

The People's POLICE REPORT

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DIRECTOR LEAVES REVIEW BOARD

Legacy of Minimizing Citizen Involvement May Persist; Only One Hearing Held in Three Months

Richard Rosenthal, whose exploits this newsletter has covered since he moved to Portland to be the first Director of the "Independent" Police Review Division (IPR), has taken a job in Denver, CO and will be leaving in June. Meanwhile, the Citizen Review Committee (CRC) continues to spend most of its time revising its protocols, having heard only one case in 2005. Rosenthal rejected an appeal on a previous case, returned incomplete by the Police Internal Affairs Division (IAD). Also, he and his boss, Auditor Gary Blackmer, rammed through a change to the IPR ordinance ostensibly allowing them to review legal claims about police as complaints.



Rosenthal heads for the hills: The IPR's first director found a more lucrative job in late March; he will likely be replaced in June.

While the original ordinance creating the IPR in 2001 carved out many responsibilities for the CRC, Director Rosenthal and Auditor Blackmer have used administrative and legislative changes to minimize citizen involvement. Despite current plans to create a "Community Advisory Council" (CAC) the CRC may be hopelessly disconnected from the community.

For instance, previous work groups of the CRC (1) reviewed police policies and proposed changes, and (2) discussed outreach efforts for the IPR/CRC program, providing broad, ongoing and meaningful activity. The current work groups are set up as short-term to (1) revise the procedures for appeal hearings on cases of alleged police misconduct and (2) create the CAC.

The CAC is envisioned to include "leaders" of community groups who are stakeholders in the issue of police accountability. This reflects the kind of citizen involvement Portland Copwatch proposed for the appointment of review board members originally in 1993 and later in 2002, when the Director and Auditor took away the CRC's powers to choose their new members. However, the CAC as proposed will meet only twice a year, once to review the IPR's annual report. It appears that this group could become a rubber stamp and a fig leaf for the IPR to hide behind when their connection to the community is challenged. Even though CRC members are and have included members of Neighborhood Associations, the editor of a homeless community newspaper, and members of other community groups, Director Rosenthal has indicated that he wants to have the CAC reflect those kinds of organizations but keep the CRC free of what he calls "agendas."

What will likely happen, as the IPR continues to whittle away at the CRC's powers and duties, is that Portland will be left (continued on p. 2)

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COUNCIL POSTPONES TERRORISM TASK FORCE VOTE

Resolution for More Oversight Draws Community Support, FBI Criticism

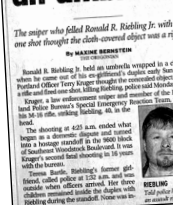
On March 30, after a four-hour-plus hearing on Mayor Tom Potter and Commissioner Randy Leonard's resolution requiring more civilian oversight of the Portland Joint Terrorism

Task Force (PJTF) (and all federal-local task forces), City Council voted 3-2 to postpone the vote until April 20. At PPR deadline, that date was again moved to April 27.

The PJTF struggle has been going on since 2000, when Portland Copwatch discovered the existence of the group which deputizes Portland "Criminal Intelligence Unit" (CIU) officers as federal agents and allows them to work with the FBI tracking broadly defined terrorist threats (see PPRs #23, 25, 28 & 31). Each year since then, community demands for more oversight and/or withdrawal from the PJTF have led to more concessions from the FBI. (continued on p. 6)



Portland FBI head Robert Jordan seemed nervous at Council, as documented on page 1 of



The major who killed Ronald R. Riebling Jr. with one shot thought the dark-colored object was a rifle.



FIVE PORTLAND POLICE SHOOTINGS: TWO DEAD, ONE WOUNDED, TWO MISSED
—AND ONE DAMAGED CLOSET
One man shot wielded an umbrella, two others had knives, two were driving

In the first three months of 2005, Portland Police were involved in five shootings, more than the total number of shootings in each of 2003 and 2004.

The most controversial, perhaps, was the shooting of Ronald Riebling, 40, who was killed after he allegedly pointed an umbrella wrapped in a towel at police early in the morning of March 20. Riebling was shot by officer Terry Kruger (#21778), who also shot Deontae Keller in February, 1996 (see PPR #9). (continued on p. 8)



with the 9-member IPR staff and the CAC, but no civilian review board. The creation of a work group seeking to revise appeal hearings is based on the premise that hearings do not satisfy anyone's needs and should be overhauled. This could mean the end of the appeal hearings and, since policy reviews are now being done by the IPR staff, the CRC will be left with no purpose. Three important reasons for the CRC to hold hearings are: 1) To give the complainant a "day in court" and the chance to change the outcome of their case; 2) to reveal both to the CRC and the public policy and training issues which may need attention, and 3) to make the process of police accountability transparent.

Given the opportunity to work with a new Director, we hope the City Council, now led by a new Mayor, and the public will step up to create improvements to the review board. No public review of the system has been done in the four years since the IPR was created.

Tort Claim Proposal: Vague Code Change Passes Quickly Through Council

The IPR's report on "Tort Claims" suggesting that they treat lawsuits as complaints was touted as a way to close the loophole allowing officers found guilty of misconduct in civil court to escape administrative review and discipline for the same incidents (PPR #34). On March 30, the Director and the Auditor presented their proposed changes to Council, who passed them unanimously despite Portland Copwatch's concerns.

We noted, for instance, that the code change merely allows the Director to create a procedure for handling tort claims (notices of intent to sue), and furthermore prohibits the Director, who otherwise has the power to investigate allegations of misconduct if the police refuse to do so, from investigating those claims. We also pointed out that this marked the third piecemeal change to the ordinance since 2001, while the community has proposed dozens of changes which have fallen on deaf ears. In addition, the proposal doesn't address the complexities that will arise if a complainant's attorney advises a client not to participate in an administrative review.

The police themselves weren't at the hearing, so the Auditor assured Council that both they and the City Attorney's office had dropped their previous objections. CRC Chair Hank Miggins, a friend of Blackmer's, was the only person to testify in favor of the amendments.

Pepper-Spray Protestor Case Squelched as Police, Director, Auditor, City Attorney Sidestep Request of CRC

The Director, with help from the Auditor and City Attorney, decided to put an end to the appeal process in case #2004-x-003 regarding Bill Ellis, a protestor who was pepper-sprayed in the face and arrested after standing on a sidewalk (see PPR #33). They claimed his participation in the lawsuit resulting in a \$300,000 settlement (PPR #34) precluded his ability to appeal. However, IAD did not perform the actions requested of it when the CRC returned the case to them in May, 2004. Specifically, they did not re-investigate three excessive force complaints (#1-3) along with a false arrest complaint (#4).

The IAD "completed" their second investigation without speaking to the appellant in late 2004. Their investigation on question #4, whether the arrest itself was inappropriate (since the appellant was not blocking traffic), came back with an "Unfounded" finding.

The Bureau then also investigated a new allegation, finding "Insufficient Evidence" that the officer, Leo Besner (#27981) filed a false report on the incident—meaning Besner may have done so. However, this allegation was not part of the CRC's recommendation to the IAD.

The Director, in consultation with the Auditor and City Attorney, decided that the complainant had waived his right to appeal as part of the settlement with the City. This curious interpretation appears to have happened without consulting the appellant or his attorney, not to mention the CRC. The dismissal of this case contradicts the Director's proposal to treat tort claims as complaints.

When Ellis' Attorney, Steve Sherlag, wrote to the IPR requesting an appeal, Director Rosenthal did not share the letter with the CRC. He presented the case in the "Director's report" instead of using other established protocols for the CRC to decide whether to accept an appeal.

The Director cited the settlement's provision that Ellis will not make any further "claim" based on the incident. Rosenthal said he considers the complaint a "claim" because if Besner were suspended without pay, it would cause him economic hardship. But suspension would not benefit Ellis or his attorney—it would be a disciplinary matter to prevent such misconduct in the future.



The attorney (L) for Officer Jason Lile (2nd from L) makes a point during the January hearing on case 2004-x-007. The CRC ultimately decided Lile did not use excessive force although the IPR Director had recommended a finding of "Insufficient Evidence."

As with the case of José Santos Victor Mejía Poot, who was beaten and two days later shot and killed by police (see PPRs #24&28), the Director has prohibited the CRC from hearing a case important to the community.

One minor benefit of this case is that the CRC decided to move up its review of crowd control tactics (by a narrow 4-3 vote). That review may improve policy and training, but will do nothing to hold accountable the officers or supervisors who were responsible for the misconduct at the protests involved in the lawsuit.

Case 2004-x-007: Police Rough Up Attorney and Friend for Flunking Attitude Test

In January, the CRC held its first full hearing in 7 months, featuring case #2004-x-007, in which attorney Heather Bissel and her friend were roughed up by police while observing a traffic stop. Bissel and three friends ("the appellants") witnessed police stopping a black man driving in a car with a white woman. The officers yelled at the appellants to move, and apparently two of them did not move fast enough for the officers. City Code allows for officers to restrict access to any area in cases involving significant risk. They cannot, however, order civilians to stop observing them from a safe distance.

Officer Jason Lile (#38941), who testified at the CRC hearing, showed his bias by accusing Bissel of being on an "anti-police crusade" and trying to bring up her previous activities in other cities. (He was cautioned on those comments by most of the CRC and IPR.) He also referred to the driver in the traffic stop as a "gang member" rather than simply a suspect—a person accused of Driving While Suspended, not a gang crime.

The appellants were arrested and charged with Interfering with a Police Officer, charges which were later dropped. This particular statute has been challenged in court and a similar statute, regarding "following a lawful order" of an officer, was recently struck down by the Oregon Supreme Court (see p. 3).

Thus, the allegation that the officer may have conducted a false arrest, which was deemed "irrelevant" by the IPR, is relevant and should be investigated. This sounds like another case of "flunking the attitude test," where an officer unhappy with a civilian's behavior makes up a reason to take them into custody.

Allegations of excessive force include that the officer smashed the face of Bissel's companion into the sidewalk while he was handcuffed, tackled Bissel and jammed her face into the cement, resulting in scratches and bleeding. The appellant's friend, who apparently was asserting his right to observe by asking exactly where the officer wanted him to stand, ended up receiving 4-6 stitches; Officer Lile said there was no excessive force because he didn't use "pepper spray, a Taser or baton," and the appellants weren't "hit, kicked, or kneed." This seems to be a recurring defense by the Bureau: rather than asking whether the amount of force used was a reasonable amount to accomplish an official purpose, they simply list the violent actions they did not use.

(continued on p. 3)



IPR Minimizes Citizen Input; Holds Retreat with New CRC Members *(continued from p. 2)*

Much of the CRC's discussion had to do with two items which had no direct bearing on whether the officer used excessive force. The first was whether the original stop was a "high risk" stop (implying the presence of weapons) or an "unknown risk" stop.

The second focus was on the fact that the two people who were thrown to the ground by a police officer had been out having drinks prior to the incident. Because they were not brought to Detox (for being "unable to care for themselves" or "a danger to themselves or others"), it seems this was just a means to discredit them in order to justify upholding the Bureau's actions.

The IPR had recommended that the excessive force findings be changed from "Exonerated" to "Insufficient Evidence," but the Bureau refused. The CRC ultimately voted 4-3 to uphold the Bureau's original findings, in part because the Director actively discouraged them from sending the case back for more investigation. More than one CRC member mentioned that they thought the officer's actions were "reasonable." However, the CRC is supposed to be judging whether a reasonable person, given the evidence, could come to the same conclusion as the Bureau. While we still find this standard too restrictive, it is not about judging whether the officer's actions were *reasonable*, but whether they were *within Bureau policy* and whether the finding reflects that.

As a side note, the CRC refused to review medical documents they had requested at the December pre-hearing, explaining they had wanted the documents to be produced earlier. The ordinance (section 3.21.160[B]) specifically allows the CRC to consider new information as part of a hearing. When this was pointed out to the CRC members, they still refused to re-open the case.

Case 2004-x-009: Domestic Violence is Bad, So Is Police Violence

The other case heard as a "pre-hearing" in December involved officers who came to the apartment of a man who may have shoved his wife during an argument in their home. We support prosecuting people who engage in domestic violence. However, the CRC did not focus on the man's allegations that an officer punched him in the chest (found "Exonerated with a debriefing"), that officers pulled a gun on him despite his being unarmed ("Insufficient Evidence"), and that they broke his wrist and did not offer medical attention ("Unfounded"—meaning it did not happen as alleged). Instead, the CRC members repeatedly questioned the appellant about whether he had hit his wife, who was apparently in a different room the entire time the officers were present in the apartment.

The CRC voted 6-1 against holding a hearing. In contrast to Bissel's case, the allegation that officers falsely arrested the appellant was considered relevant, but the officers were "exonerated" for the arrest.

New Members Inducted; CRC Retreat Reveals IPR Agenda

In February, City Council inducted three new members of the CRC. Marcella Red Thunder, an auto mechanic, nominated by Commissioner Sam Adams, Mike Bigham, a former Port of Portland police officer, and Jerry Spegman, a former attorney who works on anti-smoking campaigns. Ric Alexander, who had been on the review

board since 1999, and who on rare occasions spoke out about problems with the IPR system, was not granted a new term.

During the CRC's February 26 retreat, the Director and Auditor made disparaging statements about Portland Copwatch and member Dan Handelman. Invited to give input, Handelman pointed out that one reason the IPR may not have credibility is that civilians might not trust a system in which police investigate other police. Blackmer blurted out: "I don't know that anyone in this room has done more to undermine the credibility of police accountability than Dan Handelman," changing his claim to target Portland Copwatch when called on the personal attack. Director Rosenthal, who had made comments about the IPR not wanting to "waste time" replying to emails from PCW, chimed in that "Dan just wants to change the ordinance because he didn't like it...he's argued against it from the very beginning."

While Handelman and PCW have issues with the IPR structure, most of our suggestions are to make the IPR more open, transparent, accountable, and citizen-based *using the ordinance as written*. Meanwhile, the Director and the Auditor have now changed the IPR ordinance three times with limited public input. Just who has been unhappy with the IPR from the beginning?

The outcome of these misleading and possibly slanderous statements is that Handelman has asked for mediation with Rosenthal and Blackmer. They agreed. One CRC member and one other member of PCW will attend the mediation.

Similar to the power imbalance between the police and the community, those in charge of the IPR have unlimited time to explain their perspective on the review board, while people who have studied these systems for years have only three minutes a month to offer a view that comes from community experience.

In addition, since January the IPR and CRC:

—Created rules to increase public participation. The public will now be allowed to speak prior to all CRC votes, whereas previously public comment was restricted to the end of meetings and hearings. The IPR will now be required to forward all emails addressed to the CRC to all CRC members. Previously, the Director and the CRC Chairperson rejected "unsolicited correspondence."

—Adopted new protocols for processing complaints at the IPR and Internal Affairs. Many concerns raised by members of the public were included in the final adopted document, created by Deputy Director Pete Sandrock.

—Released a CRC report analyzing 45 cases, fifteen declined by IAD, fifteen "service complaints," and fifteen which were investigated. The CRC supported the choices made in all the cases, though they found one case in which "the booking photo showing the complainant's bruises" was not present, two in which investigations were not thorough, and three findings which they found inappropriate. Perhaps most disturbing was Sandrock's comment that the IPR "defers to the Bureau's interpretation of its own policies."



IPR Director Rosenthal and Auditor Blackmer scrambled for answers when Commissioner Sam Adams asked why he hadn't seen the applications of new CRC members on February 23. As it happens, City Code 3.21.100 requires Council to review those applications.

Another item of note from the retreat: The review board's packets included only one short section of the overall ordinance, and one member of the CRC admitted that she had never read the whole

Outgoing CRC member Ric Alexander, and one of the three remaining original CRC members, in his final comments, spoke to many of the issues we have raised about the IPR and CRC:

—There are far fewer appeal hearings now than there once were

—There is less citizen involvement than there once was and IPR staff does work that volunteers used to do

—A long list of policy issues has been generated but not addressed

—The majority of the CRC is made up of appointees of the City Council.

OREGON COURT OF APPEALS TOSSES OUT "DISOBEYING AN OFFICER" LAW

In December 2004, the Oregon Court of Appeals invalidated ORS 162.247(1)(b), which made disobeying a police officer a crime. The law has been used by police officers to arrest protesters who did not obey orders to leave protest rallies. Based on a prior ruling by the Oregon Supreme Court in March 2004 which struck down the disorderly conduct statute as unconstitutionally broad (ORS 166.025(1)—see *PPR #32*), the Court of Appeals ruled that ORS 162.247(1)(b) was also overly broad.

Both statutes violate the Oregon Constitution because they prohibit the constitutionally protected rights of speech and assembly. A person's continued attendance at a peaceful assembly and refusal to obey an order to disperse is no longer a crime, assuming the person was not engaged in any other illegal activity.

The ruling is a major victory for protesters engaged in peaceful demonstrations, even if their intent is to cause inconvenience to others as a way to express a political point.



Sit/Lie Opens Door to Selective Enforcement

In what some consider Mayor Vera Katz's farewell gift to the Portland Business Alliance, on December 15, 2004 the Portland City Council unanimously passed, on an emergency basis, the Obstructions as Nuisances Ordinance, which is more commonly referred to as the Sit-Lie Ordinance (see PPR #31).

The City Council maintains this Ordinance was the result of many months of meetings by representatives of business, neighborhoods, the homeless community, and law enforcement officials. However, it appears to be classist and directed at a specific population of the community, mainly the poor and the homeless who do not have the options that are open to the more affluent when it comes to needing a place to sit and rest. The end result may be the criminalization of poverty and homelessness.

The Ordinance, which has an eighteen month sunset clause, covers the area bounded by the Willamette River, Interstate 5 and Interstate 405. It prohibits sitting, kneeling or creating a trip hazard or obstruction in the through pedestrian zone of a sidewalk, on any part of the sidewalks on the bus mall, on any part of the same sidewalk as a MAX stop, or creating a trip hazard or obstruction between 7:00 a.m. and 7:00 p.m. on any frontage or furnishing zone. The Ordinance also provides that a violation exists if a stationary group of three or more persons stand in a through pedestrian zone. A through pedestrian zone of a sidewalk is defined as consisting of eight feet on a fifteen foot wide sidewalk, six feet on a twelve foot wide sidewalk and five feet wide on a local service walkway.

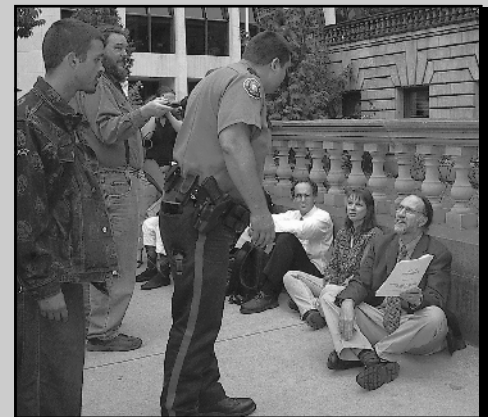
In other definitions which might well be described as convoluted and require the use of various measuring devices, the Ordinance mentions specifics. One defines a trip hazard being a thing or animal that extends to or occupies space more than a half-inch above a sidewalk surface or an object that is "within two feet of a person who is capable of moving or controlling the object to accommodate the needs of other sidewalk users." Two of the definitions state that "legs extended from a seated person are a trip hazard, but a person who sits or kneels with legs drawn up to the body does not constitute a trip hazard."

The City should soon be producing statistics as to how many warnings and violations of the Ordinance have been issued and to whom they have been issued. The concern is that those who are poor and who have few, if any options of places to sit, lie or stand, will be cited under this Ordinance and the more affluent will not. It is not hard to visualize that four or five people standing in front of the Portland Center for the Performing Arts after attending a play will not be said to be in violation of the Ordinance whereas four or five homeless youths will be. One City Commissioner discussed the Ordinance in terms of "moving them along." The question must be asked, "To where?" A City staffer indicated there were sufficient benches in the specified area for everyone to be able to sit. That seems quite unlikely given the large homeless population in Portland—according to a January 26 census by local advocacy groups, at least 2355 people were on the streets that night, mostly in the central city.

Commissioner Erik Sten has stated he is confident that safeguards are in place to ensure that the Ordinance is not used to restrict the right of anyone to enjoy downtown streets. His Chief of Staff, Bob Durston, has stated that if problems do arise during the course of this pilot project they will not wait 18 months to fix them and they will monitor the enforcement issues as they arise with input from a broad cross section of the community. The City needs to be held to that. While Durston and Sten stress that there has been and will be input from representatives of the homeless community, a question arises regarding the impact of their influence versus that of the business community and law enforcement. A community must be based on the human and civil rights of all who live in that community.

Some concern has been raised as to whether this Ordinance will be used against activists who might assemble in the downtown area. The Ordinance does specify that it "doesn't apply to a person who is part of an assembly that has formed to participate in or observe an expressive event if such assembly lasts less than eight hours unless the person refuses to comply with a reasonable order to move so as to moderate the impact of the assembly on passage along the through pedestrian zone." This language is open to broad interpretation and the application of the Ordinance to such assemblies remains to be seen.

According to Commissioner Sam Adams' office, as of April 20 there had only been two arrests under the new ordinance—one on March 23 and one on March 30. No statistics seem to be available about how many people are warned, or what their age, gender, race or housing status may be. More significantly, the police will not receive special training about "Sit/Lie," until sometime in May.



In August, 2003, attorney Alan Graf faced off with an officer trying to enforce the then-"Obstructions as Nuisance" law using guidelines from Mayor Katz (see PPR #30; photo from www.portland.indymedia.org).

Eugene Finds Lack of Cop Oversight

An external review of the Eugene Police Department (EPD) found that lack of supervision and failure to fully investigate allegations contributed to the criminal activity of two officers convicted of sexual abuse. Officer Roger Magaña was sentenced to 94 years in prison for on-duty incidents of rape and other crimes (see PPR #33); Juan Lara was sentenced to 68 months for coercing women into sexual contact, also on duty (PPR #32).



Roger Magaña on KVAL-TV when he was convicted in 2004.

The report, by the International City/County Management Association (ICMA) and Police Executive Research Forum (PERF) noted that Magaña was hired on a fast track to increase diversity on the force, but was not given a background check or psychiatric exam. As a result, his 1982 arrest for burglary and other criminal records were not brought to light, with his file "mysteriously reappearing" after the sex abuse charges were imposed.

The report also blamed supervisors, who failed to correct substandard work or perform employee evaluations, and an "incomplete, illogical and inadequate" internal affairs process for many problems. The report noted a "widespread desire" for creating an external police review board, but cautioned that it would need proper funding to build public trust (*Eugene Weekly*, March 17).

PDX Mayor Potter Hits

Critical Mass –BMX Style

Critical Mass, while defined by some as “the smallest mass of a fissionable material that will sustain a nuclear chain reaction at a constant level,” is also the name for an unstructured, non-hierarchical coming together of bicycles in the streets, a movement occurring locally on the last Friday of every month in the North Park Blocks at 5:30 P.M.

Portland's Mayor Tom Potter, who is also Commissioner for the Police Bureau, attended the January Critical Mass ride, one of the first in recent years in which the police backed off and did not aggressively ticket participants (see PPR #28). Potter “is a proponent of both bicycling and alternative forms of mass transportation,” according to John Doussard, the Mayor's Director of Communications, adding that he “does not condone anyone disobeying Portland's traffic laws.”

Doussard said Mayor Potter rode in Critical Mass for two reasons—first, he “feels supporting [alternative transportation] is an important message to send to our community.” The other reason: “He wanted to see for himself the dynamics of the evening's ride, and witness the interaction between bicyclists and police officers without the filter of the media or those parties on either side of the debate with their own agendas.”

“The Mayor rode for an hour with the bicyclists, and then for an hour with police officers [in a squad car]. He took no preconceived notions into the evening — he had read what has been written in both the mainstream and alternative media, and wanted to experience the ride for himself. He enjoyed talking to both the bicyclists and the officers, and felt he heard their concerns and learned about their perspectives.”

When asked about the different levels of police presence at the rides before, during, and after the Mayor rode, Mr. Doussard replied, “It would be difficult to say if the police presence was ‘high.’ There were about 150 or so riders, they were in both lanes of traffic and the ride was at night when visibility is poor. So the number of officers may have been appropriate to ensure safety of both the riders and traffic.”

Since January, according to posts on Portland's Indymedia (such as <http://portland.indymedia.org/en/2005/03/314274.shtml>), police presence has gone back up, but officers are mostly on bicycles, not on motorcycles or in cars. This minor victory is being attributed to the difference between Potter and his predecessor, Vera Katz. For its part, the local mainstream press reacted varying to Potter's decision to ride. Some called the move “puzzling,” wondering why the Mayor wasn't solving traffic issues “by working on policies and city ordinances and other boring stuff” (*Oregonian*, February 2), while others praised him for “making an effort to listen to ignored views” (*Mercury*, February 10).

The Mayor's office chose not to answer any questions about the differences in the Portland events from those in New York, where officials have filed lawsuits against those they feel organize and promote Critical Mass events. Time's Up!, a non-profit charged with breaking regulations by not applying for a permit, calls the city's charges “ridiculous, selective enforcement” (www.times-up.org/legal_newswire.php#2005-03-23). During the Republican National Convention in New York, 264 people were arrested one night at Critical Mass. According to www.stillweridethemovie.com, a movie documenting the Critical Mass movement is scheduled for release in May.

For more local info visit www.rosecitycriticalmass.org

Portland Cops Head to DC For Inauguration: Deputized Mercenaries for the Feds?

Nineteen Portland police officers traveled to Washington, DC for the Presidential Inauguration on January 20; to participate, they were deputized as federal agents and worked with US Marshals, DC Metropolitan Police, US Park Police (Secret Service) and the FBI. Despite the Portland City Council's reservations about the lack of oversight for its officers in the Portland Joint Terrorism Task Force (PJTTF—see p. 1), they unanimously approved the Memorandum of Understanding (MOU) allowing the officers to go.

Although the MOU's wording was ambiguous, the Police Bureau claimed that the feds and the DC Police would reimburse the City, one of the “selling points” for Council. If our officers can be whisked off the streets by the highest bidder, when we are constantly told how understaffed they are,



The March Rap Sheet featured Juanita Downing's article “Portland's Finest Assist with Inauguration,” accompanied by photos (also see p. 12). The cops, put on the street to guard the President, were “armed with only collapsible batons,” says Downing. Our concern, that there was no tangible benefit for Portland to send the officers to DC, was perhaps confirmed by her noting that snowfall on the day the officers arrived “negated photo opportunities with President Bush.”

doesn't it make them a kind of mercenary squad?

But our larger concern was possible misconduct by the officers. The police claimed that since a Captain, Lieutenant and Sergeant were among those travelling to Washington, there would be plenty of accountability. However, as deputized federal agents, it is unclear whether Chief Foxworth and the Police Commissioner (Mayor Potter) could review their work. The officers, most of whom are part of Portland's “Rapid Response Team,” might have been used for surveillance or on-the-street repression to target people expressing their First Amendment rights.

The Council never answered what might happen if an officer committed an act of misconduct while in Washington. Would the DC local Internal Affairs investigate? If so, what possible discipline could they have imposed on Portland officers? If not, would Portland's Internal Affairs Division (IAD) investigate allegations about an incident 3000 miles away?

The flip side of this concern was raised by the City's bringing in officers from other jurisdictions to patrol the many protests going on in Portland for the Inauguration. We wonder whether officers from other agencies who come to Portland can be held accountable since they are not subject to review by the Independent Police Review Division or the IAD. As it happens, the police got into a standoff in Portland with protestors at the end of a permitted march, arresting a few and confiscating the truck of one of the organizers. It's not clear if they were all Portland officers.

PUBLIC RECORDS NOT SO PUBLIC IN EYES OF POLICE

Despite state laws requiring most public records to be open to inspection, Oregon journalists found that many cities and towns in the state were unwilling to comply with records requests, with “police and sheriff's offices the least helpful and most intimidating” ([kgw.com/Associated Press](http://kgw.com/AssociatedPress), March 13). Their study noted Portland's records division won't fill requests like “the last five drunken driving arrests,” because the last five change too frequently. The study quoted Tim Gleason at the University of Oregon's journalism school saying that there is a risk of being sued for giving out the wrong information, but “no real cost to saying ‘no.’”

The chief deputy of Wallowa County said “I wasn't going to hand our files to anybody...without a subpoena.” On the other hand, Wasco County District Attorney Eric Nisley directed their Sheriff to comply, noting “You can't ask them who they are [or] why they want it...we want to make sure we give people whatever it is they're entitled to, because that's the purpose of the law.” So...Portland Police, IPR Division, and the FBI—take note.



City Challenges FBI For Oversight of Terrorism Task Force (continued from p. 1)

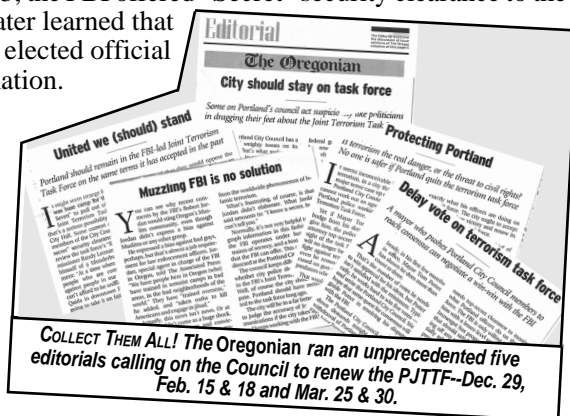
First, they said that Senator Ron Wyden had the ability to oversee the activities of the PJTTF to be sure that Portland officers were complying with Oregon law and not investigating people for their ethnic, social, religious, or political affiliations. That turned out to be untrue. Later, in 2003, the FBI offered "Secret" security clearance to the Mayor (who is Commissioner of Police) and the Chief. However, it was later learned that the officers in the PJTTF are given "Top Secret" security clearance, so the elected official in charge of the police employees still does not have equal access to information.

In the weeks prior to the vote, Portland FBI Director Robert Jordan told the Associated Press that there were people in Oregon who "have trained in jihadist camps in bad areas, in the bad neighborhoods of the world." When pressed for details, he refused to provide any. He stuck to his story, even after meeting with concerned members of the Portland area Arab and Muslim community, and after the ACLU and others labelled Jordan's announcement a scare tactic.

On March 23, Commissioner Leonard (a former Portland firefighter) and Mayor Potter (a former Portland police chief) introduced a resolution requiring access to information for the Commissioner/Mayor, the Police Chief and the City Attorney equal to the officers on the PJTTF. This could mean lowering the officers' clearance to "Secret" or raising the other clearances to "Top Secret." The resolution would have given the FBI 90 days to comply or the City would leave the Task Force.

The FBI's response was swift and clear: There is no way we are going to give top secret clearance to "politicians."

National headlines popped up claiming Portland was planning to vote to leave the PJTTF. The *Oregonian* ran its unprecedented fourth and fifth editorials urging council not to leave the Task Force. The *Portland Tribune* interviewed only businesspeople (including the director of the "Citizens Crime Commission") supportive of the Task Force in their final article on the matter, despite that paper's earlier history of releasing hundreds of files kept on Portland citizens by the Portland Police (see PPR #28).



Be Very Afraid!

Oregonian and Saltzman Use Fear to Keep You in Line

PERHAPS POLITICS HAS always been about bullying. But ever since 9/11, politicians and policy makers have increasingly used fear to corner and silence opponents. Locally, this threatening tactic has



The February 24 Mercury accused the Oregonian and Commissioner Saltzman of using scare tactics.

At the end of the hearing, after 43 people testified in favor of the resolution (or for going further and leaving the Task Force) and only 8 testified to stay in the PJTTF regardless of the clearance issue (or to postpone a decision), it came time to vote.

Commissioner Dan Saltzman, who in the past was a staunch supporter of the PJTTF, revealed that he agreed to put the resolution on the agenda as a bargaining chip to get more oversight—but he was swayed by the US Attorney's testimony that a compromise could be reached within a few weeks. (The FBI and the US Attorney did not bring information to resolve issues at the hearing—such

as, do other police commissioners have Top Secret clearance? Is there a way the Portland officers can work in the Task Force without Top Secret access, since they apparently don't ever use Top Secret information, but only need it to be able to go unescorted into the FBI building to work every day?) Saltzman's biggest argument to postpone the vote, however, was that the media was present and he feared they would report that Portland decided to leave the Task Force, even though Mayor Potter explicitly pointed out it was about oversight.

To be fair, Saltzman is right, in that at least one TV station characterized the vote as being about whether Portland would leave the Task Force—but wrong to postpone in that the vote was a matter of principle in the storm of anti-terror hysteria, and regardless of what the media says, it is up to elected officials to take principled actions.

Leonard revealed that he had previously dropped provisions of the resolution to secure Saltzman's support. Potter supported the idea of postponing the vote. Commissioners Adams and Sten were silent when Saltzman made a motion to postpone the vote; Potter ended up seconding it. It looked like a 2-3 vote, with the postponement going down.



Channel 2 (KATU) used this graphic to illustrate its story on Mayor Potter asking for more oversight over the Terrorism Task Force (March 23).

Adams voted no (once he realized the nature of the motion), followed by Leonard, who was clearly disappointed that the vote would no longer be unanimous. Then Commissioner Erik Sten, with the swing vote, spoke at length on the FBI's past history of misleading the Council about oversight...but voted to support the motion. With Saltzman and Potter chiming in, the vote was postponed.

The public testimony, as usual, was impassioned and informed. It began with a roster of organizational representatives from the ACLU, Japanese American Citizens League (again warning that the end result of unchecked war hysteria is internment camps), the League of Women Voters (urging transparency), Portland National Organization for Women, the Multnomah Meeting of Friends/Quakers, International Longshore and Warehouse Union #8 (who related that the Dept. of Homeland Security threatened to charge them with "economic terrorism" for a strike action), the Community Language and Culture Bank (speaking of the effect of the Task Force on the Muslim community) and many more.

It seems ironic that all this testimony, which seemed to keep the attention of at least a few Commissioners at any given time, had less influence than the appointed FBI agent in charge, the US Attorney and the Chief of Police, when the very issue at hand was that these law enforcement officials should not be dictating public policy.

Ultimately, Potter announced that he was inviting the ACLU to sit in on the negotiations with the FBI as they work out the details to satisfy the City's concerns. It will be interesting to see whether the FBI, now that the City has revealed it has no intention to withdraw from the Task Force, will concede anything.

In summary, the question of who exerts outside influence on the City Council is important, but the politics among elected officials at City Hall play an equal role in whether public input is ignored. We will continue to monitor the JTTF issue, but it is clear that promoting police accountability in Portland is as complicated as it ever was, even under Mayor Katz and her various chiefs of police.

For more info contact the ACLU of Oregon at 503-227-3186.

PEOPLE'S POLICE REPORT #35

TASERS INCREASE IN NUMBER, SCRUTINY OF SAFETY CONTINUES

As the Portland Police Bureau distributes 270 new Tasers to arm every officer on patrol with the 50,000 volt electroshock devices, serious concerns continue to arise, including from the police themselves.

The December 26 *Arizona Republic* quoted Portland Training Division Sgt. Robert Day, who said about 30 percent of Portland officers training with Tasers decided not to volunteer to be hit by shocks as part of their indoctrination. The article focuses on a Maricopa County deputy who suffered a fractured back (a crushed seventh thoracic vertebra) due to being hit by a Taser for only one second. One physician attributes the injury to an increased risk for those who are prone to osteoporosis. Sgt. Day told the *Republic* he wants more information about safety: "I'm not just talking about officers. I'm thinking about citizens. There is obviously a risk there."

Lawyer John Dillingham, interviewed in the article, sums up the issue: "This is not a problem with law enforcement. It's a problem with Taser... Police officers are brainwashed into thinking that the (stun) gun is safe, taking a hit during training and then us[ing] it in the field anytime they want."

In San Francisco, UCSF cardiologist Zian Tseng found that Tasers might interrupt the rhythm of the human heart, particularly if they are used for more than one five-second cycle. He told the *SF Chronicle* on January 5, "If you are shocking someone repeatedly, it becomes a bit like Russian Roulette. At some point, you may hit that vulnerable period in the cardiac cycle when shocks can cause dangerous arrhythmias."

In Chicago, the Police Department held off expanding its use of Tasers after a 54-year-old man and a 14-year-old boy went into cardiac arrest after being tased within a few days of each other. The younger man survived, but the older man died (*Oregonian*, February 12).

RECENT NEWS OF TASER-RELATED DEATHS:

—Robert Clark Heston, 40, died after his "heart stopped when he was hit with Taser darts" (LA Times February 22).

—Multiple Taser shocks also may have killed Greg Saulsbury in Pacifica, CA, when police stunned him for being uncooperative during a call initiated by his family, who were concerned he wasn't breathing properly (San Jose Mercury News, January 4).

—The family of James Borden won a \$500,000 settlement with two Indiana counties for his death in jail in November, 2003. Borden died of a heart attack after officer David Shaw shocked him six times. Shaw is facing criminal charges (Associated Press, January 21).

—37-year-old Douglas Meldrum died after being hit by a Taser and pepper spray in his vehicle in Heber, Utah (Deseret News, December 18, 2004).

The Columbian
SERVING CLARK COUNTY, WASHINGTON ■ MONDAY, JANUARY 24, 2005 50c

Tasers potent and controversial

By ERIN MITTEWOOD, KEN OLSEY and STEPHANIE RICE
Columbia staff writers

Donald Ray Cross claims putting on his T-shirt was all it took to provoke a Woodland police officer to shock him with a Taser at least 10 times during a traffic stop. Officer Blayden Wall "yelled his Taser gun, pointed the Taser in Cross' face and said, 'Do you know what this is? Do you want me to shoot you with it?'" according to Cross' claim against the city of Woodland. His attorney filed a \$1.1 million lawsuit in federal court this month.

Wall declined The Columbian's request for an interview about what happened. His report on the arrest states that he fired his Taser after Cross, whom he believed to be prone to violence, refused to drop a weapon.

Police have turn weapons that fire instead of bullets. The lethal force of Tasers not only in other words would

their guns, but to gain compliance from those they apprehend.

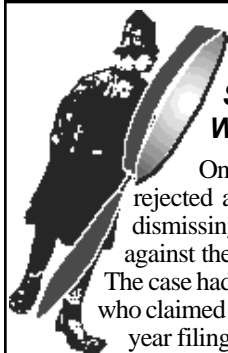
More than 6,000 law-enforcement agencies use the devices, according to manufacturer Taser International. Nearly 200,000 Tasers have been sold since 1996.

■ RUNDOWN: Federal police slip through the system. Officers protect their own. Supreme Court limits use of force. Accountability saves money.

■ TODAY: Police increasingly use Tasers in low-level conflicts.

Tasers use compressed nitrogen gas to shoot two barbs that penetrate the skin or clothing to deliver a 50,000-volt, five-second shock.

The January 24 *Columbian* featured stories on Taser cases in SW Washington.



POLICE SPYING LAWSUIT DISMISSED ON TECHNICALITY Substance of Peace and Justice Works' Complaint Not Addressed

On March 2, the U.S. 9th Circuit Court of Appeals rejected a motion to reconsider their earlier decision dismissing a suit by Peace and Justice Works (PJW) against the City of Portland for police spying activities. The case had been rejected in 2003 by a federal magistrate who claimed the July, 2002 filing date was beyond the two-year filing deadline for civil rights suits (see *PPR* #29).

The clear timeline presented by PJW, member Dan Handelman, and their attorney showed they had no knowledge about the "small number of documents" the Police Bureau had handed over to the City Attorney in January of 2000 until the City admitted having them in July that year. Because an Oregon statute specifically prohibits the "collection or maintenance" of information on those who are not suspected of criminal activity, Handelman's attorneys argued that the City had admitted to collecting the information, even if they did not maintain it. But as a result of the court's decision on the deadline issue, the question of the collection of information on Handelman with no suspicion of criminal activity has not been addressed.

The Portland Police in the CIU were involved in these activities, which implies that they may have acted similarly in their capacity as deputized members of the federal Portland Joint Terrorism Task Force (see p. 1). PJW's case underscores the possibility that similar such files exist on a local or national level about other individuals and groups, perhaps based solely on their political, religious or social affiliations. Meanwhile, PJW awaits the results of the ACLU's Freedom of Information Act Request regarding any PJTTF files being held on the group by the FBI (see *PPR* #34).

For more information contact Peace and Justice Works, which is the parent group of Portland Copwatch, at 503-236-3065.

The Justice Department commissioned a study at the University of Wisconsin to test Tasers, but the study will use "anesthetized pigs," not humans. Dr. Robert Kaminski of the University of S. Carolina criticized that idea since "most deaths have occurred when suspects are shocked after taking drugs or running from the police" (*NY Times*, February 17).

Across the river in Clark County, the *Columbian* ran a front-page story on January 24 regarding two high-profile Taser cases there. In one, from May, 2003 and now the subject of a \$1.1 million lawsuit, Donald Ray Cross was stepping out of his truck after being pulled over for expired tags and an expired license when officer Blayden Wall threatened him with a stun gun. Cross began to unfold his shirt to put it on when Wall fired the Taser, hitting with only one prong, so he tased Cross multiple times on the neck causing "multiple electrical burns." The other case is of 35-year-old Russian immigrant Olga Ryback, who was hit 12 times in 91 seconds with a Taser, also in 2003, causing "swollen wounds on Ryback's chest, stomach and back."

In big news, the Security and Exchange Commission (SEC) is investigating Taser International for possibly having made false claims about their product's safety (*Arizona Republic*, January 8).

But Taser International is not backing down, and continues to tout its product's safety. However, their stock fell by 52% as of early February after having quadrupled in 2004 (*NY Times*, February 9).

Amnesty International (AI) released a new report in late March counting 103 Taser-related deaths in North America from 2001-2005. They cite Taser's website, which shows the weapons did not stop suspects nearly one-third of the time. AI called on the company to cease promoting Taser as having a 95% success rate (see www.amnestyusa.org).

National Lawyers Guild attorney Lynne Wilson asserts that the reason for many of the Taser-related deaths is not the device itself, but subsequent restraints used by law enforcement (*Police Misconduct and Civil Rights Report* Jan/Feb 2004 and *Covert Action Quarterly*, April 2005). Since Portland has had its share of deaths by "positional asphyxia" (restricting the suspect's breathing by piling on them or putting them on their stomach while in restraints), it would be wise for Portland Police to incorporate precautions into its training, since they don't appear ready to give up Tasers. ■

Man killed by police was waving an umbrella

The officer who shot David R. Riebling Jr. said that though the shot seemed to have been a warning shot, it was not.

Five Police Shootings in Seven Weeks (continued from p. 1)

Riebling had allegedly forced his way into the home of his former girlfriend, Teresa Bartle, who called police. She managed to get outside, though her three children (between the ages of 12 and 22) were still inside. Bartle allegedly told police Riebling had surveillance cameras around the outside of the home. The police say that a Crisis Intervention Team officer, Sgt. Scherise Bergstrom, talked to Riebling on the phone in an effort to de-escalate the situation. However, when Riebling came to the door at one point, officers shot at him with a "bean bag" (lead-pellet bag) shotgun. We're sure this helped calm him down.

Eventually, Riebling came back out of the house carrying something the police only identified as "an object" for the first 30 hours after the incident. When it was announced that the object was an umbrella, police quickly defended Kruger's actions by stating they believed Riebling was armed because both Riebling and the children ("hostages") claimed he was (*Oregonian*, March 21-22 and Portland Police Bureau [PPB]).

Another man shot and killed by police just days earlier was Dwayne Novak, 38, who allegedly confronted two Portland officers and a Multnomah County Sheriff's Deputy with a knife on March 12. The police were called to a motor home in Scappoose by a 14-year old who had witnessed Novak assaulting her grandmother, Norma Murff, 74. Novak apparently killed Murff and was ransacking the house when Officer William Gillentine (#38034), Officer James Nett (#41052) and Deputy Jeffrey Schneider all shot him (*Oregonian*, March 14-15, and PPB).

This incident is significant—it is the second time in five years Portland Police were involved with other agencies in a fatal shooting. In 2000, Justyn Gallegos was shot by the PPB, Troutdale and Gresham police (see PPR #22). The Police Assessment Resource Center (PARC), which is reviewing shootings from 2000-2001, refused to review this case despite Portland Copwatch's urging them to review the procedures when multiple agencies are involved in deadly force situations. Even if PARC reviews the Novak case, it won't be until at least 2007.

Gilbert King was shot on the one-year anniversary of the shooting of James Jahar Perez (March 28, 2004—see PPRs #32-34).

The third incident, which happened most recently, was the March 28 shooting of Gilbert Thomas King, 35. King allegedly put the pickup he was driving into reverse as officers approached him, and rammed the police car. The officers, Michael Honl (#33525) and Dell Stroh (#39607) shot nine bullets, missing both King and his passenger. King received a head wound from the crash (*Oregonian*, March 30-31 & April 12 and PPB). It is unclear why King is being charged with attempted aggravated murder, since the officers were not in their car at the time. It is similarly unclear whether these officers' actions would violate the new policy proposed by Chief Foxworth restricting shooting at vehicles (see Foxworth's Foxhole, p. 11).

Terry Kruger's brother, Officer Tadd Kruger, was involved in two shootings in 1988 and one in 1991.

The fourth incident—the second chronologically—was the non-fatal shooting of John Vitale, 49, at an apartment building in northwest Portland on February 26. Officers responded to a call about Vitale "walking around and screaming" (PPB news release, February 26). They say when they arrived, Vitale came at them with a knife, and Officer Stacy Dunn (#43482) shot a live round at him. Shortly after, Dunn fired a second round while Officer Mark Friedman (#36237) used a "bean bag" shotgun.

Public Information Officer Brian Schmautz informed our friends at Flying Focus Video Collective that Officer Friedman is a fully certified Crisis Intervention Team (CIT) officer, meaning he had 40 hours of training in de-escalating situations with people in emotional crisis. Officer Dunn had the minimum two-hour CIT training. This raises the question, could the suspect have been apprehended without the use of a firearm if both officers were fully CIT trained?

The fifth, earliest shooting took place on February 6, when reserve officer Michael Hayward (#39233) fired at a suspect during a traffic stop and hit a closet instead. Apparently, Lee Harrison Hardman, 36, had driven away from the officers moments earlier and was pulled over with the assistance of a civilian. When



Nanci Hopkins showed KGW-TV the hole in her house from a bullet fired by Portland Reserve Police Officer Michael Hayward. The bullet landed in her closet, barely missing her bed (February 9).

Hayward mistook a gesture as Hardman reaching for a gun, he shot his weapon, missing Hardman and hitting a nearby house, where the bullet traveled through several walls and came to rest in a closet. The homeowner, Nanci Hopkins, told KGW-TV on February 9 that the bullet came within inches of her bed. Hardman was arrested for one count of Driving Under the Influence of Intoxicants and one count of

Attempting to Elude a Police Officer (PPB News release, February 9).

In the meantime, there were at least two incidents where officers shot and killed dogs during alleged meth raids (one was on Feb. 17). These raids often do not turn up any drugs and sometimes do not end in convictions. It appears, though, that no Use of Force Board, Humane Society, or any other group has been questioning the frequency with which police are killing dogs.

What can we learn by looking at these recent shootings? For one, the shootings have once again come clustered fairly close together (two 20 days apart, then three all separated by 8 days). And, after two years in which every shooting was fatal and five of eight victims were people of color, three of the five recent incidents did not result in death and none were reported as involving people of color. Finally, neither the PARC report nor the Attorney General's report adequately addressed ways to minimize the number of shootings (more on p. 9). One exception is the directive requiring officers to report when they draw their weapons (see Rapping Back, p. 10). A caution: simply because these shootings appear to be "justifiable" under the circumstances does not mean they were necessary. The community should continue pushing for policy and training that encourages de-escalation over deadly force.

For a detailed list of Portland Police shootings and deaths in custody from 1992-2005, see the Portland Copwatch website at <http://www.portlandcopwatch.org/listofshootings.html>.

Police shoot Portlander at apartment complex

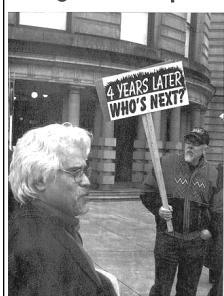
John M. Vitale, 49, is in serious condition after he reportedly approached an officer with a raised knife.



small entryway of the complex, police said. "Depending on the witness, he raised the knife near his shoulder or near his head and moved toward the officer in a confined space," Schmautz said.

The *Oregonian* covered Vitale's shooting, identifying him as "on probation," on February 27. Previous criminal history is nearly always released by police as a reason to justify shootings.

Mejía remembered, but lack of a full investigation leaves questions unanswered



Members of the Latino Network and others remembered Jose Mejía Poot four years after his death on April 1.

Portland, OR — Four years after a Portland police officer shot and killed Jose Mejía Poot, a 29-year-old man, the city has not yet opened an investigation into the shooting. The city's police department said that the only way to carry on doing business as usual is to ignore the shooting. The city's police department said that the only way to carry on doing business as usual is to ignore the shooting. The city's police department said that the only way to carry on doing business as usual is to ignore the shooting.

ATTORNEY GENERAL ISSUES REPORT ON POLICE USE OF DEADLY FORCE: Suggests Publishing Grand Jury Testimony • Focus on Aftermath, "Cycle" of Shootings Won't Lower Incidents

Oregon Attorney General Hardy Myers released a report in late March with recommendations for statewide guidance regarding officer-involved shootings and other deadly force incidents. The most promising recommendation in the report is a recommendation that grand jury testimony in these cases be transcribed and publicly released, whereas currently all grand jury testimony is sealed. The main theme of the report is reflected on its cover, showing a cycle beginning with planning for an incident and ending with revising those plans. In other words, the report, like the Police Assessment Resource Center (PARC) report on Portland deadly force incidents, accepts that officer-involved shootings are inevitable and addresses more of the aftermath than the prevention of such incidents.

The report rejects the concept of having the Attorney General's office (AG) take over the prosecution from District Attorneys (DAs) in cases involving officer use of deadly force. Despite concerns expressed by the community about the apparent conflict of interest this presents the DAs (who need to work with police on a daily basis to prosecute others), the AG seems to feel that since DAs are elected, the community can hold them accountable over what will be perhaps four to ten cases a year in a city the size of Portland.

The report also rejects the idea of setting statewide standards for when police may use deadly force, leaving such details to the discretion of individual communities.

The task force, which was made up of 86 individuals, most of whom were police chiefs, officers, or their attorneys (only seven "citizen participants" are listed in the roster) focused much of its energy on trying to get the community to understand how difficult it is to be an officer. We do not debate that being a police officer is not an easy job; however, the end result of this report might be the escalation of police use of force. The community is being asked to accept that deadly force is inevitable, and not to be outraged even in situations in which the person who is shot was unarmed and posed no real threat.

The report does capture, in the form of interspersed quotes, some of the public's concerns: a black man fearing being approached by an officer at a traffic stop; the need for more de-escalation training; and the suggestion that officers should consider retreat as a viable option. However, most of these concepts are not included in the main body of the report.

The report also recommends writing into law that inquest juries, which determine who died, when they died, where they died, and how they died, not be held until after a grand jury hearing for officers. The inquest in the James Jahar Perez case was delayed until after the grand jury only because the Portland Police Association threatened to sue the District Attorney (see PPR #32). However, the 1985 inquest jury in the death of Tony Stevenson returned a verdict of "negligent homicide," which gave the grand jury reason to indict the officer who killed Stevenson with a choke hold. The officer was not indicted. Given law enforcement demands to have as much testimony as possible heard behind closed doors, the codification of this order of events seems only to serve police interests, not the public's.

Like the PARC report, the AG's report glosses over the question of race, despite the high percentage of people of color shot and killed in Portland in the last few years. It does recommend expanded cultural sensitivity training depending on the needs of each community in Oregon.

As for the proposal to release grand jury transcripts, the proposed bill incorporating ideas from the report (SB 301) includes numerous

loopholes that would allow the police to prevent the release of such information. Other ideas in the report with positive potential include that the primary agency involved in a shooting should not investigate the incident without outside help. It also suggests increasing Crisis Intervention Training for all officers, requiring psychological exams for officers involved in deadly force incidents, creating community dialogues with police, and contacting the family of the victim before releasing information.

Interestingly, the report reveals that in some jurisdictions (Marion County and Jackson County's protocols are included as examples), officers may be requested to take an alcohol/intoxicant blood/urine test. Many people in Portland have wondered why that is not standard procedure after shootings that occur here. The report notes that these tests are not consistently applied, but stops short of recommending that such tests be part of every investigation.

Overall, it is good that the AG convened the task force and issued the report. In part, it was done to address bills currently before the Oregon legislature, introduced by former Rep. Joe Smith and current Sen. Avel Gordly. On the other hand, since the AG only held a small number of "listening sessions" with members of the public, many concerns remain unaddressed.

The AG's report is available on line at

<http://www.doj.state.or.us/pdfs/deadlyforce.pdf>.



Hardy Myers

Attorney General Myers held several "listening sessions" to gather community input. The Alliance for Police and Community Accountability convinced him to hold one final, open hearing on March 6.

OTHER OREGON POLICE SHOOTING/DEATHS IN CUSTODY NEWS:

—Chief Foxworth considered firing Sgt. Bert Nederhiser for shooting his gun past other officers during an attempt to apprehend unarmed murder suspect Russel Stoneking in 2002 (*Oregonian*, January 22). The incident ended when 26-year-old Stoneking (who was not hit) jumped six stories in the Hotel Vintage Plaza, breaking his arms, legs, neck and back. Other officers had fired "beanbags" and Tasers to no avail. The *Oregonian* reports that Foxworth "cited Nederhiser for not actively participating in the tactical plan...and not being truthful when he claimed a greater leadership role" in the arrest. Later, Nederhiser* was demoted to officer and filed a civil rights lawsuit against the city for "irregularities" in the investigation against him and for releasing "false information" to the media about him (*Oregonian*, April 8).

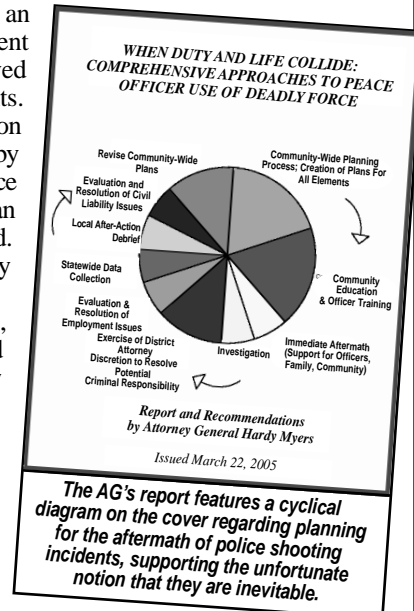
—Washington County Sheriff's Deputy Jarrod McCreary shot Kerry Prowse in the leg after a car chase led them to the parking lot of a private school in West Portland. Prowse, 34, allegedly was driving toward one of the deputies on the scene when McCreary fired (KGW-TV, April 15; Washington County Sheriff's Office, April 18).

—On April 4, Deschutes County Deputy Justin Alps shot Gregory Willis, 43, after he rammed one police car and attempted to ram a second one during a traffic stop for speeding. Willis was wounded in the shoulder, fled, and was found hiding in a tree. Willis is charged with attempted murder among other crimes (Bend.com, April 7).

—Coos County Sheriff's deputies shot and killed Ronald Oxford, 38, when he ran at them with a knife and hatchet on March 30 (*Eugene Register-Guard*, April 1).

—Sherman County Sheriff Brad Lohrey shot and killed Cody Jack Childress, 23, during a standoff on March 8 in Grass Valley when he and Oregon State Police Trooper Kaipo Raiser mistook a pair of binoculars for a gun. Lohrey's .40-caliber Glock killed Childress with a bullet to the head. It was the County's first fatal officer-involved shooting (KOIN-TV/AP and Oregon State Police, March 9; *Oregonian*, April 2).

—On February 12, Clackamas County Deputy Scott King shot and wounded a suspect after an 80-mile-an-hour chase on I-205. The suspect allegedly "exchanged gunfire" with the deputy (*Oregonian*, *Portland Tribune* and Clackamas County Sheriff's Office, February 15).





RAPPING BACK

Portland Copwatch analyzes the police 'union' newsletter
—continued from back page—

"CONTEMPT OF COP" (continued)

On the bright side, Walsh says that sometimes officers took the time to talk to citizens about the shooting incidents and that dialogue helped defuse tensions.

Walsh praises officers who patrolled protests after the invasion of Iraq in 2003: They showed "professionalism and self control" in the face of "disgusting .. verbal abuse and pure hatred shown those officers." Looking at the videos of police pepper-spraying unarmed, nonviolent protestors makes me think otherwise.

Moving from the police to their supporters, #1 fan Juanita Downing, now a regular contributor to the *Rap Sheet*, titled one of her three March columns "Thanks North Precinct, you are the best." Referring once again to the public outcry surrounding the police shooting of unarmed motorist Perez, Downing writes, "it horrified and angered me to see the public and the media turn on the very people who are trying to protect them from the scum of society."

But she's not the only one comparing suspects to "scum." An article on "Testifying in court: A police primer" printed in the January *Rap Sheet* by John Fuller (identified only as "Preparation") includes some really good advice for police. He suggests to officers that they "ALWAYS TELL THE TRUTH. Don't lie, exaggerate, omit, distort, overstate, or otherwise 'stretch' the truth."

It might, however, undermine the court case if officers disclosed the entire truth as seen by Fuller: "Predictably, the scumbag you arrested a few months ago will look like an investment banker when he arrives in court... Don't gloat or sneer at the defendant, his lying friends or his shyster lawyer."

Race and Criminal Justice

In the March *Rap Sheet*, Det. Mike Malanaphy responded to a January 24 *Oregonian* column by S. Renee Mitchell about racial bias in the justice system, complaining that she failed to use statistics to prove her point. "In this community, minority males commit serious crimes well in excess of their proportion of the population at large," Malanaphy writes—without providing any statistics. He refers to an Oregon Supreme Court report from a few years ago which "basically found the system racist, but curiously it didn't identify any racists." This logic is like saying you can't claim that beer commercials unfairly exploit women without identifying specific misogynists in the advertising industry—it's not the individuals' actions but the institutional behavior that is in question.

"HARD WORK" TRUMPS ACCOUNTABILITY?

President King used January's *Rap Sheet* to express disappointment in "how little regard some people seem to have for the working Police Officer of Portland." He notes that many problems in the criminal justice system—the lack of jail beds, clogged courts, budget cuts for police and lack of drug rehabilitation programs—are not the fault of the cops. "Despite all our hard work and great successes and accomplishments throughout the year, there is still a chorus of anti-police sentiment that is given a voice all too often."

As is the mistake of many in power, the idea that people want to hold police accountable for actions and policies they are responsible for is interpreted as "anti-police."

Malanaphy coins the term "bigophobes" for people who, in his estimation, believe the system is racist because they hate white racists.

In contrast, in a rare admission that racism exists, Daryl Turner, Vice President of the PPA, exposed a previously unknown sensitive side in his January *Rap Sheet*

column. In defending the Police Association's refusal to oppose Ballot Measure 36 (which denied gays and lesbians the right to marry, affecting at least a few police officers), Turner, who is African American, revealed his feelings about discrimination. "I have dealt with racism in college, the military and as a cop and a civilian." Hearing more stories like this might help those "anti-bigophobes" like Malanaphy.

Right and Wrong #2: The Irony Award Goes To... Last fall, the Chief's



DRAWING YOUR GUN: MERE PRESENCE?

Officer James Hurley writes about the Police Bureau's recent requirement to document pointing a gun as a "use of force" (*Rap Sheet*, March 2005), which arose from the community concern that police are drawing and pointing their weapons in situations that don't warrant deadly force.

Hurley claims officers tell him they now hesitate before drawing their weapons, which he says puts them in danger. He quotes a Police Marksman magazine article about when it is justifiable to draw a gun. The article says police are not "required to wait until the deadly force threshold is met. The standards are extremely low. You are merely required to suspect that there might be some indications of deadly threat based on the totality of the circumstances."

Hurley argues that pulling out a gun, like standing in a police line with a riot baton in hand, is a "threat of force," along the lines of "mere presence and/or verbal control." Since the gun can't cause injury until the officer pulls the trigger, he argues, it is not use of force. Why is it, then, that when an officer sees a gun pointed at him, deadly force is justifiable?

that "few critics surfaced" about these shootings, stating that the cops "deserve to be honored" for their behavior in these two cases.

Simpson then revisits the old "I had no choice but to shoot" argument. "Contrary to many beliefs, we don't have many choices in our line of work... we don't get to choose when or where a deadly force encounter will occur," he begins. But Simpson explains that every officer has at some point used "mental and physical training" to exercise an option other than deadly force in situations where such force might be justifiable. Then he contradicts himself by saying "Some folks 'out there' would like to believe that there is always another option, but it's simply not true."

Simpson suggests that both Clark and Grigsby "forced our officers into situations where the only option was to use deadly force." He then further removes responsibility from the officers by suggesting "maybe 'suicide by cop' had crossed their minds." (The March 23 *Oregonian* also suggests that Ronald Riebling committed "suicide by cop" when he pointed an umbrella in a towel at them [see p.1]. As noted before, the Oregon Right to Die act is for doctors to help the terminally ill, not for police to fulfill wishes of criminal suspects by dispensing street justice.)

In a special aside to our group, Simpson refers to a quote in the *Oregonian* regarding the time it took for paramedics to attend to Grigsby. "Dan Handelman, the Portland copwatcher who always seems to have an opinion, says he's concerned about the length of time that it took the suspects to be treated by medical personnel. ... Handelman's only experience with defiant people is when his inner-child and he argue over whether the macaroni and cheese should have hot dogs cut up and mixed with it."

Actually, I love vegan hot dogs in my mac and soy cheese, that doesn't trouble me a bit. Excessive use of force on dying people, and the unquestioning power of the state to take human life, that bothers me.

PPA President Robert King weighs in on deadly force in the February *Rap Sheet*. Referring to the 2003 PARC report and its (continued on p. 9)

Forum gave a "Certificate of Appreciation" to Applebee's restaurant for "promoting community policing in a distinctive way." Officers involved in shooting Kendra James in 2003 infamously used Applebee's to talk before being interviewed by detectives (see PPR #30).—January *Rap Sheet*.

Police Shootings: Forced to Do it, Don't Question Us

Prior to the five police shootings in 2005 (see p. 1), several officers took time to write about officer-involved shootings and how they see citizens' input regarding these life-and-death events.

Det. Peter Simpson wrote in January about the shootings of Bruce Clark, a robbery suspect with a knife, and Willie Grigsby, who allegedly fired at police and was shot at least 13 times, and whom officers then shot with 22 bean bags and several Taser zaps (see PPR #34). Simpson notes



RAPPING BACK

POLICE SHOOTINGS
—continued from p. 10—

89 recommendations about police use of deadly force, King notes that the Bureau is updating its policies, putting a Use of Force Review Board in place, and changing how investigations are done. “Most of which is good,” he notes, qualifying, “However, as officers we increasingly find ourselves on the losing end of the equation when the Bureau’s choice is to be responsive to the community or support its officers.”

It never ceases to amaze how the improvements of police policies which can benefit both the officers and the community (and in many cases, which have been watered down to address the concerns of the police) can be interpreted as a “losing” proposition for the police.

King describes the importance of emotional recovery for officers involved in deadly force situations, repeating again the police “no choice” mantra: “When we are forced to shoot, it is to defend our lives or the lives of others. A traumatic or critical incident is traumatizing because ‘it is a situation that results in an overwhelming sense of vulnerability or loss of control,’ according to Roger Solomon of Police Psychologists.”

To his credit, King states flatly as a matter of fact, “We need to talk with a professional therapist” in the aftermath of a shooting. This is important because so many police fear it is embarrassing to seek help, while King acknowledges it is no big deal.

In the same issue, VP Turner argues that officers should have more say in the policy on time off after a shooting. “When we are involved in controversy because of actions we take in the line of duty, we all of a sudden have a multitude of community meetings... We rely on recommendations from so-called community leaders, who have no police experience, to help ‘reform’ our policies.”

This tired argument needs to be addressed: We’re not doctors at Portland Copwatch, but we know that it’s wrong to sew surgical instruments into a patient’s open wound. Some aspects of how police do their jobs come down to common sense and community standards.

Right and Wrong #3: The Role of the Police “Union” “One of the things we will be doing is informing this new council about the good bad right and wrong as we see it with the Bureau and the work we do.”—PPA President Robert King, *Rap Sheet*, January 2005

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. We worry 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.portlandpoliceassociation.com

If police want to search you,

they may pat you down to check for weapons. Make it clear you do not consent to any further search. If they say they have a search warrant, ask to see it. If they are searching your home or your car with “probable cause,” make it clear you do not consent to a search.

If you are arrested, you do not have to answer any questions, other than identifying yourself. Don’t offer excuses or explanations. Anything you say can be used against you. Just say, “I want to talk to a lawyer.” If you don’t have a lawyer, ask the police how to contact one.

If you are Copwatching, be sure to let officers know you don’t intend to interfere with the arrest. This means staying ten feet or more away from the action and not trying to distract the officers or the arrestee’s attention.

If you are the victim of police misconduct, be sure to get the names of all officers involved and supervisors names if possible. Get names and numbers of any witnesses to the action.

If you are the victim of police misuse of force, document injuries right away. You may wish to pursue any number of routes, from filing a complaint with the Independent Police Review Division (IPR) to pursuing a lawsuit.

FOXWORTH’S FOXHOLE

Portland’s Chief Allows for
Retreat, Hires From Within



COMMON SENSE DRIVES NEW POLICY ON SHOOTING AT CARS

In March, Portland Police Chief Derrick Foxworth introduced a proposed policy regarding police shooting at moving cars: Get out of the way and don’t shoot unless you can’t escape. Though the policy is based on recommendations from the Police Assessment Resource Center (see PPR #31), it also reflects community concerns following the shooting death of unarmed motorist Kendra James in 2003.

According to the March 10 *Oregonian*, the policy “explains that a moving vehicle with an incapacitated driver could become an ‘uncontrolled dangerous weapon,’” warns that innocent passengers could be harmed, and prohibits officers from using “poor tactics or positioning as justification for discharging a firearm at a moving vehicle.” We hope this change leads to fewer incidents such as the two recent shootings where officers fired at cars and missed their targets (see p. 1).

EX-CAPTAIN’S “SWEETHEART DEAL” PROVEN

On January 24, Chief Foxworth responded to Portland Copwatch’s news release about the hiring of former Internal Affairs Captain Darrell Schenck as a consultant to restructure the Bureau’s Early Warning System (PPR #34). Noting that Schenck retired in December, we expressed concern that he would receive both retirement pay and a consulting fee to do what should have been part of his job. Foxworth accidentally proved our point by saying that while pondering how to implement an “Early Intervention System” modeled on Phoenix, Denver and Seattle without creating “another command level position to manage...a six month to one year project,” they turned to Schenck. Foxworth said the Human Resources bureau explained that as “a short-term contract, it would be cost prohibitive to recruit outside the organization.” In other words, Schenck was handed a sweetheart insider deal, just as we alleged.

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Letters/submissions welcome. Contact us by e-mail: newsletter@portlandcopwatch.org

Information on authors of this issue is available in the print version of PPR #35.

Call us at (503) 236-3065 for more info; report incidents with the police or Sheriff’s deputies to the Copwatch Incident Report Line at (503) 321-5120.

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CLIP AND SAVE THIS “YOUR RIGHTS AND THE POLICE” CARD

We have cards available in English (Left), Spanish, Russian, Serbo-Croatian, and Vietnamese. If you can translate and/or typeset into other languages, want more copies or can print more copies for us on card stock, contact Portland Copwatch at (503) 236-3065.



RAPPING BACK

Portland Copwatch member Dan Handelman analyzes the Police "Union" newsletter, the "Rap Sheet" for the People's Police Report

Portland's Po-Po Poo-Poo People Power

Right and Wrong #1: What If Clergymen Had Pepper Spray and Semi-Automatic Weapons? *"Dishonesty and brutality are news [because they are] exceptional, unusual, not commonplace...one half of one percent of police officers misfit that uniform. And that's a better average than you'd find among clergymen."* —Editor Peter Simpson, Vice President of the Portland Police Association (PPA), quoting Paul Harvey in the March Rap Sheet.

CONTEMPT OF CITIZEN

Sometimes when we hear complaints of police misconduct, the incident can be summed up with the phrase "contempt of cop." Civilians, though they have no legal obligation to be polite to officers, sometimes are thrown to the ground, taken to detox, cited and/or arrested for showing disrespect.

In recent months, the Rap Sheet has shown that the PPA and its supporters hold civilians in contempt, with no consequences.



19 Portland officers stand in formation at the Presidential Inauguration in Washington, DC (March Rap Sheet). The officer on the front left appears to have a gun, though they allegedly only had batons (see p.5).

In a diatribe in the February Rap Sheet, Officer Stuart Palmiter chastises Multnomah County Commission Chair Diane Linn for spending money to remind "criminals" (aka suspects) to go to court. *"What would you call, the phone booth along the streets of Portland? Because that is where the drug dealers and drug users are."*

Funny, we remember a number of cases such as a police chief's son, a deputy DA and a neighborhood involvement officer who were all busted for drugs (PPRs #13&34).

Palmiter lists the reasons suspects don't show up in court: *"1) They do not want to go. 2) They are so high on drugs or too busy trying to get their next fix that they do not care if they miss court. 3) They are too busy committing new crimes to be*

bothered with going to court. 4) There are no consequences for missing court!" So much for innocent until proven guilty.

In the March issue, Sgt. Pat Walsh of Drugs and Vice describes how after Kendra James was shot, *"angry citizens told us what they thought, and much contact was quite hostile."* After police shot James Jahar Perez, Walsh says, the outcry was loud and *"often turned to violent confrontations."* I recall only one incident—in which officers pepper-sprayed a young man who crossed the police line trying to see what had happened to Perez. (continued on p. 10)

To report incidents involving Portland Police Officers call:
PORTLAND COPWATCH
(503) 321-5120

HANDY NUMBERS:

Independent Police Review
Division (IPR)503-823-0146
Mayor Tom Potter.....503-823-4120
Metro Public Defenders..503-225-9100
Multnomah Defenders 503-226-3083
Legal Aid 503-224-4086
Oregon Law Center.. 503-295-2760
Juvenile Rights Project..503-232-2540
Bar Association legal
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For more information:
Portland Copwatch
PO Box 42456
Portland, Oregon 97242
(503) 236-3065
www.portlandcopwatch.org

YOUR RIGHTS AND THE POLICE

a quick reference guide for civilians in Portland, OR

When you're stopped: Stay calm, keep your hands visible, be careful what you say. If you are not driving, you do not have to carry I.D. You do not have to identify yourself, but if you refuse, police may bring you in. You can't be arrested for not having I.D.

If you are driving, you must show your license, registration and proof of insurance. If you are suspected of drinking and refuse to take a breath test, your license can be suspended.

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