

Tim Burns interview 5-17-10

Q. Dave Edwards came into a meeting last Thursday with a letter from Anne Kirkpatrick, which I take you've seen by now?

A. Yes.

Q. I describe the episode, MLK Day. 1/18 and that he came in the next day 1/19. (we're checking the date of the contact).

A. (Tim asks to check his file)

"He did say it happened on the 18th. And the complaint was formally submitted to IA on the 25th."

"I was out of town on the 18th and a couple of other days so I can't tell you what day it was but I can tell you as prescribed by the ordinance I have three business days to get it to them. So it was soon, thereafter."

Q. (I relay my understanding, under terms of the ordinance, how it's supposed to work. You summarize the grievance and give it to them and then they decide "whether they will agree to receive it as a valid complaint.")

A. "That's a fair summation. More clearly what happens though is I send it over, they establish what policies or procedures or conduct-related issues may be violations. They then send it up to assistant chief Nicks for assignment. And depending on whether it's a conduct-related or a policy and procedure, the Chief will establish whether or not it's going to be an investigation or an inquiry, and then it is addressed accordingly. And then the Chief will also determine whether it's going to be investigated through what's called the chain of command, or whether it's going to be investigated through the internal affairs division or unit.

Q. So is this part of your orientation? When someone comes to you with a complaint, do you explain all this to them?

A. "I do, absolutely."

Q. Their first call is to determine whether it's a complaint or a concern?

A. "A complaint or an inquiry? By 'they' do you mean the police department?"

Q. Yeah.

A. "Yeah."

Q. "So what is your role with that? Because my understanding of the ordinance, at least the spirit of the ordinance is that you would have to, if somebody come to you with a complaint, you receive it as a complaint. As it goes downstream, whenever there's a substantive decision made there, you should have a say..."

A. "I do. Absolutely. If it comes back as an inquiry and I disagree, I have the opportunity to discuss it with Assistant Chief Nicks and either we agree to agree or we agree to disagree, and if we agree to disagree, then I have that conversation with Chief Kirkpatrick who has final say. However, again, if I disagree with Chief Kirkpatrick, then it would be something in the spirit of the ordinance that we would move forward to the mayor. And I would suggest the ordinance is silent on that actual process, although it clearly says in the ordinance that the Chief or her designee in this situation has that authority in [this] part of the ordinance."

Q. So what happened on this one?

5:00

A. Well, what happened is it went up, okay, and there were some policy and conduct violations potentially. The Chief assigned it to what's called the chain of command, so it was then assigned to a patrol sergeant to follow through with. And that sergeant did in fact do that. And, from what I can tell, because of course I reviewed it and certified it as timely thorough and objective, however, taking a couple steps back or looking at it after the fact, I went back just recently to refresh myself on what the patrol sergeant did. And that patrol sergeant actually got it, made a call to Mr. Edwards home, from his report, I don't know this factually but I do believe

the sergeant, of course, left a voice mail and there was no return call. The next day the patrol sergeant left another voice mail and at 11 o'clock in the morning when he had not received a return call, he decided to go out to the house and contact Mr. Edwards. And he did, and Mr. Edwards was not home. So what the sergeant did was to leave a business card, and when Mr. Edwards returned home, he called the sergeant. And the sergeant then responded back, and they had a conversation to move this thing forward. And I asked Mr. Edwards, if he wanted me there, why he did not call me. And his response was, it was on the weekend and I value your time and privacy, so out of courtesy I chose not to. I can tell you Tim, as a result of this I did suggest to him that in the future to call me at any time. Because even though the phone rings here, through the world of technology, my hip rings as well. And so I recognize his number and I would call him back. But he didn't make the call; that didn't happen. I would also tell you that, in reviewing the sergeant's report, it seems as though there was good dialogue and there was a good rapport that went along and if Mr. Edwards didn't want to meet with the sergeant he could have declined to, but he told the sergeant to come, and they had a conversation and the process went forward."

7:00

Q. Okay, can I go upstream a little bit?

A. "Yeah, sure."

Q. Because it seems to me at some point the decision would have been made before this encounter about whether there's a complaint or an inquiry by internal affairs.

A. "Oh no. It was determined to be a complaint and an investigation."

Q. It was. Again, according to the ordinance, once they begin to investigate a complaint, you have to be given the opportunity to accompany them on interviews...

A. "Well, and see I'm not so sure I'm going to agree with you on the

language, and I'll pull it up here, and I think that the ordinance, as it relates to complainants interviews is silent. I would acknowledge and agree with you as it relates to officer interviews that it's clear. But I've looked at it, and I've looked at it six different ways because, I too..."

Q. "You think it's ambiguous as to whether you needed to be notified..

A. "Right."

Q. And given an opportunity to be there?

A. "Right. As it relates to the complainant and any potential witnesses, yes. I would say the ordinance is silent and I would recommend that things get changed either through an administrative policy or through a text amendment, to clearly define that."

Q. "So you think it's even ambiguous on witnesses then?"

A. "Yes."

Q. "As to whether you need to be notified?"

A. "Yes."

Q. "Do you think you should be notified?"

A. "Oh sure, yeah, I do but hindsight is 20-20, of course."

Q. "So, we may have a difference on how we read the ordinance but.

A. "Yeah, clearly, and I've looked at it several times."

Q. "But you agree it would be better if it could be read my way?"

A. "Oh yeah. Well of course. Absolutely.

Q. "That you be given the chance to have been there.

A. "Right. And I can tell you Tim, in certain instances when people come in and meet with me on a preliminary interview, that if they say 'I want you there, I will make a note in the narrative I send over to the P.D. and the P.D.'s been good about honoring those. But in this case, out on location, I wasn't there because Mr. Edwards didn't indicate that to me."

Q. "When he met with you he didn't indicate that he wanted you there?"

A. "No. No. And so having said that the sergeant was simply doing what the sergeant was assigned to do."

Q. "Now, there's a little bit of confusion over whether the sergeant was an internal affairs officer or..."

A. "No, he's a patrol supervisor."

Q. "But because it's a complaint, it's still part of an internal affairs investigation?"

A. "Yes, that's true. Yeah."

Q. "And so, what happens through their process, moving forward, is they prepare a report on the complaint."

A. "That's correct, after they interview the participants."

Q. "I actually haven't seen the report that you forwarded. And I'd like to get a copy. And maybe there's some issues around that we can talk about later. The way I read the ordinance, again, is that when they reach a determination on the complaint, you get the opportunity to look at the complaint..."

A. "That's true."

Q. "And, at that point, certify it or.."

A. "Send it back."

Q. "Send it back. So, my question is, and one of the reasons I ask is that Dave said that he met with you last Tuesday..

A. "That's true."

Q. "Right before the meeting [in the Community Building] and you had no information about his..

10:00

A. "No, no. What I do is I certify the investigation but I have no understanding because it's not part.. Discipline is out of my parameters as you know, so when I certify the investigation I'm done. Then it goes back to internal affairs and it is sent up to Chief Kirkpatrick through [Assistant] Chief Nicks for her review. And that's typically the first time that Chief Kirkpatrick will get involved at all. What she draws from conclusions from reading the report are hers. And I have no say, and I have no knowledge of where she goes. So...

Q. "Did you certify this?"

A. "Yes. Oh, yes I did. But before I certified it, I think it's important for you to know, I did send it back for some additional work."

Q. "So you had one pass at it before.

A. "It came over once, and I sent it back for some additional data, yes."

Q. "Shouldn't you have been copied on her letter to him?"

A. "Oh, I am. But when I get it depends on when her administrative assistant sends it."

Q. You haven't gotten it yet?

A. "Not yet, but I'm not sure whether it's in my email format or not yet.

Q. In doing this, when they were doing their investigation, did they interview the two officers?

A. "Yes, the patrol sergeant did?"

Q. "Were you present when they interviewed?"

A. "No, I was not, and that's a problem. Because as I suggested before I believe the ordinance is silent as regards to witnesses and complainants but it's clear as it relates to officers. And I will tell you that we had already figured out, not in Mr. Edwards's situation, but in practice, as a current practice that that hasn't always been the case. So there was some leadership training that SPD hosted at the police academy on April 15th I believe it was of this year. That was already brought up, to say, 'hey, if you're a patrol supervisor and you get one of these complaints, you need to contact the Ombudsman and schedule a time when the ombudsman can be present for the interviews of officers. The witness thing and the complainant was not, as I suggested in my read of the ordinance, would suggest it is silent on that. Having said that, I'm also going to be making some recommendations that, whether it be done through a text amendment to the ordinance, or whether it be done through an administrative order, that there's clarity brought to that. So that this is not going to be the way that these things continue in the future. But like anything, the ordinance is a living document and, you know, we're stubbing our toe occasionally and, although I wasn't present, I believe, having reviewed the report from the sergeant, that it was thorough and objective, and so I certified it.

Q. But you certified it not the first time, but the second time?

A. "Oh no, on the rebound."

Q. And whatever questions you had on the rebound were answered.

A. "Were answered."

Q. "Were answered. But answered, I gather, without you requesting again to be present..."

A. "They were statistical things. For example, one of the questions would have been 'how many tickets did the officer who wrote the ticket to Mr. Edwards issue for a like offense?' And then, one of the questions I asked was 'how many tickets did the officer who issued Mr. Edwards the ticket, has the officer issued in the last twelve months to people of color?' And then another question I asked was I wanted to know what the cover officer's stats were as well because we both know people working together have the ability to influence somebody, and so the answers came back and they were within reason based on my interpretation. And at that point I certified the investigation. But nothing was glaring, I can tell you that."

16:45 "We have a computer program called IA pro which tracks all of that stuff for us (information on officer arrest patterns, complaints, etc.) and there was nothing in there that suggests that these officers have those type of issues."

Q. According to your read, from your data base?

A. "Right, right. But certainly, yeah, if we were to get more complaints involving these officers of that nature well, of course, that adds to the, not the credibility of Mr. Edwards's complaint, but the probability that these officers may have some behavioral issues. But when it's 'I said, you said,' and there's no way to prove or disprove it you know, you're stuck."

Q. So you would have been in a tough case even if you'd been present at the interviews because there just weren't any third parties?

A. "Exactly."

Q. And, let me ask the question correctly, would you agree in cases like this that the burden of proof is on the person with the complaint, not the officer?

A. "Yes. I say that reluctantly because I'm still am somewhat naive, I suspect, quite honestly Tim, and would hope that officers come with some

level of integrity and are going to be honest. But there's no guarantee. I mean they go through an extensive screening process before they become cops and they get a lot of ethics training and I would believe that they're ethical, but I can't prove or disprove it. And it's frustrating on all levels, on both ends."

18:13

We talk about the policy issues around Ombudsman expectations. And I ask whether it would have been better if the letter came from OPO rather than the Chief.

19:10

A. "You know, Tim, I would say that it could go either way. And the truth is in some cases there's going to be duplication in work. I will tell you that we did stub our toe, I believe in Mr. Edwards investigation, not in the investigation part, but in the procedural part. And I think we're going to learn from that. You know, I can tell you that in one of my conversations with Mr. Edwards, he didn't think that I accurately reflected what his complaint was. To solve that problem in the future, my response to that is I provide enough information to the investigator to go start an investigation and the sergeant that did it, his report is significant and he spent a lot of time with Mr. Edwards. My role is to get them enough information so that they can see that there's value to it. However, having said that to you, I've also ordered one of those little wonderful devices there [nodding toward my recorder] and we're going to record all complainants interviews from now on. Just so that we can be comfortable knowing that we've done as good a job as we can. And then on a case by case basis, we'll probably transcribe them if we need to."

20:20: (I ask if he's given thought to sharing his report to IA with the complainant before it goes up.)

A. "Sharing it with the complainant? I would have no problem with that, sure."

Q. But you haven't done it thus far?

A. "I haven't done it in the past. This is the first one where we've had somebody that has come to this point, and argued."

[Here I mention another case and we discuss it for a while]

I read the questions to him that Dave asked me to ask. And report that I'll send them via email, as well, which I did later in the day.

I ask for a copy of his [Tim Burns's] summary of Dave Edwards's issues. Tim pulls out the report and says, sure, as long as it doesn't have officer's names. Then, says he wants to run it by the City Clerk's office for review, before releasing it.

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