding him that it is important to appoint members to the Oakland Police Review Commission. Staff will prepare a letter to this effect.
- Commissioner Zellman presented a City Council Item that will be on the Council Agenda for January 19, 2000 regarding establishing a police liaison position to the lesbian/gay/bisexual/transsexual community.
- Commissioner Martynn asked that the BPD general orders and bulletins that were in the Communications Packet for this meeting be placed on an agenda for the second meeting in February.
- Barbara Attard disseminated the General Plan Revision Schedule.
- Chair Bennett bid farewell to Sgt. Harris who is transferring to patrol from Internal Affairs and she expressed appreciation on the part of the PRC for her support. Sgt. Ahearn is transferring into Internal Affairs.

**10. COMMISSION TO ADJOURN INTO EXECUTIVE SESSION TO DISCUSS LITIGATION****11. ADJOURNMENT**

DeBose/Taylor (Moved/Seconded), passed unanimously adjourn the meeting at approximately 10 PM.