

**CITIZENS POLICE REVIEW BOARD MEETING  
CITY OF FORT LAUDERDALE  
CITY HALL 8<sup>TH</sup> FLOOR CONFERENCE ROOM  
100 NORTH ANDREWS AVENUE  
FT. LAUDERDALE, FLORIDA 33301  
FEBRUARY 9, 2009 – 7:00 P.M.**

<b>Board Members</b>	<b>Attendance</b>	<b>1/09 – 12/09</b>	
		<b>P</b>	<b>A</b>
Alan Stotsky, Chair	P	2	0
Eileen Helfer, Vice Chair	P	2	0
Capt. Eric Brogna	A	1	1
Lt. Mike DiMaggio	P	1	1
Det. Nina Justice	P	2	0
Patrick Kerney	A	1	1
Edwin P. Parke	P	2	0
Adriane Reese	P	2	0

**Staff**

Capt. Rick Maglione, Internal Affairs  
B. Chiappetta, Recording Clerk, Prototype, Inc.

**Witnesses and Visitors**

Roosevelt Walters, former CPRB Chair  
Priscilla Williams, resident  
Ralph Riehl, Economic Development Advisory Board member

**A. Roll Call**

Chair Stotsky called the meeting to order at 7:01 p.m. and roll call was taken.

**B. Approve Minutes from the Board’s January 2009 Meeting**

It was noted that Ms. Reese, not Ms. Helfer had asked that some additional information regarding HIPAA compliance be included in the Board’s November minutes.

**Motion** made by Ms. Helfer, seconded by Ms. Reese, to approve the minutes of the Board’s January 2009 meeting as amended. In a voice vote, the motion was unanimously approved.

**C. General Information**

Pursuant to the Board's request at their previous meeting, Capt. Maglione explained the operating procedures for releasing someone who had been brought to the Police Station. He stated BSO determined whether someone should be released on his own recognizance, and would release someone whenever processing was complete, at any time of day or night. Capt. Maglione explained that Fort Lauderdale Police Officers had the ability to issue a Notice to Appear in lieu of arresting someone, and this could be done anywhere. He presented Chair Stotsky with a copy of the guidelines that governed when an Officer could and should not issue a Notice to Appear, but pointed out that nothing addressed when or where a person should be released with a Notice to Appear.

#### **D. Special Presentation**

Chair Stotsky presented Roosevelt Walters, former CPRB Chair, with a plaque of appreciation for his service to the Board.

Mr. Walters remarked on the importance of the CPRB, and said the community no longer viewed the Board as able to provide the public with a solution to their complaints. He anticipated questions would be asked regarding the need for the Board, since it had no power.

Capt. Maglione gave the Board an overview of the different terms used by Internal Affairs to describe their investigation findings:

- Sustained: there was a preponderance of evidence and/or testimony to support the allegation against the employee.
- Not Sustained: There was a lack of evidence and/or testimony to support the charge against the employee.
- Exonerated: The allegation occurred, but in this circumstance, the Department condoned the action and/or found it justified.
- Unfounded: The allegation did not occur.

The CPRB had an additional recommendation at its disposal:

- To defer the case for additional information

Capt. Maglione confirmed for Chair Stotsky that the City Manager could agree or disagree when the Board deferred a case because of the Board's status as an advisory body.

Capt. Maglione stated the CPRB reviewed cases based on the following criteria:

- The subject was a Police Officer
- The case had been investigated by Internal Affairs

- The complaint was externally generated [by a member of the public] or, under certain circumstances, by the Police Chief

Capt. Maglione added that the Police Chief had the option to refer any case to the CPRB. He explained that it was the CPRB's role to review Internal Affairs cases on behalf of the citizens to determine whether they agreed or disagreed with Internal Affairs' findings. If they disagreed, they could make a recommendation to the City Manager. He added that there was State law affecting discipline of an officer and an ordinance governing the timing of the CPRB's review of the case.

#### **E. Review the Following Internal Affairs Investigation**

##### **1. I.A. Case 08-221**

<b>Complainant:</b>	(Former) Chief Bruce Roberts
<b>Allegation:</b>	Use of Deadly Force
<b>Officer:</b>	(Former) Officer Jonathan Welker
<b>Disposition:</b>	Exonerated

Chair Stotsky opened the hearing for public comment. Finding there were no members of the public wishing to speak, public comment was closed.

Capt. Maglione confirmed that Mr. Welker had resigned [not related to this case] and was now employed as a Police Officer elsewhere.

Ms. Reese asked about policy regarding officers' notifying the Department of their activities, and Capt. Maglione informed her that the Officers had decided to engage in a training exercise, and there was no requirement for them to notify headquarters of this; they were still on duty and available for calls. Ms. Reese asked about the Department's Taser policy, and Capt. Maglione reported that at the time of this incident, they had no Tasers.

Ms. Reese asked what the policy was regarding subjects who were "under the influence or possibly have a medical condition and are encountered in this sort of situation." Capt. Maglione replied that there were specific policies based on State law for all of those circumstances.

Capt. Maglione said there were no specific guidelines regarding subjects who might be diabetic. Ms. Reese noted that tests had shown this subject had acetone in his urine, and a glucose level under 10, which indicated the subject could possibly have been diabetic.

Ms. Reese said she was “concerned about the policy, and possibly an inconsistent in the application of Department policy as it relates to nighttime training...but that’s only with regards to the radio and being, conducting a nighttime training at one or two or three or four in the morning, and while I understand the need to do so, I think that there are a lot of things that can arise in those hours of the night and, you know, I’m just kind of surprised that Dispatch isn’t notified that somebody’s going to be out of their car conducting training, or a supervisor or sergeant to their patrol isn’t notified...”

Lt. DiMaggio was not sure whether the supervisor in this instance was aware the officers were conducting training, and there was no policy on when impromptu training could take place. There was also no provision that an officer must report leaving his car. Lt. DiMaggio was unsure if such a policy would have had a bearing on what happened in this case. The officers were in their training field, and the incident occurred in the business complex across the street. Lt. DiMaggio said he encouraged all officers to conduct training as often as possible when not actively working a case. Ms. Reese reiterated that she was concerned about the fact that the officers had not notified anyone that they were training.

Det. Justice informed the Board that she had been a field training officer, and explained that they did not call Dispatch and go out of service to conduct impromptu training; they remained in contact and available for service.

Capt. Maglione added that K-9 officers must be available to respond to in-progress felonies in all districts while on duty.

Chair Stotsky wondered why neither officer had released his dog on the subject in the field. Capt. Maglione said this was not a situation that warranted that action. Officer Welker was hiding in the bushes “playing bad guy” and did not have his dog with him when he contacted the subject. Capt. Maglione explained that each situation must be looked at based on what the officer was presented with. In this situation, within seconds of being warned of the situation, Officer Welker was in the subject’s presence without his dog.

Mr. Parke asked what training officers had to defend themselves or subdue subjects without resorting to shooting. Lt. DiMaggio explained that officers received extensive training, including excessive force training, at the Police Academy, and took refresher courses each year. The reason this officer did not use some other defensive tactics in this situation because this was not what officers were taught to do. Every officer was trained how to respond to certain levels of resistance. Lt. DiMaggio referred to two Supreme Court cases regarding use of deadly force, and the officer’s knowledge of details at the time of the incident, the standard by which officers were judged in such cases.

Lt. DiMaggio said they must resist the tendency to “Monday morning quarterback” cases after they occurred when there might be information provided that was not known by the officer at the time of the incident. In this case, the officer perceived a lethal threat, and waited until the subject was only a few feet away from him to act. Capt. Maglione pointed out that Officer Welker could justifiably have shot much sooner because the subject had a weapon. Then Captain Maglione explained the “21 foot rule.” Capt. Maglione stated, “We believed, and Homicide believed, and the State Attorney believed, and the Grand Jury believed that Officer Welker was acting to prevent death or great bodily harm...”

Mr. Parke felt Officer Welker had other options, and thought the subject must have been mentally ill. Lt. DiMaggio reminded him that “a mentally ill person can kill you just as fast as someone who's sane.”

Ms. Reese wondered why the officer had used his cell phone instead of his radio to inform Officer Welker of the subject, and said this was why she was interested in policy regarding cell phone/radio use. Lieutenant DiMaggio explained that Officer Welker had his radio turned down so the other officer could not detect his location while they were training.

**Motion** made by Ms. Helfer, seconded by Ms. Reese, to support the findings of Internal Affairs. In a voice vote, Board unanimously approved.

Mr. Ralph Riehl, Economic Development Advisory Board member, asked about the timing of presenting this case to the CPRB. Capt. Maglione said this case was public record when we received the criminal close-out on December 16.

Ms. Priscilla Williams, resident, said she had complained to Internal Affairs about an officer, and they had determined the officer had not committed any misconduct. She related an encounter she had on January 10, 2009. Capt. Maglione stated this was a BSO complaint, not a Fort Lauderdale Police Department issue.

There being no further business before the Board, the meeting was adjourned at 7:58 p.m.