

**OIR Group's First Report on Portland Police Shootings:
Good insight, moderated criticism bolsters community views;
Invisible recommendations and inconsistent reporting lead to confusion
an analysis by Dan Handelman, Portland Copwatch, June 5, 2012**

On May 30, the Auditor's office released the first of several planned reports on shootings and deaths in custody put together by the OIR Group from Los Angeles.*

<http://www.portlandonline.com/auditor/index.cfm?c=52199&a=399048>

The 82-page report provides new information in its narratives of seven Portland Police Bureau (PPB) shooting incidents, rightly criticizes the PPB for being slow to learn from its mistakes, and repeats concerns which have been raised in the community (and in particular by Portland Copwatch) for years. At the same time, because they make only 13 formal recommendations, some of OIR's recommendations are buried in the text. And, while the report marks a huge improvement over past reports by the Police Assessment Resource Center (PARC) by naming every person who was shot by police for clarity, and mentions each shooting officer by name at least once, a variety of other officers are not named, once again leading to confusion for readers.

It is telling that the Police Bureau's response is, as with all reports from the Auditor's office, embedded with the report. It's amusing how Chief Reese is quick to emphasize the praises given by OIR about the Bureau's reviews of these incidents and openness to review, then mentions as an afterthought their comment that there is room for improvement. One side effect, and a perpetual problem, is that the Bureau has a chance to start doing what it believes is the proper remedy to concerns raised while the report was in draft form, dulling the impact of final recommendations and cutting out any community input on how to fix the identified problems.**

Perhaps our largest concern about the report is that while it rightfully urges the Bureau to ask officers whether they considered alternatives to their use of deadly force, it doesn't adequately address the community's continued belief that police investigating other police is at the root of both the Bureau's inadequacies and the lack of community trust. In fact, it could be said that the reason the Bureau often won't challenge officers on their reasoning for pulling the trigger is the "thin blue line" which leans in the officers' favor and not the civilians'. It is this conflict of interest that makes us wonder why OIR has now joined PARC in asking the Bureau to cease using officers from other agencies (the "East County Major Crimes Team"—recommendation #11, p. 70) to investigate Portland shootings without then suggesting that a truly independent, non-police civilian agency conduct the investigation. Given officers' propensity to defend and protect one another, the longer the community waits for such a review body, the longer the mistrust will continue.

While OIR frequently cites the documents that show the Bureau has (or has not) incorporated certain ideas into policy, there are often mentions that certain policies or training exist, based only on statements made by the police. (This was also a shortcoming in the Auditor's May 15 report on the Bureau's slow response to learn from mistakes.) Similarly, they repeatedly praise the Bureau for thoroughly looking

for and interviewing witnesses—but without independently checking, there's no way to know if the PPB deliberately failed to interview people, or whether some witnesses never came forward because they did not want to talk to police.

The report also intends to have a clear focus on the Bureau interacting with people in mental health crisis. While it does make a few appropriate recommendations on this subject, we were hoping there would be a more detailed analysis of current training and whether and how that training could have been incorporated into the scenarios at hand.

It also must be noted that even in discussing the possible racial profiling of James Jahar Perez and the controversial nature of Aaron Campbell's death, the report never identifies either man as being African American. And, as we noted with every report after PARC's first one in 2003, there is no table showing the cumulative figures for this report nor the entire time frame now studied by outside consultants (1997-March 2010) which would indicate that people of color, and in particular African Americans, are shot more than their white counterparts in mostly white Portland.

*Note that while some attempt to uncouple the acronym in this organization's name, the Office of Independent Review is a formal group that looks into deadly force incidents in Los Angeles County; some of the people involved in the OIR created the separate OIR group to consult with other agencies.

**For example, when OIR pointed out that a PARC recommendation for Internal Affairs to re-interview witnesses on administrative issues not covered by the Homicide investigation was not written in policy, IA changed the policy (p. 33). They also changed the Standard Operating Procedure for interviewing witnesses face-to face "absent extenuating circumstances," short-circuiting OIR's recommendation #7 (p. 60).

INSIGHTS INTO SHOOTINGS

In reviewing, for the first time ever—albeit eight years later, the Jahar Perez shooting (3/28/04), and the shootings of Raymond Gwerder (11/4/05), Jerry Goins (7/19/06), Lesley Paul Stewart (8/20/07)***, Jason Spoor (5/13/08), Jack Dale Collins (3/22/10), and, significantly****, Campbell (1/29/10), OIR has shed some light on incidents whose details remained murky. While there are still unanswered questions, the new report provides the kind of information the Bureau should release as soon as it is gathered contemporaneously to the incidents.

Each shooting is examined for tactics, communication, training analysis, investigative timeliness and thoroughness, and post-shooting response. While they mention when discipline was instituted against officers and/or when many of the questionable tactics were found in policy, their approach is not to criticize the officers or the discipline. That, we suppose, is up to us in the community to do.

One fascinating fact emerges about the Perez case: That the “slumper” training revealed in a video shown at the public inquest on that case, showing Officer Jason Sery approach a car where an actor “woke up” in the front seat of a car and immediately pointed a weapon at him, is based on what-if concerns, but has “yet to [be] encounter[ed] in the field” (p. 13).

While the report excellently challenges officers’ decision making in many of the shootings, it glosses over the fact that Officers Scott McCollister and Timothy Bacon (stop laughing!!!) shot Jason Spoor after they emerged from behind the house he’d been in. Other officers were present and contemplating what to do about Spoor threatening suicide with a gun to his own head. From the scenario described in the report, it seems as though McCollister and Bacon could have injured other cops and didn’t bother trying to communicate to assess the situation.

In the Stewart case, the Training Division labelled the Lieutenant’s decision to call Stewart personally as a “deviation from policy” (p. 38). There’s no indication, though, whether the Lieutenant was disciplined. Training also was too deferential to Officer Stephanie Rabey’s rationale for shooting Stewart as he reached in his closet for clothes, though she thought he was going for a gun—a “pre-emptive shot.” OIR says the analysis “appears to search for a strategic justification for the shooting” (p. 39).

In the Campbell case, they note that Officer Ron Frashour should have been using an earpiece since he was operating an AR-15 assault rifle; they conclude, however (in a footnote on p. 51) that since officers weren’t communicating important information over the radio, it wouldn’t have made a difference. We’re not sure if the earpieces also work as transmitters, but if so, perhaps Frashour could have broadcast “what the heck is going on?” when Campbell unexpectedly emerged from the apartment at the behest of the negotiating team.

Perhaps this was already known, but the Bureau created new mandatory training for “beanbag” operators after the 12-year-old girl was hit by Officer Christopher Humphreys’ “less lethal” shotgun in late 2009. It’s not clear whether Officer Ryan Lewton had this training when the Bureau found his decision to shoot Campbell for failure to comply with his commands was out of policy, saying his training should have taught him to talk more and de-escalate the situation (p. 56). Also, AR-15 operators now need to be screened for their Use of Force and discipline history, take 60 hours of classes and annual in-service refreshers; as a result, as has been noted in the press, there is now a 25-30% failure rate for police sniper candidates (p. 58).

In a very confusing paragraph, OIR calls out the Commander for including factual errors in the analysis of the Jackie Collins shooting (p. 65). Apparently, the supervisor included the alleged threats to a mother and son as justifications for Officer Jason Walters shooting Collins, even though Walters didn’t have that information. The supervisor also said no witness saw blood on Collins, even though the investigation says the son did see blood. (Conversely to the first mistake, because this information was also not conveyed to Collins, it was not crucial, OIR notes.)

MODERATE CRITICISM BOLSTERS COMMUNITY CONCERNS

***Stewart now goes by the name Akiaz King; at the time, he was known to others by his middle name “Paul” but that name is not used by OIR; we use it here for accuracy.

****Campbell’s family had an open lawsuit pending while OIR’s review was taking place (the City settled in February). While this marks the first shooting to be reviewed while a lawsuit was pending, as in the Chasse death in custody report by OIR in 2010, the report was released after the case settled, so the effect of the Auditor’s new policy to analyze cases regardless of pending litigation on the City’s liability is unknown.

(more)

Perhaps the key criticism OIR Group was able to bring forward based on the specific cases they chose for this report (11 others will appear in future versions): The lack of communication among officers which often leads to unnecessary shootings. Portland Copwatch pointed out as early as 2007 the similarities between the shootings of Paul Stewart and Raymond Gwerder, both of whom had been on the phone with negotiators, then were shot in the back by AR-15 assault rifles. If that scenario sounds familiar, it is because it happened again when Aaron Campbell was killed over 4 years after Gwerder and 2-1/2 years after Stewart was shot. We brought this up to Chief Sizer and City Council. We mentioned this concern in our letter to District Attorney Michael Schrunck after Campbell was shot (2/11/10— http://www.portlandcopwatch.org/lettertoDA_campbell.html). And yet, not only does the report indicate that these communication issues have not necessarily been remedied, but the audit released May 15 by the Auditor said the same thing in so many words. That audit (<http://www.portlandonline.com/auditor/index.cfm?c=53777&a=397351>) also echoes OIR's comment that the Bureau is slow to learn from its mistakes.

OIR's solution, to give Critical Incident training to all field officers (recommendation #13, p. 77) is a step in the right direction. Chief Reese's response is that such training is given to all commanders and supervisors, and it will be included as in-service training— but it is not clear whether that means for street officers or just supervisors.

OIR also points out that officers approached Jason Spoor's lifeless body within 15 minutes despite their being unsure he was dead, but compared to 35-38 minutes for cops to get near Jerry Goins and Aaron Campbell, it could have made a difference if Spoor needed aid. In response to that incident, the previous incarnation of the Police Review Board (PRB) suggested that the Bureau get ballistic shields so they could approach "downed suspects" more quickly. However, the OIR report notes, those shields were not purchased until after Campbell's death nearly two years later. To be fair, the Review Board findings were made only about three months before Campbell was shot. These concerns have stretched back at least to the 1996 shooting of Deontae Keller, who was left to bleed for two hours, through the 2003 death of Kendra James, among others.

What's unfortunate, though, is that for all its repetition of the PARC recommendations to get medical aid to suspects more quickly, OIR does not address the fact that the Portland Police frequently abuse mortally wounded individuals by attacking them with "less lethal" weapons. This includes Jahar Perez (tased for 3 minutes after the shooting), Jerry Goins (hit 5 times by "beanbags"), Jason Spoor (2 "beanbags") and Aaron Campbell (bitten by a dog after being shot). The final PARC report touched on this issue by discussing the ridiculous post-shooting assault on Willie Grigsby in 2004—22 "beanbag" rounds plus Tasers. Perhaps when they get to the Keaton Otis case, in which Otis was similarly hit by "beanbags" when deceased, as well as Dennis Young, who was also tased after being shot, OIR will make a recommendation to halt this practice.

OIR also calls on the Bureau to "re-examine" its policies on multiple uses of Tasers (recommendation #2, p. 15), which echoes calls from the Citizen Review Committee (CRC)'s forthcoming Taser/Less Lethal report, community comments on that report, and, as OIR notes, PARC's 2009 report. However, rather than be specific, as these other sources have been, OIR is not asking the Bureau to limit the number of cycles to three maximum, and to require an officer to consider his actions after the first shock is applied.

One item that is as important as it is amusing: OIR raises the fact that an "expert" witness was brought in by the District Attorney to explain the "action/reaction principle" (which we call the "Superman theory" because it posits that suspects can draw a gun and shoot officers faster than cops can fire back, even with their weapons drawn and trained) at the Perez grand jury. This was, as OIR notes, of great concern at the time, because it is unusual for anyone other than a witness or participant to testify at such proceedings. Dr. William Lewinski, the "expert" in question, was also taken to task in the OIR Group's report on the death of James Chasse, for another theory about allowing officers more time before being interviewed after a shooting because of its traumatic nature.

In a related issue, the OIR Group suggests, and Chief Reese agrees, that the City should remove the so-called "48-hour rule," giving officers two days before compelling interviews,***** from the Portland Police Association (PPA) and Portland Police Commanding Officers Association (PPCOA) contracts at the next negotiations (recommendation #8, p. 69). While we support this idea, our reading of the contract is that the rule does not apply to shootings. "Whenever delay in conducting the interview will not jeopardize the successful accomplishment of the investigation or when criminal culpability is not at issue, advance notice shall be given the officer not less than 48 hours before the initial interview commences or written reports are required from the officer" (PPA contract, section 61.2.1.3). Criminal culpability is always an issue in shootings cases.

*****Recommendation #9, to require officers to make a "narrow public safety statement" at the time of the shooting, is also valuable. We have in the past stated repeatedly that compelling officers to testify, thereby forcing them to waive Fifth Amendment rights and giving up the right to prosecute, isn't so important since officers are never brought up on criminal charges for on-duty use of force. Since the indictment of Officer Dane Reister for shooting William Monroe in the back with live rounds loaded into a "beanbag gun," the historical note is no longer true. However, it is still true that (a) IPR and the Bureau can use their discretion if they believe a criminal case needs to be preserved, and not compel an officer to testify in some cases, and (b) even if the officer's testimony is compelled, and no prosecution follows, if the officer admits to criminal conduct, he/she will be fired and therefore no longer a problem for the community.

Reese also agreed that all officers should continue to be trained in Crisis Intervention Team (CIT) training (recommendation #1, p. 8). While some in the media have questioned Portland's abandonment of the volunteer, "Memphis model" of CIT, in which special officers are trained and roll out on demand, we support CIT training for all. However, the fact that the Mobile Crisis Unit, praised and suggested for expansion in the same OIR recommendation, only involves one car pairing an officer with a mental health specialist, and does not provide for such a specialist to roll out if there is a weapon on scene (couldn't they still at least advise the police from a safe location?) makes us hope OIR will refine its suggestions in future reports.

Also in recommendation #1, OIR asks that the Bureau hold officers accountable if they don't use their CIT training during a critical incident; Reese doesn't respond to that crucial part of the report.

We also support recommendation #3, to treat all involved officers as potential suspects (p. 19), though we hope it isn't used by the Bureau as a way to gouge taxpayers by putting every officer on paid administrative leave while IA investigates.

"INVISIBLE" RECOMMENDATIONS NEED TO BE SPELLED OUT

Throughout the report, OIR makes recommendations to the Bureau that are not enumerated along with the 13 summarized in the report's last chapter. If we've learned one thing in our many years looking at changes to the PPB, it's that they at best read the recommendations that are clearly spelled out (though often interpreting them in their own manner), but rarely catch subtle comments made in the body of a report. Below we've listed a number of recommendations we believe OIR Group made but didn't highlight:

—The most significant such "invisible" recommendation: just because some officers found the Training Division's analysis of the Campbell shooting to be controversial, the Bureau should not refrain from imitating the Campbell review's thorough and straightforward analysis in the future (p. 60). This concept is echoed in the thematic section on the Training Division on p. 75. It may be that the Bureau treated Officer Frashour differently because he had already been found out of policy twice for using potentially deadly force without fully assessing the situation (using a Taser on a suspect holding a camcorder in 2006 and ramming the wrong car in 2008), but it should not matter what the officer's history is; their actions must be within policy and training, particularly in these most serious of confrontations.

—The "slumper" scenario in which an apparently sleeping driver poses a threat to an officer, should be modified to train for appropriate safety tactics, therefore should not always include deadly force. The Bureau allegedly has this training "under review to... comport with best policing practices" (p. 13). While this is one example of a change that may have gotten underway because of OIR's information gathering, it should be a recommendation so the final outcome is audited.

—As noted above, OIR mentions concerns about prolonged Taser use and PARC's suggestion to use one cycle, then re-examine before zapping a person again. These specifics should have been included in recommendation #2.

—OIR seems to feel that the Bureau should ask for grand jury transcripts as part of every investigation. In the Perez case, they did not, leading OIR to state "it is difficult to fathom why internal investigators would be prohibited access [to transcripts]" (p. 17). They revisit the topic in the Jackie Collins case, calling the use of grand jury testimony in that investigation "invaluable" (p. 64). Yet they do not make this a formal recommendation.

—The Bureau needs to use the Gwerder incident as a way to train officers on the difference between a suspect who poses an "imminent threat" (Bureau policy) and one who poses a "significant and immediate threat" (legal standard per *Tennessee v. Garner* [1985]); OIR says they saw no evidence that has ever happened (p. 24). Although OIR says they will examine this issue again in later reports, it is apparent they are in favor of such training.

—In the Goins shooting, the Training Division cites contents of a phone call that Officer Richard Steinbronn made to Goins that wasn't in the investigative file. Rather than recommend that interviews such as the one that drew the information out of Steinbronn be documented, OIR suggest that the Bureau limit Training analysis to information that is in the investigative file (p. 34). These are not mutually exclusive ideas; both could be added to Bureau policy.

—When reporting on subjective comments from the officers involved in the incidents, the Bureau should use neutral language. When describing how Officer Rabey felt her location was "vulnerable" at the Stewart incident, OIR points out that the Training Division stated that her position was the "best available choice." In suggesting that Training back up such statements by analyzing the alternatives (presumably ruling them out), OIR really makes another recommendation (p. 37).

—The Bureau should be explicit in telling field officers not to wait for long periods of time before calling out the Special Emergency Response Team (SERT-p. 38). In several cases, OIR indicates that officers apparently violated policy by not calling SERT to so-called "barricaded, armed suspect" incidents (Stewart, Spoor and Campbell).

—In a footnote on page 43, OIR points out that the Bureau has not made a training video on proper use of police radios, despite a recommendation by the Training Division made in 2009; it is apparent that they support this idea.

—Noting that a “Code-3” emergency response call went out from the site of the Spoor incident which didn’t explain all the relevant circumstances (and thus had to be retracted to stop cops from driving up with lights and sirens blaring), OIR indicates that giving such details can help relieve chaotic situations from getting worse (p. 46).

—The Bureau should train 911 operators to get information from callers that can be passed on to police, and police should be trained to draw that information out from dispatchers (p. 64). This is a very important recommendation which could have been useful to avoid the shooting of Bradley Morgan in January of 2012, and it’s unclear why OIR didn’t list it formally.

INCONSISTENT REPORTING

In each case, the shooter officer’s name is given at least one time, though frequently they are then afterward only referred to as “the shooting officer.” Other key players are not named. For instance, Officer Sean Macomber, who held the trigger on his Taser for over 3 minutes after Jahar Perez was shot, prompting OIR to state they’d never seen a Taser used that long, is not named. Officer Ryan Lewton, who fired the “beanbag” rounds at Aaron Campbell and precipitated his death, is left anonymous, as are the two Sergeants (Liani Reyna and John Birkinbine) who were disciplined in that case.

In the case of Jason Spoor— who was shot and killed by McCollister, the same officer who killed Kendra James— there was apparently some disagreement between two sergeants who showed up on scene. They are referred to as the “East Sergeant” and the “Southeast Sergeant.” It eventually becomes clear that both were female, so the pronoun “she” doesn’t help clarify the narrative as it unfolds.

It seems as though at least any names that have been reported publicly (and repeatedly) by the press and the PPB should be used in the report to clear up such confusion. We are truly grateful for the use the names of the victims and shooting officers.

In a topic heading on Safety and post-shooting actions on the Perez case, OIR notes that one officer responded by driving 80-85 miles per hour to the scene even after the situation had been “resolved” (ie, Perez was dead). They don’t name that officer, nor the officer that they say was killed when responding “hot” to a call prior to 2004. (Do they mean quickly, or ill-tempered? We’re not sure.)

In the Raymond Gwerder description, the narrative implies that Gwerder was pointing a weapon at unseen targets before heading into the house. This was the statement given by Officer Leo Besner, who shot Gwerder. It may have been instructive to go into more detail about what Gwerder was talking about on the phone at the time the bullet hit him, which was a friendly conversation about his dog. While Gwerder may have been experiencing a mental health crisis, listening to the audio of the conversation indicates pretty clearly that he did not sound angry, fearful or threatening at the time Besner’s shot rang out from nowhere.

In a similar vein, OIR tries to give unbiased narratives of the cases, but occasionally reports statements made about deceased subjects as fact, when they have no way to verify the record. For example, they claim that Jackie Collins said “I’m going to kill you” to a woman in Hoyt Arboretum, when in fact, that is what she claims he said.

As noted above, sometimes the OIR Group doesn’t cite where specific Bureau policies or protocols are written down. For example, in their analysis of the Bureau’s use of diagrams, leading to recommendation #10 (p. 69), to train investigators on the importance of diagramming scenes and including the drawings in the case file, they do not suggest that a written protocol require this be done. What OIR misses is that PARC made an almost identical recommendation in 2003 (#5.8)***** and followed up, noting that civilian witnesses were still not being asked to mark their locations in their 2009 report (PARC 2009, p. 64). In a September 2, 2003 memorandum from Assistant Chief Jim Ferraris outlining changes to investigative protocols, he directed that crime scene sketches be included in case files. If that memorandum was never embedded in a protocol, or if there is a written protocol not being followed, OIR should have cited them specifically.

Also, OIR calls out the Training Division for having an unsigned analysis in the Goins case; they say that “the Bureau has informed us that protocol ... has been for the authors... to be identified” (p. 34) but they don’t cite any document requiring such a signature.

*****There are at least two other related recommendations about crime scene diagrams and including items in files: PARC 2003 #s 5.7 and 5.13.

Similarly, Chief Reese claims throughout his response that several suggestions are already current policy. For example, he said that Cadets are supposed to be dropped off in a safe location before officers go to high priority calls (recommendation #5, p. 30) and implies that Cadets are interviewed “in the same manner as any other witness.” However, OIR made a recommendation to revise interview protocols (#6, p. 32) because a Cadet’s supervisor inappropriately sat in on an interview in the Jerry Goins shooting case.

Oddly, Chief Reese refers to a policy document, “Training Division SOP-11,” to indicate that the Bureau is already complying with OIR’s recommendation #4, to have Training review SERT and Crisis Negotiation Team (CNT) incidents as well as regular patrol officers’ (p. 26). Since OIR had unfettered access to Bureau documents, we wonder why this wasn’t given to them, but rather mentioned only after the report was published.

While OIR fairly regularly refers back to PARC reports, showing their knowledge of the substance of the reports, they unfortunately use the term “lethal cover” to describe Officer Ron Frashour’s role at the Campbell shooting—a term PARC suggested they not use (PARC 2003 recommendation 7.18). We have two other linguistic concerns as well: (1) OIR used the term “suicide by cop” in the Campbell analysis (p. 53), a term we’ve repeatedly denounced as taking the onus off police when they commit a homicide involving a community member, and (2) they praise the “civilian-staffed” Internal Affairs (p. 71), though in reality the IA investigators are retired law enforcement officers, a source of concern in the community.

It is not clear whether IPR gave OIR the IPR’s reports or CRC’s to study. For example, in the various analyses of timeliness (and lack thereof) in the process of investigating, reviewing, and issuing findings on shootings cases, OIR never mentioned the IPR’s analysis from 2011 on the very same issue, even though it’s readily available on line (<http://www.portlandonline.com/auditor/index.cfm?c=44653&a=357789>). Timeliness is the subject of recommendation #12 (p. 72), which calls on the Bureau to create consequences for missing deadlines during deadly force investigations.

They also don’t support their calls for change by noting where CRC pushed the Bureau on PARC recommendations, such as the medical response policy, in a 2010 report (also on line, at <http://www.portlandonline.com/auditor/index.cfm?c=52678&a=304275>). While OIR cites PARC’s repeated stress on that issue, they don’t make their own recommendation (p. 78).

It is disappointing that in the one incident in which a suspect lived, the OIR Group chose to report that a grand jury indicted Paul Stewart on firearms charges (p. 36). We’re not sure how this is relevant to the analysis of the shooting. Had they read transcripts of Stewart’s criminal trial, they would see that the judge commented both that Stewart should not have been shot and that he was lucky to be alive. If OIR plans to report on post-shooting actions like this, they should also mention the settlements paid out by the City: \$350,000 to Jahar Perez’s family; \$500,000 to Gwerder’s; \$20,000 to Stewart; and \$1.2 million to Campbell’s family. The already looked at the Chasse death (\$1.6 million) and will be looking at Dennis Young’s (\$200,000). Surely officers should be at least briefed how their actions might cost the people they’re sworn to protect; better yet, OIR could recommend that such payments come from the Bureau’s budget... or the officers’ salaries.

While they do mention that the individuals had no weapons, OIR does not make enough of the fact that Perez, Stewart and Campbell, the three African American suspects shot, were all unarmed.

CONCLUSION

While the OIR Report is welcome and contains many good suggestions, we hope that they will be more explicit with recommendations in the future, and be willing to look more at the racial dynamics of the Portland Police and the community.