

3/20/2009

The Right Honorable Dan Pike, Mayor
Barry Buchanan, Council President
Members of the Bellingham City Council

Dear Representatives,

A Disturbing Event

Not long ago, I walked with a friend late one evening to a local business. I chanced upon another friend and stayed to chat with him in the parking lot while my companion went inside to shop.

Suddenly, a man appeared, chased by five others who brutally tackled, choked, beat and roughly searched him even though he gave up immediately and never resisted. It was soon obvious the detainee was a shoplifter, but after watching the brutal treatment continue for several minutes, I approached to a safe distance and asked them to stop. Two of the attackers immediately charged me and, crowding me with menacing gestures and threats of physical harm, tried to intimidate me into leaving the scene. Instead, I dialed 911 and reported the incident. Soon the police arrived.

Six cars from three jurisdictions were soon on the scene. The suspect was handcuffed and placed in a car while his attackers joked around with the police for quite a while. Wanting to go home, I tried to ask two different officers about filing a report. I was pointedly rebuffed and ordered to stand in one spot. I called 911 again to report that no one would take my report, that it was very late and cold, and that we would like to finish up and go home. I was advised to stay put, that an officer would soon take my report. Eventually, without ever bothering to hear my complaint, Officer David Johnson presented me with a lifetime trespass admonition, forever prohibiting me from the establishment. I left.

On the way home, I spoke at length with the Shift Sergeant on duty, Officer Grunhard, I believe. I asked him if our conversation would be recorded as a report. He replied that he was "there to listen to me as long as I wanted." Continuing the apparent embargo on my testimony, this conversation also never became part of the record.

Does that sound right? Do store employees have the right to choke, beat and search suspects? Does their authority to instruct police officers to issue trespass admonitions extend beyond their leasehold? If so, how far? Is it within the officers' discretion to refuse to take a report on a citizen complaint? In this case, it deprived the suspect of three witnesses. It radically slanted the official account of the incident. Doing so tacitly condones the brutal and unconstitutional behavior of the attackers. At least, that is what they have learned. Is that a City policy?

A Puzzling Procedure

Following the event, I called the Police Department to see if there was some way my report could finally be taken. I was told that I could make an appointment, come in and speak with an officer and, if desired, file a complaint. I was referred to Lieutenant Slodysko. We discussed the matter and he agreed to simply send me a complaint form. I called the department again to request the Police Reports and 911 recordings from the event.

I received the complaint form and used it as an opportunity to file a report, thinking it would become part of the record. A few days later, the department sent the police report on the shoplifting event. I reviewed this with the other two citizen witnesses. We were surprised that they included only a tangential reference to my 911 calls or the trespassing admonition. Our collective impression was that the reports were considerably inaccurate and imbalanced. I wrote Lieutenant Slodysko, expressing this and asking how my complaint might be appended to the police report. I also asked for details on the procedure and timeline for processing the complaint. The Lieutenant replied that my account would “not be included with incident reports submitted to the court”, and that “written complaints are investigated with a subsequent administrative review. There is no established time line...”

Concerned that information was being wrongly omitted from the record of the case, I subsequently asked the Lieutenant when I would be able to file a report pursuant to my 911 call. There has been no response since February 26th.

Eventually, I reviewed the department’s incident reports and realized that the trespassing admonition had been inventoried as a separate “trouble with a person” incident, even though my call had been a direct consequence of and relevant only to the shoplifting detention. I realized that this was why the documents produced in response to my disclosure request had not included an account of my admonition, even though this had been fully described to the department in my original request. I made another request, using the specific incident number and, a few days later, finally received the reports. By then the investigation had concluded.

I was shocked. Officer David Johnson is untruthful. He makes several misrepresentations regarding my behavior. He stated that I “interrupted” him “several times”, that I was “yelling”, “yelling” and “yelled”, that I insisted the shoplifter “had done nothing wrong” and insisted that Officer Johnson “hurry up what (he) was doing.” These assertions are conspicuously absent from the other officers’ reports. The other two citizen witnesses refute them.

Having refused to take my statement, in spite of another witness affirming my account, Officer Johnson took it upon himself to ask for separate retrospective statements from the store employees regarding my involvement. In these reports, they concoct the idea that the suspect said I paid him \$100 to steal the stuff. Significantly, the suspect had no occasion to speak while he was being choked

and beaten. The only opportunity he had to make any such claim was after the police arrived. None of the officers' reports relate this detail.

The employees, with one notable exception, also joined ranks to assert that I charged belligerently into their detention of the suspect. I never approached within ten feet of their detention. Two other witnesses agree that I kept my distance, neither yelled nor interfered with the employees or the police at any time, that they did not hear the suspect make any claim that I had paid him, that the assertion was ridiculous and furthermore, that I made it clear to both the employees and the officers that I was not defending the shoplifter but was instead concerned with the severity of the employees' response to him.

Two weeks after the event, on March 2nd, having never been informed of any procedure or timeline, having never had an opportunity to file a report for the record on the case and having never been interviewed pursuant to my complaint, the internal investigation was concluded. Not surprisingly, the department "determined that the Bellingham Police Officers acted lawfully and properly." This had not originally been at issue, other than their refusal to take my report. My complaint was with the conduct of the store employees. The report concludes that it is my responsibility to address this issue "with (the store's) Loss Prevention Manager." The store refuses to release internal policy documents regarding the detention of shoplifting suspects.

Interestingly, though the police did not bother to consult me, they did find time to contact "the arrestee whose case has already been adjudicated in Bellingham Municipal Court. The arrestee does not wish to pursue any complaint on the force used against him during the incident." But what if he had known about three other witnesses to his beating? This information was systematically withheld from the record and the suspect.

Whether the police acted "lawfully and properly" has now been called into much deeper question by their...

- staunch refusal to take my report,
- categorical avoidance of the real basis of my complaint,
- false statements (of one officer and his possible collusion with other witnesses),
- arbitrary subdivision of the event into separate incidents,
- gaming of documents relative to a bona fide disclosure request,
- ex-parte communications with the arrestee,
- systematic withholding of evidence and,
- lack of publicly transparent procedure for processing complaints.

These points are either patently obvious or easily inferred from a reading of the record. Notably, the case was adjudicated and the investigation concluded before I received more than half the documents relevant to my request and complaint. I still have not received the 911 recordings. That may be swift, but it is not justice.

Three Requests

1) I ask the Council and Administration to rescind the trespass admonition issued to me by the Bellingham Police on February 13, 2009. The report on my complaint states that I must take the matter up with the store. It is absurd to issue punitive measures to someone exercising their civic duty, however inconveniently, and then leave it to the extra-judicial discretion of a private party to decide. There is no guarantee of a fair hearing, no legal framework, no objective review or constitutional recourse. The City issued the admonition and the City should take it away. I never entered the store's premises that evening and the store's leasehold does not even extend to the Sehome Mall's common parking area. How far away from the store can the employees travel to impose such penalties?

2) I also ask the Council to make a clear policy that reports be taken when citizens call 911, that related events be joined, not arbitrarily subdivided in the record and that complaints be appended to the record of their subject incidents. This will assure much better lawful and proper behavior and prevent the many deficiencies listed above. It may seem all too easy to dismiss these shortcomings in the case of a single shoplifter. More circumspectly, I think we can agree that all citizens should be afforded timely access to the best quality information for their defense. It did not happen in this instance. That's wrong and requires correction.

3) The time may have come for the City to establish a Citizen's Police Review Board. I have studied this issue and am aware that there would be difficulties and complications to overcome. However, the experience I have had deserves a venue, outside the courts, for objective review. It is in the City's and its citizens' best interests to have a system in place that can guide Police Department culture and procedure toward better constitutional compliance and help avoid costly court actions and civil consequences. I ask the Council to hold a public hearing on the subject of establishing a Citizen Police Review Board. We might all be surprised at what we learn.

Thank you for your careful consideration of this matter. Please consider me at your service in any capacity for this purpose moving forward. I look forward to hearing from you regarding your disposition toward these specific requests.

Sincerely,

Tip Johnson