



To: Mayor Sam Adams, Police Chief Mike Reese, Auditor Lavonne Griffin Valade

cc: Independent Police Review Division (IPR), Citizen Review Committee (CRC), City Council, members of the press and the public

re: **Proposals for Portland Police Bureau and IPR/CRC, Part 2: Bureau Policies**

November 11, 2011

OVERVIEW

Yesterday, Portland Copwatch (PCW) released an 8-page analysis of many of the Mayor, Chief and Auditor's responses to over 100 recommendations about changing the police oversight system in Portland. This document analyzes many responses to the 50 or more additional recommendations by the Albina Ministerial Alliance Coalition for Justice and Police Reform (AMA Coalition) and Citizen Review Committee (CRC) regarding police policies. Some of the community demands date back to 2001 and earlier.

Again, the Mayor and Chief's document can be found on line here:
<http://www.portlandonline.com/shared/cfm/image.cfm?id=372686>

The Mayor and Chief claim to agree with 35 of 51 of these recommendations (69%), though as noted below (and as with the police oversight issues) sometimes there are misinterpretations or parts of the recommendations that are not addressed. They say they partially agree with 6, disagreed with 6, and didn't address 5 (10%).

As noted in the previous analysis, the major theme of disagreement which causes concern is the Police Bureau's insistence that they need "flexibility" to use various kinds of force, including multiple Taser cycles, unleashing police dogs simultaneously with other force options, and firing "beanbag" guns from less than ten feet.

Also of concern is that the Mayor is claiming full credit (along with Commissioner Saltzman) for asking the Federal Department of Justice (DOJ) to conduct a pattern and practice review of the Bureau. In fact, that request was part of the AMA Coalition's five-point plan released in February, 2010, after the shooting of Aaron Campbell and three months before the DOJ was called in (<http://albinaministerialcoalition.org>). While there is a lot of talk of Community Policing, Community-Police Relations, public input, and transparency, the failure to note where the City is responding to community concerns is indicative of the mixed results on display in the "Report on Recommendations Regarding the Portland Police Bureau" ("the Report").

Areas of Disagreement

The Report states that policies seeking to limit officers' use of force are too "rigid" and thus "inconsistent with the US Supreme Court's decision in *Graham v. Connor*." However, that decision is based on the reasonableness of an officer's actions considering the totality of the circumstances. Surely if an officer were to set off a nuclear weapon to end a bar fight, the question of the reasonableness of use of force would not be the focus so much as why would police use a nuclear weapon?

What the community demands seek are reasonable limitations on officer use of force so that no matter the circumstances, we can all agree that some kinds of force are not reasonable.

The City's claim that these demands are "inconsistent with case law" shows that they are unwilling to set reasonable limits on force:

—"If used at all, a less lethal ("Beanbag") shotgun should not be used for compliance, and not used from less than 10 feet." (AMA #1.6) In late 2009, a 12 year old girl was shot with a "beanbag" for failure to comply with commands, and was struck from less than 10 feet, something the manufacturer acknowledges can cause serious injury or even death if aimed at the torso or head. 19 months later, a man refusing to comply was deliberately shot with a "less lethal gun" that was accidentally loaded with live rounds.

—"If used at all, use of police dogs should be coordinated so as not to be used simultaneously with other uses of force." (AMA #1.7) Aaron Campbell's mortally wounded body was attacked by a police dog because the dog was unleashed at the same time Campbell was shot.

—“Use of Tasers shall be limited as outlined by PARC [the Police Assessment Resource Center] in its 2009 report: limited to one discharge cycle by one officer, then a reassessment, then used no more than three times total. This includes not having multiple officers use Tasers simultaneously.” (AMA #1.11) In 2004, James Jahar Perez’ mortally wounded body was jolted by a Taser constantly for over three minutes until the weapon malfunctioned from overheating. Prior to any gunfire, Keaton Otis was struck by three officers’ Tasers at the same time.*

Similarly, the Mayor and Chief refuse to recommend changing the state statute, which says that an officer can use deadly force if he or she “reasonably believes” that his life or another’s is in danger. The AMA Coalition’s recommendation (#1.4) is to be sure that such a belief is objectively reasonable; the Report claims the City Attorney reads the Graham decision to say force must be objectively reasonable. This is a different issue from whether the officer “reasonably believes” serious injury or death is imminent, which is why the recommendation was made.

They also disagree with the idea of appointing “an independent prosecutor for all cases of possible police criminal conduct to avoid the inherent conflict of interest within the Multnomah County District Attorney’s office” (AMA #4.3). The claim here is that the recent practice of releasing grand jury transcripts make this unnecessary. We would argue that the transcripts convince us now more than ever that the District Attorney only brings in the witnesses and only asks the questions that will help support exonerating the police, with whom he must work every day to prosecute law-breakers.

The final disagreement is over the idea of requiring an independent autopsy for cases of police shooting deaths and deaths in custody (AMA #4.7), with the Report claiming there is no provision in state law for such a practice. Just because there is no provision for it does not prevent the City from passing an ordinance allowing an independent autopsy, which could either consist of a second autopsy done after the Medical Examiner (ME)’s or one done simultaneously. PCW has documented numerous incidents in which the ME’s report blatantly relieved the police of responsibility in civilian deaths.

*To their credit, the Bureau notes in their response to the Taser recommendation that they are working on requirements for a supervisor to review all force incidents, which they have said will include coming on scene for anything more serious than a handcuffing situation.

Discouraging Replies

In 6 instances, the Mayor and Chief’s responses of agreement or partial agreement are so far off the mark that we wonder if they deliberately did not want to follow the community’s lead.

The first seems to contradict the above examples of disagreement. AMA Coalition demand #1.1 is for officers to use alternative, lower level uses of force before resorting to deadly force, unless there is gunfire present. The Mayor and Chief say they “agree in principle, but differ in approach... allowing the use of deadly force only when officers are confronted by gunfire limits the ability of police officers to protect the public. This is because of the myriad of ways individuals can present a community member or an officer with the threat of death or serious physical injury.” They again point to the flexibility issue. So in other words, it appears that they actually disagreed with the recommendation.

Another dismisses a community concern about the use of force against mortally wounded suspects (AMA #1.8). It states that it is rare that weapons are used on “downed subjects,” yet Jahar Perez, Aaron Campbell, Keaton Otis, and, notoriously, Willie Grigsby (who, as noted by the Oregonian, was “shot by bullets 13 times, hit 22 times with beanbags and Tasered four or five times”) were among the many who suffered this indignity. (And, we note, were all African American.)

While PCW does applaud the release of Grand Jury testimony, we find it alarming that the Report equates people reading those transcripts with the request for holding a public inquest in police shootings cases (AMA #4.2). As the Jahar Perez inquest proved, the community can learn a lot about police training and practices, and more of the nuances by hearing witnesses directly than reading hundreds of pages of transcripts.

Perhaps the most blatant mischaracterization of “agreement” is a response to the AMA Coalition demand for a culturally diverse panel of psychologists to administer tests to recruits (#9.1). The same white male psychologist has been single-handedly testing officers for over 10 years, and even though the job is open for bidding this year, to write that a culturally diverse panel is “current practice” is bizarre.

Additionally, when the Citizen Review Committee states that the Bureau should make it a policy for officers to have back-up or a supervisor present, if they are available, before “forcibly extract[ing] a subject from a vehicle” (CRC/PARC #2), the Mayor and Chief state that such a practice is “more appropriately done through training.” Obviously, the training would be reinforced if it were written in the policies.

In another recommendation (CRC/PARC #5), CRC recommends that the Police Review Board (PRB) conduct an annual review of all cases in which use of force resulted in transporting the subject to the hospital. The Report claims partial agreement, noting that they only review cases in which a person is actually admitted to the hospital, rather than examined and released. While it may be reasonable to limit the PRB's workload by avoiding review of cases with no injury at all, if a person receives outpatient treatment— but is not admitted to the hospital— there should be at least a cursory review of the incident.

Unanswered Questions

A few of the Mayor and Chief's answers failed to address the specific issue raised by the recommendation they responded to.

For example, the request for a city-wide ordinance against police brutality (AMA #1.3) was met with the response that "excessive force already violates Bureau Policy and state law (Assault and Official Misconduct)." However, the request was for a City ordinance, which can be narrower in scope than the state law, specifically about police brutality.

An ongoing and important demand to drug-test officers after shooting incidents (AMA #7.1) is met with a matter-of-fact explanation of current Bureau policies to randomly test officers, or to test based on "reasonable suspicion." Do the Mayor and Chief believe officers involved in shootings should be tested? We don't know from this document.

The request to support a state law opening up grand jury testimony for public scrutiny (AMA #4.4) states that they will "look into it" if such legislation is proposed. Since the current practice by the Multnomah County DA to release such transcripts is completely voluntary, and the City has shown its desire to make them public, it is confusing why the City would not pledge to support such legislation.

As to the community demand that the FBI be invited in to investigate any case involving possible civil rights violations (AMA #4.5), the Report here cites the Mayor calling in the DOJ, and suggests that "anyone can request an FBI review of a deadly force incident." There is no promise to do so in the cases recommended, nor is there a refusal to do so, only the statement that "The Chief of Police decides whether to request such a review on a case-by-case basis."

Oddly, when the AMA Coalition suggested that the city fund the highly touted (for over 20 years now) concept of Community Policing (AMA #10.2), the Mayor and Chief responded that Community Policing is an approach, not a problem, and that not a lot of money is available. Does this mean that they do not want to fund Community Policing? It is not clear. (PCW notes here, however, that our definition means that police respond to community concerns, not that they behave as two officers did in 1991 confronting veterans shining slides on a warship, stating "This is community policing— you're the community, and we're the police.")

Missing the Point?

While the Mayor and Chief assert that they agree or partially agree with many recommendations, in at least 10 instances, they seem to have missed the point of the demands.

One, which was highlighted in the Mayor's letter to the community announcing the Report, asks that "The Bureau must involve community members in developing police training and policy" (AMA #1.5). The point of this recommendation was to have an ongoing opportunity for the community to address current and new training and policy issues, perhaps with a specific training advisory board. Instead, the response just underscores the rolling, haphazard current system in which "Community groups, the community academy, advisory group feedback, the Citizen Review Committee, and City Council currently give input directly to the Chief."

When a demand was made that "Public statements by involved officers or representatives of the Bureau regarding shootings and deaths should be cleared through the Chief's office" (AMA #2.5), the response was that "It depends on the phase of the investigation" and that officers could talk once the investigation was over. It should have been obvious that this demand related to Officer Chris Burley, who was shot during the Keaton Otis incident, doing a news conference days after the grand jury found no criminal wrongdoing, but long before the administrative investigation was completed.

While the Bureau has apparently included Racial Profiling in its in-service training, a specific request to include unlearning racism training for all officers (AMA #5.1) was not addressed. Similarly, while the Mayor and Chief note that officers are prohibited from profiling and discrimination, they do not respond to the AMA's demand (#5.2) to discipline officers who are found to be profiling.

After Jack Collins, a homeless man who had a one-inch Xacto knife, was shot and killed by a Portland Police Officer, a demand was added to require officers participate in a “homeless immersion” (#5.3) to help end discrimination based on income/perceived income level. The Report talks about concepts taught in training, but not about having officers live on the street for 24 hours as homeless people (the “immersion”).

When the AMA asked that an outside contractor be hired to study the police culture that leads to the “blue wall of silence,” (#10.4) the Mayor and Chief claimed they are doing so as “current practice,” talking about citizen participation in the oversight process as an example. The concept of an external review? Overlooked.

The Report also does not speak about reinforcing the concept of valuing human life described in the Use of Force policy (as requested in AMA #1.14), only that officers are “expected to be familiar with” the language.

In our previous analysis, we explained that the City missed the provision in the Portland Police Association contract that exempts shooting and death incidents from the need to wait 48 hours before interviewing officers (AMA #4.1), and has not corrected the directive on applying medical attention to close an existing loophole (CRC/PARC #3 & AMA #3.1).

And, Oh, Yeah, Some Good Stuff

Not everything in the report is in such grey areas. In many instances, progress is being made. Rather than list all of the remaining recommendations and responses, PCW would like to highlight a few, albeit with some caveats:

—Training around de-escalation and the requirement of an articulable plan (AMA #2.1); “The Bureau recently conducted In-service training regarding de-escalation. For situations requiring a multiple-officer response, Bureau members are trained to make a plan and have a leader responsible for coordinating the response.”

—Using time as a factor to de-escalate (AMA #1.13) is listed as being a current practice; several media reports indicate that officers are also learning to “walk away” rather than escalate situations unnecessarily.

—The IPR Director or her designee have been called to the scene of shootings and deaths in custody since February of 2011 (AMA #4.6 & CRC/PARC #10).

—The PPB has been putting out more information to the public, though it remains variable how quickly it is released, and whether the incidents are discussed with “no distraction from the core issue of police excessive use of force by referencing mental health, homelessness or other unrelated issues,” and we haven’t seen equal time given to representatives of the families (AMA #8.1 & 8.2).

—Communication training was given to PPB rifle operators, which should diminish or end the lack of dialogue between negotiators and “snipers” as happened in the Aaron Campbell, Raymond Gwerder, and Paul Stewart cases (AMA # 2.3).

—Although the Chief and Mayor caution that “severe discipline” may not be administered, they agree that officers should not violate Bureau policy or take action to precipitate deadly force (AMA #1.2). While the fate of the appropriately-fired Officer Frashour hangs in the balance, PCW still believes that Officer Lewton, who set the shooting of Aaron Campbell in motion by firing a “beanbag” gun to gain compliance, should also have been fired.

We would add that the CRC’s request for more scenario-based training (CRC/PARC #9) is not necessarily a signal that the community is asking for a new training facility to be built; since the Report clearly states such scenario-based training is currently underway (which we support), we hope it can continue whether or not such a huge project is initiated.

Conclusion

While the Police and IPR are making some improvements, we still have a long way to go to a Bureau free from corruption, brutality, and racism and a truly independent, civilian oversight system. We appreciate the time and energy taken by the city officials who created the Report (and the responses about the IPR/CRC changes), but hope that they, realizing how much work that is, will give community members more time to respond to their lengthy and complex publications.

We look forward to the opportunity to testify about the IPR changes and the Bureau policies on Wednesday, November 16, but hope that members of the public will be afforded more than three minutes to address 90 pages of information. We also hope that the promised second hearing on these matters will include more changes to the Mayor and Chief’s Report and to the draft IPR Ordinance.

Thank you again for your time,

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