

CITIZEN REVIEW COMMITTEE

Community Oversight of Portland Police Bureau

Jamie Troy, Chair

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Minutes

Citizen Review Committee

May 30, 2012

Date Approved: September 5, 2012

Meeting Location: Room C, Portland Building

Chair Troy called the meeting to order at 5:30 pm.

Introductions and Welcome

Citizen Review Committee (CRC) Members Present: Jamie Troy (Chair); Michael Bigham (Vice-chair), Jeff Bissonnette (Recorder), David Denecke, K.A. Lalsingh, Rodney Paris, Andre Pruitt, Dr. Rochelle Silver, Steve Yarosh

City staff: Mary-Beth Baptista, Director, Independent Police Review (IPR); Constantin Severe, Assistant Director, IPR; Rachel Mortimer, Assistant Program Manager, IPR; Derek Reinke, Senior Management Analyst, IPR; Linley Rees, Deputy City Attorney

Portland Police Bureau (PPB): Captain Dave Famous, Professional Standards Division; Captain Sara Westbrook, Central Precinct; Lieutenant Chris Davis, Internal Affairs (IA); Sergeant Craig Morgan, Central Precinct; Sergeant James Dakin, IA

Community: Dan Handelman, Portland Copwatch and Flying Focus Video; Regina Hannon, Portland Copwatch; Debbie Aiona (League of Women Voters); Kalei Luyben, Ted Luyben, Ann Brayfield, Monica Juarbe, Fred Bryant, Megan Henson, Irene Fischer-Davidson

Approval of Minutes of the 5/2/12 CRC Meeting

A motion was made by Dr. Silver and seconded by Mr. Pruitt to approve the minutes of the 5/2/12 CRC meeting. The motion passed unanimously.

Chair Troy explained that there was a technical glitch the 4/8/12 meeting, and the recording system failed. The minutes of this meeting have not yet been completed.

Appeal Hearing for IPR Case #2008-C-0336

Chair Troy opened the appeal hearing scheduled for tonight's meeting and introduced the participants. He noted that Mr. Hung Tran, the appellant for tonight's hearing, has chosen to identify himself even though he is not required to do so. Mr. Tran was

present with his attorney, Mr. Matthew McHenry. The Appeal Process Advisor, Mr. Eric Terrell, was not present since Mr. McHenry was available to represent Mr. Tran at the hearing. The involved officer was not present. Chair Troy reminded the participants that the names of the involved officer and witnesses should not be used at the hearing.

Chair Troy stated a case file review of this case was previously held in which CRC had requested additional investigation, and Internal Affairs (IA) had complied with this request.

- Chair Troy outlined the appeal process.
- Mr. Bigham presented the CRC appeal summary, including the allegations and findings.
- Mr. McHenry made a statement on behalf of Mr. Tran.
- Lieutenant Davis presented a summary of the IA investigation.
- Captain Westbrook presented an explanation of the Command Staff findings
- IPR Director Baptista provided the following comment: "The only thing I want to address is a process point. We have tried over and over again to make it clear that Internal Affairs but does not make findings. Internal Affairs does investigations. Internal Affairs then hands over that investigation for fact finders, not just the Commander. Then the Commander starts the process and writes the written document, then there are three other people who do their own independent assessment about whether or not the facts [background noise interrupting]: myself, the Captain of Internal Affairs, and the Assistant Chief that oversees whatever division that officer is in. I think it's really important for the public to understand that, that it's not about Internal Affairs doing an investigation so they can get to the findings that *they* want. They have to do an investigation that they cannot turn over to the fact finders until IPR determines that it's unbiased and neutral and fair and complete.... It's our role to make sure that it's valid, and then it's four people's role to make a decision about what the facts prove. So I just want to make sure that everybody is aware that it's not just Internal Affairs writing whatever they want and the Commander being the only person that makes the decision. It's much more complex than that."
- Public Comments

Mr. Handelman asked if it is not possible for a Taser to cause a shock even if the probes do not embed themselves into a person's skin. He felt that a lot of the Commander's explanations are very speculative. Mr. Handelman said that if the Taser was used on the appellant's back when he was on his knees and being compliant, it seems like that would be against policy; he also asked, if the appellant's belongings were smashed, why was that not investigated and why that is not one of the allegations. He also thought that it should have been mentioned that there were two sustained findings in addition to the findings that are being discussed in tonight's hearing.

- Mr. McHenry provided rebuttal comments.
- Lieutenant Davis provided rebuttal comments regarding the IA investigation.
- Ms. Rees asked CRC members to confirm that they had all reviewed the entire file in preparation for tonight's hearing, which they did. Ms. Rees then explained CRC's standard of review.
- Mr. Bigham repeated the allegations and CRC's options regarding the hearing.
- CRC members directed questions to IPR and the Police Bureau representatives and discussed the appeal.

Mr. Denecke asked Captain Westbrook: "The question of submitting an inaccurate police report regarding use of force, I didn't hear you address the question of not mentioning the discharge in her report. I heard you say she was talked into it by somebody else, but I didn't hear you say how you evaluated her failure to put it in the report." Captain Westbrook responded that it was the officer's supervisor who advised her not to mention the accidental discharge in her police report.

Mr. Denecke asked Lieutenant Davis what the officer told him about her reason for not telling people about the discharge in the holster before the criminal trial. Sergeant Morgan, who did the initial IA investigation, responded that the main issue at that time was why she did not mention the discharge in the holster in the police report. Sergeant Morgan said that he did not know if the officer anticipated that coming out in the criminal trial, but she had a conversation with her sergeant about it and was instructed on how to prevent this from happening in the future. Mr. Denecke asked Mr. McHenry where he obtained the photograph, and he said that he obtained the photograph from Mr. Tran. Mr. Denecke asked Mr. McHenry who had Mr. Tran's shirt. Mr. McHenry said that he remembered seeing the shirt, but he does not know where the shirt is now. Mr. Denecke asked Mr. McHenry why he asked for the officer's Taser holster in the criminal trial.

Mr. Bissonnette asked for verification that the expert witness said the marks on Mr. Tran's back could have been made by a Taser in dry stun mode. Mr. Bissonnette asked Captain Westbrook to specify which parties said that Mr. Tran was tased in the front of his body and which ones said that he was tased in the back. Mr. Bissonnette asked Captain Westbrook why her finding was not Unproven, considering all the inconsistencies that she mentioned. Captain Westbrook said that the allegation was that the officer improperly tased Mr. Tran, and she did not think there was evidence to show that the deployment of the Taser was out of policy.

Chair Troy questioned how so many witnesses testified that Mr. Tran was on his knees and facing away from the officer and was tased in the back. He asked Lieutenant Davis to comment on how he handled the possibility of bias in the statements of two PSU public safety officers whom he interviewed. Chair Troy asked Captain Westbrook to state where she decided Mr. Tran was tased when she

made her decision. Captain Westbrook replied that she does not know where he was tased.

Mr. Yarosh asked if the Taser is generally held against the person for five seconds when a dry stun is used. He asked if Captain Westbrook was suggesting that Mr. Tran may have been moving or rolling as the officer was trying to tase him, and if that was why she thought the tasing was in policy whether it was front or back. Captain Westbrook agreed with that assessment.

Mr. Pruitt asked Captain Westbrook why she discredited some of the witnesses because of their inconsistencies but did not discredit the police officer, who was also inconsistent. Captain Westbrook replied that she did believe the officer was consistent in her testimony. Captain Westbrook also confirmed that the officer had submitted a Force Data Collection Report, as required when anyone is tased.

Dr. Silver: "While you're talking about the veracity of witnesses and how they say things – there were two different people who describe what they thought was going on with Officer A at the time. One was the woman who the call came about at the beginning, and she described the officer as seeming like she was afraid, and then one of your own officers said that when Officer A called in, she sounded 'frantic.' Those are his words. So if you have a person who is scared and frantic, what about their veracity? How is that weighed – I guess I'll ask you, Captain Westbrook, in how they present their picture of [garbled]?"

Captain Westbrook responded that it would make a difference to her if she thought the officer was "terrified" so much that she was getting tunnel vision, but it was never expressed that the officer was terrified to the extent that she had lost her ability to be reasonable. She agreed that the officer was probably a little scared or nervous, but it was not to a point where she lost her ability to be perceptive. Dr. Silver did not understand how some the testimony of some witnesses was discredited, but the officer's credibility was not diminished by the perception that the officer at some point lost control of the situation.

Mr. Yarosh: "If you jump to page 32 of the investigation report, you get from one of the PSU officer's statement that 'When I got out I saw [Officer A] and the other officer, and they were actively fighting with this guy on the ground, trying to get him into handcuffs, so my first kind of thing, I was about to go and help, and I noticed that the guy had a couple of buddies that were starting to get close. They were yelling.' ... We also have the boyfriend and girlfriend, who say pretty much the same thing, that Mr. Tran was actively resisting the whole time, never wasn't a threat. We have those three people. Ignore the officer's testimony. We have half of the folks saying something exactly opposite. We don't have a consistent story here. We've got a whole lot of folks saying a whole lot of different things. ... We can't sit here five years after the fact and look through this and glom onto one sentence by one person and say, 'Hah! I know what happened.' You know what? We don't know what happened. One thing we know is that the barbs were in the holster the whole time. That's one thing we know... according to the evidence. It's absolutely guaranteed. It's *absolutely* guaranteed. Absolutely. The Taser cycled twice, the barbs come out on the first cycle. Where were the barbs recovered? From inside the holster, pulled

out by pliers with fiber that matches the holster. That's why she didn't report. You know what this case is about? The case is about the accidental discharge, and not wanting to step up and say, 'I fucked up. I did an accidental discharge.' That's why this skillful trial attorney was able to win the criminal case so handily, because when that came out, credibility sank to the bottom, because she didn't step up right away. If that had happened, we wouldn't be here today."

Chair Troy opened CRC discussion of the case:

Chair Troy: "First of all, I want to commend Internal Affairs on what I think was a very thorough, very good investigation. ... I think we have a lot of information, and I am a vocal critic of Internal Affairs when I don't think they have done a good investigation, so I try to be a vocal praiser of Internal Affairs when I think they have done a good investigation, and that's what I think, particularly Chris Davis, so thank you for that.

"I do think that this is an incredible case to me in some ways, because I think six people – cocktail waitress, bartender, buddy, Mr. Tran, Ms. M, and two PSU officers – seven people believe that Mr. Tran was tased in the back with probes. Now I have come to believe that that is not what occurred, because I agree with Mr. Yarosh, though I'm not as passionate as him, at least at this moment, that the investigation shows that there was an accidental discharge into the holster, because we have Taser cycle reports that showed they were twenty-one seconds apart, so there were only two Taser cycles that evening. All of the police officers who are investigated are commanded to answer these questions and put under what they refer to as oath, and so that's why, when Captain Westbrook says 'testimony,' that's what they consider it, so I consider it that as well. And what they never did in the criminal trial, they never did in civil trial, was find Captain Boy Scout with the pliers, who got the Taser points out of the holster, and Chris Davis found him. And I don't know what to say. The wires are very long. Seven people thought the guy was tasered in the back with the wires, and it must have really looked like that, because – moving on... So I think it was foolish of the officer not to include in her report the accidental discharge. I think it did lead to credibility problems for the officer in the criminal trial, and I think that – the bottom line for me is, there's very different stories about how Mr. Tran was behaving and how the officer was behaving. And some people could view it as Mr. Tran was behaving badly, and she was in perfect control, or she was scared, or some people might view it as she was an aggressive cop, that because she was scared or otherwise really came in heavy-handed and was giving conflicting orders, and – I don't know. I agree with Mr. Yarosh. I don't know. I don't know what happened. But I do know that if Mr. Tran was facing away from her and was on his knees on the ground when he was tased, even in dry stun mode, that he is not a threat to her, because he's on the ground, on his knees, facing away from her. And I can't understand how that would be found to be within policy, and Arbitrator Bonebrake found that it violated his civil rights, which essentially would be a violation of policy. Now Bonebrake didn't know about the accidental discharge. IA hadn't gone in there. You didn't have Chris Davis in there doing a brilliant job of an investigation at that point. He didn't have all the facts in front of him. We have different facts here. So we have a different situation and story to look into right now and determine, but from my perspective, I do think that the officer was inconsistent at times, and I do think there is some credence to the criticism articulated by Mr.

McHenry that when Internal Affairs is investigating some of these, sometimes I have a concern that they're giving too much of a benefit of the doubt to the officer and not to others. Now I don't have the breadth of experience looking at all the investigations that you guys do, and I know that you are increasingly sustaining complaints against officers, so I'm just saying, of my limited window of opportunity, that's what I see. And she was really consistent on one point, which is that 'I put it in my holster, accidental discharge, he's coming at me, strip the cartridge off, drive stun in the stomach.' There's no information about – and 'it was a massive struggle, and maybe I got around behind him on his back.' I mean, there's no information there about that at all that I could see. And if someone else had seen it, in this big tome, please let me know, because I looked. I spent probably ten some odd hours reading all this stuff. I mean, I am trying to do my civic duty up here, and she doesn't say she did that. So it strikes me as somewhat speculative, with all due respect, Captain Westbrook, for the Bureau to come to a determination that, yeah, he probably was tased in the back, because we've got this picture, and it is at least consistent with the tattooing pattern you would see in a dry stun operation that is done of a Taser. So, and nobody disputes Mr. Tran was tased. Absolutely, the guy was tased on that night, and it looks like he was tased on the back, and seven, *seven people* say he was tased in the back. I just – I can't give credibility to her statement of what happened, because of the evidence, which I believe shows by any standard that Mr. Tran was tased in the back. And if I can't find that – so that's the bottom line for me. That is where I'm stuck. I'm stuck with, her story is not – her story and the Bureau's finding of how she was within policy because it's her story, does not comport with the evidence before me, which is that the man was tased in his back. I don't buy that there was this big struggle during the tasing. He was screaming in pain and dropped to the ground, according to three or four witness statements, and I can't find that her statement of tasing him in the stomach happened. So that leads me to question the finding that the Bureau made. And that's just – you know, I have worked diligently to try be evenhandedly fair to everyone in this case, and the bottom line is, she says she tased him in the stomach, and the man was tased in the back. So that's what I have to say."

Mr. Bissonnette: "Then a question to you... where are you at then, because I'm frankly still struggling. So you're looking at challenging? And are you challenging to Unproven or challenging to sustain?"

Chair Troy: "I'm willing to listen to what other committee – I'm looking to challenge, and I'm interested to hear what others have to say."

Mr. Denecke: "I'll go next. I think the physical evidence is, as Captain Westbrook said, there's reason to believe that the – whether it was dry stun in the back or the stomach, to me doesn't make a whole lot of difference. I think that the circumstances support the idea that there was a drive stun, probably in the back. There was a reason to do it, and Mr. Tran for – you know, he's not telling us a story now. What he remembers is that he was shot with probes in the back, but I don't think it happened, and I think there's a reason there for it to sustain Captain Westbrook's decision."

Mr. Yarosh: "And I think that to look at it, you have to go back to what the attorney said, that our job here is to see whether or not, even if we don't agree, is it rational to reach the conclusion that Captain Westbrook reached. I think that what's happening is that you're finding plausible arguments to reach other conclusions. That's not what we're supposed to be doing. We're supposed to be deciding whether it's irrational for her to reach the conclusions she reached. I don't think you can conclude that it was irrational for her to reach the conclusion. She said that her conclusion is not based on whether he was tased in the front or the back. It's based on several statements of several witnesses, who said that he was struggling, they were trying to contain him from the beginning to the end. And for us to say, based on one of the PSU officers or the girlfriend or the boyfriend, and for us to just say, 'No, it's still irrational.' I think that goes far beyond what our prescribed duties are. I don't think we have a choice to sustain, even if you believe that you would have reached a different conclusion. I don't see how you can point your finger and look at statements by three or four people, that are consistent with her findings, and say, 'You're still irrational.'"

Chair Troy: "What are the three or four consistent statements that you're referring to?"

Mr. Yarosh: "The assault victim – I call her the girlfriend – her boyfriend at the time, the PSU officer. All three of those match up."

Chair Troy: "That he was tased?"

Mr. Yarosh: "Not where he's tased. This case is not about where he's tased..."

Chair Troy: "I disagree with you on that. But they all match up in what regard that you find compelling?"

Mr. Yarosh: "That he was a struggling threat the entire time. That there was no point – what you want to present is a compliant, submissive person, on their knees, with their back to an officer with the Taser, and getting tased."

Chair Troy: "Well, yeah."

Mr. Yarosh: "If we had everybody stacking up and saying that's what happened, except the officer, and Captain Westbrook says, 'Well, I'm going with the officer,' that would be irrational. That's not what we have. That's not what we have."

Dr. Silver: "I think what we have is somewhere between those two things. I don't think we have any evidence that says that Mr. Tran was totally compliant and just was sitting there quietly, not saying anything, with his hands behind his back, but there were many witnesses who said that the officer was overboard, with the choke hold or the head – whatever you call it – and the finger into the throat and the pushing and so on and so forth..."

Mr. Yarosh: "There is not an allegation that – we're not here to decide anything."

Dr. Silver: "We're talking about is the behavior sufficient to create a situation for tasing, whether it's in the front or the back or with wires or without wires, and I think that it's just unknown. Some of the people say this. Some of the people say this. We discredit this people, we don't discredit this people. And, if anything, I think we have to come down to a challenge and an unfounded situation – Unproven."

Mr. Paris: "That's where I was before I got here. I thought – I'm not sure I'm still not there. I think the question for me – I think, on balance, I think I agree with you that somewhere in between... I think the evidence of the witnesses would favor Mr. Tran's story. I think there are some that go the other way, but I think, on balance, the witness statements favor that. I think, on balance, the physical evidence says that he wasn't tased in the back with probes. I'm not sure where he was – frankly it's really tough for me to figure out where he was tased and how that happened. But there's a pretty strong majority of people that say he was compliant at the time he was tased, at least at that time. So is it reasonable for a fact finder to look at that and say, 'Well, the physical evidence is strong enough for me to – and the small inconsistencies' (I believe they're fairly small inconsistencies) in a witness statement are enough for me to discredit them and find an Exonerated finding. I'm not sure that that gap is big enough to go to Exonerated. I think there – to me, if I was – I'm not in a position to have to look at this. I'm looking, like what Mr. Yarosh said, I need to look at whether it was reasonable to make that call. I'm not sure. I've been thinking about this a lot. Like Mr. Troy, I've spent a lot of hours on this. I've been thinking about it, [garbled] trying to figure out what we need to do with this. That's what it comes down to be, physical evidence versus the witness statements and whether there's enough there to discredit all of those witnesses who, over the years, I think they've been fairly consistent. And I don't see a strong motive for them to fabricate that stuff."

Mr. Bissonnette: "I came in leaning more towards saying I have to say that – that's why I pushed on the Captain so much, because during her presentation, well, it could be this or it could be that, and et cetera, and so I kind of moved a little bit more into sort of the Unproven, and I guess what I'm struggling with now is, you know, was it within policy, and to me, what I'm trying to figure out is the reasonableness of the assessment that, you know – and again, I was like, it could matter if it was back or front, but I'm not sure it is. But I – again, I came in after my examination and my thinking about it and my reading my notes and that sort of thing, and, you know, kind of really between Unproven and Sustained, probably closer to Sustained, and now I'm very keenly interested in the debate, and I appreciate Mr. Yarosh's opinion, and it's compelling, but I'm not quite convinced yet."

Director Baptista: "When you say 'sustained,' do you mean sustain as in 'agree with' Captain Westbrook?"

Mr. Bissonnette: "Yes... affirm her – I'm sorry. I was careless in my... and I apologize. I didn't mean to be so imprecise."

Mr. Pruitt: "As I read, I had a hard time trying to figure out all the [garbled], all the inconsistencies of the whole thing, and I hear what you're saying, Mr. Yarosh. I totally disagree with you, and I will put that on record, that by the evidence I see, the

evidence that was presented to me tonight, I don't think a reasonable person could come up with the decision that is said and to create exoneration, and I will be challenging that. And it was great work done, the research and everything they did behind it was fantastic and was good, but because of that it makes it very hard for me to say yes, it was exonerated, that there was no, it was clearly exonerated. I just can't do that, and I won't."

Mr. Bigham: "I will agree with Mr. Yarosh that I do believe that there was an accidental discharge, and that I think this – in some degree, [garbled] this whole thing, that – and I think it really hurt the officer's credibility on the stand when she kind of came up with that in the middle of trial. But I have to agree with Mr. Paris, with his analysis that – it's just not sure for me. And I came in more towards challenging and sustaining against the officer, but now I've moved more to the middle of Unproven."

Ms. Lalsingh: "And that's where I'm at. I came in confused, like a number of us, and wondering where I stand. And I looked at this, I spent a tremendous amount of time trying to understand the evidence, and trying not to bring perception and misinformation or any bias into it -- I'm just going to look at the evidence. And I'm at that point where I'm in the middle, and I'm leaning towards Unproven. I don't believe it's going to pass."

Mr. Denecke: "I have a question, I think for you, Mary-Beth. We have the choice of either affirming Captain Westbrook or reversing Captain Westbrook – challenging. We have to decide whether a rational person could make the decision she made. Reasonable person. Not rational – reasonable."

Director Baptista: "Why don't we read the Reasonable Person standard again."

Ms. Rees repeated the Reasonable Person standard.

[At this point there was some discussion about the officer's decision not to document the accidental discharge of the Taser in her police report.]

Chair Troy reviewed the three options available to CRC: to affirm the Police Bureau's finding; to challenge the Police Bureau's findings; or to request additional investigation.

- Mr. Bissonnette made a motion to affirm the Police Bureau's finding on Allegation #2, that Officer A submitted an inaccurate police report. Mr. Denecke seconded the motion.

Dr. Silver: "No. It had nothing to do with honesty, but thoroughness, and the fact that she had to even ask her boss was a question I had."

Mr. Paris: "I affirm the finding. I think that, based on the nature of what they were discussing, it's not the sort of thing I would think would be – that we'd put on the officer. I think if there were other situations, that would be different, but in this case, I would affirm the finding."

Mr. Pruitt: "No. [Garbled.]

Mr. Bissonnette: Yes. This is, I believe, a reasonable person with evidence that she went and asked her superior officer on guidance and was given that guidance, and she acted on that, that a reasonable person would make the finding, so I vote yes."

Chair Troy: "The Chair votes yes and adopts Mr. Bissonnette's reasoning."

Mr. Bigham: "I'll vote yes, and I'll adopt Mr. Troy's reasoning."

Ms. Lalsingh: "I will vote yes, and I'll adopt Mr. Bissonnette, Mr. Troy, and Mr. Bigham's reasoning."

Mr. Denecke: "I'll vote yes, and I'll adopt all of the above."

Mr. Yarosh: "I'll vote yes. I hate the decision that the sergeant made. I think that this is something that some major training by folks at the law department should give, because I think it drove the criminal case, and I think that drove everything that happened thereafter, and nobody paused – and easily to understand, nobody paused to think, 'Oh, what could happen?' And here we are."

The motion carried by a vote of 7-2.

- Dr. Silver made a motion to challenge the Police Bureau's finding on Allegation #1, and change it to Unproven. Mr. Pruitt seconded the motion.

Dr. Silver: "I'm voting yes to the challenge because I think there was just enough inconsistency across various witnesses and the testimony to make it unclear as to what Mr. Tran was doing in terms of struggling and whether use of force in the form of a Taser was needed.

Mr. Paris: "I agree to challenge the Bureau's finding. My rationale primarily – I think it's a very close call for me. Primarily, I would say that I don't think it's reasonable for a fact finder – there's not enough there to challenge, to discredit so many witnesses who had fairly consistent statements over quite a number of years. I just don't think there's enough on the other side of the scale to find a finding of exonerated."

Mr. Pruitt: "Yes. As was said before, I think there's not enough information – there's too much information that's conflicting to come with an exonerated.

Mr. Bissonnette: "I'm going to vote yes, and I think that the questions of – you know, the statements made by the Captain tonight, even from a memo that she wrote on April 3rd of this year – so a couple months ago – finding the accounts just so widely – the victim wasn't sure how he got tased, whether he got tased in the front or the back, and I don't believe that a reasonable person can come to a decision on whether it was in policy without a clear picture of what actually happened, and so forth, for that I will vote yes on challenging the finding."

Chair Troy: "The Chair votes yes – challenge the Bureau's finding, converting it from Exonerated to Unproven. And I think it's clear that I don't agree with the reviewing body and the finding that they made, but I'm trying to hold myself to the standard here, which is whether a reasonable person could make the finding in the light of the evidence, and I said again, and other people disagree with me, but I think her statement was, 'He came at me, I accidentally discharged, I tased him in the stomach,' and the evidence proves to me that Mr. Tran was tased in the back, and I don't know how that happened. I don't think that the decision maker has a good understanding of how that happened, and I don't know how a reasonable person could sort of take that as, 'Well, I'm just guestimating that it happened this way because there was a struggle, and that's not what the officer stated in multiple different venues. She talked a lot about struggles, but not during the actual tasing, and so – the Bureau's decision was based upon essentially taking the officer's statement at face value, and I think there are many reasons that we can't do that with the evidence here, and I don't believe it is reasonable or that a reasonable person could make that decision. So I am voting to challenge. I will say that I struggle with whether or not we should challenge to Sustain, and perhaps there should be a separate vote on that, but I'm going to go with Unproven.

Mr. Bigham: "I actually agree with Mr. Troy one hundred percent. Yeah, and I struggled – for me it's a struggle between challenging for Unproven or challenging to Sustained against the officer. But if it was me making the decision as a Commander, I would probably lean more towards sustaining, but we have to use the reasonable standard of a reasonable Commander, and I think on that point I'll have to go with Unproven, so I vote aye.

Ms. Lasingh: "I will vote aye for challenge to Unproven, and I will adopt Mr. Troy's reasoning. I do not believe a reasonable person would come to the conclusion that was reached, based on the evidence – on the conflict in the evidence.

Mr. Denecke: "And I'll vote no. I think that there is adequate evidence that the Captain's decision should be Sustained. I think the whole thing hinges on whether or not, as Mr. Tran recalls, he was on his hands with his arms in the air, and that he was tased by somebody who's [garbled] and shot him in the back, and I don't think that happened. I think the physical evidence is against that, and, you know, I can't accept part of his statement that he was submissive and was willing to be arrested and ignore the part which says he was tased by a shot in the back by the Taser as he was submitted to arrest. You can't put the two together, so I'll say no."

Mr. Yarosh: "I'll also vote no. I think that a rational decision maker could reach the decision that Captain Westbrook reached. I don't think that it was based simply on the testimony of the officer. I think that a fair reading of the record would, especially through the lens of Mr. McHenry started with. And I think we have three excellent witnesses who meet that category who weren't friends with Mr. Tran or who didn't have a history with him, didn't know him, and that was the boyfriend, the girlfriend and the PSU officer. And I would just direct the review to page 5 of the April 20th investigation by the boyfriend's statements there. I would direct the record to Page 32 of the January 23 investigation, and I would also direct the investigation to Page 40 of the January 23 investigation. That was all three witnesses who didn't have a dog in the fight, all said

that Mr. Tran was consistently struggling, and the officer did what she need to do to bring him under arrest.

The motion passed by a vote of 7-2.

Mr. Troy: "Okay, so I'm going to add the vote then. I'm going to ask Director Baptista, we have a case where a majority of the voting members of CRC have challenged a Bureau finding and recommended a different finding. Would you please draft a notice of our recommendation, run it by me before sending it over there, and we will wait to hear the Bureau's response to that.

Captain Famous thanked CRC for their professional and in-depth analysis of this case.

Taser and Less Lethal Workgroup Report

Postponed.

Adjournment

Chair Troy adjourned the meeting at 9:45 p.m.