

OIR GROUP REPORT ON POLICE OFFICER INVOLVED SHOOTINGS & IN CUSTODY DEATHS

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To Portland City Council

Re OIR Report

January 28

My name is Barbara Ross. I am testifying as an individual and not on behalf of any organization.

I read with great interest the fourth report on officer Involved shootings and in custody deaths. While it is clear that performance has not reached perfection, slowly but surely progress is being made.

Of course officers cannot control all aspects of what happens in fast moving events where they are confronting a potentially dangerous person. The common Themes and Issues section on page 101 points out two areas where staff do have the ability to influence the outcome.

1. Giving high priority to officer safety by keeping a reasonable distance between themselves and the potentially dangerous

subject.

In the Hatch case they acted wisely: "And the officers and the sergeants who responded to the call involving Mr. Hatch all recognized the appropriate goal was to contain and isolate Mr. Hatch, with the hopes of stabilizing the situation..."(Page 103)

In the Higginbotham case officers did not focus on their own safety, and "neither recognized how a more informed decision about whether or how to approach the likely armed, violent man in a confined space might have allowed the officers to avoid being in the position where they were forced to use deadly force".(page 103)

In additional discussion of this case, they add "As we have stated before tactical decision making that is consistent with the principles of officer safety provides smart techniques for detention and apprehension that provide police the ability to more frequently influence how the encounter will end.....Particularly here , where Mr. Higginbotham was found holed up in a room, was not going anywhere and did not present a threat to any one else, time and resources were on the side of the officers." (page 18)

I would urge the continued attention to Recommendation 1 , which emphasizes the Bureau;s opportunity to influence the outcome of encounters with dangerous individuals. (Page 119).

2. The Sergeant should remain in command, looking at the whole situation and delegate others to carry out tactical assignments.

" In four of the shootings... on scene sergeants assigned themselves to tactical roles despite the presence of officers to whom they could have delegated those tasks." (page 105)

Neither the training division review or the Commander's review consistently emphasized this error, even though the Critical Incident Management training stressed the need for sergeants to maintain their supervisory perspective and avoid tactical involvement.

Top level bureau management should focus on Recommendations 20, 26 and 27,(pages 122 &123) to make sure that all levels of the bureau as well as the training division are alert to this problem and are working together to help all officers abide by the policies taught in training.

In summary I was impressed with the quality of the report and hope it will be used to inform policy development and supervisory follow up.

Thank you for this opportunity to testify.

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TESTIMONY BY PORTLAND COPWATCH ON OIR GROUP DEADLY FORCE REPORT January 28, 2016

Portland Copwatch believes many of the recommendations in the new OIR Group report can create a better Police Bureau. OIR does a very good job warning the Bureau against using the term “suicide by cop,” which presupposes the outcome of a confrontation with a person intent on provoking the police to shoot them is for police to accommodate that desire. But we once again are disappointed in the consultants for not focusing on issues of race. Specifically, four of the 11 cases involved people of color. We suggest the Bureau might think about adding a standard question in all shooting reviews: “Did the suspect’s race play a role in your decision to use deadly force?”

Not written in our 8 page analysis is our concern that OIR expresses support for PPB’s transparency. Police Review Board hearings and Behavioral Health Unit Advisory Committee meetings, for example, are not open to the public, and the Chief’s reply to the 31 recommendations here reflect his lack of response to the COAB and the community in general about suggestions received on Bureau policies. OIR says other cities have less information from their police—we feel sorry for those cities.

We do appreciate that OIR included good information such as:

- Calling for the City to remove the “48-hour rule” from the police “union” contract (which also needs to allow civilian investigation of officer misconduct including deadly force, and to remove the binding arbitration clause for deadly force incidents);
- Telling the City “not to sacrifice thoroughness for the sake of timeliness,” a suggestion that should apply to all misconduct complaints and appeals;
- Including cumulative totals of African Americans and Latinos subjected to deadly force in the 35 cases they have reviewed since 2010 (10 and 3, making 29% and 9% of the victims, respectively);
- Adding a table of the 35 incidents showing data about cases involving mental health issues (57% of suspects) and unarmed suspects (26%); and
- Despite the overall lack of analysis on race, telling the Bureau to take corrective action when officers say things such as “shuck and jive” to describe African American suspects’ behavior.

We also noted a number of issues OIR highlighted or failed to note in the individual cases. In summary:

- A commander wrote that Sgt Fort’s ill-advised shooting at Kevin Moffett was done in the “fog of war”;
- A Sergeant allowed two officers who shot at Joshua Baker to remain in the field because they were in “combat mode”;
- Nobody compared Officer Gregory Moore shooting at the back of African American teenager Juwon Blackmon to the Aaron Campbell incident, though OIR did point out there was no review of the K9 which bit the wrong person when released;
- Neither Officer Jason Lile nor Larry Wingfield was disciplined even though they put themselves into a position which precipitated their shooting and killing homeless veteran Thomas Higginbotham, and furthermore Lile violated training by holding a Taser and gun at the same time;
- Sgt. John Holbrook and Officer David Scott also precipitated the death of Brad Morgan by getting too close to him, but were not disciplined;
- OIR says the City can protect itself better in lawsuits by examining repeat shooter officers like Sgt. Nathan Voeller, who shot David Hughes in 2006 and Merle Hatch in 2013;
- Even though their table implies numerous officers were disciplined for using force, the only one for whom the discipline stuck was Officer Dane Reister, who was fired for permanently injuring William Monroe with live rounds in a “beanbag” gun; and
- The Police Review Board removed a Commander’s recommended debriefing for Officer Justin Clary, who shot at Billy Wayne Simms in front of a populated convenience store in 2012.

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We also note that the Auditor announced the report was done under City Code which “authorizes” IPR to hire experts to review deadly force cases, yet the code actually requires annual reports to be generated. Since OIR is now at the end of its contract, the shootings from 2014 and 2015 should be under review already. The most recent case in this report is nearly three years old.

We also would welcome OIR to recommend that IPR should conduct its own investigations in deadly force cases, that the District Attorney should hold Grand Juries even when the suspect is not killed by police, and to allow civilians to appeal the outcomes of deadly force cases to the Citizen Review Committee. Such appeals might have changed some of the poor outcomes OIR itself noted in the report.

Thank you for your time.

OIR GROUP'S FOURTH PORTLAND POLICE SHOOTINGS REPORT STEPS UP... EXCEPT FOR RACE

an analysis by Dan Handelman, Portland Copwatch, January 28, 2016

In the last of its contracted four reports on Portland Police Shootings, the OIR Group analyzed 11 incidents from 2011-2013 and stepped up its critique of the Bureau. It may be they were emboldened by the US Department of Justice (DOJ), whose Settlement Agreement with the City over excessive use of force was introduced in 2012 and went into effect in 2014— they hint as much in the report. They also note we are now in a climate of more scrutiny on police use of deadly force. They make a huge point of telling the Bureau to stop using the term “suicide by cop” to avoid the presumption that the only outcome in a suicidal person’s confrontation with police is the use of deadly force. What’s missing, however, as we’ve repeatedly noted in our analyses, is any look at the factor of race in the incidents.*-1 This is particularly troubling in the new report since two of the 11 suspects were African American and two were Latino. That said, most of the OIR recommendations are well founded and useful, and the questions they raise about tactics employed by officers— and the Bureau’s lack of doing anything about those choices— are encouraging. Since the general public has no meaningful role in the review of these incidents (the grand jury has no background or training on police matters; the internal Police Review Board has only two civilians out of 7 voting members), the report is a great tool for fomenting change. The Community Oversight Advisory Board (COAB), charged with ensuring implementation of the DOJ Agreement, cites OIR (and its predecessor, PARC) in many of its recommendations to the Bureau. The new OIR report is on line at:

<<http://www.portlandonline.com/auditor/index.cfm?c=52199&a=561174>>

Portland Copwatch (PCW) still believes that having local involvement in reviewing these cases would speed up the review process— note that the most recent incident in this report is almost three years old— and bolster community input and confidence. However, OIR’s reports have increasingly sought to encourage officers to consider other options rather than fall back on the tired argument that they “had to” shoot a person.

OIR also calls out the Bureau (again) for allowing Sergeants to involve themselves in the tactical operations, rather than supervising line officers in these serious incidents; repeats its wise suggestion from 2014 to review officers who’ve been involved in more than one incident; and really hammers home the need to end the police “union” contract provision providing a 48-hour waiting period before interviews can happen. In fact, ending the Portland Police Association (PPA)’s 48 hour rule is not only a formal recommendation (#31), but is mentioned in six of the 11 case file reviews as a hindrance to good investigative practices.*-2 OIR also hammers this point home by flippantly suggesting officers be allowed 48 hours to write police reports and delay taking witness statements to be consistent.

The new report once again uses the names of all the suspects and many of the officers involved, which is one leap forward OIR made over PARC. However, it would be more helpful, as we’ve said in the past, to use more names, or at least simple identifiers (Officer 1, Officer 2) with a table explaining who was whom, rather than descriptors like “the supervisory detective who had yet to arrive.”

One of the best admonitions in the report is that the City “not sacrifice thoroughness for the sake of timeliness.” This has been a mantra of PCW since the DOJ began demanding that all investigations be done in 180 days— including appeals to the volunteer Citizen Review Committee (CRC). The fact that CRC has sent back three of its last four cases for more investigation means both that internal investigations are lacking and that the appeal process needs time to get it right.

PCW appreciates that the OIR Group has finally responded to one of our requests, including a table of all 35 incidents they reviewed starting with the 2010 report on the 2006 death of James Chasse. The table identifies persons with mental health issues (20, or 57%), whether people were unarmed (though they exclude the deaths in custody— which PCW includes to total 9 incidents, or 26%), and how many bullets were fired. Those statistics— 38 bullets fired at Marcello Vaida, 32 at Keaton Otis, 22 at Santiago Cisneros— show the largest fusillades sent at people of color. Though OIR does mention the cumulative totals of African Americans (10, which is 29%) and Latinos (3, or 9%), again there is no analysis of whether this represents some kind of trend. Latinos make up 9% of the Portland population, meaning the number of Latinos shot is reflective of their numbers in Portland, while African Americans are just 6% of the population, meaning they are shot/shot at/die in custody at 5 times the rate they would if it were proportional.

More About Race and the Portland Police / Details on Moffett, Blackmon, Tate and Cisneros Incidents

The 2016 OIR report covers two shootings involving African American suspects. In the first, Sergeant Michael Fort saw Kevin Moffett firing a gun at a security guard at a downtown club, then took a shot at Moffett, missing him (Jan. 1, 2011).
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The second involved a juvenile (who, OIR notes, has been identified by the PPB and the press so we will name here), 17 year old Juwan Blackmon, who was shot from behind and hit in the leg (July 17, 2012). OIR's only mention of race in its case analysis is a welcome call-out of a female officer who described Blackmon's movements as "shuck and jive," which OIR points out is "unprofessional" and "racially offensive." OIR indicates that nobody at the Bureau blinked an eye at her description, suggesting informally that such behaviors should be subjected to corrective action.

Two other suspects, Michael Tate and Cisneros, were Latino. While Tate was not hit by any bullets (August 21, 2012), Cisneros was shot and killed (March 4, 2013). As PCW noted in our previous analysis, OIR encourages the Bureau to ask questions even if there is no actionable answer. PCW suggests a universal question— whether the suspect is white or not— should be "did the suspect's race play a role in your decision to use deadly force?" It will at least cause both the investigators and the officers to think about this issue.

Amazingly, the Bureau did not discipline Fort for arriving on scene, not contacting another officer who was already there (who said he didn't know Fort arrived nor that he'd used deadly force), not calling in his gunshot, not contacting medical for the security guard, and firing what appeared to be a "warning shot"—which is against policy. OIR writes that Fort fired the shot to "stop the suspect." Fort himself admitted he was not in a good position to shoot and was not following training; the Acting Captain reviewing the case wrote off the errors as being part of the "fog of war." Interestingly, Fort was willing to submit to an interview immediately, but a PPA lawyer talked him out of it. Furthermore, when Fort did talk to detectives about what he saw Moffett do, his statement wasn't recorded, which PCW believes is itself a violation of policy.

Blackmon was at a "location" being staked out for a search warrant by the Gun Task Force when officers say they saw him displaying a gun. He got into a car with three other people, then officers stopped the car, extracted the front seat occupants, and ordered Blackmon to get out. When they told him to lift his shirt so they could see his waistband— a practice that had been discontinued by the Bureau— he turned and ran, prompting Officer Gregory Moore to fire one bullet. Officer Dennis Wilcox (who was also involved in another shooting in this report) fired a "bean bag" (lead-pellet bag) but may have missed. Since at this point the cops still did not know for sure whether Blackmon was armed,*-3 PCW contends that this case was very similar to when Aaron Campbell was shot in the back (by beanbags and bullets) and killed in 2010. OIR makes no analogy. Also similar to the Campbell case, officers unleashed a K9 dog to chase Blackmon. Instead, it attacked the last occupant of the car and had to be commanded numerous times to stop biting. PCW wonders whether the dogs are being trained in racist behavior, to recognize any black person as the target. OIR says that the Bureau did no review of the use of the K9, which is alarming considering what happened.

As part of this case, OIR made five recommendations: special units like the Gun Task Force are advised to alert precinct commanders to special operations (both shooters were among the East Precinct officers who were called in as backup-#9), the Bureau should let all officers know when tactics are abandoned (#10), deadly force reviews should include use of K9s (#11), special unit commanders should weigh in on deadly force reviews (#12), and the Bureau should develop protocols for working with other jurisdictions (#13). This last recommendation came because another agency arrived to assist but, as Portland officers noted, did not use their radios to check in. The outside officers also may not have the same high risk stop training as the PPB. The report notes that PPB has an agreement with other locales about pursuits; PCW has asked for years that such agreements also address deadly force so that one agency will not make an inappropriate decision to use deadly force against someone due to confusion about who is in charge, and whose policies take precedence.

Side note: The recommendation about alerting precinct commanders notes that it will help reduce the likelihood of interference by cops who are not involved in the special operation. OIR doesn't always explain the reasoning within its recommendations, meaning some who do not read the whole report may not understand the logic.

Tate was a fugitive who'd cut off his GPS ankle bracelet after skipping parole on a Domestic Violence charge. Detective Michael Fields and a detective with the Washington County Sheriff's Office (WCSO) decided to save the federal marshal's task force money by leaving the other four officers who were also staking out Tate's location and knocking on the door. They made a number of plans, but none to cover what happened— which was Tate's female cousin opening the door and inviting them in, where Tate sat on the couch. Tate pulled a cell phone out of his pocket and held it toward the officers, prompting Fields to fire two shots. One traveled through the next door apartment (nobody was home), the other hit the wall near the kitchen door; the cousin at that point was in the kitchen. This was apparently not part of the PPB review of Fields' actions, and though the Commander did question the backstops, he thought shooting at Tate was justified. Tate jumped out the third-story window and was apprehended by others on the team. The cousin later related to officers that Tate had told her he would rather die than go back to prison, and that he would fake having a gun if police found him. It's not clear when the PPB interviewed Fields; the OIR report says that IA rescinded its 48 hour notice after he gave a voluntary statement to WCSO detectives. It does say that IA interviewed the WCSO officer over the phone, rather than in person, four months after the fact, and at that only did so because they felt time pressure to finish the investigation. This shooting happened just

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before the DOJ Agreement was signed by the city urging that all investigations be done within six months. IA also did not interview Tate, saying he had refused to talk to the WCSO; OIR points out since PPB did not take him into custody, maybe they would have had better luck than the arresting agency.

Side note: Though the report says the Training Division (“Training”) failed to raise issues about the backstops, the cousin’s presence (she could have been asked about weapons and told to leave the apartment, and could have been hit by a bullet), and tactical issues, it does not say how the Police Review Board reacted to the shooting.

The Cisneros incident is very troubling. OIR fell into the same trap as the media, saying that officers who were parked atop a parking garage had no time to react because Cisneros drove up on them and “immediately” pulled a shotgun out of his trunk and started shooting at them. However, the narrative clearly states that Cisneros was sitting in his car talking on the phone when Officers Michelle Boer and Brad Kula moved their cars from their position next to one another to be up near Cisneros’ car. This means they clearly had time to talk to each other about a plan, but instead chose to confront Cisneros, who at that point was not engaged in any criminal activity (other than parking outside of the lines). Cisneros, who it was later learned spent time in the US Army in Iraq in 2006 and 2007, fired the gun at least twice, hitting Boer’s car and a wall of the parking structure. The two officers dove for cover and shot at Cisneros, with Kula emptying all 18 rounds out of his weapon and Boer shooting four times. She claims Cisneros paused with the gun pointing at her head but wasn’t sure why he didn’t fire. It should have been obvious that a trained soldier who couldn’t hit two officers at point blank range wasn’t really aiming for them. Cisneros died with 7 wounds in his lower legs, a graze to the torso, and a severed jugular vein. This is the last case in the report and the first to strongly address mental health issues, with OIR saying the outcome probably wouldn’t have changed if they had known Cisneros had PTSD and had just told his mother the police were going to take him to a “higher place,” but that they should have examined it. Their formal recommendation here (#24), to have the Behavioral Health Unit bring an analysis to the Police Review Board when the suspect has mental health issues, is of some value, though it would be better to have non-police personnel weigh in on this issue as well.

Deadly Force and Mental Health Issues / Dispelling the “Suicide by Cop” Paradigm

The DOJ’s investigation and the Agreement focus on excessive force particularly against those in mental health crisis. In addition to Cisneros and Tate, OIR points out that five of the other suspects expressed verbally or in their actions a desire to provoke police to end their lives. The specific recommendation to stop using the term “suicide by cop” (#25) says “The Bureau should guard against the language, culture and mentality that suggests the death of a suicidal individual ... is inevitable.” They also state that “Simply because a suspect in crisis desires a certain outcome in his confrontation with law enforcement does not mean that skillfully trained and well equipped officers should necessarily accommodate him.” PCW has been championing this idea for years, in particular because when an officer takes another person’s life, it is a homicide, not a suicide. (It is unfortunate that OIR, probably due to contractual issues, did not mention the November 2015 case where police shot and killed Michael Johnson and the State Medical Examiner called it a “suicide.”) OIR observes that the PPB becomes less rigorous in its review of cases when they think there was no alternative for the involved officers. They note that current Bureau practice includes disengagement, maintaining distance and staying out of sight to reduce confrontation.

The five other identified cases are Thomas Higginbotham (January 2, 2011), Brad Morgan (January 25, 2012), Jonah Potter (March 26, 2012), Joshua Baker (September 29, 2012), and Merle Hatch (February 17, 2013). In four of these cases (Morgan, Potter, Hatch and Tate) the suspects were not holding deadly weapons— Morgan and Potter had fake guns, Tate had a cell phone and Hatch had a broken phone receiver. Baker’s rifle was covered by a “protective sock” which he said made it inoperable.

As for Higginbotham, it’s apparent that the officers precipitated the use of deadly force. Officer Larry Wingfield more or less admitted this when he told the grand jury he knew there was no way to get back out of the door in the abandoned car wash where he and his partner Jason Lile had gone to confront Higginbotham about a trespassing complaint. They knocked on his door and he came out with a knife; Lile had a Taser in one hand (which hit Higginbotham but didn’t penetrate his clothes) and a gun in the other, and he and Wingfield fired a total of 12 shots, hitting Higginbotham 10 times and killing the homeless veteran. Here the OIR Group critiques the view that the suspect “drove” the officers’ actions saying it gives him “too much credit.” They repeat a recommendation from 2013, here listed as #1, that Commanders should judge events on whether the officers focus on influencing the outcome of events rather than simply reacting to suspects. Wingfield also said he shot because Higginbotham was closer than 21 feet away with an edged weapon; OIR repeats information that their predecessor PARC printed many years ago that the 21 foot rule is not a “green light” for deadly force (quoting police chiefs who shared this opinion with the Police Executive Research Forum in 2015). They also made a recommendation (#2) to train on considerations about knives, not that they must inevitably shoot if the person gets that close.

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A few other notes about this case:

—Wingfield tripped when he was backing up, something that happened in two other cases that led to deadly force in recent years (Nick Davis in 2014 and David Ellis in 2015); PCW continues to encourage training on safely backing up.

—Though Lile violated training by having a weapon in both hands (which could have led to disastrous consequences), and “inexplicably” sat in the patrol car when Wingfield was gathering initial information about the trespass complaint, the Commander found him in policy.

—The officers asked another person living at the car wash (labelled a “transient” by OIR, not a preferred term for homeless/houseless people) for permission to enter; he said the owner gave them permission to stay there, but technically they needed a warrant to get in. Thus, OIR recommended (#3) reviews of constitutional issues as part of deadly force reviews.

—The Sergeant who arrived on scene decided to drag Higginbotham’s mortally wounded body out of the cramped hallway to ensure access by medics, raising questions about Sergeants becoming involved tactically and, for PCW, whether dragging a person around is humane, even if the end goal is to render aid.

Morgan’s case, which recently ended with a civil jury deciding the police were not at fault, resulted from his call to 911 that he had committed a robbery and was planning to jump off a building. He was 20 minutes into a conversation with the 911 operator when Officer David Scott and Sergeant John Holbrook decided to move close to have a “face to face” talk. This ended the 911 call and, though they engaged Morgan in conversation for over 15 minutes, Morgan eventually pointed his fake gun at the police and the officers shot and killed him. Though it was 3 AM, nobody (including OIR) seemed to wonder what happened to the three bullets from Holbrook’s gun that missed Morgan. (Scott killed him with one bullet to the head.) Though Morgan was threatening to jump and indicated he wanted police to shoot him, he also told the operator that he didn’t really want to jump. OIR notes this missing piece of information may have changed how officers approached Morgan. Both Training and the Commander noted this means they put themselves into a position which precipitated their use of deadly force (which is against policy), but they cleared both officers anyway. The Commander wrote “Morgan committed to suicidal plan and no amount of negotiation would have prevented him from forcing officers to take his life.” As noted by OIR’s caution, this is not a healthy analysis. Despite the troubling questions about Morgan’s death, one positive outcome is that the Bureau now uses the shortcomings of this case to train officers how to handle people in crisis. Also, the PPB is now encouraging officers to use the 911 call already in progress to introduce them to the suspect, rather than going face to face right away. OIR repeats their earlier recommendations that 911 operators should receive crisis instruction and their supervisors should participate in the Police Review Board (2016 Recommendations #7 & 8).

It’s also of interest that Holbrook inserted himself into the situation even though 2011 training for Sergeants taught them not to engage, but Training said it had no impact on the outcome so recommended no discipline. Also, a third officer, who Morgan recognized, came forward and started to talk to Morgan, but Holbrook sent him away.

Potter had committed a robbery the night before officers surrounded him sleeping in a car in SE Portland, using what they found out later was a plastic gun. Officer Wilcox (the “bean bag” operator in the Blackmon case), Officer Wingfield (who shot Higginbotham), Tracy Chamberlin and Rich Storm*-4 ended up shooting at Potter when he awoke and came out of the car with the replica weapon. In fact, one of their bullets knocked the gun out of his hand— proving that when officers say that only happens in the movies, they are wrong. Seeing Potter wasn’t moving and was unarmed, Wingfield took it upon himself to retrieve the weapon and check Potter’s injuries. Though they fired a total of seven shots, Potter lived. He later let the cops know about a note he’d left in the car that apologized to them for making them do his “dirty work.” There’s no commentary from OIR about the fact that Wingfield had an M16 military assault rifle and Wilcox had an M4 when the Bureau’s standard rifle of use is the AR-15, a civilian version of the M16. Instead, because there was a plan to take Potter into custody, OIR commends their actions as being safety oriented (even though four officers shot someone seven times). Internal Affairs didn’t interview the officers for two weeks after the grand jury was held (so a month after the shooting), much longer than 48 hours, prompting an unnumbered recommendation from OIR that IA should do an immediate interview and then do follow up questions later.

Baker’s girlfriend had called police saying he’d left their apartment after an argument and then she heard one (then a second) gunshot. Baker called 911 himself, saying he was armed with a rifle and suicidal. A sergeant followed him and tried pulling him over, but Baker sped away. (OIR notes once again that the Sergeant should have delegated responsibility but nobody in the Bureau called him on this.) Officers Gary Britt and Eric Strohmeyer chased Baker, reaching up to 90 MPH. Baker crashed his truck and got out with the rifle in the protective sock, apparently pointing it at the ground, but the two officers fired their weapons— a handgun and an AR15— from inside their patrol car. Neither OIR nor the Bureau seems to have opined on the fact that Strohmeyer had the gun out and ready to use while the car was in motion, or the choice to shoot from inside the car. Baker climbed back into the truck listened to the radio and started texting as other officers arrived. The Sergeant then showed up*-5 and let the two officers remain in the lead, defying Bureau policy to remove them (which would have been easy since other cops had comparable weapons), saying they were in “combat mode.” OIR makes

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recommendation (#20) for supervisors not to use involved officers in tactical situations. Eventually, the Special Emergency Response Team (SERT) took Baker into custody. Though the commander who took control of the SERT team was involved, he made the findings on the investigation, leading OIR to suggest (Recommendation #21) that a commander's superior should take on that role if the commander is part of the case under review.

Hatch made his way out of Adventist Hospital, where he was being treated for mental health issues, pretending the broken phone handle was a gun. Two security guards didn't bother to check to see if the gun was real before alerting police. Officers from East Precinct (which is literally only blocks away, not noted in the report) swarmed in, locking down the hospital and calling in air support (it's not clear why) while essentially trapping Hatch in an employee parking lot. Sgt. Nathan Voeller decided to be the "spotter" for Officer Andrew Hearst, who had an AR15 rifle. Hatch got on top of an SUV, yelling, but the officers could not understand him as he was 300 feet away. PCW repeatedly has asked why the Bureau didn't use bullhorns to communicate but never got a good answer. Like the Mayor, the Bureau and the media, OIR opined on this case based on video taken by a neighbor of Hatch yelling stuff like "come out and play" and "come on pig, let's go," which because the police couldn't hear him is not germane to the analysis (except perhaps to include Hatch in the list of people seeking police confrontation).*-6 As he ran toward the cops, Hearst, Voeller, and Officer Royce Curtiss all fired at him, with all 5 of Hearst's AR15 rounds missing, and most of the other 15 bullets hitting and killing Hatch. Another Sergeant (let's call him Sergeant 2) sent a K9 to drag Hatch away from the "weapon." The dog caused punctures and lacerations post-mortem, which led OIR to recommend (#22) asking whether it's appropriate to use a K9 after an officer involved shooting.*-7

Though officers generally were working to contain, rather than confront, Hatch, the two Sergeants and acting Lieutenant on scene never talked about a plan, and officers gave different answers when asked who they thought was in charge. Nobody noted that Sergeant 2 went in and personally "secured" Hatch, thus involving himself; Voeller's involvement was found in policy because the incident unfolded quickly (even though it lasted 12 minutes). OIR contradicts its own warning when saying that the officers were "reacting to Hatch's movements," since they firmly have told the Bureau—as noted above—that the police should guide the engagement. However, they draw parallels to two other incidents: the Aaron Campbell incident in which lack of coordination among supervisors contributed to the tragedy, and the 2006 shooting of David Hughes, in which Voeller shot a man trapped in a parking area while a supervisor became involved in tactical action. This led to two formal recommendations (#29 and 30) asking that deadly force reviews consider if officers have been involved in multiple events, and a debriefing for an officer after a second shooting. OIR notes that this could help absolve the City in lawsuits, showing that they were willing to examine the incidents even if there is no clear overlap. It's very odd, by the way, that the Hughes shooting didn't come up as part of the Bureau's investigation, since officers usually describe previous deadly force incidents during their interviews.

As noted above, none of these analyses delve deeply into how officers might have used their Crisis Intervention Team training to de-escalate the situations with persons in crisis. Forty hour CIT training was implemented for all officers after the death of James Chasse, Jr. — the first case OIR reviewed for Portland.

Live Rounds in Less Lethal Shotgun; Rifle Fire in a Gas Station: William Monroe and Billy Wayne Simms

The remaining two cases involve the only officer whose firing from the Bureau in a deadly force incident has ever stuck and a highly questionable shooting in a 7-11 gas station.

On June 30, 2011, William Monroe was called in as a suspect because he was "bothering" kids in a park in SW Portland, with one caller saying he had a knife. (OIR lists him as "unarmed," probably because he dropped the pocket knife before he was shot.) Officer Dane Reister went after Monroe and, when he would not respond to commands, shot at him four times with a "less lethal" shotgun, which was loaded with live rounds rather than "beanbags." (Not mentioned—a fifth round jammed and was ejected from the gun.) Monroe was permanently and seriously injured in the pelvis, bladder, colon and abdomen. Though the Chief faulted Reister for not noticing the difference in sound or "kickback" from the gun, the Training Division said it was not something they trained on so they didn't expect him to do so. (In Recommendation #4, OIR asks that the Chief be clear when he/she contradicts Training.*-8) Apparently, many officers including Reister took a class about less lethal weapons in general but weren't aware that did not make them certified on the shotgun. Not mentioned in the OIR report is that Reister had carried his less lethal rounds in the same fanny pack as lethal shells, but they did note that he loaded his gun in a dimly lit parking lot. Reister, they note, was charged with criminal assault but met an "untimely death" before trial; to be clear, he committed suicide in May 2015 after having been fired in October 2013, 11 months after the PRB suggested his termination.

What comes out of this horrible event is a number of safeguards the Bureau has put in place, such as making officers check "beanbag" guns out of the armory, keep ammunition mounted on the gun, and inspect each round as it is loaded. While PCW believes the Bureau should just ditch using shotguns with live ammunition, OIR encourages the Bureau to get

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incompatible lethal and “non lethal” weapons (Recommendation #5). The question of how to separate lethal from less lethal still hasn’t been resolved over four years later; apparently a delivery system with re-usable “sponge rounds” was rejected by the Bureau for some reason. PCW notes here that OIR usually uses the correct term “less lethal” but in a few places, including Recommendation #5, use the incorrect term “non lethal”— beanbag rounds are capable of causing death. The report notes that the Oregon State Police determined the last of Reister’s rounds hit Monroe from just 15 feet away. Since he was running away that means the first shot might have been within 10 feet, meaning it could have been lethal even if it had been a “beanbag” round. It’s not clear whether the Bureau has adopted OIR says came from an expired hired by the DA, that officers yell “beanbag” or “less lethal” to reduce the likelihood of other cops firing their lethal weapons when they hear less lethal gunfire. It was not part of the Bureau’s proposed Directive on these weapons.

The questionable shooting of Billy Wayne Simms on July 28, 2012 came when Officer Justin Clary fired his AR15 rifle at Simms’ moving car while standing in a gas station connected to a 7-11 store, with propane tanks as a potential backstop. For some reason, the Bureau’s reviewers seemed only concerned that the 7-11 was open for business at the time. It’s not bad to be worried that bullets might hit employees and customers, but he could also have ignited either kind of fuel had the bullets caused a spark. The PRB actually removed the Commander’s recommended debrief on the backstop because Clary said he was aware it wasn’t ideal. Simms was wanted for reported gunfire in East Precinct, and officers using the GPS in his rented car kept trying to find him but just missing him in North Portland. A Sergeant involved took part in the search but didn’t formulate a plan on what to do if they found Simms. As it happens, Simms and a passenger came out of the store together; the passenger walked the other way and was in a patrol car which was used for cover. OIR notes that nobody addressed this issue, even though one of the officers who was interviewed brought it up. It was also mentioned that a “high level city official” came into the scene and took pictures. OIR suggests (Recommendation #19) that concerns raised by interviewees be addressed.

The Sergeant who didn’t make a plan received command counseling, leading OIR to list this case as involving discipline in their table of all 35 incidents, explaining it was the Sergeant and not the shooter cop in a footnote. PCW believes they should have said there was no discipline, and discussed the Sergeant’s discipline in a footnote. (More on this below.) A number of other issues came up including that neither Sergeant on scene had critical incident training (because they had each recently transferred from other positions), and one officer believed an armed suspect had to be confronted by an AR-15 or a shotgun (which is not Bureau policy). OIR made recommendations to remedy such problems (#15, 16 and 17). They also note that one of the Sergeants here, as one of the Sergeants in the Baker case, was uncomfortable using the ballistic shield, calling (in Recommendation #28) for better information on the shields to get to these supervisors, who receive two hour training and carry them in their trunks. Most disturbingly, OIR writes off that Internal Affairs didn’t “purposefully” ask leading questions and try to state the facts for officers, strongly suggesting rather than not letting IA ask such questions, that those reviewing the investigation identify such questions (Recommendation #18).

Longstanding Issues and Other Observations

PCW has been looking at these officer involved shooting analyses since they started coming out. in 2003. The ordinance creating the “Independent” Police Review Division (IPR) instructs that IPR “shall” hire an expert and “shall” issue reports on an annual basis, but the reports have only come out in 2003, 2005, 2006, 2009, 2010 (Chasse), 2012, 2013, 2014 and this year. There have been six years with no reports since IPR was created in 2001. The Auditor’s memo noting this is the last report under OIR’s current contract doesn’t indicate that anyone is reviewing the shootings from 2014 or 2015, and uses the language “Portland City Code authorizes the City Auditor’s Independent Police Review to hire outside experts to review closed officer-involved shootings and in-custody death investigations.” It does more than authorize, it mandates.

PCW has also encouraged OIR (and its predecessor, PARC), to urge the City to allow an independent agency like IPR (but preferably one that can actually compel officer testimony) to investigate deadly force incidents. OIR only briefly touches on the minimal nod the City gives to community concerns of police investigating themselves, once again criticizing the “East County Major Crimes Team” for poor investigations, but not suggesting an independent civilian agency.

Many in the community have also called for an independent prosecutor to review whether officers commit crimes in these cases. While the Multnomah County District Attorney generally holds automatic Grand Jury hearings in all deadly force cases, they did not in the cases of Kevin Moffett and Joshua Baker. Even though Moffett was not hit and Baker lived, the officer’s intent in both cases was to injure or kill the person. If a civilian fires a weapon with those intentions, they are tried for attempted murder. So holding a grand jury is the least the DA can do. While this may be outside OIR’s jurisdiction, they can still recommend that the City push for such a policy. A grand jury was also not held in Tate’s shooting, because the Washington County DA declined to call one together. It’s interesting that OIR mentions in passing that the same grand jury reviewed Mr. Potter’s criminal behavior in his incident and the officers’, which seems like a conflict of interest that needs to be resolved.

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Also in this report, OIR twice (on pages 59 and 114) calls for the Bureau to fix how the Training Division assigns people to review deadly force cases, but never makes a formal recommendation about it. PCW has tried to identify many such unnumbered recommendations but can only do so much.

On the positive side, OIR latches on to an issue that became current after a 2015 shooting regarding officers viewing video surveillance footage as part of a deadly force investigation. In the 2015 shooting of Allen Bellew, officers were shown video footage before they were interviewed, causing the Chief to “admonish” higher ups in the Bureau for violating good practice. OIR notes that in the Moffett and Simms cases, officers were shown video, but only after they gave their statements.

Conclusion:

PCW wants to be clear that despite their shortcomings, OIR Group’s reports are quite important to the community both for their recommendations and for consolidating facts about cases which sometimes are only briefly reported on by the Bureau and the media. It is crucial that whoever is hired to write the next report be fully immersed in the history of the PPB, going at least as far back as 1997, the first date of incidents in PARC’s first report in 2003. It’s frustrating here, as it is with the Compliance Officer and Community Liaison hired to oversee the DOJ Agreement, to have people from out of town who do not connect to local communities supporting those who have mental illness, are houseless, or are people of color, for example. OIR has come a long way in acknowledging the importance of community perception and concerns over the years. However, the City and the PPB should be listening to its own community, which is capable of coming up with similar, stronger and more locally tailored solutions.

The various incidents in which OIR indicates that the Bureau missed the chance to hold officers accountable, whether for actions leading to the shooting, supervisory, or post-shooting, is evidence that the system would benefit from allowing shooting survivors or their families to appeal Police Review Board findings to the Citizen Review Committee.

Final thought: it will be a great day to see the end of the use of “suicide by cop” as a term used to describe police homicides of vulnerable community members, and, in the best of all worlds, the end of these annual reviews if the police would stop killing people.

Footnotes:

*1-OIR did have a short section on “Bias Based Policing” in their 2012 report, but dismissed in 2014 the idea that Keaton Otis was racially profiled, even though officers said they “thought he looked like a gangster” and thought he was driving too nice of a car.

*2- Fixing the 48-hour rule is only one part of breaking down barriers in the PPA contract; the City also needs to allow a civilian agency to compel officer testimony and to investigate officer involved shootings, at minimum.

*3-Police found two guns in a nearby yard which Blackmon admitted were his. Still, he did not draw or point the weapons at police nor display them when he ran away.

*4-Storm was one of three officers disciplined for posting a PPB badge with the words “I am Darren Wilson” on his Facebook page, referring to the cop who killed Michael Brown in Ferguson, MO.

*5-The narrative says that the Sergeant parked much closer to Baker than he should have; some officers thought maybe his brakes had failed during the chase. In any case, officers’ adrenaline is usually pumping high after a chase and the Sergeant should have been asked about this.

*6-Also irrelevant is the note that Hatch had run away rather than go to a halfway house days before, and had committed robberies— since he’d given a fake name to the hospital, officers knew none of this at the time.

*7-This appears to be a different from #11, which asks to review the use of K9s during the shooting incident, in that it asks whether using K9s on downed suspects is a reasonable tactic.

*8-OIR doesn’t explain in the recommendation that they want the Chief to include this information so that discipline will stick, which is ironic since the recommendation is for the Chief to be clear why he/she made a recommendation.



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OIR Group Report Portland Police Bureau Officer-Involved Shootings and In-Custody Deaths City Council Testimony January 28, 2016

The periodic reports on police shootings and in-custody deaths are an important element in Portland's efforts to improve Police Bureau operations. They not only provide guidance to the Bureau, but also inform city leaders and the community about the details of specific cases, what went well, and where there is room for improvement.

After careful review of the report and participation in yesterday's community meeting with the OIR Group, the League would like to offer the following comments:

- In the future, allow more time for the public and city officials to review the report. One week is not sufficient to digest a report of this length and complexity and provide feedback.
- Training Division reviews of specific incidents and officer training are discussed throughout the report. We strongly recommend that the Bureau's Training Advisory Council receive a briefing on the report; there is much in it for the TAC to consider and address.
- When drafting the next contract for the expert review of closed investigations of shootings and in-custody-deaths, include a review of all the recommendations made to date by PARC and OIR, whether they are being implemented, and to what extent. If the Bureau chose not to implement the experts' recommendations, it should provide an explanation.
- Chief O'Dea provided a brief response to the report, which is understandable given the short amount of time he had to review it. The League would like to encourage him to prepare a follow-up document that responds to each recommendation individually and explains to City Council and the community which items he plans to address and how.

The report describes areas in which the Bureau has improved its operations and others where more training, better execution, and greater accountability are

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

needed. The discussion of cases in which the subject had in one way or another expressed a desire to provoke a lethal response from the police was particularly compelling. We hope the Bureau will train its officers to avoid looking upon the outcome in those cases as inevitable and use their training and tactical advantage to resolve the incident without resorting to deadly force. Furthermore, we have heard over and over again from the outside experts reviewing closed cases of shootings that the 48-hour delay in interviewing involved officers is bad policy. The League encourages the city to change this provision in the union contract.

We would like to thank the Auditor's office and the OIR Group for this valuable report.