

MINUTES

Citizens Police Review Board Meeting

August 11, 2010
7:00 p.m.
City Hall – New Addition
City Council Chambers
701 East Broadway
Columbia, Missouri

Board members present: Ms. LoCurto-Martinez, Mr. Highbarger, Ms. Smith, Mr. Weinberg, Ms. Wilson, Mr. McClure and Mr. Alexander.

Excused absence: Mr. Martin.

Staff Present: Deputy Chief Tom Dresner, Officer Jessie Haden, Fred Boeckmann and Rose Wibbenmeyer.

Members of the public were present.

Ms. LoCurto-Martinez called the meeting to order at 7:03 p.m. Mr. Weinberg moved to approve minutes. Ms. Wilson seconded the motion. The Board unanimously approved the minutes.

The Board heard comments from Mr. Viets and other complainants. Mr. Viets stated that he believed the essence of their complaint is that extreme violence was inappropriate for the execution of search warrants for marijuana. He wished the City would reassess the use of the search warrant. He stated that there are other options. Mr. Viets stated that when a search warrant is executed, the police take on great risk. Mr. Viets also expressed his concerns for the family and the child in the home.

Mr. Weinberg indicated that he would like to hear from the two people in the house at the time of the search warrants. He asked Mr. Viets if he felt that the Board should contact the Whitworths. Mr. Viets said that he would contact them, and stated most attorneys would tell people not to make statements if there was the possibility of a lawsuit. Mr. Viets thought the Whitworths were still considering their options. Mr. Weinberg said that is why he has not asked the Board to contact the Whitworths. Mr. Viets pointed out that the delay in the police handling of the complaints could discourage complaints and cooperation from people.

Mr. Weinberg asked Mr. Viets regarding the reliability of the informants. Mr. Weinberg asked Mr. Viets if that kind of inquiry is part of the Board's purview. Mr. Viets believes it is within the Board's purview, especially with the Board's responsibility to look into matters of that nature. Mr. Viets felt that the tactics used in the Kinloch Court were wrong.

Mr. Viets discussed proposition 2 and the voters' endorsement of making marijuana enforcement the lowest law enforcement priority. Mr. McClure asked about meth and heroine. Mr. Viets thought there were safer ways. Mr. Highbarger said that this ordinance was aimed at casual users and that the police evidence indicates distribution. Mr. Highbarger discussed the exceptions to the marijuana ordinance and stated that the police may have viewed it as a high risk situation. Mr. Viets believes there are safer ways to enforce the law than this. Mr. Alexander stated that the average police officer is thinking about his or her own safety primarily.

Mr. Viets would like the Board to establish a subcommittee as to the proper implementation of the ordinance. Mr. Alexander asked if the proper approach would be fact specific. Mr. Viets wanted the Board to recommend the elimination of the use of search warrants if there is no evidence of violence. Mr. Viets suggested that it would be safer for the police and the residents if the police sent the informant in with a wire to perform a controlled buy.

Ms. Wickersham stated that she spent two years looking at the marijuana propositions. She believes the Board needs to look at this policy and whether the police are in fact making marijuana enforcement one of the lowest law enforcement priorities.

Mr. LaVaugh addressed the Board with his concerns about this incident. He was embarrassed by what happened and that it is a poor reflection on the City of Columbia. He quoted the United States Constitution and asked how the constitutional rights can be enforced when the police action involves the use of confidential informants or anonymous tips. Mr. LaVaugh stated that there was no accountability for what happened.

Mr. Thampy addressed the Board. He directed some questions towards Ms. Smith. He stated that he believed there were financial incentives involved in the execution of the search warrant. Mr. Weinberg asked if he was referring to forfeiture. Mr. Thampy stated that it is forfeiture, overtime for the officers, as well as pay to confidential informants.

Mr. Warren stated that he wanted the City to restrict the use of search warrants in nonviolent situations. Mr. Warren said that he would like to see more research done on this.

Ms. Dundon said that she reviewed the video and was sickened by the fact that it was less than 20 seconds before they entered the home and that the police did not give the residents an opportunity to answer the door. Ms. Dundon said that there needs to be ramifications regardless of the chief's determination of this incident.

Ms. LoCurto-Martinez asked if any officers were present and wanted to make a statement. The Board received no response.

The Board discussed the complaint. Mr. Weinberg stated that he would propose two separate motions: (1) to look into a number of the issues mentioned in the Viets complaint as part of the Board's ongoing policy review, to include the use of confidential informants, the marijuana ordinance, and the use of search warrants on marijuana cases; and (2) to see if they could obtain more information from the Whitworths. Mr. Alexander asked Mr. Weinberg if the Board would set aside what they decided. Mr. Weinberg indicated that he is willing to reconsider reopening the conduct of the officers if the Board can hear from the two people in the home that night.

Mr. Weinberg moved that the Board address the policy issues addressed in the Viets complaint as time and resources allow. Mr. Weinberg stated that he does not believe the policy review needs to be part of the Viets appeal, but it is a way to be somewhat responsive to the complaint filed by Viets and others.

Mr. McClure moved that the Board ask the attorney for the Whitworths to provide information or allow the attorney to provide information to the Board on their behalf. Mr. McClure would like to show the community that they tried to get all of the information from everyone present during the search. If the Whitworths opt not to come, the Board can then move on.

Ms. Smith moved that the Board send a letter to the couple and ask if they would address the Board. Mr. Weinberg seconded the motion. The motion failed. Mr. Alexander and Mr. Weinberg voted yes. Mr. Highbarger, Mr. McClure, Ms. Smith and Ms. Wilson voted no.

Mr. Weinberg moved that the Board review the Viets policy recommendations as time and resources permit. He said the policy review should include: (1) lower priority enforcement of marijuana laws; (2) the use of residential search warrants; and (3) the use of confidential informants. Ms. Smith seconded the motion. Mr. Highbarger inquired about the review of the use of confidential informants. Mr. Weinberg said he would like to know if they are used appropriately. Ms. Smith said that case law governs the criteria for the use of confidential informants. She indicated that it is a matter being challenged in court when appropriate. Weinberg amended the motion to eliminate the review of the use of confidential informants.

Ms. Wilson asked about the policy recommendation made last week. Ms. Wibbenmeyer read it from the minutes. Mr. McClure asked for clarification. Mr. Weinberg said that the group is asking whether residential search warrants should be the norm due to the risks involved in the execution of search warrants. Mr. Weinberg indicated that the Board is not exactly tied to what Mr. Viets raised in his letter. Mr. Weinberg amended the motion to state that the Board review these Viets policy recommendations as time and resources permit 1. To cease and desist from using search warrants in the investigation of nonviolent law violations; and 2. The enforcement of the marijuana ordinance.

Mr. Boeckmann stated that Mr. Viets raised the same issues. Mr. Boeckmann said the Board could make a motion to reaffirm the decision last week. Mr. Alexander moved that the Board reaffirm the Board's action in the Rosenthal and Bacca appeals. Ms. Smith seconded the motion. Ms. Wilson said that she believes it is logical to do so, and that Ms. Bacca and Mr. Rosenthal may seek further recourse through an appeal to the city manager. Ms. Wilson said that she wanted her votes of last week to stand as voted. Mr. Alexander said that the Board is voting to reaffirm the vote of last week. Mr. Weinberg said that the Board is taking action on a different complaint. Ms. Wilson wanted clarification of the language.

Mr. Alexander moved that the police acted according to policy in this incident. Mr. Alexander withdrew his first motion to reaffirm the decision. Ms. Smith withdrew her second to the motion to reaffirm. Mr. Weinberg said he would vote the same way with a troubled mind. He is uncomfortable with the way the raid was carried out. Mr. Alexander said we should do everything we can to make sure this does not happen again. Ms. Smith called the question. Mr. Highbarger seconded her motion to call the question. The Board unanimously agreed to the calling of the question. On Mr. Alexander's motion that the police acted according to policy, the motion passed with Mr. Alexander, Mr. Highbarger, Ms. Smith and Mr. Weinberg voting yes. Mr. McClure, Ms. LoCurto-Martinez and Ms. Wilson voted no.

Ms. LoCurto-Martinez opened the discussion of the Weilbacher appeal and provided the public with a brief summary of the complaint. Ms. LoCurto-Martinez said that she was concerned because she does not believe that the police officially treated it as a complaint. She stated there was no finding by the Chief. Mr. Weinberg indicated that he would like to see a letter from the Chief because he needed more perspective from the police and because that is the required procedure. Mr. Weinberg moved that the Board request a letter from the Chief on this apparent complaint. Ms. Smith seconded the motion. The Board unanimously passed the motion.

Ms. LoCurto-Martinez opened the discussion regarding investigative delays. Mr. Smith stated that his client filed a complaint about four months ago and the complaint is still under investigation in the police department. Mr. Smith said that it should not take that long. He spoke with Sgt. Simons regarding his client's complaint. After speaking with Sgt. Simons, he stated that the problem is that the only way to the Board is to go through the process. If complaints get stuck in the process, then it nullifies the Board's ability to act. While Mr. Smith understood that the Internal Affairs unit was very busy, Mr. Smith stated that something needs to be done and this problem needs to be addressed.

Mr. Highbarger believed the complaints should be prioritized based upon the severity of the matter. Mr. McClure asked if the Board can ask the police to look into their procedures. Mr. Alexander suggested the Board should ask and then talk to the individual officers involved. Ms. LoCurto-Martinez said that the police department's policy sets time limits for internal affairs investigations at 50 days. She asked Deputy Chief Dresner to address these issues.

Deputy Chief Dresner said that the police need to apologize for the delays in the investigation of these cases. Deputy Chief Dresner said that Mr. Billups complaint arrived on his desk three days before the bikers rally. Mr. Billups complaint is now on the Chief's desk. He would anticipate that Mr. Viets and his client, Mr. Billups, should hear something within days or weeks. Deputy Chief Dresner indicated that the cases are worked as they come in and then they are prioritizing accordingly. Deputy Chief Dresner would love to shoot for 50 days, but believes it is wildly optimistic target. He further stated if they need to rewrite the policy, they can do it. Ms. LoCurto-Martinez asked if the police department had provided the Board with the latest Standard Operating Guidelines for the Internal Affairs. Deputy Chief Dresner said that he did not know the answer to her question. Mr. Alexander asked what percentage of complaints are from external sources. Deputy Chief Dresner indicated that the majority of complaints are internally generated. Mr. Alexander said the police should consider segregating the two types of complaints. Mr. Alexander suggested that the police contact the complainant right away if the complaint was not internally generated.

Mr. Viets stated that he appreciated the comments from Deputy Chief Dresner and they will await the Chief's response. Mr. Weinberg wanted Mr. Viets to let the Board know if he has a response from the Chief within ten days. Mr. Viets suggested that more resources in the department should be reallocated to handle the complaints. Sgt. Simons said he finished the Billups report on June 11 and they are still waiting for the Chief to make a decision.

Mr. Boeckmann asked if fewer people could review the complaints and thereby save some time. Deputy Chief Dresner explained the procedure. Ms. LoCurto-Martinez asked that the police department provide the Board with the latest Standard Operating Guidelines along with a detailed outline of the steps in the process. Deputy Chief Dresner said that he would not provide draft Standard Operating Guidelines, but could provide a copy of the latest guidelines. Ms. Wilson stated that there appears to be so much repetition and that the Board may make suggestions regarding this which could assist the police.

Ms. Smith reported to the Board the standing subcommittee's recommendations. She discussed the proposed amendments to Section 21-51 of the City's Code. The subcommittee disagreed with an item and had drafted other language which would allow the board, the police chief, the city manager or the city council to allege misconduct regardless of personal knowledge. Ms. Smith then moved that the Board accept the recommendations of the subcommittee. Mr. Alexander, a member of the subcommittee, initially supported the proposal of the subcommittee, but has reconsidered and requested the input of the Board. Ms. Wilson moved to make the standing as broad as possible. Mr. McClure asked what is so bad about having any resident of the city being able to make a complaint. He stated that it still restricts the universe, but if you are a resident of the city, it is pretty inclusive. Mr. Weinberg commended the subcommittee for its work, but stated that he does not like the language of the subcommittee's amendment to subsection 4. Ms. Smith read the

amendment. Mr. Highbarger seconded Ms. Smith's motion. The motion failed with Ms. Smith and Mr. Highbarger voting in favor of the motion. Mr. McClure, Mr. Alexander, Mr. Weinberg, Ms. Wilson and Ms. LoCurto-Martinez voted against the motion. Mr. Alexander moved to recommend the adoption of the ordinance proposed by the City Councilmember. Mr. McClure seconded the motion. The motion passed with Mr. McClure, Mr. Alexander, Mr. Weinberg, Ms. Wilson and Ms. LoCurto-Martinez voting in favor. Mr. Highbarger and Ms. Smith voted against the motion.

Ms. LoCurto-Martinez asked Board members to email information to be gathered at the NACOLE conference to the chair or vice chair.

Ms. Smith discussed information regarding the dazerlaser. She moved that the Board recommend the police department conduct a six month pilot program regarding this technology and that the city council appropriate resources to do so. Mr. Alexander suggested that before resources are appropriated, they should get information from scientists to see if it is effective and safe. Deputy Chief Dresner said Ms. Smith gave them brochures at the last meeting. He said that he sent an email to the company and asked what agencies are using this technology. He received no information. He thinks it is an emerging technology, and they are willing to look at it, but he feels procurement and funding may be premature. Deputy Chief Dresner said sometimes companies provide technology free of charge for testing. Mr. Alexander believed that there needs to be investigation very carefully before any new technology is purchased. Mr. Alexander suggested having someone who knows about lasers look at the material and give their opinion as to if this is even safe. Mr. Alexander said the manufacturer will say that it works and that it is safe. He suggested that some independent information needs to be gathered. Mr. Weinberg suggested the Board wait to see what Deputy Chief Dresner finds out. Ms. Wilson deferred to Mr. Alexander's scientific caution and said that she is not ready to vote on this issue. Ms. Smith asked that Deputy Chief Dresner report to the Board regarding any information Deputy Chief Dresner finds out. Ms. Smith withdrew her motion.

Ms. LoCurto-Martinez read the police department's proposed amendments to the ordinance. Mr. Weinberg asked if the command of the police department felt restricted by the findings. Deputy Chief Dresner said yes. Mr. Boeckmann indicated that the amendments have been introduced with the City Council. He said that the report to the Council can indicate that the Board reviewed the changes and does not have any problems with it. The Board concurred.

The Board heard public comment. Ms. Smith moved to adjourn. Mr. Weinberg seconded Ms. Smith's motion. The meeting adjourned at 9:36 p.m.