

OIR GROUP REPORTPOLICE OFFICER-INVOLVED SHOOTINGS AND IN CUSTODY DEATHS

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To: Portland City Council

From Barbara Ross  
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My name is Barbara Ross. I am testifying as an individual and not on behalf of any organization. I have been attending the Citizen Review Committee meetings and have reviewed the Department of Justice's findings and draft agreement regarding the Portland Police Bureau's use of Force.

The city Auditor and the OIR Group are to be commended for producing such a thorough and clear review of officer involved shootings. No matter what the circumstances, these deaths and injuries are tragic events for the families and for the police bureau members involved. Many of the factors leading up to the shootings are beyond our control.

I would like to draw attention to something that is within the control of the PPB and the city council. That is the unfortunate delay in completing the investigations. The OIR Report gives the length of time required for investigating each case they studied:

Marcello Vaida 14 months

Dennis Young 16 months for investigation and a total of 2 and 1/2 years to complete the arbitration process

Timothy Grant 14 months

Scott Suran 20 months

David Hughes 23 months

Osmar Lovaina-Bermudez 7 months

Keaton Otis 17 months

None of these cases were completed in the 6 months time frame recommended in the draft DOJ agreement.

7/16/2013



This pattern of lengthy delays in completing investigations is confirmed in the recently released 2012 Annual Report of the Independent Police Review Division.

The table on page 25 of that document shows that the median number of days for a full investigation of citizen complaints was 221 days. This means of course that many investigations took much longer. The internal affairs investigation alone took a median number of 81 days.

This inexcusable delay is unfortunate for a number of reasons. The officers involved are kept hanging. Witnesses memories fade. The public is impatient and cynical. Family members of the person shot get no closure. It is not good for the reputation of the bureau or for speedy changes in faulty policy or training. No one benefits from this drawn out process.

The good thing is that this is something you can fix. You can set firm deadlines for the completion of each phase of the process and require accountability. The report recommends eliminating the Commander's Memorandum as one way to shorten the timeline.

I urge you as the city council to work with the bureau to thoughtfully modify the time required to complete each step of the investigation. This is within your power. You can't change everything, but this is something you could change.

Thank you for the opportunity to testify.



## **The League of Women Voters of Portland**

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## **OIR Group Second Report Officer-Involved Shootings and In Custody Deaths City Council Testimony July 17, 2013**

The League has been involved in police oversight in Portland since one of our past presidents served on the Storrs Commission that proposed the city's first oversight agency over 30 years ago. Currently, we closely monitor the Independent Police Review Division (IPR) and its Citizen Review Committee (CRC).

Auditor Griffin-Valade deserves the public's gratitude for facilitating the expert review of shootings and deaths in custody. These periodic reports shed light on the most critical interactions between the police and public and provide observations and recommendations that, if implemented, should lead to fewer tragedies going forward.

The report discusses throughout shortcomings in the Training Division Analyses. These analyses, done well, have the potential to provide critical guidance for needed changes to policy, training, and tactics. The OIR report indicates the analyses have improved over time, but they could be better. We expect that the Bureau is taking a close look at this. As an additional step, the League recommends tapping into the Training Advisory Council and the CRC for supplemental assessment. Using the OIR report as a guide, the advisory committees could study recent analyses and report back to the Bureau on how they measure up to the concerns outlined in the OIR report.

OIR explains that reviews of officer-involved shootings should identify potential accountability, training, policy, supervision, and equipment issues. The 2010 Police Oversight Stakeholder Committee recommended adding such policy-related issues to findings in all cases. To date, in cases that come before the CRC, we have seen no evidence this recommendation is being followed. In light of OIR's emphasis on such factors, these ratings should be included in all investigated cases. The lessons learned from broadly evaluating cases, not just specific allegations, can lead to steady improvement in policy, training, and tactics.

It has been 10 years since the first Police Assessment Resource Center (PARC) report on shootings and deaths in custody was released. PARC

commented on the implementation of its recommendations throughout the follow-up reports. The CRC issued a PARC follow-up report in 2010 that addressed only two out of the four reports. OIR states, "internal review processes... must be accompanied by efforts to make substantive modifications in the ways officers act and make decisions in the field." (p. 2) We think it is time for a look back at the recommendations made by PARC and OIR to determine if, indeed, substantive modifications have been made by officers in the field in response to those recommendations.

As OIR points out, the Keaton Otis case raised community concerns about racial profiling. Some of the descriptions of Mr. Otis by the officers leading up to the stop included terms with racial overtones. Furthermore, the CRC will be hearing a case on appeal next month that involves a 62-year-old African American man who was cited for jaywalking. He says the officer who stopped him suggested he might be a pimp, that a woman with whom he was speaking was perhaps a prostitute in his employ, and that his medical marijuana pipe was intended for smoking crack. The IPR dismissed the disparate treatment allegation related to this exchange over the vociferous objections of the CRC. Both of these cases indicate a need for more thoughtful and comprehensive investigations and ongoing training.

OIR discusses the problematic use of Tasers in four of seven cases covered by the report. All uses were ineffective. OIR acknowledges the adoption of an improved Taser policy in 2013, but notes that the new policy "allows for a good deal of interpretation and may be difficult to enforce." (p. 96) OIR should work with the Chief to develop more precise language so officers will have clear direction on Taser use.

The report highlights the need for more emphasis on stepping back, planning, waiting it out, and bringing in more officers. Unlike suspects, police officers have the advantage of personnel, training, equipment, and communications. The League encourages the Bureau to continue working to use those advantages effectively in order to reduce the number of tragic endings for both the suspects and the officers.

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## **WATCHDOG GROUP SAYS PORTLAND POLICE SHOOTINGS REPORT HIGHLIGHTS MISTAKES BUT EXCUSES RACIAL PROFILING**

July 16, 2013

Local group Portland Copwatch (PCW) today released an 8-page analysis of the OIR Group's new 100-plus page report on Portland Police Shootings, finding "some well-directed critiques of several shooting incidents and even some meaningful recommendations" but also a deeply disappointing discussion of race in relation to the Keaton Otis case. The report focuses on the years 2005-2010, covering six shootings and Portland's only Taser-related death, which PCW notes supports the medical examiner's finding of "accidental" death without question. PCW also calls out the OIR Group for relying too heavily on the Portland Police Bureau's perspective.

PCW calls for more local input into the periodic reviews, which began with Police Assessment Resource Center (PARC) in 2003, even while praising the report for challenging the Bureau by, among other things, suggesting alternative ways that incidents could have been handled and noting how long some changes are taking to make. In several cases the OIR Group chastised officers for putting themselves into a position of danger, then using that mistake to justify the use of deadly force. PCW rephrases this recurring theme to say: killing is always a choice for an officer, and it is pretty much never true that they "had to" shoot someone.

The report's focus on reckless tactics, poor supervision and neglect of officer safety mostly in cases involving car and/or foot pursuits suggest that such chases may prompt officers to use deadly force more often. However, the OIR Group once again fails to call for more civilian oversight as a partial remedy to the ongoing problems.

Portland Copwatch's analysis includes sections on:

--"Race and Portland Police: Keaton Otis and Marcello Vaida," which takes OIR to task for brushing off of the concern that Otis was racially profiled despite police saying he "looked like a gangster," he wore a hoodie on a hot day, he didn't "fit" the car he was driving (Otis' mother's Toyota), he was slouching in the car, and he cut across several lanes of traffic to make a turn... without analyzing that these concerns would never have applied to a 20-something white kid in Portland. They also ignored that Otis was followed by police just 3.5 months after Aaron Campbell, another African American youth, was shot in the back and killed. While OIR questions many of the police tactics in the stop and shooting, they ignore that Otis would be alive but for the initial stop, which was not originally based on any criminal activity. The other case involved Vaida, who was chased after supposedly littering, and ended up wounded by many of the 39 bullets two officers fired at him. Amazingly, the OIR Group reveals that a commander cleared the officers of wrongdoing based in part on an erroneous and easily disproven fact forwarded to the commander: he said the officers never lost sight of this other young African American man (which should have ended the chase) but both officers admitted doing just that. OIR also reveals that Vaida's gun was jammed by the time one officer reloaded and continued shooting him.

--"Keeping Cops Fired and Ending 'This Time, It's Personal': Dennis Young," in which PCW supports OIR Group's multiple suggestions to improve the changes of making the firing of police permanent, as well as using arbitration decisions-- like the one that reinstated Lt. Jeffrey Kaer after he killed Young-- to fix police training and policy. However, PCW disputes both the assertion that Kaer was in danger of being run over by the car (the bullet holes from his two shots went through the driver's door to kill Young) and that no existing policy would have stopped Kaer from leaving his assigned post to go to his sister's house leading to the death (at least two existing directives prohibit officers using their power in personal disputes). It is in this section that OIR makes its overarching comments against language the Bureau used and the Arbitrator repeated that the "actions of the suspect dictated the actions of the officer" (which PCW calls "blaming the victim"), and notes that such an analysis creates an "excuse for the outcome and does not sufficiently credit well-trained officers and their ability to bring suspects into custody intelligently and safely." However, as with the 2010 report, there is no mention of the outcome of lawsuits; Young's family was awarded \$200,000 in a settlement with the City.



--"Taser Ignored?: Timothy Grant," which furthers OIR's point that a civilian had shut off the lane of traffic where Grant was lying and thus officer Paul Park should not have used his Taser or punched the man, who was clearly in some kind of crisis-- and ended up dead. What PCW suggests beyond the report's conclusions is that despite the Medical Examiner's finding that the Taser did not contribute to his death, nobody asked if Grant would still be alive if police had never intervened. While critical of the decisions leading to Park using the Taser, OIR suggests he could have fired the Taser's darts at close range and then used the weapon in "drive stun" mode to immobilize Grant, rather than suggest he should have avoided using the 50,000 volt electroshock device altogether.

--"Other Foot Pursuit Follies: Scott Suran and Osmar Lovaina-Bermudez" which notes that OIR stops short of saying the officer who bumped Suran's van, causing it to flip over and catch on fire should have been investigated for use of deadly force. They do raise questions about the officer who shot Suran at close range with an AR-15 rifle (one of three such incidents in the report), saying his concerns about Suran's threat level were generic and, as PCW points out, unjustified since Suran was both unarmed, and had committed robberies using a fake gun found destroyed in the burned-out van. In the other case, the officer who shot Bermudez (after he ran from a small shed officers filled with 6 canisters of gas) was hiding behind a tree, fired sight-unseen through a fence, and ended up hitting a nearby apartment with the AR-15 bullet that passed through the Latino man, wounding him. PCW notes that the case, which involved the PPB working with Gresham's SWAT team, brings up long-standing concerns about inter-agency operations involving deadly force that have never been addressed. PCW also connects the OIR's recommendation in this section to use negotiation before weapons to the recent death of Merle Hatch, whom the police never engaged in dialogue before killing him.

--"Caged Suspect Gunned Down: David Hughes" covers the shooting of an unarmed fugitive who was trapped between two buildings and two fences, yet the police confronted and shot him at close range (again with an AR-15), killing Hughes. PCW expresses concerns that OIR refers to Hughes, who was unmistakably suicidal, as "paranoid" for thinking the police were after him, even though officers had visited his (then-empty) hotel room earlier in the day. However, they wisely point out that the 911 operator who didn't realize he was the wanted fugitive and further did not connect him to an officer who could possibly have negotiated with him based on his past relationship should have been part of the Bureau's review of the case. (PCW notes that conversely, an emergency operator was doing well talking to Bradley Morgan in 2012 before police arrived and shot him, but that no outside review of that case will be done until at least 2015.) As noted in PCW's response to last year's OIR report, the Group should refrain from repeating the term "suicide by cop" because when one person kills another, it is a homicide, so this term reinforces the idea that officers "have no choice."

PCW critiques the report for failing to see that with no true civilian oversight, "Portland's system is still too incestuous for officers to be held accountable." Portland Copwatch notes that in other potential misconduct cases the Bureau finds more complaints "Sustained" based on officer complaints than on civilians', and "is reluctant to hand down discipline in cases involving deadly force." PCW also urges caution in moving forward with OIR Group's suggestion to shorten the memos which Commanders are required to write supporting their proposed findings, rather than examining the system that lets them vote on their own recommendation, and calls for more civilian oversight to include the investigations of deadly force and appeals to the CRC.

In the end, PCW supports a number of OIR's other recommendations (such as not letting Sergeants take a tactical position alongside their officers), takes issue with others, praises the new generous use of shooter officer names (though secondary officers are still not identified) and asks for the Auditor to allow OIR to review shootings from 2011-2013 in next year's final report.

PCW's full analysis is available as at [http://www.portlandcopwatch.org/shootings\\_analysis\\_0713.html](http://www.portlandcopwatch.org/shootings_analysis_0713.html) and an 8-page pdf file upon request. The OIR report can be found at <http://www.portlandonline.com/auditor/index.cfm?c=54263&a=455591>. The report will be presented to City Council at 2 PM on Wednesday, July 17.



## **OIR GROUP'S SECOND PORTLAND POLICE SHOOTINGS REPORT HIGHLIGHTS MANY MISTAKES BUT EXCUSES RACIAL PROFILING** an analysis by Dan Handelman, Portland Copwatch, July 16, 2013

In early July, the OIR Group's new 100-plus page report on Portland Police Shootings 2005-2010 was released to the public. The report focuses on six shootings (including the controversial death of Keaton Otis and the shooting of Dennis Young that led to a Lieutenant being fired, then rehired) and Portland's only Taser-related death (Timothy Grant in 2006, glossingly attributed to "excited delirium" and drug use). Portland Copwatch (PCW) has reviewed the report and found that there are some well-directed critiques of several shooting incidents and even some meaningful recommendations— but when the report gets to the Keaton Otis case, it falls on its face. The young African American man's death finally prompted an outside reviewer (for the first time in the 10 year history of such reports) to address the issue of racial profiling in depth, but the OIR Group's approach to that issue, as with its interpretation of many of the facts in all of the cases, relies too heavily on the Portland Police Bureau's perspective.

The report can be found at

<http://www.portlandonline.com/auditor/index.cfm?c=54263&a=455591>

PCW advocated at the time the Independent Police Review Division (IPR) was established in 2001 that the local members of the new Citizen Review Committee (CRC) should conduct the reviews of closed shootings case files, since they were put in charge of overseeing the review process and hearing appeals of misconduct cases. The City opted instead to hire outside experts, first the Police Assessment Resource Center (PARC) from 2003-2009, then OIR Group from 2010 to the present. The Group's not being from this community hits home on the report's first page, where the headlines they use as examples include "man dies after being shot in the face with a Taser." That incident happened in Spokane, not in Portland.

To their credit, the OIR Group notes that some people will always support the police in a deadly force incident, while others will always question the official story. Their report does challenge the Bureau repeatedly, offering alternative ways that incidents could have been handled, but stopping short (as their contract requires) of stating whether they believed the officers were in or out of policy. One can read between the lines and see that in several cases the Group felt officers were out of policy, in particular for putting themselves into a position of danger, then using that mistake to justify the use of deadly force. The unstated but subtextual message they are sending by calling out the Bureau on blaming the shooting victims for "dictating" the outcomes of these incidents is one PCW has said for years: It is always a choice for an officer, and it is pretty much never true that they "had to" shoot someone.

Also, the Portland Police Bureau (PPB) likes to brag about how different the institution is since these reports have started, but OIR Group notes that unless there is true change, the Bureau's "efforts remain hollow."

The report summarizes its focus on reckless tactics, poor supervision and neglect of officer safety in these cases, most of which involved a car and/or foot pursuit. In their foot pursuit summary section,

OIR wisely notes that officers under the stress of chasing suspects may come to think that there is more danger being posed than actually exists, leading to the use of deadly force even when the suspect is unarmed. Unfortunately, they once again fail to call for more civilian oversight as a partial remedy to the ongoing problems.

### **Race and Portland Police: Keaton Otis and Marcello Vaida (includes other observations)**

PCW has repeatedly documented, using the City's own statistics, the disproportionate way in which police dole out force, stop, search, and arrest people of color, particularly African Americans, in Portland, which has a 6% black population. Use of force (29%) and deadly force (25%) are among the worst disparities, while traffic stops (12%), pedestrian stops (20%) and searches (8% of those stopped vs. 4% of white people) also indicate there is something going on, even if subconsciously. While PCW called attention to these disparities in the earliest PARC report, the only real mentions of race until 2013 were PARC's first report stating they did not believe officers were deliberately shooting more African Americans due to overt racism and OIR's very brief section on "Bias Based Policing" in the 2012 report.

This new report includes seven incidents, of which two victims (28%) are African American (Otis and Marcello Vaida) and one is Latino, meaning 42% of the examined shootings are of people of color, the same percentage as the 2012 report.

So the fact that the L.A. "experts" finally created a section on racial profiling in Otis' case is of note for being groundbreaking, but unfortunately the analysis dismisses out of hand that Otis' death was a result of bias on the part of the cops.

(more)



They list the cops' reasons for pulling Otis over: he "looked like a gangster," he wore a hoodie on a hot day,\* he didn't "fit" the car he was driving (Otis' mother's Toyota), he was slouching in the car\*\*, and he cut across several lanes of traffic to make a turn... but don't understand that these concerns would never have applied to a young 20-something white kid in Portland. The Citizen Review Committee is currently processing a case in which an African American man was apparently: asked if he was a pimp and if the woman he was with was one of his girls; disparaged for living in publicly subsidized housing; and accused of smoking crack for having a medical marijuana pipe on him. The IPR's staff claimed they didn't see how that added up to a complaint of Racial Profiling. OIR Group seems to have a similar myopic opinion that officers need to use the "n-word" to be engaging in race-based policing. They need to open their eyes.

OIR Group also emphasized the initial officer's concerns about the way Otis looked at him, described as Otis wondering "do you know what I know?" In reality, this incident took place just 3.5 months after a Portland Police officer shot the unarmed African American Aaron Campbell in the back when Campbell was in psychological crisis. There is no discussion by the OIR Group (or, obviously, the Bureau) that maybe Otis, who himself had mental health issues, was afraid for his life once he saw the police—and rightly so, it turned out. In fact, even though the explosive death of Mr. Campbell was featured in OIR's 2012 report, his name only appears twice in the new document.

They also dismiss out of hand the testimony of one eyewitness who said Otis asked her not to leave or the Police would kill him; this was the witness who also said she never saw Otis reach for a gun. They claim the video "conclusively refutes" her testimony, but the footage doesn't show anything clearly enough to prove whether Otis' hands were visible or if he had a gun. Perhaps the OIR is referring to the witness' assertion that Otis was assaulted by the cops for 15-20 minutes, which could merely have been a misperception of time watching Officers Burley and Defrain trying to extract Otis through the car window and/or door. (A struggle which included Burley punching Otis in the face, something not mentioned in OIR's report.)

While there is mention that a gun, one shell casing, and one bullet matching the gun were found on scene, presumably used to shoot Officer Chris Burley in the leg, there is no issue made of the cops' allegations that Otis fired the gun twice. There is mention of the Crown Royal bag that the gun supposedly was in, but no narrative explaining how Otis managed to supposedly get the gun out of the bag (and no story claims the gun was fired from inside the bag).

It is likely the officers assumed Otis was in a gang because they were part of the Hotspot Enforcement Action Team, an offshoot of the Gang Enforcement Team tasked with looking for trouble, which likely led to some racially biased thinking.

Other analysis by OIR fails to ask whether the officers even questioned Otis about the ownership of the car, which could have de-escalated the situation once they realized it was not stolen. They repeat loaded language including that Otis "lunged" at the glove compartment after being shot simultaneously with three Tasers.

They further praise the officers' tactical decision-making, even though they go on to critique:

- the officer who "boxed in" Otis' car, which seemed logical enough but they say he could have been exposed to gunfire when getting out;
  - the decision to approach Otis right away, not because of how it escalated the situation but because it was dangerous since the police were worried Otis had a weapon;
  - trying to remove Otis from the vehicle (this one, they got right) because it unnecessarily sped up and escalated the tension;
  - having six officers on one side of the vehicle at a time, but in part because they were in harm's way when "Otis fired";
  - the cross-fire, which caused (the unnamed) Officer Pat Murphy to dive out of the way from the passenger side (no speculation here that it could have been Murphy who shot Burley, by the way);
  - use of three Tasers simultaneously, noting that one officer thought his Taser would complete a circuit with another one if only one dart from each weapon hit Otis (not true),\*\*\*
- and
- undermining attempts to de-escalate (Defrain briefly put his gun away and lowered his voice) by having so many officers show up at once.

As part of this analysis, OIR asserts that the officers were right to use at least one Taser on Otis because he was resisting them, however, at the time they zapped him he was not posing an immediate threat.

OIR also calls out Sergeant Livingston for actively participating with his officers in the tactical stop of Otis, being one of the three people who fired Tasers, rather than standing back to assess the situation and perhaps avoid the above-listed issues. They suggest both that Sergeants not be engaged alongside their officers (Recommendation #23) and that straying from their supervisory role lead to their being held accountable (Recommendation #30), both wise ideas.

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\*-this is also one reason the George Zimmerman ended up shooting teenager Trayvon Martin in Florida, a bias based on clothing.

\*\*-ironically, Otis may have been slouching because he literally didn't fit in the car— Keaton Otis was 6'-5.

\*\*\*-no mention is made that Tasers' supposed low amperage is why they are touted as safe but the amperage of three at once could have been deadly.

Interestingly, the OIR Group asserts that Otis was not racially profiled by contrasting his case with Jahar Perez's, where officers pulled Perez over for being in a car that "didn't fit the neighborhood" and pulling him over for failing to signal a turn. These circumstances mirror Otis' almost exactly, but perhaps because the OIR Group was allowed to attend the non-public, ultra-secret Use of Force Review Board (UFRB) held in this case, they were won over by the Bureau's version of the "facts." Rather than encourage the profiling training that is underway to speed up and go further, the OIR Group suggests that the Bureau's problem is failing to "communicat[e] with the public on these sensitive issues."

In the Vaida case, in which the young man was chased for "offensive littering" in (what was then) a mostly-black neighborhood, officers responded to Vaida's alleged gunfire by unloading 39 bullets toward him (previous reports had only listed 38). OIR Group dutifully notes that some bullets hit nearby cars and buildings, but that the Bureau never examined whose bullets they were. Officers are supposed to consider the "backstop" when firing; furthermore, Vaida's gun jammed after five rounds and yet Officer Chad Gradwahl emptied one clip and reloaded, shooting a total of 30 bullets. In the Otis case, 23 of the officers' 32 bullets hit their mark, with some hitting a nearby apartment building and one landing in a Radio Shack 2 blocks away. PCW's examination of all shootings since 1991 shows that these two incidents involved the largest number of bullets fired in 20 years in Portland— and both against young black men.

Another key issue which indicates possible cultural bias was that the police held the patrons of a bar (which at that time was mostly an African American hangout) until 3 AM before interviewing potential witnesses, nearly four hours after the shooting. This was in part because officers got confused by a call from someone whose door Vaida knocked on, thinking there was a second suspect. (The detention led to OIR's recommendation #2, to ensure witnesses are not held without cause.)

OIR doesn't call attention to the fact that Vaida was merely failing to obey officers' commands at the time Gradwahl ordered his partner Ryan Derry to use a Taser (which didn't successfully immobilize Vaida anyway). Instead, they take it for gospel that the officers believed him to be armed (though he posed no immediate threat) and chastise the officers for using a Taser on an armed suspect. This is odd, as Tasers are supposedly weapons adopted to avoid the use of Deadly Force. They do, however, dispute the Bureau's analysis that the officers should not have warned Vaida about the Taser, since doing so, OIR notes, gave him a chance to comply with their commands.

The report essentially blames Gradwahl and Derry for continuing a foot pursuit after losing sight of the suspect, not calling for backup to set up a perimeter, and endangering themselves by approaching Vaida after he got out ahead of them. They add an interesting point: that by emptying his clip, Gradwahl actually put himself in danger because he was essentially defenseless when reloading. (Lucky for him he was firing at someone who was even more defenseless?) OIR also says the officers should not have split up from one another. It appears that although the commander thought the officers needed to be debriefed, the UFRB (predecessor to the current Police Review Board) did not recommend a debriefing.

Another odd part of the Vaida incident: an officer was ordered to shoot out a street light to make it harder for Vaida to see, using a less-lethal "beanbag" shotgun. OIR Group notes that is not what the weapon is designed for, and that the officers could have called someone to turn the light off, but did not, and moreover, that officers need light to conduct their business.

Beyond their not faulting the officers for shooting at someone already on the ground incapable of returning fire, the Bureau's analysis of the incident assumed Gradwahl was holding a flashlight in one hand (and thus did not use a suggested two-handed grip on his gun), but no evidence in the file supported that notion. The Bureau also decided not to call out Gradwahl for running with his weapon drawn (which is against training) since he told them he thought he would need to use it. Most disturbingly, one reason the officers may not have been disciplined for continuing a chase after losing sight of the suspect is that a detective's summary claimed they always could see Vaida, though that was not true.

Interestingly, the first recommendation in the report comes from the Vaida case and calls for officers in specialty units like the Gang Enforcement Team to retain their patrol officer tactics through ongoing training. Since the GET and its progeny HEAT were involved in both these deadly force cases stemming from minor violations at best, it seems that a better idea might be to not have the specialty units. (The HEAT team was, apparently, dissolved sometime after the Otis shooting.)

Although Vaida survived his "multiple" gunshot wounds, it took the SERT team, and thus medical, over an hour to take him into custody.

### **Keeping Cops Fired and Ending "This Time, It's Personal": Dennis Young**

Twelve of the report's 31 recommendations come in the section devoted to Lt. Jeffrey Kaer's shooting of Dennis Young in 2006. Kaer's sister called him, concerned about a man parked in a car near her house, and Kaer left his precinct without telling anyone he was going to investigate. After startling Young awake and wrestling with the gearshift, Kaer claimed he feared being run over (even though he was next to the car, as evidenced by the bullet holes in the driver's door) and killed Young. Backup officer Lawrence Keller (it's not clear from the report when Kaer eventually did call in his position — or why OIR doesn't use Keller's name) then used a Taser on Young's mortally wounded body to be able to reach in and turn off the engine.

(more)



Mayor Tom Potter ultimately fired Kaer, who was then reinstated by an arbitrator who changed the discipline to 30 days leave without pay.

One fantastic point of OIR's report is their recommendation (#5) that the Bureau use arbitration decisions to make changes to their policies and training. Though they don't reference it directly, this also applies to the ongoing battle between the City and the Portland Police Association over the arbitrator-ordered reinstatement of Officer Ron Frashour, who killed Campbell and was fired in 2010 but rehired on administrative leave in late 2012.

They also call for the cops to tighten restrictions on intervening on behalf of family members (Recommendation #15), which should be a no-brainer, considering that officers are already not supposed to use their position in personal disputes on or off duty (Directives 313.00 and 311.30). PCW called attention to this at the time of Kaer's discipline to no avail.

Some interesting new information came out about this shooting, such as:

—Lt. Kaer pushed Mr. Young by the face to reach in and put the car into park.

—Young allegedly pulled Kaer partway into the car (further supporting our concern at the time that as a supervisor, Young should not have acted the way he did knowing the outcome of the Jahar Perez and Kendra James traffic stops, something echoed in the OIR's report).

—Kaer never talked to Officer Keller to make a plan or seek specific assistance.

—The officers pulled Young out of the car, failed to find CPR equipment, eventually other officers tried CPR, then an arriving Sergeant had a paramedic cover the body with a sheet which led to moving the corpse (a second time) before the investigation was completed.

While Mayor Potter's letter disciplining Kaer was made public in 2007, it was also interesting to learn that the Training Division found Kaer violated training by failing to wait for cover, not running Young's license plate, not notifying dispatch, and not talking with Keller. At that time PCW wondered whether Keller was found out of policy for Tasing the then-non-threatening Young, but the report says he was found in policy because the Bureau says Young was trying to flee— even though the car, at that point, had come to a stop and Young was for all intents and purposes dead. Also, as the OIR Group notes, the officer himself said he used the Taser to reach into the car safely, not because of fear Young would drive away.

The bulk majority of the OIR recommendations based on this case have to do with ensuring that in the future the firing of officers will hold up at arbitration. The suggestions include being more explicit about how violating multiple policies may lead to more discipline (#7), and that poor performance can lead to discipline (#8) including serious discipline in critical incidents (#9).

Because the Arbitrator repeated the Bureau's language that the "actions of the suspect dictated the actions of the officer," this case led to OIR's specific recommendation (#13) that it be clear the officers are the ones who dictate the outcome of these events. In his response, Chief Reese typically deflected the notion that the police take responsibility for ending community members' lives by saying "the subject can influence the outcome." That may be so, but as noted above, the training needs to emphasize that an officer's choice to use deadly force is just that— a choice. As OIR points out, blaming the victim creates an "excuse for the outcome and does not sufficiently credit well-trained officers and their ability to bring suspects into custody intelligently and safely."

Weirdly, part of the Arbitrator's decision said that although Kaer did violate policy in his poor decision making, his use of deadly force against a moving car was justified because when he confronted Young the car was not in motion. The Arbitrator then took the City to task for faulting Kaer's failing to get out of the way of a moving vehicle. If nothing else, one of the main points of the directive about shooting at cars is to increase officer and community safety— so these comments reinforce the idea that the Arbitrators are biased in favor of the police. Even though they presumably have access to the Campbell and James arbitrations as well, the OIR Group does not suggest examining the system for such problems.

As with the 2010 report, there is no mention of the outcome of lawsuits here; Young's family was awarded \$200,000 in a settlement with the City.

### **Taser Danger Ignored?: Timothy Grant**

The OIR Group simply reports the fact that the Medical Examiner did not find Officer Paul Park's use of a Taser contributed to Timothy Grant's 2006 death, but rather referenced his cocaine use calling the death "accidental." The training division noted Park had seen a video about the non-medically-accepted-diagnosis of "Excited Delirium." The analysis on this case runs a close second to the Keaton Otis chapter in disappointment from OIR's "experts." Over 350 people are known to have died after application of Tasers. No analysis of Grant's death that PCW has seen asked the question if he would still be alive if he had never encountered a police officer.

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Again, the report gives the community the benefit of learning details of this incident previously unreported: That Park punched Grant in the back to try to get handcuffs on him before using the Taser on his back and neck; that medical responders were on scene but not called in quickly; that Park refused help from a civilian witness to help keep Grant still before backup officers arrived (and used a second set of cuffs to get Grant into custody); and that, most significantly, a civilian had blocked off the lane of traffic where Grant was lying in the road when Park arrived, so he could have theoretically waited for backup and never chosen to use his Taser. This last point was emphasized by the OIR Group, except they stated that Park would not have “needed” to use the Taser (undercutting their own overarching suggestion that each action is a decision made by the officer).

Unfortunately, the OIR Group, while critical of the decisions leading to Park using the Taser, also suggests he could have fired the Taser’s darts at Grant at close range and then used the weapon in “drive stun” mode to immobilize him. Since Grant was not posing an imminent threat, it seems the focus should have been on avoiding the use of the 50,000 volt electroshock device altogether.

A strange tidbit recalling decades-old cases states that the Bureau does not require people in handcuffs to be rolled on their side, but do so because of “public perception” since it doesn’t hurt to keep the person off their stomach. A Mr. Kirschbaum died in the back of a Portland police car when he choked on his own vomit over 20 years ago, leading to a lawsuit. It was also speculated that police hog-tying and putting pressure on Damon Lowery’s chest led to his in-custody death in 1999. While OIR Group may not know about these Portland-specific cases, it is curious they did not raise concerns about this claim in the report based on similar incidents nationwide.

### **Other Foot Pursuit Follies: Scott Suran and Osmar Lovaina-Bermudez**

Two more cases involving foot chases also received low marks from the OIR Group. The first, in which officers first chased and crashed the van driven by robbery suspect Scott Suran in 2006, fails to identify the officer who “PIT-stopped” (Pursuit Intervention Technique— hitting the bumper to deliberately make the vehicle spin out) the van causing it to flip on its side and catch fire. Even though OIR makes it clear that this maneuver could have been considered deadly force if the chase was above 45 MPH— and nobody examined the scene to determine if it was— they don’t look at that part of the incident as a use of deadly force. They do, however, talk about how Officer Anthony Passadore shot Suran with an AR-15 rifle after, he claims, Suran reached for his waistband. Even though the charred remains of Suran’s fake gun were found in the van, nobody challenged Passadore’s story.

Furthermore, the report reveals, Passadore wasn’t disciplined for running with his rifle, a dangerous action. It also notes that the PPB officer who tried to justify fear of Suran taking hostages by invoking the shooting of young Nathan Thomas, who was held hostage in his own home and killed by Portland Police in 1992, ignored the Bureau’s foot pursuit policy warning against chasing potentially armed suspects.

Suran ran away from the crash site and across several properties, spotted by Passadore near a shed a few hundred yards away. Stingingly, OIR points out that Passadore’s justification of shooting Suran (who lived), which was the proximity to residences and his refusal to stop when ordered, could justify use of deadly force in any chase, so it was inadequate. They also note that Passadore driving past the crash site created officer safety issues.

More things to make one lose faith in the PPB:

—Somewhere along the way, one of the officers dropped his Taser during the chase.

—A cop moved one of the involved police cars before the investigation was concluded, then a Sergeant ordered him to put it back (which of course didn’t land it in its original position).

Very similar circumstances led to the 2009 shooting of Osmar Lovaina-Bermudez, also a suspect in armed robberies, who led officers on a foot chase which ended up at a shed, where Officer Russ Corno shot and wounded him. (Oddly, they did not include the case of Derek Coady, shot in an outbuilding a year earlier by Corno, who is involved in the Gang Enforcement Team. Perhaps some of these connections will be made in the 2014 OIR report.)

After some confusion about whether to call in Portland’s SERT or Gresham’s SWAT team, they decided to share responsibility for the scene. A police dog tracked Bermudez to the shed, where the officers then launched six gas canisters— and a seventh “hot” projectile that didn’t penetrate the shed wall. While OIR suggests (Recommendation #21) letting negotiations and perhaps police dogs do the work before releasing gas, no question is raised about the amount of gas used on a small, enclosed space for one suspect. As it happens, Bermudez kicked out the back of the shed and ran, with the cops all on the other side oblivious to his escape.

Corno and his partner were hiding behind some trees near a fence when Bermudez’s hands appeared over the fence. Even if he was actually armed at the time, it is unlikely that Corno’s perception of the gun being pointed at him was accurate, since Bermudez would have been unable to see him and was using his hands to climb, not to aim a weapon.

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Nonetheless, Corno shot his AR-15 rifle three times and hit Bermudez twice, wounding him. He was quickly put into cuffs and given medical attention, significantly in contrast to so many other cases in this and previous reports. OIR nicely points out that Corno was safely positioned behind a tree, but felt “compelled to shoot” at the unseen suspect anyway.

Scary story: One of the bullets that hit Bermudez passed through his body (likely because Corno was so close) and went through a glass door into a fireplace of a nearby home. Scary story 2: The officer with the “hot gas” canister knew it was not likely to penetrate the shed, but shot anyway because he wanted to help. He was not disciplined.

Interestingly, Bermudez’s ethnicity came into the narrative as his accent was described by witnesses to the robberies, and officers yelled at him in English and Spanish to come out of the shed. According to the report, Bermudez’s answer was “Fuck you.” For the record, “I want to talk to my lawyer” might have been a better reply, but his hostility still did not necessarily justify six gas canisters and two rifle bullets.

Incidentally, one witness who spoke Spanish had his testimony discounted because he apparently misidentified the location of the shooting officers, but nobody re-interviewed him with a proper translator. Also, the investigators didn’t try to find a witness who allegedly took pictures of the incident. They did, however, try to interview Bermudez about his own shooting but he was considered “hostile”— not surprising since he had two bullet wounds.. and no lawyer.

OIR Group pointed out that Bermudez did not answer the cell phone number the Hostage Negotiation Team had for him, but nobody tried alternative means to communicate such as a bullhorn or a third party who could have talked to him. These issues are similar to the lack of communication between police and Merle Hatch before he was shot in early 2013. OIR wisely reminds the SERT team that they could have relied on time as a tactic (unfortunately stating it reduces the “need” to use deadly force).

OIR states that the Training Division did a good job reviewing this case, as the review came after the Aaron Campbell fiasco in early 2010. Training said something about Corno failing to give a warning before he shot, but didn’t talk about how dangerously close he was to Bermudez and thus the “backstop” being the inside of someone’s house. The Bureau also, notes OIR, did not ask why the officers were in such a rush to confront Bermudez.

As a side note, the Gresham SWAT team being involved complicated the scenario a little bit. PCW has urged the Bureau for years to create understandings for such situations so it is clear which agency is in charge. As it happens, only Portland Police were involved in the showdown and shooting, but a commander apparently noted the “glitches” in multi-agency work. OIR made no recommendation on this issue.

### **Caged Suspect Gunned Down: David Hughes**

In late 2006, a fugitive wanted on firearm charges was reported to be at a hotel in Portland. Officers came by but he was not in his room. Later when the fugitive, David Hughes, returned, the clerk alerted police, who clustered in a nearby lot. Meanwhile, unbeknownst to them, Hughes had somehow learned the cops were after him and one half hour earlier called the news media and 911 trying to get in touch with an officer who knew him and knew of his troubled suicidal past. The 911 operator refused to put Hughes through on a “personal call.”

While the cops were making their plan, Hughes jumped out the window of his room, probably breaking his arm. The officers rushed over and found Hughes in an area bounded by the hotel, the next door business, and two chain link fences on either end. The Sergeant on scene and two officers lined up at one end of the fenced area and tried to engage Hughes, who said he couldn’t put up both his hands (due to the injury). Hughes allegedly put his hand in his jacket several times but the officers didn’t respond. When he reached for his waistband, all three fired— one, Nathan Voeller (who shot Merle Hatch earlier this year) used an AR-15. A fourth officer fired a lead-pellet “beanbag” round that hit the fence and bounced off. When Hughes kept moving, they shot him again, ultimately killing him with 9 bullets. Hughes was not armed.

Unfortunately, the OIR Group uses the term “suicide by cop” to discuss this incident; this is another contradiction to their theme that officers control the outcomes. As noted in PCW’s response to last year’s OIR report, when one person kills another, it is a homicide, so even in reference to others’ documents this term should not be used as it reinforces the idea that officers “have no choice.” They also refer to Hughes’ “paranoia” that the police were after him, which is not only a pejorative term in general, but since the cops had been at the hotel earlier in the day, fails to take into account the narrative the report itself describes.

In this case, like the Otis case, the Sergeant became actively engaged in the incident and didn’t step back to examine the bigger picture, which of course was that Hughes was contained and the entire confrontation was likely unnecessary. OIR points this out clearly, along with the fact that the officers put themselves in danger if Hughes had a gun.

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One of the recommendations from this section (#19) calls for the Bureau to bring in Emergency Communications people to Police Review Board hearings, but they only suggest doing so when performance issues are at hand. It seems 911 operators play a crucial role in many cases, so perhaps the suggestion should be broader. For example, Bradley Morgan was engaged in a positive dialogue with a 911 operator when officers arrived and shot him in January 2012. (But of course, no outside expert will be looking at that case until 2015 or later.)

Rather than sequester the officers in different locations after the shooting, they were not only brought together to the same restaurant but in the same staging area as the logistical team. While a commander noted the problem later, it is not clear whether the officers' stories were contaminated by this proximity, and it recalls the meeting of officers involved in killing Kendra James at an Applebee's in 2003 prior to the grand jury.

This was the third case just in this report in which an AR-15, meant to cover long distances, was used at close range.

### **PPB Policing Itself: Internal Affairs, Police Review Board, Grand Juries and IPR**

In many of the cases, OIR identifies questionable actions or outright misconduct by officers which was not questioned by Training, Internal Affairs or IPR, suggesting that Portland's system is still too incestuous for officers to be held accountable. It seems that the Bureau, which finds far more complaints "Sustained" based on officer complaints than on civilians', is reluctant to hand down discipline in cases involving deadly force. Even such indirect issues as the officer in the Vaida case who shot out a streetlight with a "beanbag" gun and the commander who wrongly wrote that the officers never lost sight of the suspect should end up with some kind of reprimand, retraining, debriefing or discipline.

In the analysis of the Kaer case, the OIR Group suggests laying out the discipline process more along the lines of our court system, where the higher court's ruling is more important than the lower court, to avoid arbitrators picking up on disagreements within the City to overturn findings. There is not specific recommendation to go along with this finding, but later on in the report they suggest that Commanders no longer write lengthy memorandae supporting their proposed findings and discipline (Recommendation #31). They believe this will help shorten the time Commanders are taking to issue their findings, which can be as long as six months. PCW urges OIR Group and the City to carefully consider these suggestions in the context of the Police Review Board (PRB) system, which allows the Commander a second "bite at the apple" by voting on his/her own recommendations at hearings. It also suggests the possibility that the Citizen Review Committee's findings will be taken more seriously, as any appeals heard by that group occur after the PRB meets. Nonetheless, PCW still takes offense at the idea that the CRC is an appeal body, since the subject of the police action (or their surviving family) is not allowed at the PRB hearings, and according to the IPR, shooting victims have no right to appeal.

In the Timothy Grant case, Internal Affairs didn't even begin an investigation until seven months after Grant's death. The commander then took five more months to issue a finding. While OIR calls out the Bureau for this shortcoming, and for failing to ask questions about the tactics and administrative questions beyond the criminal investigation that was done, they did not make a corresponding recommendation. Perhaps they are growing tired of repeating the same thing, or feel that IA is now doing more thorough investigations. PCW continues to believe that having an independent body such as IPR conduct the investigations would lend more objectivity and more confidence from the community in the system.

In one odd timeline revelation, the Osmar Lovaina-Bermudez case was sent to the grand jury (actually, the same grand jury cleared Officer Corno and indicted Bermudez, a concern of PCW but not OIR) in four days, but the Detectives did not finish their investigation for three weeks. How can a fair grand jury have been held if a full criminal investigation wasn't done first?

In a few places, OIR Group seeks to bolster its concern that other police agencies should not be doing the investigations. While not perfect, PCW supports the idea until a civilian system is in place so that there is at least no perceived (or real) conflict of interest of the PPB investigating itself. In the Hughes case they note the investigation by other agencies wasn't as good as some others had been; a recommendation could be made to team them up with the IPR (or the PPB if that is how the City wants to continue playing this game).

In the Otis case, OIR notes the lengthy delay in investigation, in part caused when IPR sent the case back for more work and Internal Affairs took four more months to finish. Because it is vaguely written, it appears OIR is partially blaming IPR for the delay, though it is likely they only meant to chastise IA. PCW hopes that OIR supports efforts by IPR to encourage thorough reviews of deadly force cases.

### **Good Recommendations**

Recommendation #14 suggests using folding screens to block the public view of shooting victims' bodies without disturbing the crime scene. The indignity of exposed, bleeding, dead people (mostly African Americans, but in this report including Dennis Young) has been an issue for a long time.

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Recommendations #24 and 25 suggest more specific restrictions on the length of time Tasers can be used and to be sure officers understand the legal and physical limitations on the weapons. They note that the new Taser directive created in February 2013 has vague language that could be hard to enforce, a concern PCW shares. Unfortunately, as in the previous report, they also hint at other changes but don't delineate them in formal recommendations: to be more clear about multiple Tasers used on one person, and to clarify if it is appropriate to use Tasers on downed suspects, who technically, they note, are "medically fragile" and thus in a protected category.

Interestingly, even though OIR makes a suggestion for officer safety reasons to make an officer radioing in his/her position regarding a foot pursuit mandatory (Recommendation #26), Chief Reese disagrees because they may have an immediate need to begin the chase. OIR works hard to explain that an "active shooter" scenario, which is the police default argument against most mandatory shooting-related policies, are so rare that specific exceptions could be crafted to end otherwise mostly ambiguous wording. Perhaps the Chief really isn't interested in firing officers and keeping them fired.

### **Minor Dispute**

In Recommendation #12, which asks that the City be clear which allegation led specifically to the discipline, OIR Group limits their suggestion to termination cases; it seems that this should be so for any and all cases involving discipline.

### **Say What??**

OIR Group may be sipping tea with the police apologists at the Force Science Research Center, which has a theory that so many officers get shot because suspects can turn around and shoot faster than a cop can shoot at them (aka the Superman theory). In their summary on Foot Pursuits, they warn that "the suspect determines the path of the pursuit. If the suspect is armed, he can draw the officer in and then turn and shoot the pursuing officer before the officer has an opportunity to react." Perhaps they are referring to cases like the Vaida case where officers lost sight of the suspect, but on its face this admonition sounds a lot like an apology to the unproven science of the FSRC, which OIR discredited in both its Chasse and 2012 reports.

In the section on vehicle pursuits, after noting that 90% of high speed chases are because of stolen cars, suspended licenses, and other minor crimes not involving violence, OIR excuses the chase of Mr. Suran because the police believed he had a gun. But since the gun was a fake and the robberies involved the threat, but not the use, of violence, this analysis falls flat.

### **Timeline Note Regarding This Report**

OIR Group was granted the current contract in 2011 to study all cases whose investigations were closed before 2012; there were 18 incidents to review and this report brings the total analyzed to 14. The last four will presumably be in a report published in 2014, meaning it will likely be as long as four years, once again, before anyone looks at many of the incidents from 2011-2013. While Auditor Lavonne Griffin-Valade has taken a much more assertive stance on looking at cases (and revealing the names of both officers and civilians) than her predecessor Gary Blackmer, the contract should have been written to fold in cases closed in each subsequent year to avoid the delays caused by Blackmer's unreasonable restrictions in 2003-2008.

### **Conclusion:**

While the OIR Group's reports continue to be a valuable source of both information and good recommendations, many of the recommendations are common sense, with some duplicative of ones made by the community. Because their contract is through the "Independent" Police Review Division, their information comes from the Police Bureau, and they are not allowed to conduct their own investigations, the reports continue to fall short of expectations. More local input, quicker turnaround time, and, perhaps more than anything, the addition of a local African American voice in the writing of the reports could go a long way to making these reports even stronger.