

MEMORANDUM

TO: Mayor Ted Wheeler
City Council

FROM: Kalei Luyben
Ted Luyben

DATE: February 15, 2018

SUBJECT: OIR Group Report
February 2018
Recommendation No. 1

Recommendation No. 1 states:

“The Police Bureau should modify its notification protocols so that a supervisor within the subject officer’s chain of command is assigned to meet with the employee and communicate the disposition of any sustained internal investigation.”

In case No. 1, concerning Kelly Swoboda, the report states, at page 16, under the heading Notification to Involved Officers of Internal Investigative Outcomes:

“Under current Police Bureau protocols, when an involved investigation is completed, Internal Affairs notifies the subject officer of the outcome via email.”

We concur with the recommendation.

Notification by email is a cold and impersonal way of dealing with a person involved in an investigation.

If the Portland Police Bureau is to become education-based rather than fear-based, then humane and fair treatment for every person, at every level and under all circumstances must be advocated and implemented.

Procedural justice is what OIR Group is really talking about in making this recommendation.

Unless and until the Portland Police Bureau guarantees procedural justice to themselves, they will never understand or accept procedural justice for citizens.

We would take the recommendation further and extend caring concern and courtesy to protocols for IPR. It has come to our attention that a citizen had their case dismissed without a personal meeting with the Director of IPR. Since this was a case of domestic violence, the

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concern here is that police officers who did not take seriously the concerns of the victim, will continue their careers without concern for other victims of domestic violence.

SECTION THREE Recommendations

- *1 The Police Bureau should modify its notification protocols so that a supervisor within the subject officer's chain of command is assigned to meet with the employee and communicate the disposition of any sustained internal investigation.
- 2 The Police Bureau should develop a mechanism whereby a tactical debrief is scheduled with all officers involved in deadly force incidents, including any insights documented in the Training Division Review and the Commander's Memorandum. The occurrence of the briefing should be documented and included in the officer-involved shooting investigative file.
- 3 The Police Bureau should advise its use of deadly force instructors to instruct officers that the basis for using deadly force should focus on the imminent danger presented by the subject's actions to them or identifiable third parties rather than speculative unidentified victims who may be in the vicinity.
- 4 When an officer uses profanity in engaging a subject, the Training Division Review should identify it and opine upon its appropriateness.
- 5 The Bureau should continue to train its field sergeants on the need to render or coordinate first aid as soon as possible and should not instruct paramedics to downsize its response team in the interest of not disturbing evidence.

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TESTIMONY BY PORTLAND COPWATCH ON OIR GROUP'S 2018 DEADLY FORCE REPORT

February 15, 2018

In general, Portland Copwatch (PCW) believes the 26 recommendations that OIR Group makes are generally useful and could improve the Bureau and its review systems. But the report only covers six incidents up until June 2015, so the City is still nearly 3 years behind in receiving these analyses. Also, there is no analysis of race in the one shooting involving an African American Portlander, and the issue of mental health, while raised, doesn't emphasize how PPB's shooting so many people in crisis violates the spirit of the DOJ Agreement. Copwatch applauds that OIR has finally begun to focus some of its attention on the District Attorney (DA) presentations to Grand Juries. Using the Swoboda case, they expose how the DA's role seems to be making the suspect seem despicable so the civilian jury will excuse the officer's homicide as justified regardless of the facts. OIR called the evidence introduced "the highest level of prejudice" and noted that a judge would have excluded it in a criminal trial. The City should heed OIR's recommendation to talk to the DA about their biased presentations.

Council also needs to scrutinize the Bureau's behind-closed-doors Police Review Board (PRB). OIR reveals that when Council changed the post-deadly force policy last August, the Bureau interpreted the part saying the Training Division's review will come after the Internal Affairs administrative review to mean it will no longer be presented to the PRB. PCW strongly disagrees with this interpretation.* Also, OIR shows the PRB failed to look at a number of possible violations by officers, including one the officer's commander found in the Sudlow case, and how Training sent that case back for more investigation which resulted in nullifying questions that came up the first time.

Overall, the theme PCW found in reading this report is that the system is set up to clear officers of wrongdoing in deadly force cases, to the point of practically coddling them— with no recognition of what it did to the civilians who were shot and/or killed.

OIR recounts that since 2010, they have looked at 41 incidents. They call PPB's investigations "thorough and fair" even though a number of their analyses indicate otherwise. OIR notes that the lengthy delays in interviewing officers should not be an issue following last year's changes to the "48-hour rule."

Highlights of the case summaries include:

—Officer John Romero swore twice at Kelly Swoboda when ordering him to sit down, which may have escalated the confrontation into the use of deadly force. Internal Affairs, the Training Division and the Commander did not review the use of profanity even though it is highly restricted by Bureau policy.

—Sgt. John Holbrook inserted himself into the chase and other tactical actions in the Paul Ropp case, even though he had similarly taken action rather than supervising when he and another officer killed Brad Morgan in 2002. OIR wisely suggests creating a policy to hold supervisors accountable when they jump into action inappropriately.

—PCW notes that Officer Michael Honl, who fired at Denorris McClendon and missed, then hit him in the legs, also fired 9 bullets at Gilbert King in 2005 and missed. Rather than being praised for using ammunition and, perhaps, aim that did not kill the young black man, the Bureau questioned why he didn't replace his buckshot cartridge with a more lethal slug.

—Sgt. Ken Duilio inserted himself into the boxing-in of Ryan Sudlow that precipitated Officer Charles Asheim firing a bullet that ricocheted around a gas station. Duilio told investigators he saw nothing wrong with trying to fire a gun near gas pumps in such a public place— but OIR doesn't note that Duilio fired at Bruce Browne, an African American man who had subdued a would-be robber at a gas station in 2001. The City paid Browne a \$200,000 settlement.

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—Similar to how the DA inflames the Grand Jury around shootings, OIR joined the Bureau in describing the kitchen knife held by Michael Harrison as “eight inches long,” though they do note that includes the handle. PCW did not previously know that Sgt. Martin Padilla had neglected to follow training and cock his less-lethal shotgun, losing precious time and thus leading to Officer Raelynn McKay’s decision to use deadly force.

—An African American man who had been looking through a bag of camera parts with Alan Bellew wondered why Officers Michael Currier and Dominic Lovato let Bellew get back in the car without having searched it, since Bellew then allegedly pulled out a starter pistol and pointed it at the cops.

When combining the lack of scrutiny by Internal Affairs, Training, Commanders and the Police Review Board, the re-thinking of holding Officer Asheim accountable for firing a gun in a crowded gas station, the Chief’s comment in her response about protecting officers’ feelings, and the fact that no Portland officer has been successfully held accountable for killing a civilian, this paints a picture of a system designed to protect out-of-control officers.

OIR continues to underemphasize the overarching problem that police investigating other police presents both a conflict of interest and a key reason the community does not trust either the initial investigations or these post-incident analyses. The number one recommendation should always be for independent investigations and prosecutions of police to engender trust and create true accountability and justice.

*(see 1010.10 Sections 3.1, 6.1, 6.3 and especially 6.5 which says the administrative review is what is given to the Police Review Board)

OIR GROUP'S LOOK AT SIX PPB SHOOTINGS: BUREAU WON'T HOLD OFFICERS ACCOUNTABLE

an analysis by Portland Copwatch, February 15, 2018

On February 8, the “Independent” Police Review (IPR) released the latest review of deadly force incidents involving the Portland Police Bureau (PPB), published by the consulting OIR Group of Los Angeles. The new report <<https://www.portlandoregon.gov/ipr/article/672343>> covers six incidents up until June 2015, so the City is still nearly 3 years behind in receiving these analyses. As with the 2016 report, a combination of the US Department of Justice Settlement Agreement and the political climate after Ferguson seem to have led to the OIR Group making stronger rebukes of some practices and questioning officers’ actions. But, as with the last report, there is no analysis of race in the one shooting involving an African American Portlander (Denorris McClendon), and the issue of mental health, while raised, doesn’t emphasize how PPB’s shooting so many people in crisis violates the spirit of the DOJ Agreement. That said, Portland Copwatch (PCW) again believes the 26 recommendations that have been made are generally useful and could improve the Bureau and its review systems. Most importantly, OIR has finally begun to focus some of its attention on the unjust, unaccountable District Attorney (DA) presentations at Grand Juries.*-1 Using one case example they expose how the DA’s role seems to be making the suspect seem as despicable as possible so that the civilians on the Jury will excuse the officer’s homicide as justified regardless of the actual facts. OIR makes an informal recommendation to talk to the DA about their biased presentations to “bolster trust.”*-2

A few of the most troubling bits of information surround the Bureau’s behind-closed-doors Police Review Board (PRB). OIR reveals that when Council changed the post-deadly force policy (Directive 1010.10) in August 2017, the Training Division’s review of such cases was changed from being part of the PRB’s scope to happening after they decide if an officer’s actions were in policy. This is astounding, since the Bureau’s training has to match its policy, and the Training Division (“Training”), if acting as honest brokers (which they aren’t always), should be able to tell the Board whether an officer violated their rules. Chief Outlaw agreed with OIR’s Recommendation #21, to put the analysis back before the PRB, but says it will require changing Directive 1010.10. However, the actual language says Training will do their analysis when at the end of the “administrative review,” which the Directive indicates means the Internal Affairs investigation (see 1010.10 Sections 3.1, 6.1, 6.3 and especially 6.5 which says the administrative review is what is given to the Police Review Board). Also, OIR shows how the PRB failed to look at a number of possible violations by officers, including one identified by the officer’s commander, and how the Training Division sent that case back for more investigation which resulted in nullifying questions that came up in the first analysis.

Overall, the theme PCW found in reading this report is that the system is set up to clear officers of wrongdoing in deadly force cases, to the point of practically coddling them because the incidents were traumatic— with no recognition of what it did to the civilians who were shot and/or killed, or those they left behind.

OIR recounts that since 2010, they have now looked at 41 incidents covering the years 2004-mid-2015. They also call PPB’s investigations “thorough and fair” even though a number of their analyses indicate otherwise.

A recurring theme in this report, echoing OIR’s previous reports, is that officers need to be interviewed as soon as possible after a deadly force incident, not more than 48 hours later. OIR recognizes that City Council changed the Bureau’s policy to require interviews in under 48 hours,*-3 after they removed the “48-hour rule” from the Police Association contract in 2016. However, since these incidents all occurred in 2014 and 2015, the changes will not be reflected at least until OIR’s next report.

Here’s how long it took for officers to be interviewed in each of the six cases:

Kelly Swoboda (March 12, 2014): 2 days
Paul Ropp (April 16, 2014): 6-7 days
Denorris McClendon*-4 (September 1, 2014): 4 days
Ryan Sudlow (February 17, 2015): 3 days
Michael Harrison (May 17, 2015): 3 days
Alan Bellew (June 28, 2015): 4 days.

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INDIVIDUAL CASES:

SWOBODA: Officer John Romero followed Kelly Swoboda on foot while a number of officers combed the area near Wilson High School, suspecting Swoboda was “watching teen girls.” According to the narrative (the report frequently presents the officers’ narratives as undisputed fact), when Romero started yelling orders at Swoboda to show his hands, Swoboda pulled out a gun and shot the officer. Romero fired back with four shots and killed Swoboda. OIR leaves out the detail that one of the bullets entered the bottom of Swoboda’s foot, meaning he was already down when the gun was fired. They do, however, note in a footnote that there were more bullets missing from the gun than the number of shell casings found, which raises a number of questions about the integrity of the investigation. Romero was injured in the hand. Backup officers arrived and used a ballistic shield to handcuff Swoboda, but backed away without providing medical aid or checking for a pulse. OIR says the Training Division brought up good questions, but does not list what they were.

This is the case where OIR outlined irregularities at the Grand Jury. The DA brought forward a Clackamas Detective who was investigating Swoboda on kidnapping charges. The DA showed stills from pornography (allegedly) found in Swoboda’s van, and referring to restraints found in the van asked whether it was “converted into a movable dungeon.” The DA pushed the Detective about duct tape that was found in the van, but the detective said there was no duct tape. OIR’s important analysis stated the line of questioning was of “the highest level of prejudice,” noting that a judge would likely have excluded it in a criminal case. They say that a Grand Jury should be limited to facts without speculation, and no leading questions. Moreover, most of the issues around Swoboda’s past— including a 1999 arrest the DA brought up— were not known to the officer at the time. OIR doesn’t explicitly say it, but the “Graham standard” says an officer’s force should be based on a reasonable officer’s actions, not on 20/20 hindsight. This means one can consider an officer’s own training and knowledge, but not bring in these wild stories to inflame those reviewing the case. OIR specifically cites the Oscar Grant case in California (where an officer was convicted of manslaughter), Philando Castile (where the officer was acquitted), and Walter Scott (where the officer pleaded guilty to civil rights violations), noting in each case judges excluded historic information that would bias the jury. They also cite an Oregon case when an officer used force against a motorcyclist where his lack of registration and insurance were excluded because, again, the officer did not know it at the time he used force. Exposing further how biased their office is (including that they hired Cody Berne, one of the officers who killed Keaton Otis), the DA told members of the media they felt the information was perfectly appropriate to share with the jury.

Oddly, OIR begins their analysis of Romero’s tactics by agreeing with the Bureau they were “sound,” but then notes that the officer took unnecessary risks by not radioing in his location or calling for backup once Swoboda walked away from him. The Training Division apparently did not discuss that failure. They also call out Romero for speculating that Swoboda might have gone to the High School and hurt un-named people— Recommendation #3 says the basis for using deadly force should be based on imminent danger, not speculation.

Importantly, they identify Romero saying “sit your ass down” and “get your f**king hands out of your pockets” as possibly having escalated the situation, leading to the (alleged) gunfire from Swoboda. Again, Training did not look at the issue of the use of profanity, leading to Recommendation #4 that they should in the future. PCW would suggest that Internal Affairs and the Commander should also weigh in on profanity use, since it is (as OIR points out) restricted by Bureau policy. Moreover, it was subject to a review by the Citizen Review Committee in 2003 and is an ongoing sticking point in the community.

Along the lines of the coddling theme, the reason the officers gave for not allowing paramedics in to check Swoboda after he’d been handcuffed was that they didn’t want to disturb the evidence. This was believed even though it’s more likely they were just as happy to see Swoboda bleed to death. The Police Review Board commended the officers for this ridiculous prioritization. OIR’s Recommendation #5 is to render aid as soon as possible, making that more important than preserving evidence.

Finally, one of Romero’s bullets hit a parked car. There were other people around and it wasn’t mentioned whether his bullets could have traveled further— maybe even coming close to the High School students he was so worried about. The only recommendations OIR made about the stray bullet was that they should identify people whose property may be damaged (#7) and find ways to reimburse them (#8).

ROPP: Officer Jason Worthington and Officer Jeffrey Dorn were among officers responding to a burglar alarm at a police supply store. An SUV that had three people in it, including Paul Ropp, was behind the store and allegedly drove away with a duffel bag full of contraband, leading police on a 35 second chase before crashing. Ropp ran away and Dorn (with his dog Mick) and Worthington followed. They say Ropp fired an AR-15 rifle and killed Mick, wounded Dorn in the legs, then was grazed in the head by one of the 15 bullets the officers fired back. Ropp ran away and was taken into custody three and a half hours later.

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OIR reports that the Bureau's review noted that there was an inherent risk in running after Ropp since the other two people were still in the van, confronted by other officers, and there could have been crossfire. Because nobody saw Ropp with a gun, they chased him as if he were unarmed, but the Commander didn't raise that as a concern. They also say little was done to question the justification for the shooting, despite being in a residential neighborhood.

Another issue OIR identifies is that Sgt. John Holbrook involved himself in the chase even though he should have been there as a supervisor—an issue they talked about in previous reports and several times in the new one. Much to their credit, in their overall analysis they note that Holbrook did the same thing— became involved in the tactical events instead of supervising— when he was involved in the shooting death of Brad Morgan in 2012 (they don't use Morgan's name). They say it is not clear why the Bureau seems unconcerned that the same supervisor has now done this twice. Such behavior is akin to a sports coach jumping off the bench to grab the ball and play in the field. This and another case (below) led them to Recommendation #23, that there should be a specific policy saying that if supervisors get engaged tactically when officers are available to perform the same function, they should be held accountable.*-5 They note that Sergeants will not take this axiom seriously unless there are potential consequences. Chief Outlaw agreed, but said that could be subject to bargaining. PCW continues to believe that labor unions are vital to our society, but that the Police Association (which represents BOTH officers AND Sergeants) and the Commanding Officers' Association (which represents Lieutenants) should not set public policy.

OIR noted that even though Officer Dorn was injured, the interviews of involved officers should have happened much quicker than 6-7 days later.

McCLENDON: Thirteen officers including Michael Honl responded to calls from people on I-84 about Denorris McClendon pointing what looked like a gun at cars on the freeway. The first officer to arrive (unlike some others in this report) called for backup and they followed McClendon up an embankment, where he darted in and out of heavy foliage. Honl believed McClendon was pointing the gun (which turned out to be a replica BB gun) at other officers so Honl fired a shot from his shotgun, completely missing, then repositioned and fired again, hitting McClendon in the legs. They took 65 minutes to approach him and get medical attention to him. Though McClendon claimed to have a "real gun" in addition to what he told them was a BB gun, he did not. McClendon had been taken in on a mental health hold the previous night but was released well before the 72 hours were over, and nobody checked why that happened. PCW would add that McClendon was tasered by police in 2002 and filed a complaint and appeal about that incident, which probably should have been relevant to the cops if they knew who he was. Honl was involved in the shooting of Gilbert King in 2005— which perhaps OIR didn't note because that shooting was reviewed by their predecessors with the Police Assessment Resource Center. Honl fired 9 rounds and missed King in that incident.

In this case, Training noted that neither of two on-scene Sergeants took command. PCW has said for a long time that supervisors should be specific about whether deadly force is authorized (especially when multiple agencies are involved, though that wasn't the case here). There was no tactical plan, and no guidance for officers coming on the scene— but the Commander and PRB did not raise these issues. The PPB also did not question whether there was imminent danger when Honl fired.*-6 The possibility was not raised anywhere that Honl's increased anxiety may have come from the fact that McClendon is black. OIR provided new information that there was a homeless camp nearby where McClendon was hiding out, and both they and the other officers could have been endangered by Honl's gunfire— but this also wasn't raised by the Bureau's reviewers. Moreover, Honl didn't broadcast his shots fired, which was very dangerous as other officers might have thought McClendon was firing and started a shootout with each other.

At the time of the incident, PCW cautioned the Bureau not to find Honl out of policy for shooting McClendon in the legs rather than "center mass." Instead, they criticized him for using buckshot in his shotgun when a slug would have been more accurate. But the existing policy said he would need permission to change out the ammunition, so the Commander and PRB asked, and PPB changed that policy. Instead, shouldn't there be praise for not shooting a young black man to death?

Another new revelation— PCW has said that no officers have gone on a voluntary walk-through of the scene since the DOJ came to town. Though this shooting happened just days after the DOJ Agreement was finally entered into the court, Honl did go on the walk-through— but he didn't say anything. Instead, his attorney came along and offered opinions about what happened. This led to OIR Recommendation #9, for detectives not to let attorneys offer so-called "evidence" on walk-throughs. The Chief agreed to add this to the Standard Operating Procedures.

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SUDLOW: Officer Charles Asheim was part of a team of officers who planned to “box in” Ryan Sudlow while he was parked at a gas pump in a service station on a busy weekday evening. Using another civilian’s car that happened to be parked in front of him, Asheim’s car (angled in to the driver’s side), and the cars of Sgt. Ken Duilio and another officer in back, they prevented the car from moving. However, after Sudlow allegedly bumped the cars by moving back and forth, Asheim thought he saw Sudlow reaching for a dark object—which nobody else saw and was never found. The officer fired a bullet that ricocheted off the windshield and hit the overhead canopy at the gas station before falling to the ground. Luckily nobody was hurt. They took Sudlow and his passenger into custody.

While OIR does question Sgt. Duilio’s decision to be a part of the tactical operation (as referenced again at Recommendation #23), they do not seem to know that Duilio was involved at a previous shooting at a gas station in July 2001. At that time he was an officer and shot at Bruce Browne, an African American civilian who had subdued a would-be robber. Browne survived and the City settled with him for over \$200,000. In their 2016 report and previously, OIR urged the Bureau to take note of officers involved in multiple deadly force incidents. Sgt. Duilio, says the OIR report, found Asheim firing his gun in a crowded gas station to be perfectly reasonable, no surprise since he did the same thing 13 years earlier. It’s also of note that the police probably would have been a bit more reluctant to fire weapons in a fancy boutique or electronics store as opposed to a neighborhood gas station.

The most serious issue around this investigation leads to OIR expressing “concern.” The case was ready for a Police Review Board hearing when a new Lieutenant took over in Training and ordered that more investigation be done,*-7 apparently tied to the Commander’s initial decision to find Asheim (and maybe the other officers who boxed in Sudlow) out of policy for the risks involved and the chosen location. Even though the second review noted that the gunfire could have ignited the fuel (which was something PCW brought up at the time of the shooting), they found Asheim’s actions reasonable. This led the PRB to find Asheim in policy, not mentioning the initial proposed Sustained finding. They asked for the Sergeants to be debriefed. Rather than disagree with the finding itself, OIR calls upon the PRB to document why they disagree with Sustained findings made by Commanders, or risk “undermining the purpose and mission of the Review Board.” Recommendation #11 calls for documentation of such reversals. The Chief claims that this is already being done and captured in PRB reports— but if that were true, OIR would not have made the suggestion. The new Lieutenant’s changes to the report also prompted Recommendation #12, to create a procedure to reconcile disagreements among Training reviewers. Indirectly referring to the Aaron Campbell case, where the Lieutenant found Officer Ron Frashour out of policy but his subordinates testified the opposite way to an arbitrator, OIR mentions they are “aware of other times” this has happened. The Chief agreed to come up with such a reconciliation procedure.

The first review also called out Duilio for becoming involved in the box-in, limiting his ability to supervise, but that was dropped in the second review. On the flip side, the second review found that there was inadequate planning even though the first review said the risks taken generally were “acceptable.” Among other things, Training noted that the civilians’ car could have driven away, allowing Sudlow to escape, the inhabitants of that car (and cars on the other side of the gas pumps) as well as the attendant could have been injured.

Interestingly (?), one of the officers who fired at Alan Bellew also fired at a windshield. OIR notes that Training said they would emphasize the likelihood of bullets skipping off glass when fired at an angle, and that the trajectory will be unpredictable even if it penetrates. However, there was no documentation that it happened. Though tied to a different issue, perhaps Recommendation #18 suggesting that proposed systemic changes should be followed up on in case files came in part from this case. The Chief says that there is an “Action Database” at the Professional Standards Division but it doesn’t necessarily flag whether suggestions are related to deadly force incidents.

Because this incident happened in Gresham, the criminal investigation was led by Gresham Police. They let Asheim view video from the gas station and a PPB airplane (!) before he was interviewed, leading in part to Recommendation #22: to prohibit viewing of such video before an interview. The concept is similar to the Grand Jury being tainted with information the officers did not know at the time—the cop’s testimony should be about what they knew at the time of the shooting, not based on other evidence. OIR points out this is one reason officers are ordered not to communicate with one another after an incident. The Chief agreed with prohibiting viewing— though the current policy set in place by Chief O’Dea is to decide on a case-by-case basis— but cautioned it could be subject to bargaining related to body cameras. Portlanders may recall that one of the outrageous trade-offs made by City Council getting rid of the 48-hour rule was to give the Police Association the right to review footage (and police reports) before being interviewed.

PCW’s overall analysis of this shooting: an officer who used deadly force and didn’t even hit the suspect was almost found out of policy, but was saved because the review system relies heavily on police reviewing other police.

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HARRISON: Sgt. Martin Padilla and Officer Raelynn McKay confronted Michael Harrison as he emerged from a home with a knife he'd used to cut himself. They say (and apparently witnesses confirm) that Harrison stepped toward them with the knife raised and pointed, so Padilla fired a "beanbag" round and McKay fired seven bullets, hitting him three times and wounding him. Even though it should have been clear both to the approaching officers and the criminal justice system that Harrison was having mental health issues (not only was he acting on suicidal urges, but he'd gone from his mother's house to a stranger's home with a woman and two young children in it). Instead of being offered help, he was shot and indicted for "burglary, unlawful use of a weapon and menacing." None of OIR's analyses mention whether any of the officers involved had Enhanced Crisis Intervention Training.

Side note: Like the PPB, the OIR Group describes the kitchen knife Harrison was holding as "eight inches long"—unlike the PPB they state "including the handle." It may be best to describe the length of the actual blade since the size of the overall weapon only serves to inflame the public.

Sgt. Padilla apparently gets a pass for getting involved in the tactical operation because he was the only available officer with less-lethal shotgun training. A detail PCW doesn't remember hearing before, though, is that he tried to fire the "beanbag" (lead-pellet bag) at Harrison, but forgot to cock the shotgun, so it didn't fire. OIR indicates that it's possible if he'd operated the weapon properly, McKay may not have chosen to use deadly force. Padilla claimed he didn't know Training directs officers to put a round in the "less-lethal" gun's chamber once it is taken out of the car. Perhaps taking his word for it, OIR makes Recommendation #13 to ensure officers know the policies around less-lethal weapons. There doesn't seem to be any investigation into whether Padilla was trained that way and forgot... or lied about not knowing.

Moreover, Padilla did not call for another Sergeant to come on scene to supervise, he just assumed his buddy Sergeant Darke Hull*-8 would be there. He turned out to be correct, but OIR suggests Padilla should have made the call.

Another interesting tidbit: Officers started interviewing Harrison about the shooting, asking leading questions about why the officers "had to" use deadly force. Fortunately, Harrison invoked his right to a lawyer and cut off the interrogation (which could have incriminated him for his actions), but it seems outrageous that the officers even approached him without an attorney present in the first place. That said, OIR reports that Internal Affairs never came back to interview Harrison later.

BELLEW: Officers Michael Currier and Dominic Lovato chanced upon Alan Bellew and two other civilians in a parking lot looking at a bag full of camera parts on the trunk of a car. Currier apparently suspected Bellew was on heroin because of his "disheveled appearance and open sores on [his] face." Nonetheless, when questioning him about a syringe they spotted in the car, to get him to prove he was diabetic Lovato told him to go back to the car and show his insulin. Once he was in the car, Bellew (allegedly) drew out a starter pistol and pointed it at the officer, which is what Lovato says prompted him to shoot at Bellew through the windshield, and Currier to fire through the passenger door window at him. Their combined 14 rounds killed Bellew.

OIR spends considerable time analyzing the fact that the officers had reasonable suspicion to make a stop, even though they claimed they didn't want to escalate the encounter from "mere conversation" by patting down Bellew or conducting a search. The cops said they were afraid to do so in part due to the "national and political climate," suggesting the post-Ferguson protests deterred them from doing their jobs. (Side note: Bellew was Caucasian, but OIR verbally let PCW know that the other male present was African American.) Even the second male civilian wondered why the officers let Bellew get back in the car where he had access to the fake gun. Training and the commander said the officers used "sound and effective tactics" anyway, since police are supposed to order people back into vehicles at traffic stops. What seems to be lost, however, is that the car was never in motion—the officers found the people huddled over the parked car in a parking lot, so it was not even a traffic stop. OIR made Recommendation #16, that there should be more analysis done around the Fourth Amendment when questions about reasonable suspicion and searches come up. The Chief agreed to consult the City Attorney or District Attorney (whom PCW would argue are both biased) in such cases.

One detail that OIR doesn't address is that in trying to verify Bellew's identity (after he told them his first name was "Alex" not "Alan"), Currier "grabbed" Bellew's identification from his wallet, which if their insistence they didn't want to escalate the situation into a stop seems contradictory. Maybe they felt they were welcome to do so when the female civilian (one of the two others besides Bellew) gave permission to search the car. OIR reports that the officer says Bellew admitted he lied about his name, leading them to believe he was a flight risk.

A troubling detail OIR does call out is that another patrol car drove by with two officers, and even though Training says to have numerical superiority, they waved the officers away. This, notes OIR, is more worrying than failing to call for backup because the extra officers were already there. Shortly thereafter, the officers decided to call for backup to fingerprint Bellew, which shows poor decision making since they'd just told the other cops to leave. They also apparently were not communicating about the decision to send Bellew back to the car, yet the Commander complimented them on their "unspoken communication."

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At the time this case broke in the news, it was revealed by IPR that the officers were allowed to look at the surveillance video of the parking lot, because the supervisor who approved it felt there was nothing important on the video. Chief O'Dea was outraged and instituted the policy that the Chief (not a subordinate) would decide whether officers can see video before being interviewed. As noted above, OIR recommends changing that policy.

One constant concern from the Portland community—and others around the nation—is when deceased suspects are left lying on the ground for all the world to see. A sergeant who came on the scene placed a tarp over Bellew's body, which OIR points out could have contaminated evidence. They suggest (in Recommendation #19) that PPB invest in body screens, which other agencies have adopted. The Chief said she has to defer to the District Attorney's statutory authority to investigate deadly force incidents, but will decide what to do within 90 days.

Finally, like Officer Romero in the Swoboda case, Currier failed to update dispatch to their location, making it hard for other officers to respond to the scene. The Police Review Board found the officers in policy and raised no questions about the various issues OIR discussed in this case.

SIDE NOTE: Recommendation #1 to have a supervisor relay the findings attached to an investigation in person explicitly says it should only be if there is a "Sustained" finding. It seems the findings should be relayed in person regardless of the outcome.

ANALYSIS:

OIR's 11-page wrap-up analysis covers a lot of areas already addressed in their (and PCW's) above-mentioned summaries. The first important summation is for the reviewing bodies including the PRB to create a new category of "Tactical Decision Making" when deciding if officers violated policy or not (Recommendation #20). OIR notes the current system has "Application of Deadly Force," "Operational Planning" and "Post-Shooting" listed, but not the tactical decisions prior to the shooting—which could mean the deadly force is out of policy (Directive 1010.00 Procedure 5.3.2).

With regard to medical aid, OIR directly references the Aaron Campbell case as leading to the Bureau's adoption of ballistic shields, which make it easier to approach a suspect who's been shot without fearing for officer safety. Bellew and Harrison, they note, were handcuffed and checked for weapons, quickly leading to medical aid coming in (though Bellew was deceased), while in the McClendon and Swoboda cases aid was unnecessarily delayed. As mentioned above, their recommendation was to render aid more quickly—and not to tell emergency response personnel how many people can attend to the suspect (which happened in the Swoboda case). Another suggestion from PCW: Don't shoot so many people. While OIR has reviewed 41 shootings between 2004 and 2015, PCW counts that the PPB has shot (or shot at, or used deadly force against) 51 people in that time, an average of over four per year. 31 of them (61%) ended up dead.*-9

As part of its analysis, OIR says that civilians may pose a risk to officers by "aggression." It may be worth pointing out that there may be viable self-defense arguments made for civilians reacting to police (ORS 161.209).

The final point to examine here is the issue of going too easy on officers who use deadly force. In response to Recommendation #17, which urges officers to radio in their locations and suggests the Bureau use the Swoboda and Bellew cases as examples, the Chief says she will consider the idea. However, she cautions, "the benefit of providing factual examples that have occurred locally must be weighed against the potential negative impact to involved members who may have suffered trauma during those specific events are attending the training iterations where those events are recounted." There is a lot of talk these days about how millennials are being over-praised and over-protected. And from the outset, Portland Copwatch has noted: "we have respect for the dangers and pitfalls of being a police officer." But, PCW notes, "this does not excuse police when they go outside the limits of the law, nor does it make bad laws good policy." (See the "About Us" section of PCW's website, at <http://www.portlandcopwatch.org/whois.html>.)

When combining the lack of scrutiny by Internal Affairs, Training, Commanders and the Police Review Board (which sometimes flips over into unwarranted praise), the re-thinking of holding Officer Asheim accountable for firing a gun in a crowded gas station, the Chief's comment about protecting officers' feelings, and the fact that no Portland officer has been successfully held accountable for killing a civilian (whether by administrative or criminal proceedings), this paints a picture of a system designed to protect out-of-control officers.

(continued)

CONCLUSION:

In its previous report, OIR summarized all 35 incidents they previously reviewed, noting the ethnicity (38% people of color) and mental health status of the victims (54% had mental health issues), and whether they were killed (63%). There is no such table in this report, only a table which lists how long each case takes to get to the Police Review Board (which varies from 4 months in the Harrison case to 23 months for David Hughes in 2006). To satisfy the DOJ, the table now lists how many days rather than months each PRB took, which makes a confusing comparison; perhaps they can put the months in parentheses next to the days, and vice-versa.

OIR has made good strides toward transparency by publishing the names of the victims and involved officers, and looking at ways the Bureau (and Police Review Board) shy away from needed criticism of police. They have made important recommendations, such as the last report's suggestion that the Bureau stop using the term "suicide by cop."*-10 On the other hand, they also found no racial profiling in the case of Keaton Otis, a young African American man who was pulled over by a special gang team because he was wearing a hoodie and driving his mother's Toyota.

OIR and its predecessor, the PARC group, also underemphasize the overarching problem that police investigating other police presents both a conflict of interest and a key reason the community does not trust either the initial investigations or these post-incident analyses. The number one recommendation should always be for independent investigations and prosecutions of police to engender trust and create true accountability and justice.

FOOTNOTES:

*-1 OIR states that the Grand Jury testimony transcripts are only released in fatal shootings, which was true of the cases they reviewed. However, in January, the DA released the report on Chase Peoples, who was wounded, not killed, by the PPB in October 2017.

*-2 Of course, a better recommendation would be that there be an independent prosecutor appointed in deadly force cases, so that (a) the DA who works with police regularly to prosecute criminals doesn't have a conflict of interest, and (b) the same Grand Jury isn't hearing testimony about the civilian's alleged crimes and considering whether the officer was lawful in using deadly force.

*-3 Like narratives around the DOJ Agreement, the role of the community in forcing the change to the "new 48 hour rule" in July 2017 is not mentioned in the report.

*-4 The PPB and newspapers spell McClendon's first name with two "r"s, but OIR only uses one.

*-5 OIR points out that they focused on Sergeants' tactical involvement in their 2013 and 2016 reports.

*-6 The OIR report says "eminent" danger, likely a typo.

*-7 PCW previously understood that the Police Review Board had exercised the power given to it under the DOJ Agreement to send this case back; the report indicates this happened before the PRB discussed the Sudlow shooting.

*-8 OIR does not give Sgt. Hull's first name.

*-9 Two incidents, both involving houseless men (Nicholas Davis and Christopher Healy) were not reviewed by OIR this time for some reason; the other 8 incidents were reviewed by PARC.

*-10 PCW is looking forward to OIR reviewing the Peoples Grand Jury testimony, which shows the District Attorney inappropriately using the term "suicide by cop."

NATIONAL LAWYERS GUILD
PORTLAND, OREGON CHAPTER



3519 NE 15TH AVENUE, #155
PORTLAND, OREGON 97212

February 15, 2018

Mayor Ted Wheeler
1221 SW 4th Ave, Room 340
Portland, OR 97204
mayorwheeler@portlandoregon.gov

Re: Public Testimony on OIR Group Report

Dear Mayor Wheeler:

I write on behalf of the Portland Chapter of the National Lawyers Guild to express our concern that the City will not accept public testimony at today's City Council hearing on the OIR Group Report on Portland Police Bureau Officer-Involved Shootings. Under the Portland City Code, you serve as presiding officer over City council meetings and you determine whether public testimony will be received. Portland City Code 3.02.040. Your decision to not accept public testimony at today's hearing rejects years of past practice; the Council has always received public testimony on these reports.

Your decision to refrain from accepting public comment also sends a message that community voices do not matter to the Council. That message can only engender public mistrust in the City's oversight of the Police Bureau, which in turn erodes public confidence in the Bureau itself.

The people of Portland should be heard on police use of deadly force in their community. This hearing is a vital opportunity for the Council to engage directly with the public on this important issue. It is gravely disappointing that it has decided not to do so.

For a Better World,

NATIONAL LAWYERS GUILD
PORTLAND, OREGON CHAPTER

cc: Michelle Plambeck, michelle.plambeck@portlandoregon.gov
City Auditor Mary Hull Caballero, auditorhullcaballero@portlandoregon.gov

The NATIONAL LAWYERS GUILD is an association dedicated to the need for basic change in the structure of our political and economic system. We seek to unite the lawyers, law students, legal workers and jailhouse lawyers of America in an organization that shall function as an effective political and social force in the service of the people, to the end that human rights shall be regarded as more sacred than property interests.

Parsons, Susan

From: Ryan Ernst <ryanmernst86@gmail.com>
Sent: Thursday, February 15, 2018 12:32 PM
To: Council Clerk – Testimony
Subject: OIR GROUP TESTIMONY

Well I would agree that this is a good topic to discuss I would like to add that the police force seems so meager at this point in time that I can only assume that when they do have the chance to stop someone who is more than likely an offender, they feel the pressure to get them into custody. Meanwhile, in SE Portland we continue to get our houses broken into, cars stolen or tires stabbed, and items missing from our yard and nothing gets done. Yes, I value life. This dream of livability that the mayor is trying to sell gets stolen or taken away daily when I wake up to log what is missing. It's time for more cops and less other BS that isn't working. I don't want to increase my taxes to make this work as there are plenty other ways in which this can happen.

Ryan

Moore-Love, Karla

From: Debbie Aiona <debbieaiona@fastmail.com>
Sent: Thursday, February 15, 2018 12:16 PM
To: Moore-Love, Karla; Wheeler, Mayor; Commissioner Eudaly; Commissioner Fish; Commissioner Fritz; Commissioner Saltzman
Cc: Severe, Constantin
Subject: LWV memo: OIR Group Report - Police Shootings 2 pm Thursday agenda item
Attachments: LWV OIR 2018 2-18.pdf

Please find attached the League of Women Voters letter on the 2018 OIR Group Report on Officer-Involved Shootings.

Thank you.

Debbie Aiona
League of Women Voters of Portland



The League of Women Voters of Portland

618 NW Glisan St., Suite 303, Portland, OR 97209

(503) 228-1675 • info@lwvpdx.org • www.lwvpdx.org

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DATE: February 15, 2018

TO: Mayor Wheeler
Commissioners Eudaly, Fish, Fritz, and Saltzman

FROM: League of Women Voters of Portland
Frances Dyke and Doreen Binder, Co-presidents
Debbie Aiona, Action Committee Chair

RE: OIR Group Report
Portland Police Bureau Officer-Involved Shootings

The League of Women Voters of Portland has been involved in issues related to police oversight since the 1980s. The OIR Group's periodic reports and recommendations on police shootings and in-custody deaths are valuable not only to the Police Bureau, but also to the public, because of the information and education these national experts provide. We would like to thank Auditor Hull Caballero and the OIR Group for the report.

Shortcomings associated with the Police Review Board (PRB) are highlighted throughout the cases described in the report, with a particular focus on the need for the Board to take a broader view of each case and examine the events leading up to the shooting. According to the report, progressive police review boards consider pre-shooting tactics and make separate findings on those decisions.

The Review Board is a key player in the investigative process and, given the problems identified by OIR, we suggest conducting a thorough evaluation of the PRB's procedures, scope of review, and membership. This might be a task the Portland Committee on Community-Engaged Policing could undertake, once it is up and running.

In recent years, community recommendations have included opening the Police Review Board meetings to the public and/or press, allowing the involved individual or a representative to attend, increasing the number of civilians on the Board, and scheduling a twice-yearly public forum with community PRB members so they can share information on the process with the public. In light of OIR's concerns about the PRB, City Council should give serious consideration to allowing survivors of police shootings or their families to request a Citizen Review Committee review of their

"To promote political responsibility through informed and active participation in government."

cases. A second look from a well-informed citizen panel could help build trust in the system.

There has been a long-standing concern about the time it takes to provide medical attention to injured individuals. In its 2005 report, the Police Assessment Resource Center recommended placing a priority on the preservation of life and pointed to cases from 2000 and 2001 where unreasonable delays occurred. Although progress has been made, it has been over 15 years since then and OIR continues to identify this as a problem. Given the potential for serious consequences, we urge the Bureau to act on the recommendations in the report.

Finally, we believe that, in its policies, training, and investigative process, the Bureau should keep in mind this statement from the OIR report:

Police science and law has increasingly recognized that tactical decision making by officers has significant impact on deadly force incidents. Tactical decisions that keep officers safe reduce the likelihood that those officers will find themselves in a position where they feel constrained to use deadly force.” (p. 65)

Thank you for considering our comments.

Moore-Love, Karla

From: Jennings, Gayla
Sent: Thursday, February 15, 2018 7:47 AM
To: Council Clerk – Testimony
Subject: FW: OIR report to Council and public testimony

Good morning, Council Clerk,

This testimony was received by Auditor Hull Caballero yesterday evening for today's afternoon City Council meeting. I'm not sure if you received a separate email from Ann – my apologies if this is a duplicate.

Thank you!

From: Ann Brayfield [mailto:abrayfield@yahoo.com]
Sent: Wednesday, February 14, 2018 6:36 PM
To: Wheeler, Mayor <MayorWheeler@portlandoregon.gov>
Cc: Commissioner Fritz <amanda@portlandoregon.gov>; Commissioner Eudaly <chloe@portlandoregon.gov>; Commissioner Saltzman <dan@portlandoregon.gov>; Commissioner Fish <nick@portlandoregon.gov>; Plambeck, Michelle <Michelle.Plambeck@portlandoregon.gov>; City Auditor, Mary Hull Caballero <AuditorHullCaballero@portlandoregon.gov>
Subject: OIR report to Council and public testimony

Dear Mayor Wheeler,

Please reconsider your decision not to take public testimony when OIR reports to Council on Thursday at 2 pm. It is very important that Council hear from the public as they have at prior OIR report to Council sessions. Given the COAB has been defunct for a year and the PCCEP has yet to be seated this year, it is more important than ever that public testimony is taken when OIR reports to Council.

Giving the public an opportunity to speak to Council when OIR reports would be helpful in rebuilding community trust. Providing for a community meeting with OIR was a good thing and does not take the place of public testimony in this matter.

Here is the section of the OIR report that I would comment on in public testimony:

Role of On-Scene Sergeants p 68 - 71

OIR Recommendation 23 The Bureau should develop specific policy that instructs sergeants on the need to maintain their supervisory perspective and avoid tactical involvement in incidents when officers are available to perform those roles and should hold supervisors accountable for violating those directives.

It is concerning that OIR has brought the role of on-scene sergeants to Council in several of their prior reports and the problem continues:

The Bureau should regularly assess the effectiveness of its Sergeant's Academy and Critical Incident Management training for field supervisors and consider whether they adequately instruct sergeants to maintain their supervisory perspective and avoid tactical involvement in incidents in which their officers are involved. The Bureau should hold accountable those supervisors who fail to adhere to these training standards.

The Bureau should direct the Training Division to include in its Review of each officer-involved shooting an examination of any supervisory issues presented, with an emphasis on identifying whether first level supervisors engaged tactically instead of assuming a command role.

Here is PPB's response to OIR's recommendation 23:

Agree. Within 120 days, the Policy Development Team shall consult with the Training Division Captain or their designee, to draft or revise a policy that is sufficiently directive to supervisors to maintain their supervisory perspective and avoid tactical involvement in incidents to the extent possible, under the totality of circumstances. This issue may be subject to collective bargaining with represented employees' labor organizations.

The last sentence in PPB's response comes across as a backdoor that City Council needs to address ASAP. I would suggest that this is one of the reasons that supervisory sergeants continue to assume tactical roles in officer-involved shootings.

Please open Thursday's OIR reporting segment to Council to public comment.

Thank you,

Ann Brayfield

Sent from my iPhone

Moore-Love, Karla

From: Portland Copwatch <copwatch@portlandcopwatch.org>
Sent: Wednesday, February 14, 2018 4:45 PM
To: Wheeler, Mayor
Cc: Plambeck, Michelle; Commissioner Saltzman; Commissioner Fritz; Commissioner Fish; Commissioner Eudaly; Moore-Love, Karla
Subject: URGENT FOR THURSDAY: Please allow public testimony on shootings report

Mayor Wheeler

Last Friday, the City Council agenda was posted announcing that the OIR Group's most recent analysis of Portland Police shootings was going to be presented tomorrow (Thursday the 15th) at 2 PM. That is still true-- but today we learned that you as presiding officer of Council are not intending to hear public testimony.

Ever since the Police Assessment Resource Center's first report to Council in 2003, there has always been testimony taken on these reports.

It appears the Council doesn't want community members discussing the controversial matter of holding police accountable for shooting community members.

This is a 90 page report which is supposed to be annual and hasn't come out for two years. Even if we do get to talk we have a mere 3 minutes to discuss these important matters.

It's often said that the cure for disagreeable speech is more free speech, not less. So even if the Council is afraid of what you might hear, you should be willing to listen to the community. There are already two hours blocked out for the presentation, and it was delayed by a day to be sure there would have a quorum present.

We were at a "community meeting" on this matter hosted by the Independent Police Review where about 8 members of the public attended.

It's likely that most other people interested in the report believed they would have time to give feedback at the Council hearing.

Please respond as soon as possible

--dan handelman

-- Portland Copwatch
(a project of Peace and Justice Works)
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