

# POLICE CIVILIAN REVIEW BOARD

## Investigation Report

Internal Affairs Case Number C 2017-0062

Complainant: (Race/Gender)	C- (W/F)
Alleged Policy Violation:	Inconsiderate Contact-S Obligation to Abide by Policy/Orders-S/S1 Use of Force Reports-S
Subject Officer: (Race/Gender)	S- Det. Jeff Payne (W/M) S1-Lt. James Tracy (W/M)
Subject Officer's Years of Service:	S- 27 years S1-22 years
Date of Alleged Incident:	7/26/17
Date Investigation Requested:	7/27/17
Date Filed with Internal Affairs	7/27/17
Date Investigation Completed:	9/8/17
Panel Members:	Kevin Parke Dennis Busch Rebekah Myers Sandy Walsh Tyson Carbaugh-Mason
Date of Panel Meeting:	9/9/17
Interviews Conducted:	3

**It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.**

### Synopsis:

PCRB was not notified about this matter until 8/30/17, after the public release of the videotapes, due to an oversight within Internal Affairs. *(Note: new procedures have been put in place to prevent such occurrences in the future.)*

This matter has been heavily covered in the media, with C making multiple appearances on TV, and with S being identified in these same news programs. A videotape of this matter was also released which not only identified S by name but he is seen and identified in the videotape. Newspaper and other print media have identified S1 by name although the report below identifies them by a single letter, as is typical of PCRB's reports, parts of this report may also identify the above three individuals by name as that data already exists in the public eye, therefore there is no privacy concern about their true names being used herein. W, on the other hand, has not been publicly identified and therefore he/she will only be identified by the letter W.

On the day in question, a male (herein referred to as V for victim) was driving a semi when it was struck by a vehicle which was traveling in the opposite direction, a car being chased by a law enforcement agency. V was transported to the University of Utah Hospital for treatment of severe injuries, including burns. V was unconscious at the hospital and there is no information indicating he had been conscious previously but it has been determined that V never gave consent to any request posed by any Law Enforcement Officer (LEO). The traffic incident investigating agency was not the SLCPD but was a northern Utah Department, which requested that a "blood draw" be performed on V. *(Note: this is a very standard request and is known as an "agency assist" when officers of one department perform investigative task(s) for a different agency. The nature of the request is also a regularly practiced item as it is a logical investigative step to determine if any of the involved drivers were impaired while driving. In this case, there was no reason to believe that V was impaired in any way as he was simply the victim of the crash and was not suspected in any way of any criminal violation or infraction. In other words, there was no "Probable Cause" to suspect V was impaired, it was simply the investigating agency's desire to perform a complete investigation that drove their request.)*

According to the law, in order to perform a "blood draw", to test for intoxicants, one of three things must be in play: 1) Consent 2) A Court order/warrant 3) An arrest. None of these three conditions existed at the time of the confrontation between S and C. During the confrontation, the concept of "Implied Consent" was raised by S and S1 as being the authority for taking the blood from the unconscious V. *(Note: S is a member of the "blood draw" unit within the SLCPD who have been trained in taking blood from individuals. This group is very small and it would be expected that they are subject matter experts on the legalities of taking blood from involved citizens. As such S should have known the current law, perhaps even more so than any other Department member except his peers on this same unit. This is a training issue which is addressed below in the "Analysis and Recommendation" section of this report. "Implied Consent" is a part of civil law, something officers are not charged with enforcing, and deals with the operation of a motor vehicle.)*

Upon arrival, S requested to be taken to V so he could perform his duty, as he understood it. C, the on-duty nurse, objected to S's request, explaining that hospital policy did not allow the drawing of blood without one of the three conditions, see above, being met. She rightfully pointed out none of the three conditions had been met and therefore she refused S's request. S consulted with S1 about the issue, who later authorized S to arrest C for "Interfering" with the investigation. *(Note: interfering is a Class B misdemeanor. As noted below, it is the policy of the SLCPD to issue citations in lieu of arrests whenever possible.)* C consulted with her superiors, who in turn spoke with S, and she also printed out and provided to S the actual policy which she accurately stated had been agreed to by her hospital and the SLCPD previously. As the discussions continued to spiral downward, S finally went "hands on" with C in order to place her into handcuffs, which he did. Other than screaming and yelling, C did not fight S. It is clear she was uncooperative, but she was not combative in any way and it does not appear that S ever truly gave her the opportunity, or command, to turn around and put her hands behind her back.

C would not participate in an interview into what occurred based upon the advice of her attorney, which is her right and is not an uncommon approach in similar cases. Therefore, C did not contribute any information to this review of the incident. The Internal Affairs Unit of the SLCPD reviewed the available evidence and brought the allegations listed above.

PCRB will not address the actual use of force used to remove C from the hospital and secure her into handcuffs as those allegations are being examined by the Unified Police Department in conjunction with the Salt Lake County District Attorney's office. It is clear when reviewing the actions of S with C that he did use some force by grasping C around her waist and forcibly removing her from the hospital. He also can be seen using a control hold on her hand/arm in order to restrain her so that handcuffs can be applied.

W was present during the interaction and he did interact with S but he failed to attempt to use the Code 909, which was instituted based upon an earlier PCRB recommendation attempting to introduce a procedure that could be used when an officer became too emotionally involved in an incident. Below is the reference to that report and SLCPD corresponding procedure:

**2<sup>nd</sup> Quarter Report 2016 (July 20, 2016)**

PCRB recommends that the SLCPD explore and implement a program wherein first level supervisors...

PCRB has recommended that the SLCPD institute a program that recognizes officers who were able to de-escalate an encounter that could have evolved into a physical interaction. With the understanding that officers attempt to de-escalate all encounters, PCRB believes that it is equally "heroic" to de-escalate a situation as it is to deal with a violent offender physically. In no way is this recommendation intended to suggest that officers should act in an unsafe manner, or expose themselves, their partners, or the general citizenry of the City to unsafe situations, but is more an acknowledgment that officers, on a daily basis, attempt to keep all encounters safe and secure for all parties involved and that when an officer goes to incredible lengths to de-escalate a situation, that their actions are on par with an officer who is forced to use force to resolve a situation. As a result of this earlier communicated recommendation, the SLCPD has instituted the following program:

**Informal Intervention Code  
"909"**

**Purpose:**

Institutionalize an informal code that can be used to let a fellow police officer know that they recognize your frustration and want you to step aside so they can temporarily take over the situation. This time should be used to calm down, collect your thoughts and get back into the incident with the respect necessary to represent our department and police officers throughout.

**Instruction and Use:**

As a Police Officer, it is always our duty to serve our community with courage, compassion and respect but we often find ourselves in situations that raise our levels of anxiety or frustrations. During those times, we place ourselves at risk of applying inappropriate force, inappropriate use of the law, etc.

909 will be the Salt Lake City Police Departments "informal" code to create a culture of officers interpreting a situation that may be getting out of hand and intervening on behalf of their partner before actions or comments are made that can be damaging to one's career. We talk a lot about de-escalation as it relates to conflicts we respond to, in hopes of resolving a situation before it escalates to arrest, use of force, etc. but we don't talk about who is responsible to de-escalate us during those same incidents.

It's imperative that we look out for each other! When we recognize our partner might be getting baited into making a poor decision or escalating a situation, the 909 code can be used to let our partner know that he or she is losing control or is escalating the situation. You will then step in to handle and calm the situation before it gets out of hand.

909 can and should be used in situations where force is appropriate but the use of additional force goes beyond what is reasonable or necessary for the situation.

The above policy was issued by the Police Chief to his Department and was in part based upon a recommendation made by CRB...

**Alexandra Wubbels, herein referred to as C, is the complainant and provided the following:**

C opted, based upon advice from her attorney, to not participate in this review directly. She in turn directed IA personnel to contact her attorney if they had any questions.

**Off. Jeff Payne, herein referred to as S, is the subject of this matter and provided the following:**

S stated the following in his official police report:

Document: INITIAL R/O

Author: H63 - Payne, Jeff L

Subject: AGENCY ASSIST/BLOOD DRAW

Related date/time: Jul-26-2017 (Wed.) 2230

Synopsis: Agency assist for XXX PD. The victim of a traffic accident where the other driver was killed was flown to the University of Utah Hospital. Logan PD requested that SLCPD conduct a blood draw on the victim due to the fatality. Problems at the hospital resulted in no blood being drawn and the charge nurse being detained for obstruction of justice.

On 7-26-2017, at 17:40, I received a request to respond to the University of Utah Hospital to conduct a blood draw on V who was a semi-driver involved in a traffic accident. The other driver was fleeing from law enforcement and collided with the semi resulting in the death of the fleeing driver. XXX PD case number XXX502. The requesting officer was Officer XXX.

I responded to the University of Utah Hospital and found that V had been moved to the burn unit. I responded to the burn unit and contacted charge nurse Alexandra Wubbels. I requested to obtain blood samples from V so that it could be determined if he had any chemical substances in his system at the time of the crash. Wubbels told me that I would have to wait until she contacted her administration to obtain permission for me to obtain the blood.

I contacted Lt Tracey (*sic*) who was the watch commander at the time. I advised him of the situation and he told me to explain to the nurse the exigent circumstances and the implied consent law. He said if she didn't allow me to conduct a blood draw to arrest her. He also said that if she refused to let him talk to her. Wubbels came back and said that it would be a few minutes and to wait in the waiting room.

After about an hour and a half I asked to speak with Wubbels. She came to the waiting room and told me that she had spoken with her superiors and she was not going to allow me to conduct the blood draw. I tried to explain the exigent circumstances and the implied consent law and she said that her policies won't allow me to obtain the blood sample without a warrant.

Wubbels said she was sorry for making me wait so long and I said "no your not" and walked away. She began following me and asked for my business card. I checked my wallet and realized that I had given my last one away and told her that I had more in my car and she would have to come to my car and I would give her one. We got onto the elevator and I called Lt Tracey and handed to phone to Wubbels. As we walked to my car I could hear her explaining their ruled to Lt Tracey and based on some of the comments I could tell that Lt Tracey was advising her of the laws and that she was interfering and if she would not allow me to get the blood samples he was instructing me to arrest her. After they talked for several minutes by my car she handed the phone back to me. I requested to have more SLCPD officers to respond. Lt Tracey told me that if she refuses to allow me to get the blood sample that I was to arrest her for interfering with a police investigation.

While Wubbels was talking on the phone with Lt Tracey I realized that this situation was possibly going to get worse so I activated my body camera.

We went back into the ER where she told the staff that I was going to arrest her and requested that they call security. She and other employees began calling members of their administration. I was shown a piece of paper that they had regarding obtaining a blood sample. They pointed out to me that based on this paper in order to get the blood sample I would need an electronic warrant, patient consent or the patient be under arrest. They,

being Wubbels and other admin staff, asked me numerous times if any of these three items applied. I told them that I didn't have a warrant, I was told the patient was not conscious and the patient was not under arrest because he was the victim, not the suspect. I told them we wanted to blood sample to protect him, not punish him. Wubbels continued that without one of those she would not allow me to get a blood sample.

Officer XXX from the U of U PD and a few hospital security officers arrived. After the situation was explained to them Officer XXX told Wubbels that I could arrest her and he wasn't going to interfere. She looked at the security officers and they said this was a police matter and they weren't going to get involved.

Officer W arrived to assist me. I briefly explained the circumstances to him. We stood by for several minutes while Wubbels and other hospital staff were calling their admin trying to figure out what was going to happen. Wubbels indicated that due to their policies I couldn't get the blood sample that I requested. I looked at her and asked if she was going to allow me to get the blood sample and she responded that I couldn't get it. I advised her that she was under arrest and I reached for her right wrist so that she could be placed into handcuffs. She pulled away and as I tried harder to control her she continued to try to get away. Due to us still being in the ER I didn't want to have a scene at that location. I was able to get a grasp on her right wrist with my right hand and twisted her so she was facing the ER doors. I then used my left hand to hold onto her shoulder and I pushed her out of the ER through the doors so we were outside and not causing problems in the ER. I was then able to hold her against a wall and place handcuffs on her. Then I walked her to my police vehicle where I double locked the cuffs and had her sit in the front passenger seat and I put the seat belt on her.

I was contacted by Lt Tracey who stated he was at the front of the hospital and looking for me. I explained that I was outside the ER and he said he would come to me. He arrived and I stood by while he talked to Wubbels and several other hospital staff. Lt Tracey then spoke to me and stated that he was able to ascertain that the hospital ER staff probably had obtained blood samples for testing when Grey was first brought into the ER. He said it would be possible for XXX PD to get a subpoena for the hospital records and get the blood test results that way. He also said that he had determined that Wubbels was following directions from her superiors and decided that maybe we would release her and not take her to jail tonight and possibly screen the case for any criminal charges. Wubbels was removed from my car by Officer W and the cuffs were removed. The decision to release her was explained to her by Lt Tracey. She was then released and we departed from the hospital. When I got back into my car I found a copy of the paper that I was shown regarding what was needed to obtain a blood sample from a patient. I scanned the paper and attached it to this report.

Most of the incident was recorded with my body worn camera. NFD.

S stated the following in his interview:

*Garrrity Protected*

*Garrity Protected*

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

*Garrity Protected*

**Lt. James Tracy, herein referred to as S1, is the subject of this matter and provided the following:**

S1 stated the following in his interview:

*Garrity Protected*



*Garrity Protected*

*Garrity Protected* , herein referred to as W, is a police officer, a witness and stated:

*Garrity Protected*

*Garrity Protected*

**Evidence:**

E: Officers Payne and W, along with Lt. Tracy wore body cameras, which at times are very difficult/impossible to hear during review. W's footage was reviewed first and so the events are told most deeply in his section since duplicate information, which is expected, may not be recounted under the sections of the other two officers, unless new information is noted or it is important in discussing related events. Naturally, it is expected the exact same verbal exchanges and physical actions were recorded more than once, but from different angles and distances. It is also likely things that were inaudible in one recording are easily heard in another recording. If an event is not recounted in multiple officer accounts, that is due to the fact that it has already been captured and reported in an earlier section, under a different officer's body camera footage. The following videos captured these events on those cameras with the above explanation being understood:

**W's Body Camera:** W's footage consists of two video clips with the one being marked #1 and the other marked #2, but it appears that recording #2 actually occurs first, with the footage being split up for reasons unknown. If the camera was intentionally stopped, it occurred at a time when nothing of note was transpiring. So, starting with the footage as it appears to have occurred in real life sequence, W is standing next to S, inside of the ER. It must be remembered that the body cameras capture the voices of the officer and whomever he is speaking with rather well but when the officer is even a short distance away from others engaged in conversation, it is extremely hard to hear what is being said.

W asks S about a Search Warrant, assumed for the blood in question, and S replies that "they" told him there wasn't any *Probable Cause*. S continues explaining to W that the Watch Commander has told him to arrest C if she continued to interfere. (*Note: some of this is extremely hard to hear and some logical assumptions are made in what S and W are discussing. But it seems apparent that S is telling W that he has spoken to S1 who has instructed him to arrest C if she persists in not allowing S to make the blood draw.*) W said to S "...this can't be the first time this has happened" to which S replies it has happened before but "...has never went this far..."

C is then seen on the recording, speaking on a phone to her ear, while obviously accessing a desk top computer. Also seen are male and female medical staff, a couple of females in civilian clothes who are assumed to be hospital administrators, two hospital security guards and one U of U Police Officer, who is later seen outside, standing chest to back with S as he secures C in handcuffs.

While C is still engaged on the computer, S speaks softly with the U of U PD officer, unintelligible. W then speaks to S, again it is too soft to understand when C approaches with a printed paper in her hand. C explains to S, in a very respectful, controlled, calm, and professional matter that “this is something you guys agreed to...” She also has her phone out which she points out to the officers saying that they are on speakerphone. C goes over the contents of the paper spelling out the three conditions required to take blood from an unconscious patient and finishing with the point that none of the three conditions exist, therefore she cannot allow them to do the blood draw. C pushes her phone to S, who briefly speaks with the person on the other end (*Note: this person is thought to be a senior hospital administrator*) who says to S “Sir, you are making a huge mistake.” As that is heard by S, he reacts saying “We are done here” and reaches for C, who is backpedaling away from S’s outreached grasp. C is back stepping in the direction of the ER doors and S pursues, grasping C by her wrist with his other hand around her back, putting them in a face-to-face position as they exit the ER. There is definitely force in use but the majority of it is an aggressive controlling, awkward, control hold apparently designed to get C out the doors. C is yelling and screaming throughout this portion of the encounter but is clearly uninjured by his actions.

As Det. Payne is pushing/shoving/moving C through the ER doors, W is still in the middle of the hospital but can be heard yelling “Payne” in such a way as to communicate to S that he is going too far and to relax, or so it sounds.

W exits the hospital and captures S placing handcuffs onto C, with the U of U officer standing almost chest to back on S, and even placing a hand onto S’s shoulder. During the handcuffing, two male hospital employees are very near S but they are not physically interfering and appear to be trying to talk S down, but their words were inaudible. C continues to ask “What is happening?” S escorts C to his unmarked police car, placing her into the front seat and secures her in a seatbelt. W approaches C and gives/places C’s cell phone near her telling her she may want it later. Lt Tracy, the Watch Commander, S1, arrives and speaks with C for a bit, inaudible.

A male hospital employee, who is in scrubs and appears to be a senior employee approaches and speaks with S1. S1 says to this male, in part, “...Your policy is constraining what I need...there is a very bad habit up here of your policy interfering with my law...” S1 continues on explaining that his duty is to the criminal investigation which is in conflict with apparent hospital policy.

Later, W is seen apparently “running” V’s data for a Utah Driver’s License, likely to support his theory of Implied Consent. (*Note: this is the first observed/known attempt to determine the driving status of V.*)

The recording made by W that is labeled #1 is after all of this has occurred and has little to nothing of evidentiary value and so, will not be included herein.

**S’s Body Camera:** S’s footage is also marked I and II, with II being the first activation of his camera and it does not appear to have been turned off by S until he verbally notes he is shutting it

down. There are two separate videos, but that is due to a system nuance, not due to an action by S.

S activated his camera with both he and C being present at his police car. *(Note: prior investigation in this case indicates that S did not activate his body camera until he spoke with S1, learned that was initially a routine matter would likely result in an arrest, and as he*

*Garrity Protected* This is a sound choice as his duties were up to this point to perform a task, not enforce a law or handle a regular call. Therefore, his lack of camera coverage earlier in the incident was not a violation of any policy as the situation was not one of the times officers are mandated to use their cameras. As learned earlier in this review, the body camera was not activated until S and C are at the police car, to get one of S's business cards for C.) S later in his video admits to S1, post-arrest, that he knew C was going to complain about his conduct based on her request for his card. Additionally, C is heard speaking to a supervisor about S's earlier conduct, this occurring prior to her arrest. As is standard, the audio portion did not begin until 30 seconds after being turned on.

When the audio comes on, C is on the phone with an unknown hospital administrator and can be heard to say "...he got really upset...threatening." S is then heard speaking to a person who it is assumed is S1 and says "I am going to arrest her." This is occurring as C is continuing her conversation with hospital officials.

S then speaks to a male hospital employee who is described as having a short cropped beard and says in effect, the following: We have exigent circumstance to get the blood from a patient upstairs. She (C) is refusing, my Lieutenant says if she doesn't...if I don't get the blood I am taking her to jail.

The two of them are now back inside the ER as C asks someone, apparently the U of U PD officer who has arrived to "protect me". This officer advises her that he cannot as this is a criminal investigation. S is then heard explaining his point of view, likely to this same officer. C can be heard on the phone again explaining to someone that there is no urgency (in the need for the blood draw) as the U of U officer advises her "...if he wants to arrest you, I am not going to stop him."

S speaks of Exigent Circumstances and Implied Consent and says "I am either going with blood in vials or a body in tow." He further adds, "This is not the way I wanted this to go", and the male hospital employee points out that we have "our bosses butting heads..." S is heard confirming that other SLCPD cars are coming to assist him as C again appeals to the U of U officer to protect her, which the officer replies by saying he cannot do so.

W is seen arriving and S loudly announces that C is no longer free to go about her business, and then he explains the situation to the newly arrived W. C asks S why he has to be so threatening to her, explaining she is trying to do the right thing. W then speaks softly to S about getting a Search Warrant with S telling him the other agency does not have *Probable Cause*. He adds that the Watch Commander has requested C be arrested. W asks about if this has happened before, as noted in his section above.

C then approaches S and W, displaying a printed form that shows the policy on blood draws and says "...this is something you guys agreed to with this hospital" and continues to explain what it says. S then asks C that without having any of the three items on the list "...I am not going to get blood?" C gives S her phone, which is on speaker phone function, with an unidentified senior hospital official. This person tries to explain that C is only the "messenger" and continues by



saying "Sir, you are making a huge mistake." At that point S says "Ok, we are done" and the arrest ensues, as previously reported upon, above. S is clearly heard to say "...we're done, you're under arrest..." which wasn't as clear in W's recording. At no time does S command C to turn around, or to put her hands behind her back, he simply tells her she is under arrest and grabs for C.

As the arrest spills outside, as earlier recounted, two males are speaking with S, including the previously described employee with the short beard. Lt Tracy is seen arriving at the scene and is briefed by S on what has occurred. S1 replies "Well, ok" and is caught up in other events. S1 is seen going to speak with C, who is cuffed at the police car and saying "...what I am telling you is we are not making a mistake." At this point, C informs S1 that they had previously taken blood from V and they simply could have requested results from that sample. S1 replies that if he had known that, they would have done so. *(Note: the video marked II then stops, and by viewing his video marked I, it is clear that the recording resumes where it left off, with immediate audio, indicating that S did not turn off his camera or a 30 second audio delay would have ensued.)*

At this point, the officers are trying to determine if V has a Utah Driver's License and then S and S1 speak again. S1 says "...I am burned if this lady is right..." and explains to S that since a blood sample had already been taken, they can get access to it later. He further tells S that they are going to "release her" and their voices grow very quiet, hard to hear. S then tells S1 that he believed C was going to make a complaint about him when they came down to get his business card. S then says "I wonder how this is going to affect my Gold Cross job?" S tells S1 "I physically drug her out of the ER..." and S1 instructs S to complete his police report prior to going home for the day.

W approaches S1 for instructions and S1 tells him to "cut her loose", at which time W goes to C and removes the handcuffs. S1 continues to interact with various arriving hospital officials and he explains to them that they are going to write their reports and "screen" this matter later. S then gives a preamble and turns off his camera as he departs the scene.

#### S1's Body Camera: S1's footage....

S1's camera was out of focus or fogged up, so all images included in this recording are bleary, at best. As the audio comes on, S1 is talking with S. S1 instructs S to complete his police reports before leaving for home.

C is seen standing outside of the police car, still in handcuffs. S1 instructs S to contact the underlying agency and advise them that they were unsuccessful in helping them.

W comes to S1 asking for instructions and S1 tells him to "...cut her loose." As W goes to C, S1 follows and interacts briefly with C explaining "...they are not going to take you to jail....we're having a fight over hospital policy and criminal procedures..." S1 then speaks on the phone with a person who was identified as the Chief Operating Officer for the hospital, explaining S1's understanding of Implied Consent as it applies to V, a person driving on a CDL. S1 then explains "...we have found a work around...that we don't have to try to get around the huge amounts of roadblocks that your organization is putting in front of us...to get what is lawfully ours to have..."

S1 then departs with S in S's vehicle and his camera is turned off.

E1 C was telephonically contacted about this matter and expressed her desire to not have all contact with the SLCPD go through her attorney.

#### **Allegations:**

Off Payne and Lt. Tracy are alleged to have violated Obligations to Abide by Policy/Orders.

Off. Payne is further alleged to have violated the policies known as Inconsiderate Contact and the requirement to document his actions in a Use of Force Report.

#### **Definitions**

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

#### **Analysis and Recommendation:**

As it relates to this incident, the following is what the policy manual says about the job of the Watch Commander:

## **III-880 WATCH COMMANDER**

The Watch Commander represents the Office of the Chief, overseeing day-to-day field operations to ensure that orders and procedures are properly executed and professional standards are maintained.

#### **Organization**

Watch Commanders operate within the Patrol Bureau and report directly to the Patrol Bureau Commander. Watch Commanders are generally the rank of Lieutenant, however, when operational needs require, Sergeants can be designated as acting Watch Commanders.

#### **Responsibilities**

As the Department's administrative representative, the on-duty Watch Commander is responsible to remain available to the Patrol Bureau Commander and the Chief of Police. It is also the responsibility of the Watch Commander to oversee major crime scenes and take command in the absence of a supervisor.

It is mandatory that the on-duty Watch Commander personally oversee the following until relieved or resolved:

- Incidents involving injury or death of an officer.
- Incidents in which injury or death of a citizen result from an officer's actions.
- Major incidents that require their direct command.

At their discretion, the Watch Commander may oversee any situation they feel is necessary, to include:

- Consulting with supervisors regarding the execution of procedures.
- Ensuring that proper notifications of major incidents are made.
- Responding to inquiries from the media in the absence of the Public Information Officer.

Lt. Tracy *Garrity Protected*

As it relates to Det. Payne, the following policies violations have been alleged:

## **II-170 COURTESY IN PUBLIC CONTACTS**

Employees shall be responsive to the needs of the public by rendering prompt and courteous service and consistently conducting themselves in a manner that encourages public respect. Employees are expected to conduct themselves in a professional manner at all times while in public view.

### **Personal Contacts**

Employees will introduce themselves upon initial contact with the public. This includes when responding to calls for service or any other appropriate public contact.

Employees will treat all persons with respect. Employees are expected to be courteous and dignified at all times as the circumstances allow. The personal prejudices or attitudes of the employees must not influence their decision to take police action other than is justified or expected within the constraints of discretion.

Employees will not use degrading, profane, abusive or defamatory language when in contact with the public or in public view.

Employees will provide their Department business card to the public when appropriate and also identify themselves by name and department assignment when requested.

## **II-010 OBLIGATION TO ABIDE BY POLICY AND ORDERS**

Employees shall willfully obey the lawful verbal and written policies of the Salt Lake City Corp. and the Salt Lake City Police Department. Police Department Policy is any written directive contained within this Manual. Employees shall also subordinate their personal preferences and work priorities to the lawful verbal and written policies of the City and Department as well as to the lawful orders and directives of supervisory personnel.

It is reasonable to expect employees to obey the written and verbal directives of their supervisors. When disagreements between management and employees occur, management has the right to expect employees to follow the accepted labor principle of "obey now and grieve later."

Insubordination occurs when an employee is capable of performing, but refuses, to do a job or comply with a lawful verbal or written directive.

### III-680.4 SITUATIONS REQUIRING A REPORT

A report must be made:

- When a crime has been committed.
- When an officer responds to a medical assist or injured person call.
- When further investigation may be necessary.
- When facts of the current incident may be helpful in a future investigation.
- Whenever an officer takes any police action.
- When there is any indication that the facts of the incident may tend to embarrass the Department.
- When there is death or probable death.
- When there is additional or new information to a previous case.
- When there is any question as to whether the incident requires a written report.
- When any person is physically arrested and booked into jail.
- When any person is charged with a misdemeanor offense and subjected to the use of force, the incident requires a General Offense report.
- When any person is physically detained with restraint devices or subjected to the use of physical force, as defined in section III-310 Force, Use of, the incident requires a General Offense report and Use of Force Detail field.
- Any time a vehicle is impounded.
- Any time a Crime Lab Technician is called to the scene of an incident.
- Any time property is booked as evidence or for safekeeping, a General Offense report is required.

## III-080 BLOOD RELATED PROCEDURES



## **Drawing Blood for Forensic Purposes**

Some investigations require taking a blood sample from individuals for forensic purposes. Depending on the circumstances, either the Medical Examiner or specially trained Salt Lake City Police Department (SLCPD) personnel will perform blood draws for the Police Department.

### **Requesting a Blood Draw**

Blood samples of a deceased victim/suspect shall be drawn by the Medical Examiner, usually after the body has been removed from the scene. All other blood samples shall be drawn by SLCPD personnel.

Except under authorization of a search warrant, requests for a blood draw must be approved by an on-duty supervisor. The request will be directed to the on-duty Watch Commander, who will authorize the call out of off-duty SLCPD phlebotomists. The Watch Commander will request a phlebotomist through Dispatch, where a phlebotomist rotation list will be kept. The request shall include the Officer's name, the SLCPD case number, and the requested location for the blood draw.

### **Location**

All forensic blood samples, except those drawn by the Medical Examiner, shall be drawn by SLCPD personnel at a secure location coordinated by the investigating Officer and SLCPD phlebotomist personnel, i.e. the jail, a hospital, the PSB, Fire Stations, other appropriate facilities, or at the scene of the investigation.

### **Procedure**

An officer will witness and document the blood draw from the subject. The officer will document the date and time of draw, the SLCPD phlebotomist's name, and the arm from which the blood is drawn.

The phlebotomist will record the subject's name on the vials and both the phlebotomist and the witnessing officer will initial the vials. The phlebotomist will then seal both vials with evidence tape. The phlebotomist will place the samples in a padded envelope and both the phlebotomist and the officer will sign across the sealed envelope. The phlebotomist will then place the blood samples and accompanying DUI Toxicology Analysis Request Form into Evidence, locked in the refrigerator. The phlebotomist will document all of this information in a Supplementary Report.

### **III-030 ARRESTS**

An officer who arrests a person without a warrant will complete the appropriate departmental reports. The appropriate investigative unit will use the reports to have a complaint made against the arrested person. The reports shall be as complete as possible.

## Misdemeanor Citations: Class B, C and Infractions

Whenever possible, officers will use a misdemeanor citation in lieu of arrest. It is departmental policy to issue a citation to all persons charged with a misdemeanor or infraction instead of arresting them unless the person is under 18 years of age or there is positive reason to make an arrest. If the person is under 18 years of age, juvenile rules apply.

### Analysis

In reviewing this matter, it is clear that the lack of understanding of the law, confusion over when "Implied Consent" applies and the inability to get sound legal/policy advice were major contributors to the bad outcome that occurred. S allowed himself to get too deeply involved in what he believed the situation called for, that he failed to listen to C and other hospital employees who were attempting to show them their policy, which was reflective of the law and an agreement with the SLCPD. Lt. Tracy *Garrity Protected*

He, of all of the involved policy personnel, should have reached out to the Department's legal advisor and got a definitive answer. He did resolve the issue once he was at the hospital but only after Det. Payne had placed C into handcuffs and seated her in a police car. Although his understanding of the situation when speaking with S was not complete, his orders to Det. Payne were based on faulty knowledge of the underlying issue. His widely reported statement that he *Garrity Protected* *Garrity Protected* was ill advised and in this case wrong, but he clearly made this statement believing his understanding to be correct and hers, wrong. In the policy manual concerning Watch Commanders it says the following:

The Watch Commander represents the Office of the Chief, overseeing day-to-day field operations to ensure that orders and procedures are properly executed and professional standards are maintained.

The issue in play as it relates to S1 is did he comply with this directive from the policy manual?

This investigation noted that W was present during a significant portion of this interaction and noted *Garrity Protected*. He further knew that the underlying agency lacked *Probable Cause* to obtain a warrant for V's blood and made *Garrity Protected*. So, *Garrity Protected*, W knew that S was getting too emotionally involved in the situation and W should have more forcibly intervened, which PCRБ agrees is not an easy choice to make. With an officer from the University Police Department also present, as well as the hospital's private security officers, the impetus to not act would have been significant but as he *Garrity Protected* *Garrity Protected*. W should have attempted to use Code 909 in addition to his attempt to intervene by calling S by name and *Garrity Protected*. There is no way to know if S would have reacted, but this intervention procedure was established for this exact fact set and it should have been attempted. W did not contribute to the situation but he also did not use every tool available to him to attempt to stop it and this inaction, it could be argued, allowed S to continue to make bad decisions with bad outcomes.

Looking closely at the actions of S, the following are apparent:

It does not appear that Det. Payne prepared and submitted a complete police report, with the required Use of Force report, as is called for in the above listed policy.

It appears that Det. Payne opted to place C under arrest, physically, rather than issue a citation as the policy manual plainly spells out. Clearly, this is a judgement call but the decision to make an arrest over a minor misdemeanor charge is generally associated with factors other than just the underlying offense. As it relates to this issue, and despite S1's advice/order to S to arrest C, it is ultimately up to the arresting officer to make the decision to arrest, or not arrest, unless that officer's supervisor is on-scene. So, the choice to arrest C, vs. simply citing her, was S's to make and so he is accountable for that decision. In reviewing the video and *Garrity Protected* it is very clear that S, Det. Payne, had become too emotionally involved in the confrontation with C. His verbal actions were loud, aggressive and overly mission driven. It appeared as if he believed he was faced with the commonly referred to perception of "contempt of cop" by C, when in fact, the situation shows C was attempting to stop S from breaking the law. Now this whole line of reasoning becomes murky as it is equally clear that both S and S1, believed S was acting, or wanted to act, in accordance with the law/policy. So, when you have two parties viewing the same issue from exactly opposite points of view, and both parties believing they are correct, emotions can run high, and they did with S, but not so with C who remained remarkably cool during this confrontation with a police officer. As it relates to who should have the knowledge of the legalities of the situation, this investigation finds that S1 should have known the most current law/policy, but also tempers that with the knowledge that this is a very, very, small part of his supervisory duties. Not to excuse his lack of knowledge on this important 4<sup>th</sup> Amendment issue, but no one can know everything at all times. S however is held or should be held, to a much higher standard, despite his lower rank, as he *Garrity Protected*  
*Garrity Protected* In fact, S stated *Garrity Protected*  
*Garrity Protected* So, no matter how  
you view this situation, one truth is apparent, S *Garrity Protected*  
*Garrity Protected* So, if S knew  
the law and ignored it, the issue becomes moot. If S didn't know the law/policy about blood draws, his perception of C "interfering" becomes somewhat understandable, yet still objectively wrong. Officers and ER staffs have a unique working situation, one of mutual respect and trust based upon countless times of needing to work in concert with each other. When C attempted to educate S about the legalities of blood draws, presenting the printed hospital policies, S should have recognized something was amiss and immediately sought legal clarification from the multiple sources which were available to him including the City Attorney's office. Instead, for reasons unexplainable, Det. Payne opted to ratchet up his response to C, who by any definition of roles should be considered on the "same team". S not only acted as a police officer, but he further *Garrity Protected* and employed off-duty with an ambulance service so his working relationship with medical staff and especially ER staff had to have been as extensive as any employee of the SLCPD. But in looking at his demeanor and actions when interacting with C, who was by any definition only looking out for the rights of V, a patient at her hospital, and her employer, the U of U Medical Center, S very clearly lost control of his emotions. Once he was delayed and not getting the response from C that he wanted, or felt he was entitled to, S appeared to have lost self-control. W failed to intervene, to "save" S from his increasing pique by using the Code 909, the U of U Police did not intervene to calm down S, and as expected, the private hospital security staff were nothing more than observers. In other words, not one officer or security officer intervened with the escalating S, and apparently, none of them knew the law any better than did S. In any case, had S not been so *Garrity Protected* as W *Garrity Protected* it, he should have cited C rather than aggressively, physically grab and remove C from the ER area. It appears that S allowed his hour to 90 minute wait for C to get back to him early in the interaction, as being a



contributing factor in S's poor behavior. His physical actions towards C were needless and overly aggressive for the situation, especially since he never truly gave C a chance to submit to arrest by telling her to turn around and place her hands behind her back and S's [Garrity Protected] [REDACTED]. There is no indication that C prepared a police report which included a "Use of Force" report, as is called for.

Although this report focuses on the facts available, some connecting of the dots needs to be made in order to arrive at a conclusion. It appears on the videos and based upon [Garrity Protected] [REDACTED] that S allowed himself to get agitated, upset and [Garrity Protected] [REDACTED]. The source of those issues appears to be the implied feeling that he was left sitting for too long without C returning to him and explaining the hospital's decision. Something transpired in those initial meetings which prompted C to ask for his business card, which is a sign that someone plans on complaining over an officer's conduct. Although S [Garrity Protected] [REDACTED] he did speak to S1 about his feeling that C was going to complain, and that likely added to S's angst after being left sitting for an hour or more, awaiting a decision. From S's point of view, the entire incident revolved around the hospital, manifested by C, denying his request to draw blood. S felt his understanding of the law was correct and this was confirmed by his supervisor, S1. Neither S nor S1, [Garrity Protected] [REDACTED] took any step to obtain legal advice from any of the entities available to him. C, who had a more current understanding of the law felt equally solid in her stance and in this case, was correct.

PCRB wants to note that while disagreeing with S's wrong interpretation of the law, C stood up for the rights of her patient and to protect her hospital from potential liability in a very professional manner. Unlike the officers, C sought advice from her superiors and this investigation assumes, subject matter experts within the hospital. PCRB want to commend C for her strong stance in protection of her patient and her demeanor during the encounter with S as she was calm, level headed, unemotional and professional in all of her dealings with S that were captured.

#### Recommendations:

The adoption of the Code 909 procedure was a sound decision that PCRB fully supported at the time it was instituted. But, based upon this case, it is clear that it has not become fully adopted by the rank and file of the Department. It is therefore recommended that a "Chief's memo" be sent to all employees reminding them of the procedure and how it can be used to defuse an escalating situation prior to a bad outcome occurring.

The supervisor over training should ensure that any new topics, agreements, MOUs that he/she becomes aware of, are distributed to the entire department, with special emphasis on units that these types of changes most directly affect. Since an informal agreement between the SLCPD and the U of U did in fact exist at the time of the incident, concerning blood draws, it seems as if that knowledge was not distributed.

PCRB has spoken on Search/Seizure related topics ten times since July of 2009, in various Quarterly Reports. Informal discussions have also occurred wherein this continuing area needs to be constantly updated to the rank and file of the Department. This is not an unusual situation since as officers' progress in their careers, they get further and further away from their initial training given during their Police Academy days. Another case recently identified the need for officers to know who their assigned City Attorney was so that they could contact him when a legal need arose, and this was done by a Chief's Memo. It has also been previously

recommended that the SLCPD set up a regular training cycle so that evolving legal issues could be discussed since Search & Seizure is an ever changing area of the law. This ongoing training cycle needs to be examined and honed in such a way to attempt to prevent officers from not knowing the changes that have occurred.

Additionally, based upon this case, it is clear that the Officer Payne, *Garrity Protected* was unaware of the law in *Garrity Protected*. PCRB therefore recommends that the SLCPD not only examine their ongoing, Department wide training program but that it identify specific officers in "specialty" assignments, such as Blood Techs, SWAT Officers, Drug Investigators, Canine Officers, Gang Investigators, Bomb Techs, Fusion Center employees, to name some of the units, and give them an additional four hour legal training course every year that specifically addresses the items of the law that they will most likely encounter in their daily work.

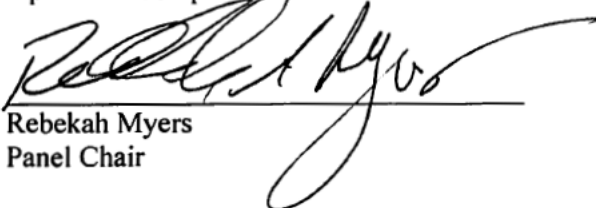
Lastly, on this same topic, had S, S1 or even W been able to contact their staff attorney, or better said, thought to contact him, this matter would have been stopped once C presented the printed out hospital policy/law on blood draws. Other agencies use a Principal Legal Advisor who can be called at any time, to get a legal opinion from. This not only protects the citizens from unlawful searches, it also protects the officers from making a mistake while honestly doing their duty. It is PCRB's opinion that had any of the officers made contact with their Department Legal Advisor, this entire situation would have been stopped very early in the conflict over their respective conflicting opinions. The SLCo District Attorney's Office has an "attorney of the day", an on-call attorney who is there to provide guidance on a myriad of issues. A call to this person, since no attempt was made to contact their own assigned attorney, also would have provided the proper guidance. The SLCPD must establish and use some system that allows officers to get up to date legal advice when they encounter unusual situations.

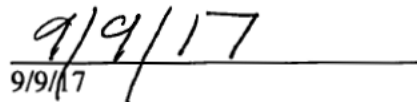
**Panel Findings:**

As to the allegations that S violated the policies listed above, the Panel makes a finding of "Sustained" on those three matters.

As to the allegation that S1 violated the policy manual above, the Panel makes a finding of "Sustained" on that single matter.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

  
Rebekah Myers  
Panel Chair

  
9/9/17