



City disguises Sit-Lie Law using Disability Act—p. 8

The People's POLICE REPORT

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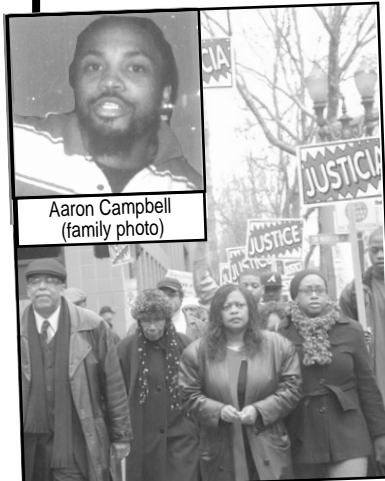
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“BASICALLY, WE SHOT AN UNARMED BLACK GUY RUNNING AWAY FROM US”:

Aaron Campbell Killed in Third Avoidable Sniper Shooting in Five Years

Portland Police Association (PPA) President Scott Westerman best described the January 29 officer-involved shooting of Aaron Campbell when he told the *Oregonian*'s Steve Duin: “Basically, we shot an unarmed black guy running away from us” (February 4). Campbell, 25, who was despondent over the death of his brother from heart failure earlier in the day, had been communicating with an officer on the scene and agreed to come out of his girlfriend’s apartment. Seconds later, Officer Ryan Lewton (#34674) shot Campbell six times with a “bean bag” gun, then Officer Ronald Frashour (#40927) shot and killed Campbell with one bullet from his AR-15 assault rifle. The death of yet another unarmed African American led to protests, marches and community outcry, a scathing grand jury letter, and even some long-needed changes.



Aaron Campbell (family photo)

Campbell's mother, Marva Davis (2nd from R) at a February rally organized by the Albina Ministerial Alliance against the shooting (Portland Mercury, February 11).

Campbell was talking about committing suicide. Officer James Quackenbush (#36875) established a rapport with Campbell on the phone well enough to allow the girlfriend and her children to come out of the apartment safely. Then, Campbell came out. In a communication breakdown eerily similar to two other incidents, a cascade of events led to the shooting. Even though Campbell had his hands up on the back of his head, Lewton was yelling orders for him to put his hands in the air. When he did not comply, Lewton shot the “bean bags,” lead-pellet nylon sacks fired from a shotgun with the force of a line drive baseball. Frashour says he then shot Campbell because he thought he was digging in his waistband for a gun, though in reality, he was moving his hands toward the area Lewton had hit. At about the same time, a police dog was released. Sgt. Liani Reyna (#28925), who apparently had taken leadership on the scene, was off briefing higher ranking officers when the shots were fired.

Because the officers feared Campbell had a gun, and he had fallen on his hands, they called for the Special Emergency Response Team (SERT). SERT arrived nearly a half hour after the shooting, at which point Campbell had died from his wounds. (continued on p. 6)

The lack of medical attention echoes the cases of Deontae Keller (1996), Kendra James (2003), Willie Grigsby (2004), James Chasse, Jr (2006) and many others, despite the Bureau's alleged efforts to fix the problem.

POLICE REVIEW BOARD TO GET SOME TEETH—NINE YEARS LATER

Police “Union” Contract May Hinder Process, Though Negotiations Stalled by Public Presence

In mid-January, Commissioner Randy Leonard announced his “New Year’s resolution” was to grant more power to Portland’s “police review board,” the “Independent” Police Review Division (IPR). At first, Leonard’s announcement seemed solely a political slap, both at the Mayor, who appointed Commissioner Dan Saltzman to head the Police Bureau, and to Chief Sizer, who threatened to resign if Leonard were put in charge of the police (PPR #46). However, Leonard worked behind the scenes with City Auditor Lavonne Griffin Valade and IPR Director Mary-Beth Baptista to draw up an ordinance that, while still lacking in many areas, gives IPR more tools that could boost its effectiveness and credibility, though leaving in place its fundamental police investigating police structure. On March 31, at the second (continued on p. 2)

The Oregonian

Community calls for police reform

City Council hearing on a proposal to tighten bureau oversight draws an impassioned crowd... (text continues)



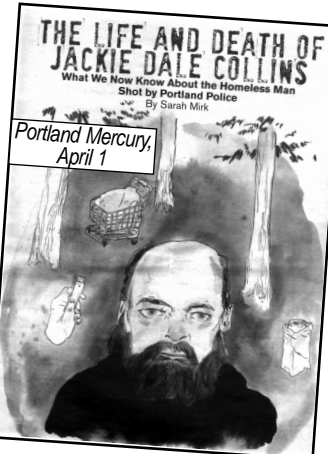
March 19... lined up to testify was Deontae Carter (seated, in...)

“UNION” PRESIDENT RESIGNS: Sgt. Scott Westerman will step down on June 19 following two off-duty road rage incidents —p. 7

SECOND SHOOTING OF 2010 LEAVES HOMELESS MAN DEAD

Developments in Chasse, “Beanbag” and Kaady Cases Grab Headlines

Just 52 days after Aaron Campbell was killed by Portland Police (left), Officer Jason Walters (#33522) shot and killed 58-year-old Jack Dale Collins, a homeless man who was covered in his own blood and carrying an X-Acto knife. Meanwhile, the September, 2006 in-custody death of James Chasse, Jr. remained in the news, with another out-of-court settlement, trial location fights, and a public forum by the police review board. Officer Chris Humphreys, one of the three officers involved in Chasse’s death, was (continued on p. 7)



Portland Mercury, April 1

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Police Review Board Gets More Teeth (continued from p. 1)

of two three-hour-plus Council hearings, the ordinance was passed in a historic 5-0 vote.

It should not be underestimated how important it is that the Auditor and IPR Director supported this ordinance: previous Auditor Gary Blackmer, who created the IPR and ran it for 7 years, and former Director Leslie Stevens, at IPR from mid-2005 to early 2008, both harshly criticized the 2008 Luna Firebaugh report for its conclusion that IPR needed to do more independent investigations (PPR #44). Also of note, Leonard himself disagreed with that report at the time, but has admitted to changing his mind since (*Oregonian*, March 22).

The “beanbag” shooting of a 12-year-old girl by Officer Chris Humphreys late last year (PPR #49) and other incidents had already led community organizations, including the National Lawyers Guild, to call for changes to the IPR. The Albina Ministerial Alliance (AMA)’s Coalition for Justice and Police Reform made strengthening IPR one of its five major demands after Aaron Campbell’s death in January (see p. 1).

Specifically, the ordinance gives the IPR Director the power to ask questions directly to police officers, if the police “union” contract does not prohibit it. Unfortunately, the current contract, which expires at the end of June, requires officers to be interviewed by other police. Answers are compelled as a condition of employment. The ordinance also gives the Director subpoena power, which is intended (1) to question officers from other jurisdictions (Deputy Bret Burton would not respond to Internal Affairs Division [IAD] questions in the Chasse case as he worked for the Sheriff’s office at the time), (2) for reluctant witnesses (ambulance company AMR is notorious for not submitting to interviews) and (3) for compelling the production of documents. It is an important distinction that Portland officers not be subpoenaed, in which case they can plead the Fifth Amendment and not give any evidence, but will continue to be compelled to testify under threat of termination, so that they will either talk or be disciplined/fired.

The ordinance also gives IPR jurisdiction over any complaint involving police-civilian interactions. Currently, when the Bureau initiates a case, they can voluntarily allow IPR to look over their shoulders, but aren’t required to by law. They made this clear in an email to Baptista after the Bureau initiated its own investigation into the beanbag shooting. In theory, IPR should now be able to investigate deadly force, but the current Portland Police Association (PPA) contract reads “the parties recognize that IPR has no authority or responsibility relating to [shootings and deaths cases]” (Section 62.1.3). We’d love to know who put that little doozy in there.

Sadly, for most civilians calling with a complaint, the system will function exactly as it does now: if IPR agrees the case needs to be investigated, they turn it over to the Bureau’s IAD. We know from years of working on this issue that people do not trust a system in which police investigate other police. On the bright side, the IPR may now initiate an investigation even if no complaint is filed.

The other component of the ordinance deals with the Bureau’s internal Use of Force and Performance Review Boards. Those boards currently meet according to Bureau Directives. When pervo-cop Joseph Wild was being investigated for lewd phone calls (PPR #48), the PPB failed to contact Baptista, a non-voting member of the boards, to sit in. Chief Sizer reportedly told Baptista and Griffin Valade she could not guarantee it would not happen again, and when challenged about following her own rules, told Baptista “I am the Directives.” The new law removes two Assistant Chiefs from the internal boards, combines them under the single name “Police Review Board,” and gives the IPR Director a voting seat. In doing so, the law not only requires the Bureau to involve IPR, but gives the Director an important legal tool to empower the compelling of testimony; that is, she will be an “integral part of the disciplinary process” as described in a 1998 Colorado appeals court case addressing the Denver and New York review boards.

Roughly 300 people packed City Hall on March 18 for the first three and a half hour hearing on the ordinance. Leading off were participants in the AMA Coalition, the Latino Network, the League of Women Voters, and others who praised the ordinance as a “good first step.” Fortunately, the Council adopted an amendment to the ordinance which calls for a stakeholder group (including Portland Copwatch) to come back with further recommendations 90 days after the law takes effect. This will

give time to make other improvements and to add much-needed changes to the IPR’s Citizen Review Committee (see p. 3). Commissioners Nick Fish, Dan Saltzman and Amanda Fritz were among critics upset that Chief Sizer was out of town, wanting to wait until she could testify in person. Fritz also wanted to give her Human Rights Commission time to review the ordinance.



Community members congratulate City Council after their 5-0 vote to strengthen IPR; in the upper left, Police Commissioner Dan Saltzman can be seen shaking hands with the sponsor of the effort, Commissioner Randy Leonard (still from Citynet 30).

Knowing he minimally needed one of their votes, Leonard agreed to continue the hearing until March 31. For that evening hearing, other groups joined the chorus in favor of the changes and packed the chambers nearly as full, and the vote was unanimous.

Not everyone is supportive of the changes. The PPA’s attorney, Will Aitchison, testified on March 18 that he feels the ordinance is unconstitutional and violates the “union” contract. Officer Daryl Turner complained in the February *Rap Sheet*, asking: “What does Commissioner Leonard want, his own little army?... Maybe Randy wants his own little Gestapo to walk into IAD interviews and torture officers to get the outcome he wants.” In an apparent metaphorical threat, Turner warns that adding more to an engine (the IPR) doesn’t make it go faster, just makes it “heavier, slow running and hotter—until it explodes.”

Regarding the “union” contract, PCW believes all workers have the right to collectively bargain for their wages, benefits, and safe working conditions. However, it is not appropriate for the PPA contract to direct public policy—dictating who will investigate alleged misconduct, and in particular, deadly force cases. In late 2009, we contacted the Bureau of Human Resources and were informed that (1) state law allows for public employee negotiations to be open unless both sides want them closed; and (2) the City was not interested in closing the meetings.

Several community members arrived to witness the first round of bargaining on March 12. For two hours, the City and the PPA debated whether the meetings would remain open, with the PPA eventually offering to rent a hotel so that all meetings would not be in public buildings. The City declined to accept, the PPA walked out, and on March 22, they filed an unfair labor practice complaint. This delay gives the City more time to straighten out those parts of the contract that are public policy, rather than job-related. ■

COP ACCIDENTALLY DOUSES MAN WHO SET HIMSELF ON FIRE WITH PEPPER SPRAY

Two days before Aaron Campbell was shot, reportedly suicidal 26-year-old Daniel Shaul set himself on fire in downtown Portland. A responding police officer accidentally grabbed a giant can of pepper spray instead of a fire extinguisher to try putting out the blaze. Because both canisters are red, the unnamed officer says she made a mistake and feels “heartsick” (*Oregonian*, January 29). Whether or not the aerosolized hot pepper being sprayed on Shaul’s burning skin caused excruciating pain and accelerated his death are unknown, though Chief Sizer claimed “In fact, it didn’t contribute to his death” (*KPTV*, January 28).



Citizen Review Committee Holds 3 Hearings, Finds Excessive Force Against Shooter Cop

—Conducts Community Forum Despite “Pushback,” Advocates for Stronger Independent Review—

In the past few months, the Citizen Review Committee (CRC) has started to live up to its potential under the limited city ordinance that created it. While the City Auditor and Director of the Independent Police Review Division (IPR) worked to grant more power to IPR (p. 1), CRC drafted its own recommendations for change. They held three full hearings on citizen complaints between January and March, plus one “Case File Review,” almost as many hearings as they held in all of 2009. They also held a public forum on the James Chasse, Jr. case despite pushback from the City, released their final Bias Based Policing report, and are ready to publish a report on deadly force policies.

Case 2009-x-0005: “I didn’t believe that Mr. Waterhouse’s failure to put down the video camera was an indication of aggressive physical resistance”

At a special meeting on February 17, CRC heard the case of Frank Waterhouse, who says police improperly arrested him and used excessive force including a “beanbag” gun, Taser, and a rough takedown, among other allegations (PPR #49). Waterhouse won a civil jury award of \$55,000 in September. In November, the CRC sent this case back for further investigation, including the transcripts of the civil trial.

The full hearing lasted 4.5 hours and drew considerable media attention: The officer who fired the Taser was Ronald Frashour, who killed Aaron Campbell in January (p. 1). The hearing was also remarkable because Waterhouse had an advocate, law student Logan Perkins of the National Lawyers Guild (NLG), who presented most of the case. She contacted Waterhouse through his attorney Ben Haile, who also spoke at the hearing.

The CRC faced challenges parsing the 13 allegations, since some involved multiple officers. For example, on the claim that officers falsely arrested Waterhouse, CRC voted 5-1 to recommend the Bureau change its “Exonerated with a debriefing” finding to “Unproven with a debriefing” only for Officer Jennifer Musser (#40710). Musser’s declaring Waterhouse was the suspected jaywalker police had chased into an auto yard led to the arrest. Waterhouse was acquitted of wrongdoing in criminal court.

The CRC mentioned once again that “Unproven” could mean (1) “Unfounded”—the facts do not support the officers did what was alleged, or (2) “Insufficient Evidence”—there was not enough evidence to prove or disprove the allegation. They urged the Bureau to restore the findings to these pre-2007 terms.

The second allegation, regarding excessive force, was also confusing. At the internal police “Performance Review Board,” it was broken out to examine the use of the “beanbag” by Officer Joshua Bocchino (#41047) and the failure to warn Waterhouse before using the Taser and beanbag—all found out of policy by Chief Sizer. The unnecessarily rough arrest was found “Unproven with a debriefing” for all four officers. The CRC upheld that finding in a 6-0 vote.

Officers can use force if a suspect shows “physical resistance” (Taser) or “aggressive physical resistance” (beanbag)—not simply if they fail to obey a command. The beanbag and Taser were fired simultaneously, indicating Frashour failed to communicate with fellow officers, as in the Campbell shooting. Waterhouse fell to the ground, barely missing a pile of car parts that lay below the embankment he was on. The officers roughed up Waterhouse to get him into handcuffs, and Perkins noted Waterhouse could not comply with officers’ commands to take his hands out from under his body because his face was being forced into the dirt.

The CRC decided in a 6-0 vote that Officer Frashour’s use of the Taser was excessive (“Sustained”). They may have agreed with Perkins’ points that: (a) one explicit reason not to use a Taser is when a person could be injured in a fall and (b) the Taser directive asks officers to consider severity of the crime (jaywalking), threat posed (eight officers against one suspect), and suspect’s history (which they didn’t know).

In addition, Chief Sizer testified in civil court that Waterhouse was not going to use his camcorder as a weapon, as alleged by the officers. She stated: “I didn’t believe that Mr. Waterhouse’s failure to put down the video camera was an indication of aggressive physical resistance.” She also said she believed the situation could have been resolved if Frashour had given the verbal warning—in other words, the use of the Taser was not necessary.

On allegation #3, that the officers failed to give proper medical attention by telling the EMTs Waterhouse was “fine,” CRC affirmed the finding of “Exonerated with a debriefing” 5-1, with member Jeff Bissonnette dissenting. On allegation #11, that the officer who shot the “beanbag” also told Waterhouse to “shut up—don’t talk s**t to the observer [an off-duty cop],” the Bureau proposed an “Unfounded” finding. Bissonnette proposed and CRC voted 6-0 to add a debriefing to that finding.

On allegation #6, that Officer Musser played loud rap music in the back of the patrol car, the finding was “Unproven with a debriefing.” Assistant Chief (A/C) Martinek reported that playing loud music is a common tactic used by officers who do not want to listen to “belligerent” arrestees. In the past, the Bureau has denied this happened in two cases that have come before the CRC: Freedom Child, who was taken into custody over a missing bicycle light (PPR #37) and Iacuzzi, who apparently “failed the attitude test” (PPR #48). A/C Martinek claimed Waterhouse was lying because Musser said she would not listen to rap music. CRC affirmed the “Unproven” finding 6-0.

Allegation #7, that the officers violated Waterhouse’s Fifth Amendment rights by questioning him after he asked for a lawyer, was dismissed by the IPR Director as “Other judicial remedy.” When the CRC asked to send this allegation back for a finding, the Director stated her position was final. CRC should be able to overturn the Director’s decision, especially on an issue that can easily be investigated.

On allegation #10, that the officers did not loosen Waterhouse’s cuffs after repeated requests, including leaving him in a holding cell for five hours in cuffs, the Bureau’s finding was “Unproven with a debriefing.” In another astounding revelation, A/C Martinek said that officers use the tightness of handcuffs as a negotiation tactic with suspects. The CRC voted to affirm the finding 6-0.

After the hearing, Sgt. Scott Westerman of the Portland Police Association (PPA) stated that a sign in the jail asserts a policy for suspects to remain in cuffs while in the cell. Westerman could have sat at the table to represent the officers, but chose not to do so.

Perkins conceded that there was not enough evidence to change the “Unproven” findings on five other allegations; the CRC voted 4-2 to affirm those findings. Members Hank Miggins and Rochelle Silver felt at least #8, regarding rudeness and bragging by Officers Musser, Frashour, Bocchino, and “Officer D,” needed more discussion.

The Chief declined to accept the recommended finding on the Taser, forcing a “conference meeting” between A/C Martinek and the CRC on April 13. CRC, voting unanimously (5-0), refused to back down on the proposed finding. Unless the Bureau voluntarily agrees to sustain the finding, the case will be heard before City Council, something that has only happened once since the IPR was created (PPR #30).

Perkins’ participation vastly improved the quality of the hearing, where an Appeals Process Advisor (APA) was assigned but not allowed to speak. After the hearing, CRC approved (8-0) giving the NLG contact information to appellants for six months as an experiment. (continued on p. 4)



Law student Logan Perkins (L) makes a point about the police using force against Frank Waterhouse (C) at the February 17 CRC meeting. Attorney Ben Haile (R) looks on.



Case 2009-x-0006: "Remember who was drunk and belligerent."

In case 2009-x-0006, Jason Krohn, the son of former Portland Sgt. Kelly Krohn, says police injured him while taking him into custody, failed to file accurate police reports, and Officer Michael Close (#38094) slammed his legs in a car door to gain compliance. Jason had been drinking downtown one night in 2006, and police were called to the scene because of an argument among Jason, his friends, and others in the "entertainment district." At some point, Jason mentioned his father was with the police, and ultimately the officers released him to Sgt. Krohn's custody rather than take him to Detox or book him.

Sgt. Krohn, who retired in 2007, acted as Jason's advocate. There was an uncomfortable personal animosity back and forth among Officer Ralph Elwood (#26797); Sgt. Roger Axthelm (#30020); Sgt. Westerman, who agreed to speak on behalf of Officer Close (who also broke Randall Cooley's arm in 2006 [PPR #48]); and Sgt. Krohn.

Sgt. Krohn alleged the police reports were inaccurate because a witness who identified himself as a police officer from Florida turned out to not to be an officer at all. However, CRC voted to uphold the "Exonerated" finding 6-1. CRC member Rochelle Silver felt that the reports should

have mentioned the bleeding abrasions on Jason's face and the bruises on his legs.

Regarding the rough take-down, Westerman and the other officers acted out the scene with one officer's knee on "Jason's" back, explaining that any abrasion on his face was from being on pavement and unavoidable. The IAD investigator discounted the witness who saw Jason bleeding, because he said it was his forehead, not his cheek. Although Sgt. Krohn indicated the most egregious force was used after Close arrived, only Elwood and Axthelm were listed in the allegation. The CRC upheld the "Exonerated" finding 7-0.



PPA President Scott Westerman (prone-c) demonstrates a takedown.

During a long discussion it was revealed that in 2003, the Bureau trained officers to close car doors on suspects' legs to get them to comply with being transported in a police cruiser. Police argued that Jason could have gotten the bruises on his shins by kicking at the door after he was in the car. Nearly four hours into the meeting, CRC voted 5-2 to uphold the Bureau's finding of "Unproven," in this case meaning "Insufficient Evidence," whether Close slammed the car door on Jason's legs.

Earlier, in the Police Association's January *Rap Sheet*, current State Representative/former PPA President Jeff Barker wrote about the case, denouncing retired officers who "have jumped in to kick the morale of those left working right in the teeth." Barker refers to Sgt. Krohn's "endless whine" in the December 5 *Oregonian*, and makes fun of Jason's complaint about his facial injury: "the cement was not smooth and comfortable." Probably to warn them off of injuring him, Jason told the officers he was an athlete, to which Barker replies: "Oh, my god! An athlete! Since when does an athlete have to follow the law or listen to the police?" Barker advises Jason to thank the officer who let him go, not make the police look bad. "Remember who was drunk and belligerent."

Case 2009-x-0004: No wrongdoing for alleged flashlight strike

In January, the CRC held a supplemental hearing in Case 2009-x-0004, in which Michael Grundmeyer says Officer Robert Jackson hit his son in the face with a flashlight and failed to file a use of force report (PPR #49). The allegations surround a contact in September, 2007 between Jackson and 38-year-old Shane Grundmeyer, shot and killed by Washington County Deputies five months after the incident.

The CRC sent the case back to IAD in October to determine whether the officer was in uniform in a marked patrol car and where the flashlight was located at the time Shane says he was hit (PPR #49).

According to the police records, Officer Jackson was in a marked patrol car and in uniform. Apparently, he would not have had a Cadet riding in an unmarked car. Commander Crebs showed the CRC a small six-inch-long metal flashlight, claiming it was the size of flashlight

Jackson had with him. CRC members, the appellant, and the APA all acceded to a claim that the dome light was on in Shane's car. The only people who could testify otherwise are Grundmeyer's witnesses, who apparently backed down, and Shane, who is dead.

IPR staff made calls to get the witnesses' testimony, since they were not willing to talk to police. However, the only information IPR reportedly received was a voice message of "I didn't see nothing."

Due to lack of new evidence, CRC upheld 7-0 the initial finding of "Unproven" as to whether the officer struck Shane. CRC then voted 6-1 to affirm the "Exonerated" finding about the use of force form. Bissonnette dissented because if the force possibly did happen, that finding should have been "Unproven" as well.

A/C Martinek scribbled a note on the Bureau's response that CRC found insulting: "I concur with Commander Crebs' finding and would have expected IAD follow-up to be enough. That would have closed this in November" (*Oregonian*, March 22).

After Back and Forth Internally and Externally, CRC Holds Accountability/Chasse Forum

As reported in PPR #49, CRC planned a public forum about the 2006 death of James Chasse in police custody (p. 1) and the Bureau's investigation into officer conduct. CRC voted twice to proceed: 7-1 on December 15, and 7-1 on February 17. Dissenting were Rochelle Silver (December) and Hank Miggins (February).

CRC had arranged for the Portland State University Veterans group to host them, but the City Attorney had CRC hold off publishing a news release while they checked for compliance with public meetings laws. We suspect the City Attorney was motivated by an interest in preventing public discussion of the Chasse case, another clear example of why CRC and IPR need to be advised by an attorney who does not also represent the Police Bureau. Other concerns thrown at CRC were fears about security (thinly veiled bias against people with mental illness) and the possibility that the volunteer facilitators might want to get paid (they didn't).

At least 50 people showed up to the March 14 event, talking about the Aaron Campbell shooting as well as Chasse and other concerns. There was considerable media attention, none reflecting negatively on CRC, and yet no IPR staff, nor the Auditor came. While this was a step forward from the showdown in 2003 in which the Auditor and IPR Director prevented CRC from hearing an appeal about the José Mejía Poot case (PPR #29), CRC was still told that they they would receive little or no staff support. CRC took a bold stand to hold the forum despite this adversity.

Reports Out, Drafted; More Personnel Changes

—With the only change being the addition of a few paragraphs describing meetings with Chief Sizer, the CRC's final Bias Based Policing report was released in March. The interim report had been released on the same day as Sizer's Racial Profiling Plan in February, 2009 (PPR #47). Three of the group's core members left CRC when their terms ended, leaving Miggins the only remaining member of the Work Group to speak to its recommendations; CRC conducted a voice vote to accept the report and did not discuss its content on March 10.

—The Structure Review Work Group released its draft report in March, listing dozens of recommendations to improve IPR and CRC. Some ideas, such as changing CRC's standard of review to "preponderance of the evidence" from the "reasonable person" standard, require changes in City Code. Others can be done in policies and protocols. CRC used the 2008 Luna Firebaugh report (PPR #44) as a basis, but was unable to approve the report before changes to IPR were enacted on March 31 (p. 1).

—The PARC Work Group completed a draft report analyzing the 2005 and 2006 recommendations on shootings and deaths in custody cases. Some of the proposals touch on changes made by Council— such as how to run the Use of Force/Performance Review Boards and IPR looking at shooting cases contemporaneously instead of farming them out years after the fact. A vote on the report is expected in May.

—Myra Simon, appointed to the CRC in November, moved out of state in December, replaced by attorney Lindsey Detweiler on March 31. We've noted repeatedly that CRC needs to have two more members, as an average of three members per year have left or resigned since 2002.

Taser Ruling Should Raise the Bar for Portland Cops to Zap Civilians

On December 28, the Ninth Circuit Court of Appeals (which covers Oregon) ruled in favor of Carl Bryan, who was tasered by a California officer. Bryan sued, claiming excessive force (*Bryan v. McPherson* 2009). Bryan had been stopped at a seat belt checkpoint, and was not wearing his seat belt. Bryan became agitated when he was asked to pull to the side of the road. He complied, but stepped out of his vehicle without being asked to. Because of unrelated circumstances, Bryan was wearing only shoes and boxer shorts, so it was clear he had no weapons. Officer McPherson testified that Bryan was standing at least 20 feet away. McPherson ordered Bryan to return to his vehicle, but Bryan says he did not hear this order.



Lady Liberty "lights up" in this image on wesawthat.blogspot.com that illustrates an article about *Bryan v. McPherson*.

Physical evidence at the scene indicates Bryan had his back to the officer when McPherson drew his Taser without warning and fired it. The five-second, 50,000 volt shock caused Bryan to fall forward, shattering his four front teeth and causing contusions on his face. Among the cases cited in the court opinion, Judge Wardlaw quoted *Meredith v. Erath*, saying "we must 'balance the amount of force applied against the need for that force.'" Not only did Bryan receive injuries during his fall, but "The tasered person also experiences an excruciating pain that radiates throughout the body," wrote the judge.

Read about Oregon's latest Taser-related death—p. 7.

Other Legal Briefs including Police "union" comments on the Taser ruling, p. 9.

The opinion continues, "A barbed probe lodged in [Bryan's] flesh, requiring hospitalization so that a doctor could remove the probe with a scalpel. A reasonable police officer with Officer McPherson's training on the X26 would have foreseen these physical injuries when confronting a shirtless individual standing on asphalt." An individual trained in the use of a Taser understands that it is certainly not a minor use of force.

In critiquing the officer's decision, the court quotes *Smith v. City of Hemet*, "The most important factor is whether the subject poses 'immediate threat to the safety of the officers or others.'... A simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be objective factors to justify such a concern." In Bryan's case, these requirements were not met.

At one point, the officer attempted to justify the Taser use by claiming he believed Bryan to be mentally ill because of his agitation. To this, the court replied "To the contrary: if Officer McPherson believed Bryan was mentally disturbed he should have made greater effort to take control of the situation through less intrusive means... A mentally ill individual is in need of a doctor, not a jail cell... Moreover, the purpose of detaining a mentally ill individual is not to punish him, but to help him." We couldn't have said it better ourselves.

The opinion makes another important point, noting that while officers do have to be able to make quick decisions, "This does not mean...that a Fourth Amendment violation will be found only in those rare instances where an officer and his attorney are unable to find a sufficient number of compelling adjectives to describe the victim's conduct. Nor does it mean that we can base our analysis on what officers actually felt or believed during an incident." The ruling states that the officers' use of force must be "objectively reasonable" in light of the facts and circumstances.

Portland is still poring over the case to see how it will affect their training and policies. It seems pretty simple to us: You can't use the Taser as a compliance tool any more, there has to be an actual threat.

NEW STUDY EXAMINES WAYS TASERS LEAD TO DEATH

On March 15, Dr. Marjorie Lindquist told the American Physical Society (a group of physicists) about several ways conductive energy devices, such as Tasers, can kill people. She said that a person with increased lactic acid in their blood from the shocks can experience a reduction in oxygen and a form of asphyxiation. Also, excessive potassium, potentially released by muscle contractions during handcuffing, in conjunction with the Taser can cause death, as can an episode of sickle cell anemia. "They have to understand how it kills," says Lindquist, who generally opposes Tasers use. "To use something that is dangerous safely, you have to understand how it poses a danger" (*Skanner*, March 16).

Man with Disabilities Tasered by Transit Cops

In a situation reminiscent of the thirteen taserings of Sir Millage, a teen with autism (PPR #40), two officers working with the Portland Police Bureau's Transit Division used Tasers on Calbruce Jamal Green in early December. Green is 34 and has a verbal IQ of 55, meaning he is considered developmentally disabled. A driver directed Green not to board a bus because the displayed route number was incorrect. To stay warm, several people including Green, who showed his Honored Citizen Tri-Met pass, got on a nearby bus. Soon, the driver of that bus asked the passengers to get off, and all complied except Green. Beaverton Officer Keith Welch quickly boarded and asked Green to disembark and to take his hands out of his pockets. Welch's report indicated that Green kept his hands in his jacket, stared blankly and said, "I just want to go home. I'm not doing anything wrong." When threatened with taserings, Green "appeared to become agitated" (*Portland Mercury*, February 11). So, Welch tasered him, then pulled a gun on him. Apparently fearing for his life though heavily armed, Welch radioed for cover and was joined by Portland Officer Jack Blazer (#37413), who tasered Green again and removed him from the bus.

Green was charged with interfering with public transportation and a police officer. Adding insult to injury, Green was also charged with possession of a controlled substance because officers misidentified his seizure medication as Ecstasy. The drug charge was later dropped. Green's attorney had him assessed to see if he was competent to assist in his own defense. On February 5, Disability Rights Oregon filed a complaint with the Independent Police Review Division about the incident.

The ignorant way Green was handled was exacerbated when the jail released him into the night without his scheduled medication. He arrived home after midnight, having walked five miles from the "Justice" Center. He was unaware he was allowed to call his grandmother, who drove around for hours trying to find him.

It appears the Crisis Intervention Team (CIT) training given to Portland officers is not having much of an effect—they seem to be unable to recognize mental illness, developmental disabilities or autism, and cannot tell the difference between Ecstasy and prescription medication. Beaverton officers are also required to do 24 hours per year of this training. Green's use of an Honored Citizen pass might have been a clue to those who decided to Taser first and ask questions later.

In the Bureau's usual defensive stance, CIT coordinator Liesbeth Gerritsen stated that "If somebody is sitting on a bus and he's got a jacket on and he's not talking, and he's got his hands in his pockets, the first concern is always going to be an officer safety concern." Many transit riders don't talk and have their hands in their pockets. Shouldn't the public's safety be the first concern? ■





Campbell: Unarmed African American Man Shot by Police

(continued from p. 1)

The Grand Jury decided on February 9 there was no criminal wrongdoing by the police. They publicly released a letter criticizing the breakdown of communications on the scene, stating they were "outraged" at what happened and "Aaron Campbell should not have died that day."

Community leaders and members of City Council have asked for a Federal Justice Department investigation, which is underway. If the FBI, Justice Department's Civil Rights Division, and US Attorney's office agree, they may also open a "pattern and practice" investigation into the Bureau (*Portland Tribune*, March 4). The Portland Police Bureau's Internal Affairs Division is conducting an administrative investigation into the shooting.

The community response was quick and clear: Aaron Campbell's death was unacceptable, and those responsible need to be held accountable. A series of news conferences, marches and rallies, including a gathering of over 1200 people headlined by Rev. Jesse Jackson on February 16, continued to put pressure on the City's elected leadership and the Police Bureau.

Campbell's death was the fourth police killing of an unarmed African American in the last 8 years: shootings of Byron Hammick (2002/PPR #26), Kendra James (2003/PPR #30), and Jahar Perez (2004/PPR #33) stirred up similar concerns. He was also the third person in five years to be shot in the back by a Portland Police sniper with an AR-15 while they were talking to a police negotiator: Raymond Gwerder was shot and killed in November, 2005 (PPR #37), and Paul Stewart was shot in the head and wounded in August, 2007 (PPR #42), both in similar circumstances to Campbell.

Portland Copwatch highlighted these similarities in a letter to District Attorney Michael Schruck, as well as the concerns that the grand jury never interviewed Sgt. Reyna or several other witnesses. Schruck responded, claiming that the jurors never showed an interest in Reyna until after they

had voted not to indict Frashour; since Schruck's team clearly leads the juries around by the nose (and, the saying goes, could indict a ham sandwich if he wanted to), this is a disingenuous claim.

Officer Frashour was previously involved in a use-of-force case where lack of communication led to him using a Taser at the same time another officer used a "beanbag" gun, leading to a jury award of \$55,000 for Frank Waterhouse and the Citizen Review Committee finding Frashour out of policy (see p. 3).

Sgt. Westerman decried the Grand Jury's letter, stating that police purposefully do not let family members

talk to people in distress, relying instead on negotiators (*Rap Sheet*, February 2010). He also said that the reason Frashour was allowed to decide to shoot on his own, rather than, presumably, being in radio contact and awaiting an order, dates back to when Nathan Thomas was shot and killed by officers in 1992 while being held hostage (PPR #5). After that incident, the police assigned officers specific roles so that multiple officers would not take the same action. He describes them as the custody, less lethal, K9 and lethal teams. He asks, do they want a committee to decide when to shoot?

Several protest actions and marches were led by the revived AMA Coalition for Justice and Police Reform, including one that ended with protestors entering City Hall and a face-to-face meeting between Mayor Sam Adams and Campbell's mother, Marva Davis. A new group called (I'm) Everyday People led a march from Pioneer Courthouse Square to Portland State University on February 19. Attorney General John Kroger told the crowd: "We just can't have our community in an endless series of lethal force incidents. If there's not a huge bond of trust between the law enforcement community and the public then we're in real trouble" (KGW-TV, February 19).

For more info or to get involved with the AMA Coalition, call 503-287-0261.



HUMAN RIGHTS COMMISSIONERS EXAMINE IMMIGRATION ISSUES, PASS ON POLICE OVERSIGHT

The Community and Police Relations Committee (CPRC) of the Human Rights Commission (HRC) continues to show occasional insight, while often overlooking issues such as racial profiling, that led to its creation (PPR #46). At their January meeting, there was an honest "light bulb going off over the head" moment. Officers, who had previously denied any involvement in immigration issues, realized that the families of undocumented suspects they arrest will blame them for their loved ones' deportation, even though it is the Multnomah County Sheriff's Office collaborating with Immigration officials who are directly responsible.

Meanwhile, the group heard about the strengthening of the Independent Police Review Division (IPR) at their March meeting, the day before the first Council hearing on the ordinance (p. 1). Allowing Assistant Chief Martinek, who sits on the Committee, to express his concerns that the changes to IPR were unnecessary but the Bureau would do whatever Council tells them to, Chair Hector Lopez asked the group about the proposal going forward with Chief Sizer out of town. Despite the fact that Martinek had laid out the Bureau's position, the Committee had no discussion and took no input to counter the idea, Lopez got a consensus agreement to express concern about Sizer's absence.

The HRC had an emergency meeting to discuss the changes, on March 25, coming up with a bland statement about being glad the community was discussing the issue. Some questioned whether oversight of the police was a human rights issue within their purview. This is disappointing, as their mission is defined by the UN Declaration of Human Rights, which grants people freedoms from oppression. Article 5, for example, states: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Sgt. Anthony Passadore declared that the current oversight system works fine, based on his experience—not surprising, since Passadore was involved in the non-fatal shooting of Scott Suran in 2006 and so far as we know was not held accountable for it (PPR #40).

In February, the CPRC watched a video of Chief Sizer's news conference explaining the Aaron Campbell shooting (also p. 1), in which she spent more time talking about police accomplishments and needs than the fact that officers had shot an unarmed black man.

The April meeting included a presentation by Passadore that was intended to show how officers will reduce unnecessary searches, but seemed to encourage unnecessary stops.

The CPRC meets on the third Wednesday of each month at the Office of Human Relations.

SHERIFF'S CANDIDATES RELATE POSITIONS

In a confusing election this May, two races for Multnomah County Sheriff will take place. One is to fill out Sheriff Bernie Giusto's 2007-2010 term, which became Sheriff Bob Skipper's term until he resigned after failing law enforcement certification (PPR #48). The other is for the 2011-2014 term.

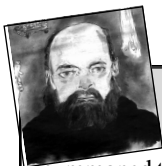
Running for the office are incumbent Dan Staton, who was appointed to replace Skipper, and Deputy Muhammad Ra'oof, who ran against Skipper in 2008. At an April 15 candidates' forum, they discussed their ideas. As we do not endorse candidates for office, we share this for informational purposes only:

Both candidates support the idea of a civilian review board for the MCSO. Staton said that, if elected, he would see such a board created. He envisions a board that would not handle "day-to-day" affairs, but focus on an occasional review of IA findings. Additionally, the citizens on the board would be selected by the sheriff's office. Ra'oof was less specific, saying that if he is elected, a civilian review board "will happen," and that such a board is "good practice."

The two candidates differed on their ideas for the unused Wapato jail facility. Ra'oof suggested that it be used as a mental health crisis facility, while Staton thinks it would be better as a training facility for corrections officers.

Both Candidates held similar positions on a number of other issues, including being opposed to any further cuts to the services MCSO provides. Both seek partnerships with other law enforcement agencies as a way to increase efficiency and continuity of services in a period of declining budgets.

The election is of great interest after County Chair Ted Wheeler, who was seeking ways the Commission could control the Sheriff's office through the budget process, was replaced by Commissioner Jeff Cogen in March. Wheeler was tapped to be State Treasurer after Ben Westlund died.



Jack Collins Shot; Kaady, Chasse updates

(continued from p. 1)



summoned to testify for two trials of other people whom he roughed up. And, the civil suit around the shooting of Fouad Kaady by Clackamas Deputies came to a close with another massive settlement.

Collins was in the Hoyt Arboretum in SW Portland when park users called police “complaining about a ‘drunk transient’ harassing passersby” (Portland Mercury, March 25).

When Walters arrived, Collins came out of the restroom, covered in blood and carrying what Chief Sizer described as an “X-Acto knife with a six-inch handle” (Oregonian blog, March 23). With its half-inch blade, such a tool is far less threatening than a switchblade, hunting knife or bayonet.

Don't call the cops: After the shooting death of Aaron Campbell, The Skanner, a Portland-area African-American publication, encouraged its readers not to call police to respond to a mental health crisis (February 15).

Details were slow to trickle out, but some in the community were angered by the continuing

Misconduct upon misconduct?: On March 29, protestors objecting to Jack Collins' death were pushed and stomped by police horses. Eight people were arrested, some on riot charges.

police violence and marched in the streets, knocking over dumpsters on March 22, with one man throwing a bicycle at a motorcycle officer who ran into him (March 23).

In general, it seems Commissioner Saltzman and Chief Sizer's deal to re-instate Officer Humphreys after he shot a 12-year-old with a “beanbag” round (PPR #49) has given free license to police. Sizer also seems to have responded to the Portland Police Association (PPA) complaint that she does not support them, praising Walters for “protect[ing] the community in a location that is deeply loved by the community.” Sgt. Scott Westerman, head of the PPA, was all over the media in the days after the shooting, explaining why Walters did not use a Taser (possible failure rate, no “lethal cover”) and pooh-poohing the community for judging Walters when the facts weren't known. Ironically, Walters had not yet been interviewed, so both Westerman and Sizer were speaking before the facts were known, likely tainting the jury pool. The grand jury found no criminal conduct, and some jurors reportedly hugged Officer Walters (Oregonian, April 8). No one was there to hug Jack Collins.

As the second shooting in 2010, this already signals a possible upward trend: there was only one Portland Police shooting in 2009, though there were two each in 2007 and 2008.

The Chasse case grabbed headlines again when the ambulance company, American Medical Response, settled out of court for a reported \$600,000 (Oregonian, January 22). Multnomah County settled for \$900,000 last year (PPR #49), while the City has paid hundreds of thousands to train officers in crisis intervention, and to defend itself. The judge denied a motion by the City to move the civil trial, scheduled for June, to Idaho or another location, rejecting the claim that the media has made it impossible to get an impartial jury. The City then announced it was hiring hotshot lawyer Anne Bremner, an occasional commentator on Fox news (Mercury blog, March 17). Willamette Week reported on April 7 that the City is planning to blame Chasse for his own death, including that a poor diet led him to have osteoporosis—explaining why his bones broke so easily.

In a bold move, the IPR's Citizen Review Committee (CRC) held a public forum to gather community concerns about police accountability, specifically asking for input about the James Chasse case. Their plan is to share relevant information with the experts from OIR, a firm of police experts from Los Angeles hired by the Auditor to review the investigation and related policy and training issues. While the IPR Director and Auditor repeatedly told the CRC that OIR is only focusing on the investigation, it is clear from the contract they signed that even though there will be no change in the outcome of the discipline imposed, any issues around Chasse's death at the hands of Humphreys, Sgt. Kyle Nice and Deputy Bret Burton could be part of the final report. Despite what they described as “pushback” from the IPR and City Attorney, the CRC held a successful forum on March 14 (see p. 4).

Humphreys' latest high-profile incident, involving the beanbag gun, led to a criminal hearing for the 12-year-old in early March. Humphreys was called to the courtroom, but never put on the stand, since Officer Aaron Dauchy affected the arrest. The girl was convicted, and, described by her mother as aggressive when anyone touches her, set her own room on fire the night of the trial (Mercury Blog, March 3-4).

An earlier case, in which Humphreys roughed up Lisa Ann Coppock in April, 2008 for failure to pay the fare on the MAX (PPR #47), was finally set to go to criminal court on March 16, but the City dropped the charges. Speculation is that they did not want Humphreys in the spotlight for more violence as the Chasse trial approaches, but the dropped charges may also have been a response to Coppock's family withdrawing their lawsuit. Coppock's mother describes her as having “an acute emotional sensitivity”... are we seeing a pattern yet?

In nearby Clackamas County, the case of Fouad Kaady, who was naked and badly burned when a Clackamas Deputy and Sandy Police officer shot and killed him (PPR #37), came to a quiet close. In mid-March, the County followed Sandy's lead and settled with the family for one million dollars (PPR #49). Attorney Kent Spence put out a statement that “The family has mixed feelings about settling this case because they feel it would have been important for the truth of this killing to come out in jury Civil Rights trial.” We couldn't agree more. ■



TASER DEATH?
BREAKING NEWS: On April 10, Cornelius and Forest Grove police tasered and pepper sprayed 24-year-old Daniel Barga, who was “half naked and bleeding.” Barga died after the incident (KGW-TV, 4/10).

TWO PORTLAND COPS IN ROAD RAGE INCIDENTS

Within days, news came out about “road rage” incidents involving two high-profile Portland Police Sergeants. One was Kyle Nice, who was involved in the death of James Chasse Jr. in 2006 (p. 1). Nice pulled his gun on a man he says cut in front of his pickup truck while Nice was driving his 6-week-old child around. The other, Scott Westerman, head of the Portland Police Association (PPA), unbelievably had two incidents with the same driver two days apart.

Neil Ruffin, the man who says Sgt. Nice pointed a gun at him, filed a lawsuit seeking \$145,000, blaming the City for not properly disciplining Nice. Officer Thomas Brennan, whose rants against civilians have peppered the PPA newsletter (PPR #45-46), previously filed a complaint against Nice for flying off the handle at a homeless man. Instead of Nice being disciplined, Brennan was shuffled off to the evidence division (Oregonian, April 9).

Virginia Thompson was stopped by Sgt. Westerman: (1) near I-205 on Portland's east side on January 28, where he screamed at her to dim her lights, and (2) on the southwest Beaverton-Hillsdale Highway January 30 after Westerman allegedly slammed on the brakes in front of the car. Westerman swears it was a coincidence that he approached the same car twice, explaining that he was dealing with “personal circumstances” the first day and was trying to get to his son's soccer game on the second (Oregonian, April 10).

The Bureau's manual of policies and procedures states in directive 311.30, Off Duty Responsibility of Officers: “Members shall not make arrests, issue citations, or use their official position to gain an advantage in a personal conflict.”

- Interesting notes:
- The day between Westerman's two incidents was the day Aaron Campbell was shot.
 - Westerman has shot and killed two people in psychiatric crisis, Patricia Sweaney in 1996 (PPR #14) and George Waldum in 2000 (PPR #22).
 - Westerman did not remember saying he was an officer, yet Thompson was able to file a complaint.
 - After the first incident, police had trouble identifying Westerman via his license plate.
 - On April 19, Westerman announced he would step down as PPA President effective June 19.

TWO PORTLANDERS ROUGHED UP, SPEAK OUT

PCC student and athlete Deleese Carter and 32-year-old Shei'meka Newmann each brought forward complaints of unnecessary force by Portland Police. Carter says Officer Scott Broughton (#40218) and four others threw her to the ground, put a knee on her head, cuffed and frisked her when she and her friends were walking in the middle of the street on January 28. Carter was smoking a cigar and the officers sprung to action when she moved her hand to take the cigar out of her mouth (Oregonian, February 5). Newmann says she was roughed up by Officer Aaron Dauchy (#30873), the other officer in the “beanbag” incident with Officer Chris Humphreys—PPR #49) and James Sandvik (#36242) on a MAX platform in February 2009. Her crime? Asking why they had pulled a man off the train. Newmann filed a lawsuit for \$152,000 on November 19 (Willamette Week, November 25). Both Carter and Newmann are African American. ■

“Sharing Public Sidewalks” Leads to Thinly Veiled New Sit/Lie Law

In late March, the City unveiled its plan for a new “Sidewalk Management Ordinance,” which on its face calls for pedestrians to leave room for people with disabilities on all sidewalks downtown and in the Lloyd District, but underneath is just another version of the discredited “Sit/Lie” ordinance (PPR #48).

As reported in PPR #49, Commissioner Amanda Fritz invited Portland Copwatch (PCW) to serve on the city’s Sidewalk Management Plan oversight committee, but we declined, indicating we would instead attend the meetings as observers. At the first meeting on January 4, we learned there would be at least 50 members of what became an advisory committee and that this would be considered “a fluid committee,” focusing on concerns about the sharing of sidewalks. It was stated that this forum would “be for discourse, not debate.” The committee members include representatives from agencies which advocate for poor and homeless people, various businesses, the Portland Police Bureau (PPB), the Multnomah County District Attorney’s Office, the Portland Housing Bureau, and the offices of city commissioners.

Despite this committee being formed in response to the October, 2009 Sidewalk Management Plan Resolution, there has been little mention of the Resolution at the meetings. The members were broken up into small groups. Discussions included suggestions as to who else should be invited to be on the committee and “societal morality.” Much of the focus was on which specific problems and behaviors need to be addressed and it was pointed out that most of the problems were caused by only a few people. Others noted that sitting on a sidewalk is a right, especially when an individual has no other place to go. In discussing the issue of “aggressive panhandlers” several members mentioned that Greenpeace and other groups who stop pedestrians are more intrusive. Andrea Meyer of the ACLU pointed out that panhandling is a lawful activity, and therefore “aggression” and “panhandling” should not be linked. Representatives of the business and tourist community were concerned regarding the effect on customers and visitors of having homeless people on the sidewalks.

Commissioner Fritz ended the first meeting indicating she would be meeting with Chief Sizer regarding mental health issues, that no new sit/lie ordinance was being proposed, though Mayor Adams was dealing with the issues of newspaper boxes and outdoor cafés.

The agendas of the February and March meetings mainly involved reports from staff, the PPB and the City Attorney’s office. In February, Central Precinct Commander Dave Famous reported on a police “mission” under the Burnside Bridge. He stated that 50 to 100 people were sleeping under the bridge and PPB had received 313 complaints in 60 days from area businesses and residents, as well as “people on MAX,” regarding fighting, urination, drinking, drugs, garbage, weapons, rodents and dangerous conditions. The area was posted for no camping on January 21, and on the 22nd “Central responded.” Famous and Officer Mark Friedman reported there was one arrest for marijuana use, ten bags of personal belongings were taken to storage, and 78 bags of garbage containing such items as needles and food containers were collected. One witness indicated that there were three pregnant women present at the time who were left out in the rain with nowhere to go. Officer Friedman claimed they had taken one of these women to a “police bed,” at the West Women’s Shelter. PCW raised concerns about Famous describing the sweep as a

“mission,” and about the belongings of those swept being destroyed.

At the March meeting, two Office of Neighborhood Involvement staffers gave an update on the Alcohol Impact Area issue (see sidebar).

The Sharing Public Sidewalks Advisory Committee discussed the draft “Sidewalk Management Ordinance” at their April 5 meeting.



Mayor Adams’ aide Warren Jiminez explains the new sidewalk ordinance in an on-line instructional video.

People expressed some concerns in a limited time frame, but were told this was not their only chance. A public hearing before the City Council will be held on April 29 at 3 PM (after our deadline), which will allow for more input from the Committee and from the public before the ordinance is voted on.

The ordinance requires the City Engineer to post sidewalk use rules in high pedestrian traffic areas with a telephone number “that citizens may use to report violations.” The reports will

most likely focus on those who are homeless instead of a concern about newspaper boxes or restaurant patrons impeding pedestrian traffic. The ordinance also directs the PPB to conduct “missions” using plain-clothes and uniformed officers to “identify criminal acts on sidewalks” including littering. Besides the offensive use of the word “mission,” this activity smacks of a police state and is a concern PCW has pointed out previously to city officials (PPR #49).

The “Sharing Public Sidewalks Advisory Committee” meets first Mondays at 3:30 PM in the Portland Building. For more info, contact Sisters of the Road at 503-222-5694.

COPS TO HELP CITY CRACK DOWN ON ALCOHOL SALES DOWNTOWN—BUT NOT FOR HIGHBROWS

While champagne corks may be popping and diners selecting an expensive wine at the downtown Arlington Club, homeless people in the same area are being restricted from their choices of alcohol by the Portland Core Alcohol Impact Zone Agreement (PCAIZA). This is just another example of how rules differ between the haves and the have nots, the rich and the poor, the housed and the homeless.

Holders of Oregon Liquor Control Commission (OLCC) off premise sales licenses are agreeing to “voluntarily” participate in the PCAIZA. The agreement is supposedly addressing “the chronic problem of public intoxication downtown.”

The recitals of the Agreement state that the Impact Zone is home to over 53% of



citywide reported drinking in public and 25% of detox incidents according to Police Bureau reports, and that 69 stores in the area sell alcohol.

The Agreement focuses on high alcohol content beverages in large containers, saying they are “known to be favored by those who drink in public illegally.” The licensees agree to not sell single containers of malt liquor and other specific products. The few exceptions

include beverages brewed in the state of Oregon and gift shops in hotel lobbies.

At the March meeting of the Sidewalk Advisory Committee (see above), Officer Mark Friedman stated there are many people drinking in public, including “kids coming down,” and that there is “no one typical person.” A Committee member pointed out people’s right to drink and that the homeless people have no other place where they can drink. In Oregon, it is not a crime to be intoxicated in public, but if the intoxicated person cannot care for him/herself and becomes a problem for others, that person will be taken to Detox.

ONI staff mentioned that they are working with PSU to do a study regarding the effectiveness of this project.

Anti-Camping Ordinance Leads to Proposed Convoluted Rules

While the federal lawsuit filed by the Oregon Law Center on behalf of persons cited for camping in Portland is still pending (PPR #48), negotiations have been ongoing regarding this issue. City Council nearly passed a set of guidelines as an out-of-court agreement in early January, but pulled the item from the agenda at the last minute. At the February 1 meeting of the Sharing Public Sidewalks Advisory Committee, Assistant City Attorney Dave Woboril said Commissioner Nick Fish is leading the City on camping guidelines. At the March meeting of the Committee, Daniel Ledezma from Fish's office handed out a draft of the Homeless Camping Guidelines. She stressed that these may change and evolve throughout the process.

The guidelines state that the City will not enforce its camping law against persons who camp on public property or public rights of way that are open to the public if they comply with eight rules regarding camp size (less than 4 people), proximity to other camps, time restrictions (after 9 PM, quiet after 10 PM, cleaned up by 7 AM), cleanliness, and location (not in roadways).

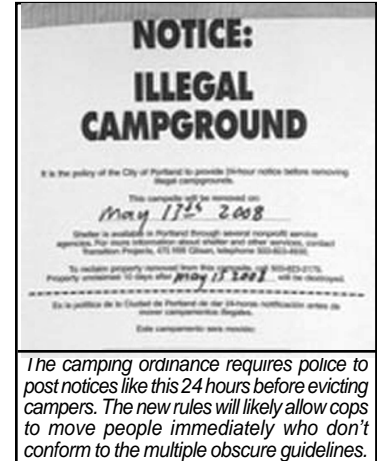
The guidelines further specify that the City will not enforce its prohibition against structures on public property as long as occupants comply with the above rules and there are no more than two sleeping structures at a site. The City will not enforce the camping law against those sleeping in vehicles who comply with the rules, and consist of no more than two adults.

The City proposes to conduct a pilot project regarding the issue of the storage of the belongings of homeless people living on the street. This has long been a problem in that Portland Police are mostly inclined to gather up all the belongings of a homeless person, and throw them in the trash regardless that this might constitute all of their worldly goods.

In February, a number of business groups and neighborhood associations sent a letter to Commissioner Fish indicating that they support the 10-Year Plan to End Homelessness. However, they added, "while we believe that the city can and should do more to address issues relating to homelessness, we do not believe the city is required to solve the issue of homelessness before it can enforce reasonable restrictions on time, place and manner of the use of public spaces for the purpose of camping. ... We do not support a negotiated settlement that unnecessarily diminishes the city's authority to manage its public spaces." Although they were "intrigued" by the possibility of churches allowing camping on their properties, they go on to state their belief that there should be no camping on sidewalks, parks, or public lands.

Espousing a more humane attitude, Sisters of the Road has set up meetings with various advocates and homeless people to discuss the issue. In a written statement, they call for an immediate end to the sweeps by Portland Police on campers until the guidelines have been established, more 24 hour restrooms, and the establishment of strong protocols for the confiscation of property from homeless people.

Fish has stated that the new rules may be incorporated into police directives instead of law. Not a great idea, since police are often not held accountable to their own rules. Commissioners Fish and Saltzman will appoint a work group to assess the success of the guidelines. ■



LEGAL BRIEFS: Persons Arrested Can Assert Right of Self-Defense in Resisting Arrest

In *State v. Oliphant*, the Oregon Supreme Court ruled that the right of self-defense, set out in ORS 161.209, is available to persons being placed under arrest. If the person being arrested reasonably believes the arresting officer is using unlawful physical force, then they have a right to use force in self defense.

COPS WEIGH IN ON LEGAL BRIEFS

The court rulings referenced here and on p. 5 caused concern among Portland's rank and file. In the December *Rap Sheet*, Officer Cody Berne of NE wrote about the "Dangerous decision" by the Oregon Supreme Court. Berne states that Kenneth Wood, who was thrown to the ground, pepper sprayed and beaten by Toledo Officer Gulbranson, got up and "wrapped his arm around" the cop's waist, forcing him against rocks and causing injury to his hip and thumb. Berne probably meant to disparage Wood's behavior—behavior the Court ruled was legal given the circumstances. Berne says "in all but extreme cases, willingness to fight the police is inherently unreasonable." That makes sense given the likely consequences, but not under the law. Berne says alcohol, drugs, anger and mental illness lead to violence, and the Court's decision empowers unreasonable people to justify injuring cops. Berne says that Wood "Provoked police to violence." He thinks the Court underestimates the ability of suspects to harm officers. Interactions with police are "Not meant to be fair—officers must win every single time," he says. Cops accept that their jobs involve risk, but it is different from "firefighters, loggers or other blue collar professions" because criminals are controllable unlike burning timbers. Berne worries that a suspect held at gunpoint who thinks the officer is unreasonable will be allowed to shoot in self defense, which is a good point—officers should not point their guns at people if it is not necessary.

In the January issue, editor Pete Simpson objected to the narrowing of the use of Tasers by the Ninth Circuit, touting Tasers' effectiveness. "Injuries are very low and compliance is high. Does it hurt? Yes, but when it's over, it's over." He contrasts this with pepper spray: "Pepper is the gift that keeps giving and can adversely affect the police officer trying to make an arrest." Simpson raises an interesting dilemma, suggesting that Taser use can be within the Ninth Circuit ruling but a citizen believing it to be excessive can resist under the Oregon Supreme Court ruling. Unlikely, he says, but it "could happen in the Republic of Portland."

A case which started out as a simple case of jaywalking escalated unnecessarily into the arrest of three people*. Officer Eric Gulbranson of Toledo, OR confronted Francisca Rilatos, a woman he suspected of jaywalking. While Rilatos and Gulbranson began a verbal battle, her boyfriend Kenneth Wood entered the fray and approached within three to four feet of the officer. Gulbranson then sought to arrest Wood for interfering with a police officer. Gulbranson ordered Wood to the ground, then put his knee on the Wood's back and ordered him to put his hands behind his back. After Wood failed to comply with the officer's command, Gulbranson fired pepper spray into Wood's face from somewhere between 6 to 12 inches away.

Wood started thrashing about, and Gulbranson delivered eight "focused blows" to Wood's back and ribs. Wood was charged with assaulting an officer, interfering with an officer, and resisting arrest.

The trial court refused to instruct the jury on the right of self-defense and instead instructed them on an officer's right to use force under ORS 161.235 and .239. The Oregon Supreme Court reversed the trial court (and the Court of Appeals), ruling that the right of self-defense applies even in an arrest situation. Therefore, the jury should have been allowed to consider if Wood reasonably believed that the officer was using unlawful force. Under the circumstances of the case, it was not difficult for the Court to reason that the jury could have found that the officer had used excessive, unlawful force from which the defendant had a right to defend himself.

*Jessica Oliphant, Rilatos' mother, was shoved by backup Officer Miller and arrested in the same incident.



RAPPING BACK

Portland Copwatch analyzes the police 'union' newsletter
—continued—

PPA PROUD OF PROTEST (continued from back page)

forced to resign in the past few years and PPA did not “blindly defend” them. The PPA evaluated those cases, agreed the discipline was appropriate, and did not intervene. These are generally the pervo-cops caught in sexual misconduct incidents (PPR #49), never those who beat, tase, or shoot civilians in questionable circumstances.

Westerman returned to his theme of accountability in January, stating that officers are held to a higher standard than others, with their work used as a “tool for political posturing and power plays by politicians.” He asks that the City hold accountable those who took three years to investigate Chasse, especially since the 9/11 investigation took less time. But he repeats that “Good police officers want those who tainted the badge with poor behavior to be held accountable.”

In March, Westerman acknowledged that November’s “Chicago-style policing” demonstration, showing muscle over a racially charged incident, “didn’t go over well in certain segments of our community.” While taking responsibility for that, he continued to defend the march as the only way to get the PPA’s voice heard.

Officer Pete Taylor chimed in, explaining why he wore one of the T-shirts (December): Chris Humphreys has been “confronting violence so others don’t have to experience it.” Well, others except for James Chasse, Chaz Miller (whose legs Humphreys beat with a baton when he mistook him for a suspect), Lisa Coppock (whom he roughed up on a MAX platform) and that 12-year-old girl—none of whom posed a threat to anyone at the time police approached them.

Interestingly, Simpson acknowledges that the *Oregonian* wants police to do a better job, and he is trying his best. But, he says, “Don’t tell me to be quiet. I am Chris Humphreys.” Here’s a suggestion, “Humphreys”: think about how the public perceives you before you open your mouth.

Sgt. Franz Schoening chimed in, describing the beanbag as a “routine use of force” (December). That’s odd, since the 2009 Use of Force Report states that police only used “Non-Lethal Impact Munitions” 14 times in a one year period.

Schoening complains the new Use of Force policy is confusing to officers, and while complying with a Supreme Court ruling (*Graham v. Connor*), they missed the important language that “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” Schoening suggests this means Humphreys should be given the benefit of the doubt, which would be fine if Humphreys were a reasonable officer and not a thumper cop.

Retired officer Greg Seamster complained about an op-ed by Susan Banitt in the *Oregonian* (November 28). She wrote that as a mental health worker she had been “spat on, bitten, sworn at, hit in the face, scratched” and was able to subdue a 14 year old with scissors, although she ended up covered in blood. She and her colleagues have no protective gear, and work for low pay. Seamster says Banitt then “twisted the knife into the heart of police work”: calling use of force against children “bullying, ignorant and cowardice.”

Seamster explains that mental health facilities have light, walls and doors, while the MAX platform had

“hostile gang bangers, other anti-police types, trains, traffic and darkness.” This is the first time we’ve heard that all of those things were present—the video shows three cops circling the one girl with one or two people looking on passively.

He also claims the patients are medicated and have no weapons, blaming a staff mistake for the one who had scissors—which was exactly the point of the story. They knew the patient was armed and didn’t shoot, tase or beat her. Nonetheless, Seamster says Banitt should be ashamed of herself.

Retired Sgt. Kim Keist, who was herself shot by a suspect, claims Humphreys protected fellow officer Aaron Dauchy and the 12 year old by using the “beanbag” (December). She notes that when she joined the force, all they had were long batons and guns, so often officers outnumbered the suspect and engaged in a “pig pile,” resulting in some injuries to officers and civilians. Keist claims the less lethal shotgun reduced the need for “close quarter combat” and was used “in an area of the body that would result in the least amount of injury.” She echoes that she was “disheartened” by Sizer and Saltzman, saying Humphreys has integrity and was only responding to the “girl who was out of control and the size of an adult.”

Words of Advice #1: How to Act at Traffic Stops

Brian Doyle wrote a poem, presumably to a generic member of the public, about how to act at traffic stops, in the January *Rap Sheet*. One classic couplet: “Times when you are adamant and indignant and rude/ which are pointless positions, of no help whatsoever in these situations.”

Police Bias Unleashed: The Rap Sheet on “Cop Haters”

Recent *Rap Sheets* have included articles on “Cop Haters.” Some come with wagging fingers, others with thinly veiled racism.

Officer Rob Blanck’s article in January highlighted the work of

Dietrich Bonhoeffer, a pastor who helped plot to kill Hitler and was executed by the Nazis. Bonhoeffer said “Silence in the face of evil is itself evil.” Blanck, an openly religious cop (see PPRs #23 and 38), seems to feel the police are organized to fight evil, “despite some people who deny evil exists in our society.” Ignoring the “evil” of three large male officers shooting a 12 year old with a shotgun, he reports: “A young woman was murdered as a result of evil gang violence. No coalition of ministers marched on City Hall to ask for community accountability and transparency.” Summarizing, Blanck says “It seems the leaders, media and cop haters in this community prefer

evil over those of us who are trying to stand against it.” A piece in the same issue by syndicated prejudice-monger Michelle Malkin (see PPR #39) decries “liberals” for being silent about the “war on cops” that is heating up. She says 19% more officers were killed on duty in 2009 than before, and more ambushes on police took place than 2000. The man who shot four police officers in Lakewood, WA was called a “Black on white martyr” by some blogger, and Malkin says the man who shot a Seattle officer stood against “white policemen.” Tripping into a racist rant, Malkin cites rap songs, points to Jesse Jackson and Al Sharpton as troublemakers, refers to Oakland, where four officers were killed last year, a “hotbed of black nationalism” and to former President Obama special advisor Van Jones. She then implies that Obama is part of the problem as a friend of “terrorists” and of Professor Henry Gates, (concluded, p. 11)



Mercury Blog, February 16

WESTERMAN TAKES CHIEF TO TASK, REVEALS SNARKY COMMENTS

In the March *Rap Sheet*, Sgt. Westerman takes Chief Sizer to task for not standing up for the rank-and-file, particularly after the shooting of Aaron Campbell.

Interestingly, his criticism of her behavior echoes our concerns: Instead of talking about the facts of the case, she talked about the accomplishments of the Bureau (as she sees them) and the lower number of use of force complaints, then pleaded with the press / community to build a Bureau training facility. We’d have liked her to release the facts of the shooting with no comment on whether it was justified, while Westerman wants full support. Surprisingly open, he said Sizer blamed not only the PPA for the public discontent, but City Council, labeling Mayor Sam Adams “a mess,” Commissioner Randy Leonard a “loose cannon with a grudge” and Commissioner Dan Saltzman as the Police Commissioner “by default.”



RAPPING BACK

"COP HATERS"
-continued from p. 10-

who was arrested inside his own home by police in 2009.

A more nuanced piece by Officer Chris Davis, who was involved in the shooting of José Mejía Poot in 2001 (PPR #24), says the community loses when the PPA fights with police management (February *Rap Sheet*). However, he feels the vague standards by which use of force incidents are now decided, commanders making judgments over long periods of time while officers make quick decisions, and incidents being reviewed "by citizens who have no experience making this kind of decision" make cops not trust the system. He states, "Some of our critics are motivated not by a desire to improve police services, but by a compulsion to undermine the entire institution of policing as part of a broader social agenda." However, Davis wants his fellow officers to know not all critics "are trying to destroy the organization," most are motivated by "a genuine desire to improve our service." Listen, he says, it could be valuable information, as "thoughtful public involvement in public safety is the sign of healthy community."

In addition, he warns officers to engage in rational dialogue, because a "scathing letter to the editor, clandestine phone call to a reporter, bizarre rants in roll call...may feel good, but in the end all it does is shut down communication." He tells command staff to justify its decisions, because Generations X&Y want to know what's happening: "It's in our DNA to question authority." Again warning fellow cops, he notes the Bureau exists to "serve the community's needs, not ours."

Another point of agreement we have with Davis is his analysis of the 2008 Use of Force policy, which did away with the "levels of force" for the more vague "totality of the circumstances" standard. He notes "Understandable concerns have risen in the community about the Portland police occasionally using a level of force that is technically justified, but to them seems unnecessary." Because the old policies were based on the suspect's action, the new directive has been applied inconsistently. Davis is probably upset that the Bureau is punishing officers for using too high a level of force, while we fear the same directive will be used to excuse it.

Without the levels of force to guide them, an officer can justify shooting someone for a minor offense, and with the vague criteria, it may even hold up in court.

Not to leave you thinking all officers are sounding reasonable, retired Lt. Al Dean wrote in the January *Rap Sheet* that Portland cops will leave for other jurisdictions if they aren't treated better by management. In other cities, he says, they don't have to deal with "backstabbing politicians, a press that uses them to improve circulation, organized police haters and other Pettifoggers [sic]" (had to look that one up—people who complain about minor things.).

Words of Advice #2: To Heck with Community Safety

Sgt. Andrew Hawkes of Collin County, TX describes how he raced to aid officers confronting a rape suspect, who eventually killed himself. The upper management is investigating his speeding: "Monday morning quarterbacking has begun by the office people who wear their badges on their belts." His reason for driving recklessly: "It's called being a COP... [you should be] more worried about a fellow officer than getting in trouble for how fast you're going." Maybe he'd care a little bit if his high-speed rescue caused the death of an innocent pedestrian, cyclist or motorist (January *Rap Sheet*).

More Perspectives on Profiling

As with the Michelle Malkin article and other pieces we've noted in the *Rap Sheet* (PPRs #41+), a lot of the somewhat racist rhetoric in the police "union" paper comes from syndicated columnists, not Portland cops themselves, indicating the bias of editor Simpson.

To his credit, an article in the December *Rap Sheet* by Jim Donahue of Officer.com warns officers about becoming jaded. He thinks it is wrong to "prejudge" people and refer to non-police as "jerks" or "one of them." Donahue says bitterness can lead to making

"poisonous" decisions about people based on skin color, ethnicity, neighborhood, or occupation. Refreshingly, Donahue gives examples of his own compassion leading to good outcomes in interactions with various civilians. He recommends the book

"Emotional survival for law enforcement" by Kevin Gillmartin, which relates that every cop will "get screwed-over by his own agency" at some point.

On the other hand, pseudonymous LA cop Jack Dunphy's piece in the February issue praises a grey-haired man he saw in a train station in Europe, presumably a plainclothes cop profiling passengers. "Profiling done properly... is most often no more invasive than my encounter

with the man at the train station." Who might be upset by such scrutiny? "A drug smuggler, a wanted criminal, a terrorist," says "Dunphy." Sure, some of those singled out will be inconvenienced, detained or "at worst jailed... for no other reason than their membership in this or that minority group"—but profiling is "legitimate and effective" to ID possible criminals. The attempted use of an underpants bomb shows why efforts need to be stepped up, he says, so we should interview passengers as they do in Israel. We can avoid patdowns or metal detectors, just concentrating on those "more likely" to pose a security risk. "If the number of young male Muslims chosen for this additional screening happens to be greater than some random selection process, so what?"

The Portland Police Association does not set policy. However, some PPA leadership and officers express negative attitudes toward citizens and civilian oversight in their newspaper, so these ideas may spread throughout Portland's rank-and-file.

The *Rap Sheet* is available from the Portland Police Association, 1313 NW 19th, Portland, OR 97209. The PPA's website is <www.ppvigil.org>.



In March, 2009 Officer Chris Davis won a grocery store "Healthy Challenge Prize," of \$1000, designating another \$5000 to the Police Athletic League. The IGA website identifies Davis as a St. John's (Portland) shopper who lives in Vancouver, WA.

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