



COMMENTS on OIR Group officer involved shootings report Jan. 2019

February 6, 2019

To Mayor Wheeler, members of Council, Chief Outlaw, the IPR and CRC:

These preliminary comments about the OIR Group's 2019 report on Portland officer involved shootings are by no means comprehensive, but rather the best we could put together having only received the 109-page report on Friday, February 1. The issue of the lack of time for the community to review the report feeds into our first comment.

INVOLVE COMMUNITY VOICES, AND SOONER

The OIR's report was finished early enough that the Chief issued a response dated January 17. There is no reason the community shouldn't have been given copies right away after that rather than 15 days later.

Moreover, the City is always talking about Community Engagement and Community Policing, but the community had no direct voice in the recommendations made by OIR. Most of the recommendations are useful and are concepts Portland Copwatch can support—in fact, several of them are ideas PCW has made for years. However, recommendations such as the one asking for more training for Police Review Board members would be best served by a community discussion before implementation. The Chief indicated she already assigned the Bureau's Professional Standards Division to find a facilitator to train the civilian (and police) members of the PRB. However, the experiences expressed by Citizen Review Committee members who have been seated on PRBs indicate that the problem isn't so much a lack of training as it is a prejudice by the police, who run and dominate the PRB process, against civilians' input. The implication is that people who are not police cannot offer valid criticisms of officer conduct. This is nonsense, of course—not only do juries offer such critiques on a daily basis, but for example one does not have to be a doctor to know you don't leave a surgical implement in someone's abdomen after surgery.

The lack of community input is only compounded by Mayor Wheeler's policy not to allow public input on Reports, to which we continue to strenuously object.

TOO LITTLE, TOO LATE

The report also strongly implies that officers violated policy and/or training in several cases, the most significant of which are the deaths of Quanice Hayes and Terrell Johnson. In Hayes' case, the officers gave Hayes conflicting commands about crawling on his hands and knees and also having his hands in the air, with one officer reporting Hayes complained he could not do both. Our reading of the report is that this confusion lead directly to the Officer Hearst's decision that Hayes was defying police orders and killing him. In Johnson's case, Officer Ajir appears to have violated several facets of the foot pursuit policy, but that was never considered in the so-called "review" of the young man's death. This

issue goes back to the problem that community members are not allowed to file complaints in deadly force cases, so the Internal Affairs investigation is called a "review" and the outcomes are not the same as other misconduct cases.

Because the cases have to be closed before OIR can review them, the most recent incident in this report happened roughly 21 months ago. Many of the problems they found could have been avoided by the Bureau adopting earlier recommendations, but those weren't made until after these incidents occurred. A more contemporaneous deep review would lead to quicker change.

WORDS MATTER

The OIR Group is to be commended for cautioning the Bureau against using the phrase "the officer had no other option," as that implies the outcome of these deadly confrontations was predetermined. They restate their concern about the use of the term "suicide by cop," turning their focus to the Medical Examiner who ruled Michael Johnson's death a suicide. This is despite the fact that he was killed by Portland Police bullets. They raise the excellent question of why a District Attorney would even have to hold a Grand Jury if the community member killed themselves. PCW has long been concerned about the ME's role in downplaying officer responsibility in deadly force incidents and hope the City follows through on this issue.

On the other hand, the OIR Group describes the Don Perkins shooting incident in which officers fetched less lethal weapons as a form of "de-escalation." As we have written many times that de-escalation should only be used to describe using words and body language to lower the tension in a confrontation. Doing something to use less force once force is applied should be called "mitigation of force."

(continued)

NO REVIEW OF COMMON SENSE VIOLATIONS

The OIR Group directly and indirectly indicates that some or all of the entities reviewing cases failed to review:

- whether it was appropriate to fire 19 tear gas canisters into Timothy Bucher’s mobile home;
- why officers didn’t think about using a bullhorn to try talking to Michael Johnson (even though one was used, albeit unsuccessfully, trying to talk to Merle Hatch about four years earlier);
- whether Sergeants who put themselves into tactical scenarios they should have supervised should have been disciplined; among other issues.

CREDIT IS DUE

PCW supports many of OIR’s observations, including their opening analysis noting the racist history of Portland and the tensions caused by the shootings of young black men. If they are looking for patterns, they should note in the next report that four black men have been killed since the election of Donald Trump (Hayes, Johnson, Patrick Kimmons and Andre Gladen) seven years after Aaron Campbell and Keaton Otis were killed. Another African American man, Chase Peebles, was shot and wounded.

OIR also reported formally on the three cases in which officers walked backward and tripped, which precipitated their (or their partners’) decision to use deadly force: Terrell Johnson, David Ellis and Nicholas Davis may all be alive if the officers had followed what the PPB says is their training, which is to go sideways instead of backward. PCW raised this issue following OIR’s 2016 report.

The report also recommends that the PPB put mug shots and criminal histories of those shot by police in the back of investigative report files rather than the fronts. Ideally, unless the criminal history was known to the officers at the time, that information should not be in the files at all, but the fact that the PPB agreed to move the information back is a good start.

One more item: In 2016, OIR recommended that the Bureau define “cover fire” in the force directive to be clear when the controversial practice can be used, repeating that recommendation here based on the Bucher case. PCW made this recommendation to the Bureau in March 2013.

POLICE ASSOCIATION CONTRACT RULES ALL

The OIR Group’s suggestion that officer interviews be video recorded led the Chief to say such a change would require collective bargaining. While we are not sure why video versus audio makes for a mandatory bargaining issue, it is telling that the Bureau was willing to open up negotiations right away for this issue while the City continues to drag their heels on changing the Citizen Review Committee’s standard of review, partly based on the assertion that the PPA has to negotiate over that item as well. If the various issues surrounding the contract—including that IPR and CRC should be able to investigate and hear appeals on deadly force cases—were consolidated, such piecemeal bargaining would not keep happening.

It is also noted repeatedly in the report that all of these cases happened before the City fixed the “48 hour rule” to require officers to be interviewed within 48 hours of a shooting rather than after those two days. The District Attorney’s understandable concern about not tainting a criminal investigation with compelled administrative testimony, however, seems to have led to a few side effects, one of which is in the report: several officers refused to be interviewed by homicide detectives, and instead spoke for the first time to the Grand Jury on the criminal question. The other is that the community has been getting a lot less information from the Bureau immediately after shootings, which leads to unrest and speculation. The City needs to meet immediately with the DA after deadly force incidents to formulate a presentation which doesn’t jeopardize the process, but which lets people know what is going on. (Not that the DA has successfully prosecuted an officer for an on duty shooting in the last 50 years anyway.)

CONCLUSION

Portland Copwatch looks forward to sharing a more detailed set of comments with Council and the community once there is more time to digest and analyze the report. We do hope the PPB will slow down implementation until there has been a reasonable period of time to look at the recommendations, similar to the 45 days total we are given to review proposed Directives. As we noted last week in the discussion about OIR’s contract, the context for this discussion is a four month period (September to January) in which the PPB was involved in more deadly force incidents than any entire year since 2006, when James Chasse was killed. We look forward to the opportunity to contemporaneously, in person, verbally testify in front of Council while the consultants, the Chief, and IPR are all present.

Thank you
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portland copwatch