

**CITY OF ALBANY
CITY COUNCIL AGENDA
STAFF REPORT**

Agenda Date: September 8, 2009
Reviewed by: BP

SUBJECT: Informational Report Re APD 09-1432

REPORT BY: Mike McQuiston, Chief of Police

STAFF RECOMMENDATION

Receive report for information only regarding the investigation related to concerns expressed under the Good of the City/Public Forums at the July City Council meetings concerning the arrest of Michael and Stephanie Williams on June 5, 2009.

BACKGROUND

On June 5, 2009, Albany Police arrested Michael D. Williams and Stephanie L. Williams after Mr. Williams was stopped for minor vehicle code violations while driving on Buchanan St. in Albany. Both were subsequently held: Michael Williams for a violation of California Penal Code §69, Stephanie Williams for a violation of California Penal Code §148(a)(1). During the arrest of Michael Williams, the arresting officer, Michael Gibson, employed a Taser control device; officer Donald Maiden assisted in this arrest. A second Taser control device was displayed, but not employed, during a confrontation between Stephanie Williams and Sgt. Thomas Dolter, just prior to her arrest. Following the arrest of Mr. and Mrs. Williams, their three children were allowed to depart in the custody of uninvolved family members.

Mr. and Mrs. Williams, accompanied by members of the Uhuru Movement, have made appearances at both the July 6, 2009 and July 20, 2009 meetings of the Albany City Council to complain about their arrests and the manner in which they were carried out. These allegations include claims of race based policing, unlawful use of force, improper search and deprivation of rights under color of law. On Wednesday August 5, 2009, the Uhuru organization sponsored a public awareness rally in front of the Albany Community Center (1249 Marin Ave.). The Williams and their supporters have made various demands, including firing of the three officers involved, monetary compensation for the Williams, dismissal of criminal charges against Mr. Williams and issuance of a formal apology for the actions of the police officers in effecting these arrests.

The manner in which this complaint came before city officials has given rise to concern among some members of the public due to the disturbing nature of the claims. On both July 6 and July 20, 2009 when the Williams matter was presented before City Council under the Good of the City/Public Forum, the Williams had yet to actually provide a concise written statement to any member of city government regarding the incident, nor

had a complaint been filed with the police department. Certainly the allegations were of such a serious nature as to merit investigation, (such investigation was immediately begun as was promised by the City Administrator when the allegations were first made on the evening of July 6, 2009) however, any competent investigation of the matter requires a clear understanding of the specific allegations and parties involved, uncorrupted by statements from non-witness parties. As of the date of this memorandum, Mr. and Mrs. Williams have provided written statements detailing their detention and arrest on June 5, 2009.

The unorthodox manner in which the complaint surfaced, combined with a confluence of previously calendared events, did not allow for an adequate response to the issues raised by the public complaint brought before the City Council. The purpose of this memorandum is to provide City Council with general information relative to the personnel complaint and internal affairs investigative process, and to provide some insight on possible future actions related to this matter. This report is not meant to serve as a response to allegations made against the city or its police department and is provided for informational purposes only. For further information, the police report and Police Department policies are all public records.

DISCUSSION

There are several facets of this matter that merit comment or explanation in this report:

- Public interest
- Criminal cases
- Use of force
- The complaint and investigative processes
- Future steps

Public Interest

The public nature of the initial complaint receipt, combined with the public awareness campaign launched on the Williams' behalf by the Uhuru Movement, lead to a higher than normal public interest in the incident. The police department received telephone calls and other correspondence from members of the public expressing both support and opposition of the police in this matter, and support for the Williams and the demands being made in connection with this incident.

In response to a California Public Records Act request from the Bay Area News Group, the police report documenting the arrest of Mr. and Mrs. Williams was released along with an accompanying press release on July 29, 2009. .

Criminal Cases

Stephanie Williams was arrested for a violation of California Penal Code §148(a)(1), a misdemeanor:

"Every person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician, as defined in Division 2.5 (commencing with Section 1797) of the Health and Safety Code, in the discharge or attempt to discharge any duty of his or her office or employment, when no other

punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment."

As stated at the July 6, 2009 City Council meeting, the District Attorney's office has chosen to not pursue criminal charges against Stephanie Williams in association with the incident that lead to her arrest. As of the date of this memorandum, a criminal case is still pending against her husband, Michael D. Williams. Mr. Williams was arrested and booked for a violation of California Penal Code §69, a felony:

"Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law, or who knowingly resists, by the use of force or violence, such officer, in the performance of his duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment in the state prison, or in a county jail not exceeding one year, or by both such fine and imprisonment."

The District Attorney's office subsequently lowered the charge against Mr. Williams to the lesser 148(a)(1) violation. The final decision to prosecute, reclassify or dismiss this matter rests with the members of the District Attorney's office. Only a command staff level officer or the Chief of Police is authorized to request modification of charges or dismissal of a pending criminal case. No such request has been made in relation to either Mr. or Mrs. Williams. Reference is made to APD Policy #600 "Investigation and Prosecution."

Use of Force

The use of force by Albany Police Officers is regulated locally in the form of APD Policy #300, entitled "Use of Force" (copy attached). Each officer must weigh the totality of circumstances s/he is confronting when making a decision to employ the use of any force on a member of the public. Our use of force policy complies with the standard of *objective reasonableness* described in the landmark U.S. Supreme Court case *Graham v. Connor*.¹

*"Claims that law enforcement officials have used excessive force in the course of an arrest, investigatory stop, or other "seizure" of a free citizen are most properly characterized as invoking the protections of the Fourth Amendment, which guarantees citizens the right "to be secure in their persons . . . against unreasonable seizures," and must be judged by reference to the Fourth Amendment's "reasonableness" standard. The Fourth Amendment "reasonableness" inquiry is whether the officers' actions are "objectively reasonable" in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The "reasonableness" of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."*²

¹ *Graham v. Connor*, 490 U.S. 386 (1989)

² *Ibid*

Although police use of force is evaluated in the context of a Constitutional protection against unreasonable seizure, it is also regulated at the state level regarding the use of force to effect an *arrest*:

*"Any peace officer who has reasonable cause to believe that the person to be arrested has committed a public offense may use reasonable force to effect the arrest, to prevent escape or to overcome resistance. A peace officer who makes or attempts to make an arrest need not retreat or desist from his efforts by reason of the resistance or threatened resistance of the person being arrested; nor shall such officer be deemed an aggressor or lose his right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance."*³

Electronic control devices, such as the Taser currently in use by the police department, have been used by modern law enforcement agencies for decades. Many persons are surprised to learn that the Albany Police Department has used Taser type devices for over 22 years. Albany Police first authorized use of a Taser device on January 28, 1987. This was a partial deployment of a small number of "Tasertron" devices. (A handheld "Nova Spirit" electronic stun gun was soon also authorized for use by patrol officers, although the utility of the Nova Spirit stun gun eventually faded - In part due to the requirement that in order to use the device, an officer would have to physically engage combative suspects, whereas the Taser allows for a stand-off deployment capability, reducing the likelihood of officer injuries brought about by physical confrontation). With the technological advances of the past two decades, Taser devices have become more reliable, effective, compact and affordable. Currently, all officers who have received requisite training are authorized to carry and use the Taser in the performance of their duties.

Several APD officers have been "tased" as a part of the training curriculum prior to using this device. Authorization to utilize voluntary Taser exposure during training was only provided after an informal survey of California law enforcement agencies (conducted by Albany PD in 2007) revealed that approximately 77% of responding agencies allowed officers to receive "voluntary" exposure during training and 13% mandated exposure as part of the training process. Whereas police would never expose an officer to being shot with a firearm or to suffer a baton strike during training, the Taser is generally viewed as not dangerous under controlled conditions and exposure is permitted (as is exposure to other control devices, including chemical agents such as pepper spray). When used according to the manufacturer's guidelines for exposure, the Taser has proven to be a reliable tool that lessens the likelihood of injuries to both officer and suspect.

When a Taser is employed on a member of the public the event is documented in the form of a written case report. The shift supervisor also authors a memo describing the event and any known issues. The Taser's internal computer memory containing information such as the date, time, number and duration of activations is downloaded and recorded. A command staff level officer then reviews the use of force to ensure policy compliance (*was it legal? was it reasonable? does the use conform to our agency's standards?*), and to identify any associated issues (*training, risk management, equipment performance*).

³ California Penal Code §835(a)

Specific Taser deployment procedures are found in Albany Police Department Policy #309 entitled "Taser Guidelines."

Police Department policies and procedures are reviewed and updated routinely and on an as-needed basis to ensure compliance with federal and state law as well as to establish and implement best practices.

The Complaint and Investigative Processes

Historically, the administrative investigation of police officer misconduct has triggered some interesting legal debate and resulted in numerous court decisions that impact the investigation, particularly with regard to the individual's right to due process and protections against self-incrimination. In the paramilitary environment of a police department, where a police officer can be ordered (compelled) to provide a statement in an administrative investigation seemingly in violation of the 5th Amendment's guarantee against self-incrimination, the courts have found that some degree of protection is in order. In *Garrity v. New Jersey*, the U.S. Supreme Court concluded, "*policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights.*"⁴ Moreover, each state may have a more specific set of procedures for conducting investigations of police officers.

In California, parameters for these investigations are found in the California Government Code and are commonly referred to as the *Public Safety Officer's Procedural Bill of Rights* or POBR.⁵ These POBR procedures were first passed into law on January 1, 1977 and apply to all investigations conducted by the police officer's employer that may lead to punitive action.⁶ Although these procedures do not get in the way of an effective investigation, they do slow the process and may lead to a perception that the department is stonewalling. For example, accused officers must be allowed ample time to obtain legal representation prior to interviews (also note: the cost of legal representation is not borne by the City).

California law also requires every law enforcement agency in the state to establish a procedure for investigating complaints against police officers made by members of the public, and to make a copy of the procedure available to the public.⁷ Albany Police Policy #1020, Personnel Complaint Procedure, describes the complaint and investigative processes utilized by the Albany Police Department. A typical Personnel Investigation will follow a set format:

- Introduction
- Synopsis
- Summary Of Allegations
- Evidence As To Each Allegation
- Conclusion
- Exhibits/Attachments

⁴ *Garrity v. New Jersey*, 385 U.S. 493 (1967)

⁵ California Government Code Title 1, Division 4, Chapter 9.7, Sections 3300-3312

⁶ Supporters of this legislation included the American Civil Liberties Union, the Peace Officers Research Association of California, (*then*) Governor Jerry Brown Jr., and (*future*) Governor Gray Davis. Those in opposition included the California Police Chief's Association, the California Sheriff's Association and the California Peace Officers Association.

⁷ California Penal Code §832.5

It is important to point out that a complaint may contain numerous allegations, particularly if the complaint involves more than one officer (The Williams complaint investigation is likely to be such a case). In these cases, the allegations are typically presented in a matrix format for clarity (an example follows the next paragraph). In addition to allegations, the investigation findings (allegation dispositions) are also included in such a matrix. These dispositions are limited to one of the following classifications:

- **Unfounded** - When the investigation discloses that the alleged act(s) did not occur or did not involve department personnel.
- **Exonerated** - When the investigation discloses that the alleged act occurred, but that the act was justified, lawful and/or proper.
- **Not Sustained** - When the investigation discloses that there is insufficient evidence to sustain the complaint or fully exonerate the employee.
- **Sustained** - When the investigation discloses sufficient evidence to establish that the act occurred and that it constituted misconduct.

Example Matrix

		Allegation			
		Use of Force	Discourtesy	Discrimination	Conduct Unbecoming
Officer	Officer A	Not Sustained	Sustained	Exonerated	Sustained
	Officer B	Exonerated	Sustained	Exonerated	Sustained
	Officer C	Unfounded	Unfounded	Exonerated	Exonerated
	Officer D	Not Sustained	Not Sustained	Sustained	Sustained

A properly conducted personnel investigation involving police misconduct will typically include:

- Formulation of an investigative plan
- Gathering of all known documentation related to the event (written complaints, police reports, medical treatment records, audio and video records, photographs, other documents)
- Review of legal and policy issues involved
- Conducting interviews (complainant/s, witnesses, subject officers)
- Review of investigation and draft report preparation
- Gathering of additional documents, follow-up interviews (if needed)
- Presentation of report to Police Chief for action

In the matter of the Williams' complaint against officers Gibson, Maiden and Dolter, Albany Police Lt. John Geissberger has been assigned to perform the personnel investigation and it is now in progress. Lt. Geissberger is a trained and experienced

internal affairs investigator. Due to the serious and troubling nature of the allegations made in the public forum, City Council specifically charged the City Administrator with the responsibility to ensure a fair and professional review of the Williams' claim. Toward that end, the City Administrator has contracted with attorney Tom Bertrand, of the Bertrand, Fox and Elliot law firm to monitor the police investigative plan and its progress. Mr. Bertrand's involvement will help ensure the matter is investigated in an impartial manner, without violating any of the myriad confidentiality, labor and Constitutional laws applicable to such investigations. The City Administrator has also held a meeting with the Williams and members of the Uhuru Movement to hear their complaints and concerns regarding the arrests and to reconfirm our commitment to a fair review of the facts of this matter.

Upon conclusion of the personnel investigation, the agency is very limited in the information that may be publicly released due to the restrictions imposed by California statute.⁸ The department (usually the Chief of Police) will always provide written notification to the complaining party of the disposition of the complaint within 30 days of the disposition and annually reports data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated, or unfounded) made against its officers to the California Department of Justice. These statutory restrictions on access to this information do not preclude a criminal suspect from obtaining exculpatory or other favorable evidence/information from these files that would assist him/her in preparation of a criminal defense. Mr. Williams' attorney has filed such a Motion for Pretrial Discovery in this matter with the court. At this juncture, based upon the progress thus far, the estimated completion date for the internal affairs investigation is October 15, 2009.

Future Steps

This informational report is provided as a backdrop to the serious public allegations that have been made against members of the City of Albany Police Department. Often there is very little that can be done to satisfy the public's desire for "closure" in these matters. Upon completion of the personnel investigation a limited release of information is authorized in statute.

At the time this staff report is being authored it is premature to comment on steps to be taken based upon information learned during the personnel investigation but sufficient information does exist to provide for some recommended future actions, including actions related to:

- City Council education
- Community conciliation
- Police department response

On the subject of City Council education, it might be of benefit to members of City Council if they were to be afforded some supplementary instruction and familiarization with contemporary police practices, equipment, policies and relevant legal standards for evaluating police detention, arrest and use of force. This could be accomplished through a combination of different means including, participation in patrol "ride-alongs," receiving familiarization with use of force polices and related equipment, etc. Currently,

⁸ California Penal Code §832.7

communication and coordination between City Council and the police department is very good however, increased insight into the role and activities of law enforcement in our community would assist Council in responding to future community/constituent concerns with any matters involving the police department. This learning experience could begin with review of the material contained in this memorandum.

Community conciliation steps may include conducting a community dialogue on race with assistance of services such as the Community Conciliation Specialist from the US Department of Justice, and/or public education of the police department's mission and daily responsibilities (frequently accomplished through development of a Citizen Academy, similar in concept to the police department's existing Youth Academy), etc. Just as the City Council may benefit from a greater understanding of the day-to-day inner workings of the police department, so too may the community, and likewise the Police Department could benefit from that context for direct communication.

The police department's response to the incident currently under investigation is perhaps the most important item to consider in this report. It is incumbent upon police supervisory and management staff to reduce the potential for future incidents of this kind wherever possible. Keeping in mind that police often must employ some level of force in order to safely and effectively perform their duties, the installation of in-car video recording systems could greatly aid any future investigation of misconduct allegations. The police department has recently conducted field trials of such an in-car video system and is moving ahead during the current fiscal year to finalize product selection and full-scale installation and implementation among the patrol vehicle fleet. Police department members involved in the recent assessment of this equipment spoke very favorably of employing this technology in the course of their work. It is thought of as a tool that can serve several useful purposes for the police department, including potentially resolving future conflicts arising from differing accounts of "what happened" during a police-community interaction. Additional police response steps may include: pursuit of supplemental training regarding de-escalation techniques and "bias-based" policing (in addition to existing training officers receive on cultural diversity and racial profiling); assisting in providing information, education and communication channels to members of the community.

SUSTAINABILITY IMPACT

Not applicable.

FINANCIAL IMPACT

None at this time.