



**CASE REVIEW / SPECIAL MEETING
MINUTES**

**Wednesday, November 5, 2008
4:00 PM – 5th Floor Large Conference Room
5:30 – Art Pick Council Chambers
3900 Main Street, Riverside, CA**

Chairman Percy called the meeting to order at 4:05 PM.

Roll Call

Rotker	Soubirous	Hubbard	Brandriff	Ward	Percy	Corral	Santore	Beeman
✓	✓	✓	A	✓	✓	✓	✓	✓

✓ = Present A = Absent L = Late LE = Left Early

Staff: Kevin Rogan, CPRC Manager; Phoebe Sherron, Sr. Office Specialist

Public Comments

There was no public comment.

Closed Session

Pursuant to Government Code Section 54957, the Commission adjourned to Closed Session at 4:05 p.m. to review the following case(s) involving PUBLIC EMPLOYEE PERSONNEL MATTERS:

CPRC CASE NO.	RPD CASE NO.	CPRC CASE NO.	RPD CASE NO.
1) 08-017	PC-08-05029	4) 08-011	PC-08-05025
2) 08-024	PC-08-07047	6) 08-028	PC-08-07048
3) 08-019	PC-08-06034	7) 08-009	PC-08-04021
4) 08-006	PC-08-03016	8) 07-058	PC-07-09066

The Commission recessed at 5:34 PM, reconvening in Open Session at 5:51 PM.

SPECIAL MEETING OPEN SESSION

Audio for the following proceedings is available on the CPRC website:

www.riversideca.gov/cprc

Copies can also be obtained by calling the CPRC office at (951) 826-5509.

Roll Call

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Acevedo Incident

RPD briefing regarding the Marlon Acevedo Incident on October 31, 2008

Capt. Mark Boyer gave the following report:

On October 31, 2008, Officers Daniel Koehler and Jeffrey Ratkovich were dispatched the 7800 block of Cypress Avenue due to calls received concerning a man standing in the street screaming at cars. Communications advised the officers that the subject was possibly under the influence of drugs or alcohol, or that he could be mentally ill.

When officers arrived, they saw several cars stopped or slowing on the street and a man standing in the middle of the street. Officer Koehler contacted the man, identified later as Marlon Acevedo, and attempted to communicate with Mr. Acevedo. Mr. Acevedo responded by raising his fists and going toward the officer. The officers removed their impact weapons and ordered Mr. Acevedo to get on the ground.

Their commands ignored, Mr. Acevedo continued toward Officer Koehler. Responding to this action, both officers struck Mr. Acevedo's legs and knees with their impact weapons. Mr. Acevedo then punched the right side of Officer Koehler's face and both the officer and Mr. Acevedo fell down. Officer Ratkovich deployed his Taser, which had no effect. He redeployed the Taser by direct contact, allowing the officers to handcuff Mr. Acevedo. Medical aid and supervision were then requested to respond.

Mr. Acevedo then began to kick at the officers. An additional officer was requested and Officer James Heiting responded to assist. He helped with the application of a hobble to Mr. Acevedo.

When medical aid arrived, Mr. Acevedo's condition was evaluated. The handcuffs and hobble were removed and Mr. Acevedo was transported to Parkview Hospital by American Medical Response (AMR), where he passed away.

Accounts given by civilian witnesses, who were contacted and interviewed by Central Investigations personnel, support the statements given by the officers.

Capt. Boyer concluded, saying he would do his best to answer commissioner questions.

Chairman Percy first opened for public comment, noting that commissioner questions would take place afterward.

Mary Shelton thanked Capt. Boyer for the presentation. She expressed concern about the chain of events and commented that community members are concerned about the treatment of mentally-incapacitated subjects. She also said she was not comfortable with the fact that the Commission would have to wait six months to a year to review the case.

Michael Dunn commented on his concerns about the case. He also noted his concern about the previous two OIDs since no CPRC investigation would be allowed due to the directive by the City Manager's office. He said that both Mr. Rogan and City Manager Brad Hudson spoke at the Latino Network meeting earlier in the day. He said that Mr. Rogan was making strong arguments that the Commission's investigation is irrelevant and that there is no problem with waiting to conduct an investigation. He said that Mr. Rogan is following the dictates of the City Manager, which places him in conflict with the Commission.

Dr. Ron Bailey said it was his understanding that there was a team of mental health workers and RPSD that were to be deployed immediately in incidents of this nature. He also commented on the Pablo incident, asking how a 30-year-old can die in police custody from natural causes. Chairman Percy now opened for commissioner questions.

Commissioner Rotker:

- What were the impact weapons the officers used?
 - Asp, baton.
- How long was Mr. Acevedo in the handcuffs and hobble?
 - Estimate of no more than 5 minutes, but closer to 4 minutes.
- Was Mr. Acevedo in the handcuffs and hobble for the same amount of time?
 - Handcuffs first, then hobble; can only estimate the time.
- What were Mr. Acevedo's symptoms?
 - Don't yet know what EMS has said, but will have a medical response regarding that subject.
- After medical aid responded and they saw something was wrong, did they ask for removal of the restraints?
 - Yes.
- What was the medical emergency?
 - Don't have that information. Paramedics will be interviewed tomorrow (Nov. 6, 2008).

Commissioner Beeman:

- Is there an estimated time from when the officers arrived to their engagement with Mr. Acevedo?
 - Less than a minute, probably seconds.
- Was there any other hold used than a hobble? Please describe a hobble.
 - A hobble is a strap placed around the ankles or near the knees and attaches to handcuffs.
- Was there any other hold used by the officers?
 - Don't believe so.
- When a person is in a hobble, are they on their stomach?
 - They can be on their stomach, but are usually rolled on to their side or knees.
- How much did Mr. Acevedo weigh?
 - Don't know.
- Was he rolled on his side?
 - Initial statements by officers said he was on his side.
- Did responding officers complete the "5150 training?"
 - Don't know.
- Was a mental health team deployed for this call? Is this the Department's practice?
 - There was none deployed and don't believe was one working that night.
- Mr. Acevedo was the reason cars were stopped? Officers witnessed stopped traffic due to Mr. Acevedo being in the street?
 - Correct. There are statements from witnesses before officers were on scene and the statements from the officers.
- Was it 4 – 5 minutes from the time Mr. Acevedo was handcuffed to being hobbled or was it the entire time he was restrained in handcuffs and hobble?
 - Haven't had time to review the time frame, but estimates that he was handcuffed for a couple minutes, assisting officer arrived and helped apply the hobble, maybe another 2 – 3 minutes.
- From beginning to end, what is the best estimate for the incident's length of time?
 - About 5 minutes.

Commissioner Ward:

- Mr. Acevedo was handcuffed and hobbled because he was combative. How is it that he was combative with the officers, but after medical aid arrived, he was released from the restraints. What happened that caused them to think he wouldn't be combative with medical aid?
 - AMR and RFD personnel had not yet been interviewed, but assume that Mr. Acevedo had collapsed or become unconscious. If he had been violent, he wouldn't have been released.
- He was unconscious?
 - Can only say he was not resisting, so the restraints were removed.

Vice-Chair Corral:

- Is the cause of Mr. Acevedo's death known?
 - No. Autopsy was conducted and it will be 8 – 12 weeks before results are received.
- Both officers had asps. Where are they trained to strike?
 - Body, knees, elbows, shoulders, but generally in the knees and legs to try to get suspect on the ground. In this instance, would say the impact strikes were appropriate.
- Was Mr. Acevedo ever placed in the police car?
 - No.
- While in the hobble, he was placed in the street in the hobble?
 - Correct.
- He was in the hobble for 5 minutes?
 - Believe to have said the entire incident was no more than 5 minutes.

Chairman Percy:

- After being placed in the hobble restraint, was he moved out of the street, off to the side of the street, the sidewalk, or a different location?
 - He was off to the side of the street when the hobble was applied and in that position when medical aid arrived.
- He wasn't moved from the time he was cuffed and hobbled to the time the restraints were removed?
 - No.
- Sounds like there was need for medical attention at the time the restraints were removed. Had Mr. Acevedo aspirated or thrown up?
 - I don't know that.

Commissioner Beeman made a motion that the CPRC immediately initiate an independent and parallel investigation into the Acevedo officer-involved death. Commissioner Ward seconded.

Before addressing the motion, Chairman Percy thanked Capt. Boyer for his presentation.

Chairman Percy asked City Attorney Priamos if the Commission would be acting within the scope of the Brown to be taking any actions or motions following the presentation. Mr. Priamos said that, as previously advised, the item was agendaized solely as a briefing with no action intended or expected. The Commission could vote to place it on a future agenda, but believe it would be outside the scope of the Brown Act based on tonight's agenda. Chairman Percy noted that Item 9 would be the appropriate place to discuss the motion.

Commissioner Beeman asked that item be referred to a future agenda and that a special meeting be called to discuss whether or not the incident would be investigated. She said she believes the Charter trumps administrative bureaucracy.

Chairman Percy opened Item 9 to record Commissioner Beeman's request that consideration of initiating an investigation into the Acevedo incident be placed on the next agenda. Commissioner Ward also included the two OIDs that the Commission knows fall within its purview.

Chairman Percy closed Item 9 and moved to Item 5, Public Comment.

Public Comment

This is an opportunity for members of the public to address the Commission on any subject matter that is within the Commission's jurisdiction. Each speaker should complete a "Request to Speak" form and submit it to the Clerk.

Steve Simpson questioned the status of independent counsel. He also asked who was going to answer the question. He said "we are not well served" by having the City Attorney act as counsel for the Commission. He also asked if Councilman Adams threatened citations on Commission members if investigations were started without City Manager approval. If true, he said that perhaps the councilman should be taken to task for threatening public officials.

Gloria Mattson Huerta introduced herself, stating that she was one of the original commissioners. She said she is "very passionate" about the Commission. She said she is very concerned about the possibility of limiting public comment. She said it has always been the practice of the Commission to allow for public comment after any presentation and was "extremely appalled" that limiting it was being proposed or implemented.

She said the Commission was formed by people who were very concerned about what was going on in the community. She noted that the commissioners were neither anti-police nor pro-police, but were appointed "to look for the truth." She said it is not a good policy or practice to bar the Commission from conducting investigations immediately. She said this affects transparency and that this has happened because "political personnel" are supported by special-interest groups who oppose the Commission because they don't understand what the Commission does.

She said the Commission was put in the Charter to eliminate the "political power" of the City Manager. She also noted that the Commission should be independent, should be able to hire investigators, and have an attorney who is not necessarily concerned with the needs of the city and its departments. She said that Mr. Priamos gave the Commission good advice when she was a commissioner, but notes that he has conflicts of interest that are not always best for the Commission.

She noted that the Commission has made many policy recommendations to RPD, improving the quality of service provided to the benefit of the community.

She also expressed concern regarding the Acevedo Incident. She said that her husband, a paramedic, was involved in an in-custody death incident in '86 or '87 that was similar to Acevedo's. She noted that there is medical evidence that hobbles are detrimental. She offered her assistance to the Commission and CPRC manager.

Commissioner Beeman asked if the intent of the practice of initiating immediate, parallel investigations was to protect evidence. Ms. Huerta said that was to preserve evidence, "to be parallel, to be fair, to make sure nothing was being overlooked." She said it was not intended to be a slight to any of the agencies involved in the criminal investigation, but was meant to be an independent, parallel, fact-finding investigation, noting that it can take six months to a year to get the case information from RPD.

Mary Shelton noted that Ms. Huerta was a conscientious commissioner, worked hard for the passage of Measure ii, and wished she had been able to serve a second term.

She said she supports efforts to place investigations of OIDs on the agenda and said it's "sad" that it's hard to get something on the agenda, let alone vote on it. She also said that City Attorney Priamos can give good advice, but that there is a conflict of interest. She said she appreciates that at least two commissioners brought up the issue to put it on a future agenda. She said she hopes the editorial was read and that the Commission has to decide whether to be a watchdog or a lapdog. She said the

community wants watchdog, but the city doesn't. She said that if the Commission can talk about buying shirts or going to a conference, it can pay for an investigator.

Dr. Bailey said because he anticipated the Coroner's report would indicate the cause of death was from natural causes, he had some questions: Were the cuffs double-locked? Was a carotid restraint used prior to cuffing? Were the cuffs removed because he was unresponsive? He said that, in order to transport with AMR, the person must be uncuffed. Was he comatose? Did he aspirate?

Cloud Officer-Involved Death (OID) Evaluation Process

Discussion of the Commission's public report regarding the officer-involved death of Douglas Steven Cloud on October 8, 2006:

- A) Stage V, Consideration of Policy Recommendations
- B) Stage VI, CPRC Prepare Written Public Report

Chairman Percy asked Staff if there were any additional items to present. Mr. Rogan noted that some of the previous discussion was regarding the narrative. He said he took the fact sheet and included it in the narrative.

Chairman Percy opened for public comment.

Leslie Braden commented on Mrs. Cloud's absence. She said she sympathizes with to her because of the Commission's decision regarding the incident. She noted that some commissioners do not engage in any dialog. She also said she had read that newly-hired officers are to meet with the Commission. She said she believes there are things that could have been done to handle incident differently.

Chairman Percy advised that work is still being done on preparing the report, but not yet to the recommendation stage. He then asked for comments on the updated report.

Vice-Chair Corral thanked Staff for the easy-to-read report.

Commissioner Beeman:

- When did the interaction during the officer question portion occur?
 - Staff advised that it was taken from the casebook which contains the officer interviews.
- Stated that it would be good to include civilian witnesses.
 - Staff said it referred specifically to whether the car was running. May need to note that there is more witness information.
- It seems that the officers' accounts are being highlighted. She said that civilian witness accounts should be noted also.

Commissioner Ward:

- Didn't participate in developing the At 7:41 PM, fact sheet because he felt it served no useful purpose and was just a repeat of what the officers said.
- Said he had a problem with the Commission's belief that the "preponderance of evidence" is right.
- Noted there are a number of statements that indicate the car was revving after Mr. Cloud was shot.
- Said that the only civilian witness's testimony at the deposition was impressive enough that the City settled.
- Expressed the need for the Commission to have independent counsel.

Chairman Percy interrupted, saying that the scope of the Commission's duties is regarding OIDs, not the civil matter regarding Cloud. He also commented on Commissioner Ward's lack of participation in discussion or the making of the fact sheet. He asked for comments relating to making a better report.

Commissioner Ward said he believed the Commission had erred in its finding (October 8, 2008) and that his thoughts would be reflected in his minority report.

Commissioner Santore asked if the minority report would be distributed to the full Commission. Commissioner Ward said the Commission would get his report when its public report was complete. After continued discussion occurred regarding the fact sheet, the minority report, and the Commission's finding in the Cloud case, Chairman Percy asked that the record reflect that there had been discussion throughout the preparation of the fact sheet. He noted that Commissioner Ward's absence from the meeting when the finding was made was a loss for the Commission.

Commissioner Beeman asked for another discussion of the issue, not to re-vote, but to record the deliberations due to the lack of a recording of that meeting. She also recommended changing "city employees" to "police officers" in the Closing section of the report. Mr. Rogan noted that he used "city employees" because he was including dispatchers. Commissioner Beeman asked that "police officers" be added.

Additional discussion took place regarding the October 8 meeting. Commissioner Beeman said that "every commissioner should have the opportunity to deliberate." Chairman Percy noted that there hadn't been a meeting since May where there was full Commission attendance. He asked Commissioner Ward if he had anything to present to the Commission. Commissioner Ward said he would like to provide input to the Commission, but it seemed useless as the decision made was contrary to his analysis of the information. He also said if the vote was rescinded and it was reopened for discussion, he would be willing to participate, otherwise it would be "useless for me to go through providing you with my thoughts."

Chairman Percy recommended that Commissioner Ward put his thoughts in writing for distribution to the Commission prior to the next meeting. He then asked for any comments regarding policy recommendations.

Chairman Percy called for a short break. The Commission recessed at 7:41 PM, reconvening at 7:49 PM.

Chairman Percy asked if there were any other suggestions regarding the report. As there were none, he moved on the policy recommendations. As there were no suggestions at this time, he recommended this discussion take place at the next meeting.

Hill Officer-Involved Death (OID)

Discussion of the Commission's public report regarding the officer-involved death of Joseph Hill on October 19, 2006, Stage II, Fact Certification Process:

- A) Commission Discussion of Underlying Facts
- B) Identification of Additional Facts for Future Commission Discussion, if any
- C) Initiate discussion of Stage III, Policy & Procedure Certification Process

Chairman Percy noted that the Commission was still in Stage II of the Hill OID. He asked for comments from Staff.

Mr. Rogan said that the fact sheet had been modified to include two items based on Commissioner Beeman's question regarding possible car-to-car contact bet Adcox and Ili and #35 – response time for medical aid.

Chairman Percy opened for public comment.

Leslie Braden said she had reviewed the fact sheet and noticed some additions:

- 14 – states he was struck in the head;
- 15 – not sure who Witness Navarette is, but would like to find out
- Not sure where new fact came from that Adcox was involved in struggle.

- 25 – Ili saw Hill holding Taser: wasn't aware that Joe had training to operate a Taser while engaged in struggle.
- 39 – officer heard the Taser and saw that Hill was holding the Taser with both hands. Adcox believed that if the Taser was in Hill's hands, he could kill them.
- 33 – at 10:28, was he dead? Was he shot? If so, someone was very hasty in their actions.

Chairman Pearcy opened for discussion.

Commissioner Beeman:

- Where did the witness statements come from?
 - Mr. Rogan said the officers' statements came from the casebook.
- Pg 6 in the Baker Street Group (BSG) report notes that Officer Ili said he activated his recorder. Why isn't there a transcript?
 - If one's available it will be included. Asking for recordings to be transcribed?
- Yes. It was footnoted that the transcript said it was after the shooting.
 - Mr. Rogan said he would check.
- Pg 6 – Officer Ili said that while struggling, he made an emergency assistance call. Would like that included in the timeline.
- Include note regarding Adcox's previous observations of Hill that raised his suspicions. Add that the probable cause for stop was Hill running a stop sign.
- Include, between 3 and 4, Adcox's statement regarding Hill (Pg 5) that Hill's hands were shaking.
- Include between 5 and 6 (Pg 6) that Hill stuck something in his car (Ili's statement).
- 7 – Important to note that Hill argued about stepping out of the car (Pg 6).
- Add to 8 or add a new fact that there was a pat-down search of Hill (Pgs 4 & 5).
- 8 – Note Hill's reply: I am sitting up.
- Between 9 & 10 - note that both officers expressed concern re hill's agitated behavior.
- 11 - officers made no statements re cuffs.
- Contradiction bet Adcox's statement (not going to arrest), but witness said Adcox told hill he was going to arrest him. what to do with #11
- 21 - Ili saw hill's hand on his gun: not clear in Ili's summary. statement references that gun was in holster need to clarify it was holstered
- Ili saw hill holding Taser. Witness said that Ili had the Taser.
- 26 - footnoted as being from Ili's statement; don't see anything in report that Ili took cartridges from Taser. Wondering why it wasn't in report.
 - Chairman Pearcy – discard fact, not in report.
- put it in as own separate fact, isn't referenced in CPRC report
- Reference Ili interview to casebook. be clear as to source. clear up in footnote
- 29 - May be same situation in this instance. Pg 5 of Mr. Warnberg's report references that Adcox heard it being activated
 - Mr. Rogan – confusion as to the difference between activation and discharge; could be the same thing.
- 29 & 30 - scream is not in report.
- 34 – Was Hill pronounced DOA at scene?

Commissioner Santore:

- Pg 4 - first sighting, officer thought strange behavior on part of Hill. Area in which Hill was walking...was any search done by forensics as this location (5892 Crest?). Would like clarification regarding officer's order to "sit up."
 - Mr. Rogan – will search for clarification
- Was Taser taken and printed?
 - Mr. Rogan – will check

Chairman Percy:

- At last meeting, Ms. Braden noted a Spanish-speaking witness. has Ms. Braden contacted Ms. Herrera to contact CPRC office
 - Yes.
- As was done with brown, get pictures of Taser involved and cartridge.

Chairman Percy closed this item, asking staff to handle requests and have updated information available for the next meeting.

Commissioner Comments

Pursuant to Government Code Section 54954.2, commissioners may use this time to make brief announcements or a brief report on his or her own activities.

Commissioner Santore asked if there were any concerns regarding the process being used. Chairman Percy asked if there were any questions. As there were none, he noted that he was not adverse to criticisms or improvements.

Commissioner Beeman expressed concern about the meeting being moved around at the last minute, saying she would rather be in 5th Floor conference room. She noted that she didn't hold staff responsible.

Chairman Percy encouraged Staff to reinforce the idea that it's better to hold public meetings in the Council Chambers than in the Public Utilities boardroom due to better security and being in a better place.

Commissioner Beeman commented on the review of oversight agencies document that was created by the CPRC manager after a miscommunication between him and the Chair. She said that the document has been used in public forums as giving credence for not allowing Commission investigations. She asked that it no longer be used by Staff. Mr. Rogan said that the document lists facts. He said the protocol directive came before his creation of the document. He said they are being used after the fact and aren't the basis for the protocol.

Commissioner Beeman said the document has been referenced many times. She said there are other facts that should be obtained. She said that if a document like this is going to be created, it should be discussed first.

Chairman Percy said it was a public document and the facts could be released. He said that this document has been used to stab the Commission in the back. He also expressed concern over what was said about staff's presentation. He said he was disappointed that there was a "dog and pony show" to build support for the directive. He said it would have been more appropriate to decline or have opposing points of view articulated. He said it was not right to go to a meeting, as the representative of the Commission, opposing the Commission's majority view. He said Staff should be working for the Commission.

Mr. Rogan said that Mr. Dunn said Mr. Rogan had made statements that he hadn't made. He said that Linda Dunn and Pastor Bob asked for his opinion at a Group meeting and he had noted arguable strengths for each approach. He said he was asked to speak at the Latino Network meeting and thought Mr. Dunn misstated the comments he had made. He also noted that he had not gone to the meeting with City Manager Brad Hudson. Mr. Hudson arrived at the meeting after he, Mr. Rogan, had arrived, and sat down next to him.

Commissioner Beeman said the Commission needs to be given the opportunity to be present to give variety to the perspectives. She expressed concern about getting reports from non-RCPA people, saying it sounds like Mr. Rogan is siding with the City Manager.

Commissioner Rotker said these issue need to be put behind the Commission and that Mr. Rogan shouldn't be berated.

Chairman Percy noted that the letter to Council would be completed soon and asked for no additional discussion until a response is received.

Items for Future Commission Consideration

There were no other items for consideration aside from the OIDs.

Adjournment

The Commission adjourned at 9:00 PM.

Respectfully submitted,



PHOEBE SHERRON
Sr. Office Specialist