

ANNOTATED MINUTES

Tuesday, February 7, 1995 - 9:30 AM

*Donald E. Long Home
1401 NE 68th Avenue*

BOARD BRIEFING and FACILITY TOUR

- B-1 Update on the Juvenile Justice Complex Replacement Project (Donald E. Long Home) and Facility Tour located at 1401 NE 68TH AVENUE. Presented by Bob Nilsen, Jim Anderson and Jann Brown.*

FOLLOWING TOUR OF THE COMPLETED PORTION OF THE NEW JUVENILE JUSTICE COMPLEX, BOB NILSEN, JIM ANDERSON AND JANN BROWN PRESENTATIONS AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

*Thursday, February 9, 1995 - 9:30 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

Chair Beverly Stein convened the meeting at 9:31 a.m., with Vice-Chair Sharron Kelley, Commissioners Gary Hansen, Tanya Collier and Dan Saltzman present.

CONSENT CALENDAR

UPON MOTION OF COMMISSIONER SALTZMAN, SECONDED BY COMMISSIONER KELLEY, THE CONSENT CALENDAR (ITEMS C-1 THROUGH C-7) WAS UNANIMOUSLY APPROVED.

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointment of RUSSELL A. ARSENAULT to the Multnomah County Deferred Compensation Committee*
- C-2 In the Matter of the Appointment of DOUG MENELY to Position 7 on the District Attorney's Citizen Budget Advisory Committee*
- C-3 In the Matter of the Appointments of Metropolitan Arts Commission Members NANCY CONRATH, Position 1; LAURA ROSS PAUL, Position 2; CANDACE BECK, Position 3; MARY BROWN RUBLE, Position 4; EFRAIN DIAZ-HORNA, Position 5; and YOLANDA VALDES-REMENTERIA, Position 6 to the Regional Arts and Culture Council*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-4 *ORDER in the Matter of the Execution of Deed D951161 Upon Complete Performance of a Contract to GARY V. JAMES*

ORDER 95-32.

- C-5 *ORDER in the Matter of the Execution of Deed D951163 for Certain Tax Acquired Property to CHRISTOPHER M. SCHLOSSER*

ORDER 95-33.

- C-6 *ORDER in the Matter of the Execution of the Deed D951168 Upon Complete Performance of a Contract to PAT ANDERSON*

ORDER 95-34.

SHERIFF'S OFFICE

- C-7 *Ratification of an Intergovernmental Agreement, Contract #800715, between the Sheriff's Office and the Oregon Public Utility Commission, Providing Revenue for the Sheriff's Office Motor Carrier Safety Unit to Enforce Commercial Motor Vehicle Safety Rules and Regulations for the Period October 1, 1994 through September 30, 1995*

REGULAR AGENDA

PUBLIC COMMENT

- R-1 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

DAN NOELLE, CANDIDATE FOR MULTNOMAH COUNTY SHERIFF, ADDRESSED THE BOARD REQUESTING AN INDEPENDENT INVESTIGATION REGARDING THE INTERNAL INVESTIGATIONS PROCESS OF THE MULTNOMAH COUNTY SHERIFF'S OFFICE. HE REQUESTED SPECIFICALLY THAT THE BOARD REMOVE THE INTERNAL INVESTIGATION FROM THE SHERIFF'S OFFICE; THAT ALLEGATIONS BE FULLY INVESTIGATED BY AN OUTSIDE AGENCY; AND AN ONGOING PROCESS OF EXTERNAL OVERSIGHT OF THE SHERIFF'S INTERNAL INVESTIGATION PROCESS BE ADOPTED.

JACQUELINE WEBER, REPRESENTING COUNTY COUNSEL'S OFFICE, PRESENTED AN OPINION (EXHIBIT B) RESPONDING TO MR. NOELLE'S REQUEST STATING, IN PART, THAT THE BOARD HAS NO AUTHORITY TO REVIEW THE INTERNAL INVESTIGATIONS PREVIOUSLY CONDUCTED IN RESPONSE TO ALLEGATIONS CONCERNING BUNNELL AND THE BOARD DOES NOT HAVE AUTHORITY TO ESTABLISH AN INDEPENDENT INVESTIGATION UNIT FOR COMPLAINTS RECEIVED BY THE SHERIFF'S OFFICE.

DAN HANDELMAN ASKED THE BOARD TO SUPPORT THE SHERIFF'S OFFICE IF THEY DECIDED TO INITIATE A CITIZEN REVIEW PANEL SIMILAR TO THE CITY OF PORTLAND MODEL OUTLINED IN EXHIBIT C WHICH HE PRESENTED TO THE BOARD.

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 Ratification of an Intergovernmental Revenue Agreement, Contract #104215, between Multnomah County Community and Family Services Division and the Oregon Department of Human Resources to Provide \$12,500 in Funds and the Terms for an Integrated Service Project located at Marshall High School, Effective July 1, 1993 through June 30, 1995**

COMMISSIONER SALTZMAN MOVED AND COMMISSIONER KELLEY SECONDED, APPROVAL OF R-2. RAY ESPANA PRESENTED EXPLANATION AND RESPONSE TO BOARD QUESTIONS. AGREEMENT WAS UNANIMOUSLY APPROVED.

Chair Stein adjourned the Regular Board Meeting at 9:41 AM and reconvened at 9:44 AM for purposes of hearing a briefing presented by staff from the Sheriff's Office and the Department of Community Corrections.

*Thursday, February 9, 1995 - 9:35 AM
Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

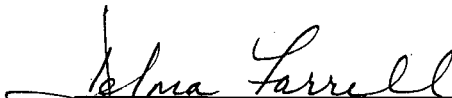
BOARD BRIEFING

- B-2 Progress Report on the Target City In-Jail Intervention Program. Presented by Carol Nykerk-Abel. ONE HOUR REQUESTED.**

CAROL NYKERK-ABEL AND NORMA JAEGER PRESENTATION OF VIDEO AND RESPONSE TO BOARD QUESTIONS AND DISCUSSION.

There being no further business, the meeting as adjourned at 10:34 AM.

**OFFICE OF THE BOARD CLERK
for MULTNOMAH COUNTY, OREGON**


Delma D. Farrell



MULTNOMAH COUNTY OREGON

OFFICE OF THE BOARD CLERK
SUITE 1510, PORTLAND BUILDING
1120 S.W. FIFTH AVENUE
PORTLAND, OREGON 97204

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR • 248-3308
DAN SALTZMAN • DISTRICT 1 • 248-5220
GARY HANSEN • DISTRICT 2 • 248-5219
TANYA COLLIER • DISTRICT 3 • 248-5217
SHARRON KELLEY • DISTRICT 4 • 248-5213
CLERK'S OFFICE • 248-3277 • 248-5222

AGENDA

MEETINGS OF THE MULTNOMAH COUNTY BOARD OF COMMISSIONERS

FOR THE WEEK OF

FEBRUARY 6, 1995 - FEBRUARY 10, 1995

Tuesday, February 7, 1995 - 9:30 AM - Board Briefing Page 2
at Donald E. Long Home
1401 NE 68th Avenue

Thursday, February 9, 1995 - 9:30 AM - Regular Meeting Page 2

Thursday, February 9, 1995 - 9:35 AM - Board Briefing Page 3

*Thursday Meetings of the Multnomah County Board of Commissioners are
taped and can be seen by Paragon Cable subscribers at the following times:*

Thursday, 6:00 PM, Channel 30
Friday, 10:00 PM, Channel 30
Saturday, 12:30 PM, Channel 30
Sunday, 1:00 PM, Channel 30

**INDIVIDUALS WITH DISABILITIES MAY CALL THE OFFICE OF THE BOARD
CLERK AT 248-3277 OR 248-5222, OR MULTNOMAH COUNTY TDD PHONE 248-
5040, FOR INFORMATION ON AVAILABLE SERVICES AND ACCESSIBILITY.**

Tuesday, February 7, 1995 - 9:30 AM

*Donald E. Long Home
1401 NE 68th Avenue*

BOARD BRIEFING and FACILITY TOUR

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-

Thursday, February 9, 1995 - 9:30 AM

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

REGULAR MEETING

CONSENT CALENDAR

NON-DEPARTMENTAL

- C-1 In the Matter of the Appointment of **RUSSELL A. ARSENAULT** to the Multnomah County Deferred Compensation Committee*
- C-2 In the Matter of the Appointment of **DOUG MENELY** to Position 7 on the District Attorney's Citizen Budget Advisory Committee*
- C-3 In the Matter of the Appointments of Metropolitan Arts Commission Members **NANCY CONRATH**, Position 1; **LAURA ROSS PAUL**, Position 2; **CANDACE BECK**, Position 3; **MARY BROWN RUBLE**, Position 4; **EFRAIN DIAZ-HORNA**, Position 5; and **YOLANDA VALDESMENTERIA**, Position 6 to the Regional Arts and Culture Council*

DEPARTMENT OF ENVIRONMENTAL SERVICES

- C-4 ORDER in the Matter of the Execution of Deed D951161 Upon Complete Performance of a Contract to **GARY V. JAMES** 95-32*
- C-5 ORDER in the Matter of the Execution of Deed D951163 for Certain Tax Acquired Property to **CHRISTOPHER M. SCHLOSSER** 95-33*
- C-6 ORDER in the Matter of the Execution of the Deed D951168 Upon Complete Performance of a Contract to **PAT ANDERSON** 95-34*

SHERIFF'S OFFICE

- C-7 *Ratification of an Intergovernmental Agreement, Contract #800715, between the Sheriff's Office and the Oregon Public Utility Commission, Providing Revenue for the Sheriff's Office Motor Carrier Safety Unit to Enforce Commercial Motor Vehicle Safety Rules and Regulations for the Period October 1, 1994 through September 30, 1995*

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- R-1 *Opportunity for Public Comment on Non-Agenda Matters. Testimony Limited to Three Minutes Per Person.*

COMMUNITY AND FAMILY SERVICES DIVISION

- R-2 *Ratification of an Intergovernmental Revenue Agreement, Contract #104215, between Multnomah County Community and Family Services Division and the Oregon Department of Human Resources to Provide \$12,500 in Funds and the Terms for an Integrated Service Project located at Marshall High School, Effective July 1, 1993 through June 30, 1995*

*Thursday, February 9, 1995 - 9:35 AM
(or Immediately Following Regular Meeting)*

*Multnomah County Courthouse, Room 602
1021 SW Fourth, Portland*

BOARD BRIEFING

- B-2 *Progress Report on the Target City In-Jail Intervention Program. Presented by Carol Nykerk-Abel. ONE HOUR REQUESTED.*

Agenda No.: C-1

AGENDA PLACEMENT FORM

1/24/95



MULTNOMAH COUNTY OREGON

INTEREST FORM FOR BOARDS AND COMMISSIONS

In order for the County Chair to more thoroughly assess the qualifications of persons interested in serving on a Multnomah County board or commission, you are requested to fill out this interest form as completely as possible. You are encouraged to attach or enclose supplemental information or a resume which further details your involvement in volunteer activities, public affairs, civic services, published writing, affiliations, etc.

A. Please list, in order of priority, any Multnomah County boards/commissions on which you would be interested in serving. (See attached list.)

Mult. Co. Deferred Comp. ~~Board~~ Committee

B. Name Russell A. Arsenault

Address 863 SW Liberty Bell Dr.

City Beaverton State Or Zip Code 97006

Do you live in _____ unincorporated Multnomah County or _____ a city within Multnomah County.

Home Phone (503) 645-5044

C. Current Employer Mult. Co. Sheriff's Office

Address 12240 NE Glisan St.

City Portland State Or Zip Code 97230

Your Job Title Sheriff's Patrol Sergeant

Work Phone (503) 255-3600 (Ext) 540

Is your place of employment located in Multnomah County? Yes X No

D. Previous Employers	Dates	Job Title
<u>City of Phoenix</u>	<u>1972</u>	<u>Public Admin. Intern</u>
<u>U.S. Air Force</u>	<u>1963-1967</u>	<u>Elect. Tech.</u>

E. Please list all current and past volunteer activities.

Name of Organization	Dates	Responsibilities
Multco Credit Union	1983-1986	V.P. - Board of Directors

F. Please list all post-secondary school education.

Name of School	Dates	Responsibilities
Portland State Univ.	1975-1980	M.P.A.
Arizona State Univ.	1969-1972	B.S. - ECONOMICS
Phoenix College	1967-1969	A.A. - BUSINESS

G. Please list the name, address, and telephone numbers of two people who may be contacted as references who know about your interests and qualifications to serve on a Multnomah County board/commission.

John Bunnell - Sheriff Mult. Co.	255-3600
Merlin Juif's - Lt. Mult. Co. S.O.	255-3600

H. Please list potential conflicts of interest between private life and public service which might result from service on a board/commission.

NONE

I. Affirmative Action Information

M/White
sex/racial ethnic background

Birth date: Month 04 Day 07 Year 45

My signature affirms that all information is true to the best of my knowledge and that I understand that any misstatement of fact or misrepresentation of credentials may result in this application being disqualified from further consideration or, subsequent to my appointment to a board/commission, may result in my dismissal.

Signature

Russell G. Arsenault

Date

12/20/94

Meeting Date: FEB 09 1995

Agenda No.: C-2

(Above Space for Board Clerk's Use **ONLY**)

AGENDA PLACEMENT FORM

SUBJECT: Appointment

BOARD BRIEFING: Date Requested:
Amount of Time Needed:

REGULAR MEETING: Date Requested: February 9, 1995
Amount of Time Needed: Consent Agenda

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE: X-3953
BLDG/ROOM: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if available):

Appointment of Doug Menely to Position 7 on the District Attorney's Citizen Budget Advisory Committee for a 2-year term ending 9/30/97.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
OR

DEPARTMENT MANAGER:

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Office of the Board Clerk at 248-3277 or 248-5222.

F:\DATA\CHAIR\WPDATA\FORMS\AGENDA.BCC

1/30/95

MULTNOMAH COUNTY CITIZEN INVOLVEMENT COMMITTEE
CBAC INTEREST FORM

NAME Doug Wexley
HOME ADDRESS 3309 SE Raymond Port. ZIP 972 PHONE 771-6706
EMPLOYER State Farm Insurance
OCCUPATION Agent

OPTIONAL: Age _____ Sex M
African American _____ Native American _____ Hispanic _____
Asian/Pacific _____ White ✓ Other _____

ARE YOU A RESIDENT OF MULTNOMAH COUNTY? YES ✓ NO _____

AREAS OF INTEREST:

Human Services _____ Youth _____
Justice Services ✓ _____ Aging _____
Environmental Services _____ Health _____
Facilities, transportation _____ General government _____
Other _____

VOLUNTEER/BOARD/COMMITTEE EXPERIENCE Advisory Bd - Westmoreland Boys & Girls Club
Bd of Directors - SE Ymca, Scoutmaster - 3^{yr} Soccer
Coach - 6 years, Bd of Directors - Adopt A School - Guatemala - Bd of
OTHER RELEVANT EXPERIENCE Directors - MAZAMA Climbing Club
Law Degree - Lewis & Clark Law School

PLEASE LIST NAME, ADDRESS AND TELEPHONE NUMBERS OF TWO REFERENCES:

- Tom Simpson - Multnomah Cty D.A. Office
- Warren Deras, Attorney 222-0106

WOULD YOU HAVE A POTENTIAL CONFLICT OF INTEREST RELATIVE TO ANY COUNTY DEPARTMENT? NO

SIGNATURE Doug Wexley DATE 1-17-95

Please return to: Office of Citizen Involvement, 2115 SE Morrison
Portland, Oregon 97214; Phone: 248-3450

Budget Committee for D.A. Office

Meeting Date: FEB 07 1995

Agenda No.: C-3

(Above Space for Board Clerk's Use *ONLY*)

AGENDA PLACEMENT FORM

SUBJECT: Appointments

BOARD BRIEFING: Date Requested:
Amount of Time Needed:

REGULAR MEETING: Date Requested: 2/9/95
Amount of Time Needed: Consent Agenda

DEPARTMENT: Nondepartmental DIVISION: Chair's Office

CONTACT: Delma Farrell TELEPHONE: X-3953
BLDG/ROOM: 106/1515

PERSON(S) MAKING PRESENTATION: _____

ACTION REQUESTED:

☐ INFORMATIONAL ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if available):

Appointment of current Metropolitan Arts Commission members to the Regional Arts and Culture Council:

Nancy Conrath	1-year (partial) term ending 6/30/95	Position 1
Laura Ross Paul	2-year term ending 6/30/96	Position 2
Candace Beck	1-year (partial) term ending 6/30/95	Position 3
Mary Brown Ruble	2-year term ending 6/30/96	Position 4
Efrain Diaz-Horna	1-yr. (partial) term ending 6/30/95	Position 5
Yolanda Valdes-Rementeria	2-year term ending 6/30/96	Position 6

SIGNATURES REQUIRED:

ELECTED OFFICIAL: Beverly Stein
OR
DEPARTMENT MANAGER: _____

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions? Call the Office of the Board Clerk at 248-3277 or 248-5222.

MEETING DATE: FEB 09 1995

AGENDA NO: C-4

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Deed to Contract Purchaser for Completion of Contract.

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: Consent

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/200/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Request approval of deed to contract purchaser for completion of Contract #15454. (Property originally repurchased by former owner.)

Deed D951161 and Board Order attached.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: Annelle D. Duman Betsy Waller

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

*Copy of Order 95-32 sent to Gwen on 2-17-95.
+ Deed*

1995 JAN 31 AM 11:00
CLERK OF COUNTY COMMISSIONERS
MULTI-FOUNTAIN COUNTY
OREGON

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of the Execution of)
Deed D951161 Upon Complete Performance of) ORDER
a Contract to) 95-32
GARY V. JAMES)

It appearing that heretofore on April 6, 1988, Multnomah County entered into a contract with GARY V. JAMES for the sale of the real property hereinafter described; and

That the above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser;

NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

ELBERTA
LOT 1, BLOCK 8

Dated at Portland, Oregon this 9th day of February, 1995.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED:
Laurence Kressel, County Counsel
for Multnomah County, Oregon

By *John D. Bay*

DEED D951161

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to GARY V. JAMES, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

ELBERTA
LOT 1, BLOCK 8

The true and actual consideration paid for this transfer, stated in terms of dollars is \$5,088.97.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Until a change is requested, all tax statements shall be sent to the following address:

2217 NE FREMONT
PORTLAND, OR 97212

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 9th day of February, 1995, by authority of an Order of the Board of County Commissioners heretofore entered of record.



REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

By John L. DuBay

After recording, return to Multnomah County Tax Title, 166/200

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

DEED APPROVED:

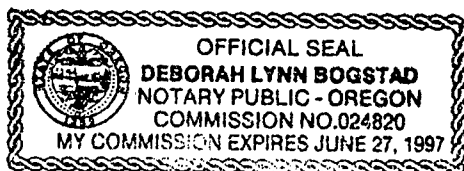
Janice Druian, Director
Assessment & Taxation

By K. A. Juncos

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this 9th day of February, 1995, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Delma Farrell, authorized signator for Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.



Deborah Lynn Bogstad
Notary Public for Oregon
My Commission expires: 6/27/97

MEETING DATE: FEB 07 1995

AGENDA NO: C-5

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Repurchase Deed to Former Owner

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: 5 minutes

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/200/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Request approval of Repurchase Deed to former owner, Christopher Schlosser.

Deed D951163 and Board Order attached.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: James M. Dunn Betsy Wallis

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

Copys of Order 95-33 + Deed sent to Green on 2/9-95.

6/93

BOARD OF
COUNTY COMMISSIONERS
MULTNOMAH COUNTY
OREGON
1995 JAN 31 AM 11:08

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

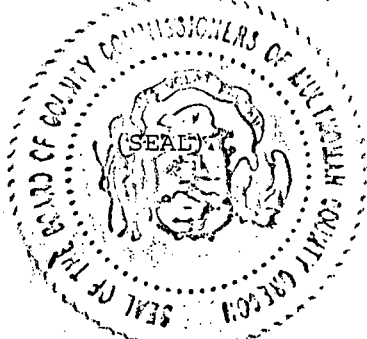
In the Matter of the Execution of)
Deed D951163 for Certain) ORDER 95-33
Tax Acquired Property to)
CHRISTOPHER M SCHLOSSER)

It appearing that heretofore Multnomah County acquired the real property hereinafter described through foreclosure of liens for delinquent taxes, and that CHRISTOPHER M SCHLOSSER is the former record owner thereof, and has applied to the county to repurchase said property for the amount of \$16,779.79 which amount is not less than that required by Section 275.180 ORS; and that it is for the best interests of the County that said application be accepted and that said property be sold to said former owner for said amount;

NOW, THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the former owner the following described property situated in the County of Multnomah, State of Oregon:

DUNTON
LOT 18, BLOCK 2

Dated at Portland, Oregon this 9th day of February, 1995.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

By *John L. DuBay*

DEED D951163

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to CHRISTOPHER M SCHLOSSER, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

DUNTON
LOT 18, BLOCK 2

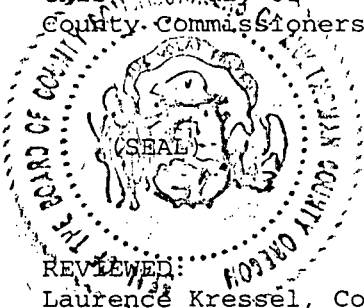
The true and actual consideration paid for this transfer, stated in terms of dollars is \$16,779.79.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate City or County Planning department to verify approved uses.

Until a change is requested, all tax statements shall be sent to the following address:

8105 SE TIBBETTS ST
PORTLAND, OR 97206-1767

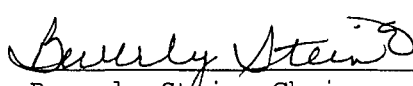
IN WITNESS, WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 9th day of February, 1995, by authority of an Order of said Board of County Commissioners heretofore entered of record.



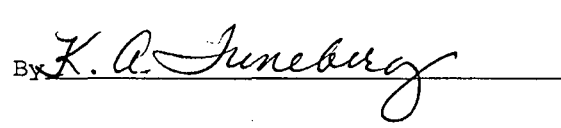
REVIEWED:
Laurence Kressel, County Counsel
for Multnomah County, Oregon

By 

BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON


Beverly Stein, Chair

DEED APPROVED:
Janice Druian, Director
Assessment & Taxation

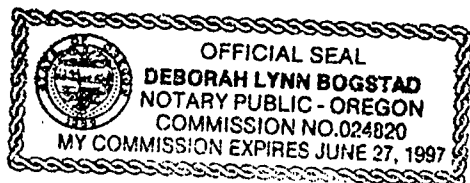
By 

After recording return to Multnomah County Tax Title PO Box 2716 Portland, Or 97208 166/200/Tax Collections

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this 9th day of February, 1995, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Delma Farrell, authorized signator for Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.



Deborah Lynn Bogstad
Notary Public for Oregon
My Commission expires: 6/27/97

MEETING DATE: FEB 07 1995

AGENDA NO: C-6

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: Request Approval of Deed to Contract Purchaser for Completion of Contract.

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: Consent

DEPARTMENT: Environmental Services DIVISION: Assessment & Taxation

CONTACT: Kathy Tuneberg TELEPHONE #: 248-3590

BLDG/ROOM #: 166/200/Tax Title

PERSON(S) MAKING PRESENTATION: Kathy Tuneberg

ACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Request approval of deed to contract purchaser for completion of Contract #15268R. (Property originally repurchased by former owner.)

Deed D951168 and Board Order attached.

BOARD OF
COUNTY COMMISSIONERS
1995 JAN 31 AM 11:02
MULTI-COUNTY
OREGON

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____

OR

DEPARTMENT MANAGER: James M. Dm Betsy Wrelio

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/248-5222

Copy of Order 95-34 & Deed sent to Gwen on 2-14-95.

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

In the matter of the Execution of)
Deed D951168 Upon Complete Performance of) ORDER
a Contract to) 95-34
)
)

PAT ANDERSON)

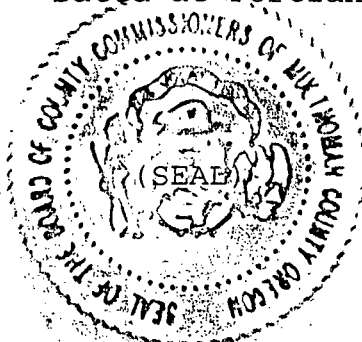
It appearing that heretofore on December 17, 1987, Multnomah County entered into a contract with PAT ANDERSON for the sale of the real property hereinafter described; and

That the above contract purchaser has fully performed the terms and conditions of said contract and is now entitled to a deed conveying said property to said purchaser;

NOW THEREFORE, it is hereby ORDERED that the Chair of the Multnomah County Board of County Commissioners execute a deed conveying to the contract purchaser the following described real property, situated in the County of Multnomah, State of Oregon:

IRVINGTON
LOT 6, BLOCK 89

Dated at Portland, Oregon this 9th day of February, 1995.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED:

Laurence Kressel, County Counsel
for Multnomah County, Oregon

By John D. Bay

DEED D951168

MULTNOMAH COUNTY, a political subdivision of the State of Oregon, Grantor, conveys to PAT ANDERSON, Grantee, the following described real property, situated in the County of Multnomah, State of Oregon:

IRVINGTON
LOT 6, BLOCK 89

The true and actual consideration paid for this transfer, stated in terms of dollars is \$8,072.43.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES.

Until a change is requested, all tax statements shall be sent to the following address:

2543 NE 12TH AVE
PORTLAND, OR 97212

IN WITNESS WHEREOF, MULTNOMAH COUNTY has caused these presents to be executed by the Chair of the Multnomah County Board of County Commissioners this 9th day of February, 1995, by authority of an Order of the Board of County Commissioners heretofore entered of record.



BOARD OF COUNTY COMMISSIONERS
MULTNOMAH COUNTY, OREGON

Beverly Stein
Beverly Stein, Chair

REVIEWED

Laurence Kressel, County Counsel
for Multnomah County, Oregon

DEED APPROVED:
Janice Druian, Director
Assessment & Taxation

By John L. DuBay

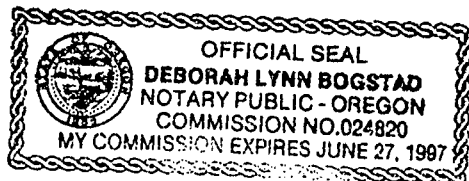
By K. A. Juncosky

After recording, return to Multnomah County Tax Title, 166/200

STATE OF OREGON)
) ss
COUNTY OF MULTNOMAH)

On this 9th day of February, 1995, before me, a Notary Public in and for the County of Multnomah and State of Oregon, personally appeared Delma Farrell, authorized signator for Beverly Stein, Chair, Multnomah County Board of Commissioners, to me personally known, who being duly sworn did say that the attached instrument was signed and sealed on behalf of the County by authority of the Multnomah County Board of Commissioners, and that said instrument is the free act and deed of Multnomah County.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first in this, my certificate, written.



Deborah Lynn Bogstad
Notary Public for Oregon
My Commission expires: 6/27/97

(Above Space for Board Clerk's Use ONLY)

AGENDA PLACEMENT FORM

SUBJECT: IGA between Oregon Public Utility Commission (PUC) and the Sheriff's Office

BOARD BRIEFING: Date Requested: _____

Amount of Time Needed: _____

REGULAR MEETING: Date Requested: February 2, 1995Amount of Time Needed: 5 minutesDEPARTMENT: Sheriff's Office DIVISION: EnforcementCONTACT: Larry Aab TELEPHONE #: 251-2489
BLDG/ROOM #: 313/231PERSON(S) MAKING PRESENTATION: John Bunnell, SheriffACTION REQUESTED:

[] INFORMATIONAL ONLY [] POLICY DIRECTION [X] APPROVAL [] OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

IGA between Oregon Public Utility Commission (PUC) and the Sheriff's Office, providing revenue for Sheriff's office Motor Carrier Safety Unit to enforce commercial motor vehicle safety rules and regulations for the period October 1, 1994 through September 30, 1995. (Renewal)

CONSENT

SIGNATURES REQUIRED:

ELECTED OFFICIAL: John Bunnell J.S.

OR

DEPARTMENT MANAGER: _____

BOARD OF
COUNTY COMMISSIONERS
1995 JAN 30 PM 3:31
MULTNOMAH COUNTY
OREGON

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Questions: Call the Office of the Board Clerk 248-3277/5222

0516C/63 Originals Sent to Larry Aab on 2-11-95 6/93

**CONTRACT APPROVAL FORM**

(See Administrative Procedure #2106)

MULTNOMAH COUNTY OREGON

Contract # 800715

Amendment # _____

CLASS I <input type="checkbox"/> Professional Services under \$25,000	CLASS II <input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	CLASS III <input checked="" type="checkbox"/> Intergovernmental Agreement APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>C-7</u> DATE <u>2/9/95</u> <u>Carrie A. Parkerson</u> BOARD CLERK
---	---	--

Department Sheriff's Office Division Enforcement Date January 17, 1995Contract Originator John Blackman Phone 251-2451 Bldg/Room 313/Administrative Contact Larry Aab Phone 251-2489 Bldg/Room 313/231Description of Contract Revenue for Sheriff's Office Motor Carrier Safety Unit to enforce Commercial Motor Vehicle Safety Rules and Regulations.

RFP/BID # _____ Date of RFP/BID _____ Exemption Exp. Date _____

ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ QRFContractor Name OR Public Utility CommissionMailing Address 550 Capitol St. NESalem, OR 97310-1380Phone 378-6204

Employer ID# or SS# _____

Effective Date October 1, 1994Termination Date September 30, 1995Original Contract Amount \$ 81,900.00

Total Amount of Previous Amendments \$ _____

Amount of Amendment \$ _____

Total Amount of Agreement \$ _____

Remittance Address _____
(If Different) _____

Payment Schedule _____ Terms _____

☐ Lump Sum \$ _____ ☐ Due on receipt☒ Monthly \$ as billed ☐ Net 30☐ Other \$ _____ ☐ Other _____☐ Requirements contract - Requisition required.

Purchase Order No. _____

☐ Requirements Not to Exceed \$ _____**REQUIRED SIGNATURES:**Department Manager Peter C. Van DykePurchasing Director
(Class II Contracts Only) [Signature]County Counsel [Signature]County Chair / Sheriff [Signature]Contract Administration
(Class I, Class II Contracts Only) _____Encumber: Yes ☐ No ☐

Date _____

Date _____

Date 1/27/95Date 2/9/95

Date _____

VENDOR CODE				VENDOR NAME						TOTAL AMOUNT \$		
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPTION	AMOUNT	INC/ DEC IND	
01.	100	025	3315			2009						
02.												
03.												
* If additional space is needed, attach separate page. Write contract # on top of page.												

INSTRUCTIONS ON REVERSE SIDE

WHITE - CONTRACT ADMINISTRATION

CANARY - INITIATION

PINK - FINANCE

MEMORANDUM OF AGREEMENT BETWEEN
OREGON PUBLIC UTILITY COMMISSION AND
MULTNOMAH COUNTY SHERIFF'S OFFICE
FFY-1995

Contract 95-IA-13.MCO

Background:

Pursuant to the provisions contained in the Intermodal Surface Transportation Efficiency Act of 1991 (the Act), the Public Utility Commission (PUC), acting as Oregon's lead agency in motor carrier safety matters, submitted to the U.S. Department of Transportation Oregon's State Enforcement Plan (the Plan) on July 30, 1994.

For federal fiscal year 1995 (October 1, 1994, through September 30, 1995), Oregon has been awarded \$1,022,457 for its commercial vehicle safety program.

Based on fiscal and program data submitted to PUC by participating agencies, the prorated share of Oregon's FFY-95 contract is: Dept. of Transportation, Motor Carrier Operations, \$229,125; City of Portland, Bureau of Police, \$46,800; Multnomah County Sheriff's Office, \$81,900; Washington County Department of Public Safety, \$46,800; and Oregon Department of State Police, \$232,370 (includes traffic enforcement).

Reimbursement Compensation:

The FFY-95 reimbursement amount for roadside vehicle inspections by the Multnomah County Sheriff's Office is \$81,900 for 2,100 Level I inspections, including 126 inspections of vehicles transporting hazardous materials. The reimbursement rate will be \$39 for each inspection. The PUC will bill the Federal Highway Administration monthly and reimburse Multnomah County Sheriff's Office, monthly for the number of inspections completed during the billing period, up to the maximum allotment for FFY-95.

To ensure the total Oregon FFY-95 allocation is exhausted not later than September 30, 1995, the PUC may adjust subcontractors' roadside vehicle inspection allocations in August. Subcontractors who have not achieved their year-to-date minimum inspection commitments preceding the adjustment period may lose a percentage of their allocated funds.

In the event a subcontractor fails to attain their prorated inspection minimums preceding the adjustment period, the PUC may reallocate and redistribute such monies to those agencies exceeding their minimum commitment.

In furtherance of the Public Utility Commission's contractual obligation to the U.S. Department of Transportation, and in recognition of its sponsorship and responsibility to coordinate the motor carrier safety activities of participating agencies, the Public Utility Commission agrees to:

1. Function as Oregon's lead motor carrier safety agency and coordinate and assist Multnomah County Sheriff's Office in their motor carrier safety activities to the end that all commitments contained in the Oregon State Enforcement plan are met;

2. Coordinate and assist Multnomah County Sheriff's Office in the preparation and timely submission to the PUC of required safety program documentation;
3. Coordinate and assist Multnomah County Sheriff's Office in their preparation and timely submission to the PUC of required fiscal documentation;
4. Process written requests for capital expenditures for carrying out the provisions of the Plan and this Agreement. It is understood that PUC must first have written authority to make such expenditures, and that no such expenditure will be made before such written authority is obtained;
5. Consolidate participating agencies' safety activity and fiscal reports, and submit a monthly billing to the U.S. Department of Transportation;
6. Receive on a monthly basis payment from the U.S. Department of Transportation, and make payment to participating agencies on a prorated basis for Level I "on-highway" commercial vehicle safety inspections; and
7. Train, retrain (as necessary or desirable), test, and certify the inspectors of the Multnomah County Sheriff's Office, as per the agreement between PUC and the Commercial Vehicle Safety Alliance (CVSA).

Multnomah County Sheriff's Office agrees to:

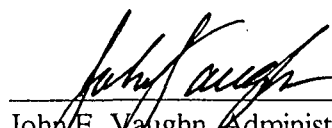
1. Enforce the state's Commercial Vehicle Safety and Hazardous Material Rules and Regulations in a manner consistent with the approved State Enforcement Plan and MCSAP/CVSA approved inspection procedures;
2. During FFY-95 perform a minimum of 2,100 Level I commercial vehicle safety inspections, including 126 hazardous material inspections. Inspections will be recorded on PUC Form No. 242, "Driver Equipment Compliance Check," and forwarded to the PUC within five (5) working days of the inspection.
3. Report to the PUC within 15 days after the end of each month on PUC Form No. 457B the following information: names of employees conducting inspections during the reported period, the number of hours each employee was involved in commercial vehicle safety inspections, and the number of inspections completed during the report period.;
4. Maintain the updated maintenance of effort level of expenditures of \$170,781 for the motor carrier safety activities, exclusive of federal assistance awarded. The updated maintenance of effort was calculated, based on the average actual expenditures for the federal fiscal years 1989, 1990, and 1991, as required by the Act;

5. Report to the PUC within 15 days after the end of each month on PUC Form No. 457A all direct and indirect expenditures in performance of this agreement. The total amount of expenditures shown on all PUC Form No. 457As submitted for FFY-95 will total at least **\$273,156** (\$170,781 maintenance of effort expenditures; **\$81,900** Level I MCSAP inspections awarded; plus **\$20,475** matching share (20 percent) to the federal assistance awarded);
6. Report in writing to the state contract officer (Paul Henry, PUC) all proposed capital expenditures. Such report shall contain an exact identification of the proposed purchase, cost, use, and justification; and
7. Comply with all provisions contained in Exhibit A, attached hereto and incorporated herein.

This Agreement expires September 30, 1995, unless sooner terminated by mutual agreement. Either party desiring to terminate this agreement shall provide written notice to the other party not less than 60 days prior to the date of termination.

PUBLIC UTILITY COMMISSION

MULTNOMAH COUNTY



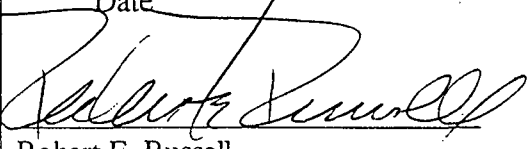
John E. Vaughn, Administrator
Business Management Division

John Bunnell, Sheriff

1/5/95

Date

Date



Robert E. Russell
Assistant Commissioner
Transportation Program



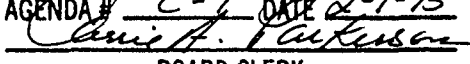
Beverly Stein, Chair

1/5/95

Date

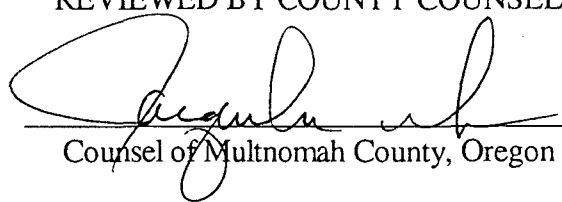
2-9-95

Date

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # C-7 DATE 2-9-95


BOARD CLERK

REVIEWED BY COUNTY COUNSEL



Counsel of Multnomah County, Oregon

#1

PLEASE PRINT LEGIBLY!

MEETING DATE Feb 9

NAME Dan Noelle

ADDRESS PO Box 80453

STREET
Portland 97280
CITY **ZIP CODE**

I WISH TO SPEAK ON AGENDA ITEM # Public

SUPPORT **OPPOSE** Comment

SUBMIT TO BOARD CLERK

#2

PLEASE PRINT LEGIBLY!

MEETING DATE

2/9/95

NAME

DAN PANOSZ MAR

ADDRESS

2601 NE MLK #106

STREET

97212

CITY

ZIP CODE

I WISH TO SPEAK ON AGENDA ITEM #

SUPPORT

OPPOSE

SUBMIT TO BOARD CLERK

Dan Noelle for Sheriff

PO Box 80453
Portland, OR 97280
(503) 228-3282

February 7, 1995

Honorable Beverly Stein
Chair
Board of County Commissioners
Multnomah County
Portland, Oregon

Dear Ms. Stein:

I am writing to request that the Board of County Commissioners seek an independent examination of allegations about the internal investigations process of the Multnomah County Sheriff's Office.

The issues raised are serious charges that must be resolved in order to restore the faith and confidence of the public in the administration of criminal justice in Multnomah County.

My request to you is that

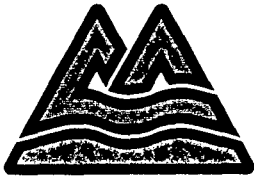
- the county remove the internal investigation from the Sheriff's office;
- these allegations be fully investigated by an outside agency; and
- an ongoing process of external oversight of the Sheriff's internal investigation process be adopted.

Maintaining the faith and confidence of the public in our criminal justice system requires the highest standards of integrity. The current allegations surrounding the Sheriff's Office raise serious questions about integrity and judgment, which, I believe, can only be resolved by an outside examination of the charges.

An independent examination of these allegations will remove it from the political arena and allow the Sheriff's campaign to focus on the issues I believe are critical for public safety -- finding more jail beds to stop the early release of prisoners and making the most cost-effective use of the county's criminal justice dollars.

I will attend the February 9 meeting of the Board of County Commissioners to make this request during the public comment period at 9:30 a.m.. Thank you for your consideration of this matter.





MULTNOMAH COUNTY OREGON

OFFICE OF COUNTY COUNSEL
1120 S.W. FIFTH AVENUE, SUITE 1530
P.O. BOX 849
PORTLAND, OREGON 97207-0849
(503) 248-3138
FAX 248-3377

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN, CHAIR
DAN SALTZMAN
GARY HANSEN
TANYA COLLIER
SHARRON KELLEY

COUNTY COUNSEL
LAURENCE KRESSEL

CHIEF ASSISTANT
JOHN L. DU BAY

ASSISTANTS
J. MICHAEL DOYLE
SANDRA N. DUFFY
KATIE GAETJENS
GERALD H. ITKIN
STEVEN J. NEMIROW
HELLE RODE
MATTHEW O. RYAN
JACQUELINE A. WEBER

M E M O R A N D U M

TO: Beverly Stein, Chair (106/1515)
Board of County Commissioners (106/1500)

FROM: Jacqueline A. Weber (106/1530) *JW*
Assistant County Counsel

DATE: February 8, 1995

SUBJECT: Request for Investigation of Sheriff's
Office

Questions Presented

1. What is the Board of County Commissioners' authority to order an independent review of the internal investigations previously conducted in response to allegations concerning now Acting Sheriff John Bunnell?
2. What is the Board's authority to establish an independent investigation unit for complaints received by the Sheriff's Office?

Conclusions

1. Although the Board of County Commissioners does have investigatory power relevant to any matter reasonably related to the need for effective discharge of any power granted to or any duty imposed upon it, the Board has no authority to review the internal investigations previously conducted in response to allegations concerning Bunnell.
2. The Board has no authority to establish an independent investigation unit for complaints received by the Sheriff's Office.

Analysis

No law requires the Sheriff to conduct internal investigations. Even so, most law enforcement agencies use an internal investigation procedure to ensure the integrity of the agency.¹

The Sheriff's authority comes from both our charter and state law. Multnomah County Charter Section 6.50(1) states that the people of Multnomah County shall elect a county sheriff "for the function of said office as prescribed by state law".

ORS 206.210 grants to the Sheriff the authority to organize the work of the Sheriff's Office and to assign personnel.²

¹ § 13.01 of the Multnomah County Sheriff's Office Agency Manual defines the policy of the Sheriff's Office regarding complaints against its members:

(1) The Sheriff's Office views complaints against its members as serious matters directly related to the public trust and performance of the office. As public employees holding positions of trust and responsibility, all Sheriff's Office members are and shall be held to a higher standard of conduct than are members of the general public. However, all Sheriff's Office members are possessed of and entitled to enjoy the same constitutional rights and privileges that all other persons in the United States possess and enjoy.

(2) The policy of the Sheriff's Office is to investigate allegations of employee misconduct in a timely, thorough and impartial manner; and to impose appropriate corrective action when such action is required or otherwise justified.

² ORS 206.210 provides:

Notwithstanding the provisions of ORS 241.020 to 241.990 or any other county civil service law or regulation, the sheriff may organize the work of his office so that:

(1) The various duties required of the office may be assigned to appropriate departments and divisions to be performed by persons experienced and qualified for such respective kinds of work.

(2) The duties of his various assistants, officers and deputies are coordinated so that, when not engaged in a

(continued...)

ORS 206.210 has been interpreted by the Attorney General to grant to the Sheriff the authority to "promote, determine work schedules, **maintain discipline**, provide for training programs, and resolve grievances." 35 Ops Atty Gen 181, 185-186 (1970), emphasis added.³

The Sheriff's internal investigation procedure falls within the statutory authority to organize the work of his office. As such, it is a procedure solely within the discretion of the Sheriff.

Therefore, the Board may not encroach on this authority by establishing an independent investigation unit for complaints regarding the conduct of Sheriff's Office employees. For the same reasons, the Board has no authority to impose discipline within the Sheriff's Office.

Similarly, the Board has no authority to review the internal investigations previously conducted in response to allegations concerning now Acting Sheriff John Bunnell.⁴ This is not to say that the Board lacks investigative power altogether. The Board has inherent power to investigate any matter reasonably related to the need for discharge of any power granted to, or any duty imposed upon, the Board. The investigative power may be used to develop facts **reasonably related to those subjects entrusted by law to some degree of Board control**. The test is whether an inquiry concerns matters which have a reasonable relationship to possible legislation within the Board's power to adopt, or more broadly, to matters over which the Board has some measure of authority. Investigations cannot occur in a vacuum, nor be pursued solely for

²(...continued)

particular duty specified or directed to be done and not then requiring attention, such persons shall perform the other duties required of the office and then required to be done.

(3) The cooperation among assistants, officers, deputies and employees in the departments and divisions may be secured for the purposes of avoiding duplication of time and effort.

³ The issue addressed by this opinion was whether a sheriff or a county governing body was the "employer" for the purposes of collective bargaining with employees in the sheriff's office.

⁴ If the Board is presented with allegations of specific criminal misconduct on the part of a Sheriff's Office employee, the Board may bring such allegations to the attention of the District Attorney.

their own sake.⁵ However, where an investigation has a legitimate purpose, it is immaterial that political motivation is also present.⁶

As noted above, the Board has no power over discipline in the Sheriff's Office; it cannot even legislate upon the subject. As the above authorities provide, the Board may not exercise its inherent investigatory power with regard to matters over which they do not have some degree of control.

⁵ See In re Shain, 457 A2d 828, 831 (NJ 1983) (power to investigate concomitant of power to legislate, implicitly included in power to legislate) and Smith v Gallagher, 185 A2d 135, 156 (Pa 1962) (no question that a legislative body has the right to conduct any investigation which will disclose information needed to guide proper and enlightened consideration of a legislative project, right is inherent, ancillary to, but distinct from, legislative power). See also DuBois v Gibbons, 118 NE2d 295, 306-307 (Ill 1954) (must be relevant or pertinent to valid legislative purpose). Last, see In re Ellis, 28 NYS2d 988, 992 (NY Sup 1941) ("the powers of all inquisitorial bodies are subject to the limitation that their power is to be exercised, not as an end in itself, but as a means 'to the end of a better discharge of their duties.'")

⁶ Eggers v Kenny, 104 A2d 10, 19-20 (NJ 1954), Board of Trustees of the Free Public Library of Union City v Union City, 271 A2d 728, 732 (NJ Super Ch Div 1970) affd 281 A2d 397 (NY Super AD 1971), and In re Shain, 457 A2d 828, 835 (NJ 1983) (political motivation immaterial).

PROPOSAL FOR AN EFFECTIVE CIVILIAN POLICE REVIEW BOARD

Portland, OR

**Presented by the
People Overseeing Police
Study Group**

**Second Edition
Winter, 1993**

A Note About People Overseeing Police Study Group (POPSG)

(November 15, 1993)

The People Overseeing Police Study Group (POPSG) was formed as a project of Portland Peaceworks in June, 1992. Since then, POPSG has consulted dozens of groups and individuals locally and nationwide on the issue of civilian review of the police. With the help of these contacts, POPSG has assembled a broad range of reports, articles, interviews, and other resources. (For a partial list of these resources and contacts, see the appendices to this report.)

POPSG has also participated in community forums on police review; produced a packet of information on the issues involved; and maintained the Portland Copwatch line for monitoring police behavior in Portland.

These actions—including the production of this report—are part of POPSG's continuing effort to balance the ideals of a "perfect" civilian review system with the realities of Portland's unique population mix, its Police Bureau and union, and the concerns of its citizens. It is clear that the implementation of Community Policing and the temperament of the new police chief greatly affect community-police relations. Nonetheless, the following recommendations for the structure and powers of a strong police review system should transcend individual personalities and provide a permanent system of checks and balances in Portland.

POPSG does not present this plan as the final word on civilian review. However, we have intentionally presented a comprehensive package in which each element is necessary for the effective functioning of the others. To implement any part of it without looking at the system as a whole will, we feel, perpetuate the weaknesses inherent in the current civilian review structure.

We want to emphasize that we have deep respect for the dangers and pitfalls of being a police officer. Nonetheless, we believe police accountability to the community is of utmost importance.

Since our first printing of this plan in June 1993, we have noted a few points that need clarification and made a few minor changes. We've also added an appendix of recent newspaper articles regarding the police and PIIAC, as well as a list of our endorsers and groups who have come forth asking for stronger civilian review. If you have questions or comments, please contact us. Only with maximum input and support from all sectors of the public can a plan like this succeed.

Dan Handelman
Marc Jolin
People Overseeing Police Study Group
2600 N.E. Martin Luther King, Jr. Boulevard, #106
Portland, OR 97212

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EXECUTIVE SUMMARY

After a year of study, the People Overseeing Police Study Group (POPSG) has concluded that Portland's current system for handling complaints of police misconduct is inadequate. In addition, insufficient opportunity exists for independent review of police policies and training procedures.

Law enforcement agencies have historically objected to effective oversight by civilians. However, in this era of community policing, where the emphasis is on police accountability and building positive police-community relations, independent civilian review is in everyone's interests.

Properly conceived, a system of independent review yields numerous benefits, among them:

1) better government through effective checks and balances; 2) improved police management; 3) more effective investigation of each complaint filed; 4) greater accountability public access to information about police conduct; and 5) public trust in the police force. Independent review creates a more open, public system that allows the police to do better self-assessment and facilitates the trusting, positive relationship between civilians and law enforcement which is a goal of community policing.

Some will argue that Portland already has a system of civilian review. However, in the present system the agency with the authority to receive and investigate complaints is the Portland Police Bureau's own Internal Investigations Division (IID). IID's lack of independence, along with its low rate of sustaining complaints, impairs public trust. The body assigned to review police investigations and policies—the board of citizen advisors to the Police Internal Investigations Auditing Committee (PIIAC)—lacks both the authority and the resources to provide effective oversight. As a result, the present system yields few, if any, of the benefits of true civilian review.

We propose that a Board be appointed which reflects Portland's ethnic, cultural, and economic diversity. This Board will meet regularly to hear from a team of independent investigators who receive and investigate all formally filed charges of police misconduct. Complaints will be taken at Portland neighborhood coalition offices and at the investigators' office.

Investigators will present each case and their conclusions at a meeting of the Board. Board members will have the ability to review cases in depth and may require the parties involved to testify before them. The Board will have the final determination on all findings and recommendations. All meetings and hearings will be open to the public. All records of the Board, including minutes and documents presented to the Board, will be public.

There will be several options for handling cases. The investigators may suggest that all parties voluntarily commit to having their case resolved through mediation. This system will be used to resolve minor complaints of officer misconduct and will reduce the number of full-scale investigations carried out by investigators. If mediation does not occur, a thorough investigation will follow. When the investigation is complete, the investigator will propose a conclusion to the Board: to find no misconduct, to dismiss for insufficient evidence, or to sustain the complaint. The Board will review the investigation and may hold its own hearing if needed. Then the Board will forward its conclusions, with recommendations for discipline when appropriate, to the Chief of Police, the City Council, and the complainant.

While the Board and its investigators will have the power to carry out an investigation, including the subpoena of testimony and physical evidence, they will not be able to require the disciplining of officers. Similarly, the Board may recommend, but not require, changes in police policy. The matters of discipline and policy making remain in the hands of the Chief of Police. To ensure accountability, the Chief of Police will report to the Board and the public on what action (if any) has been taken on their recommendations.

Although no plan is perfect, our research indicates that adopting the POPSG model will lead to an open, streamlined venue for civilians with complaints, which will result in greater police efficiency, increased public trust, and a more livable city.

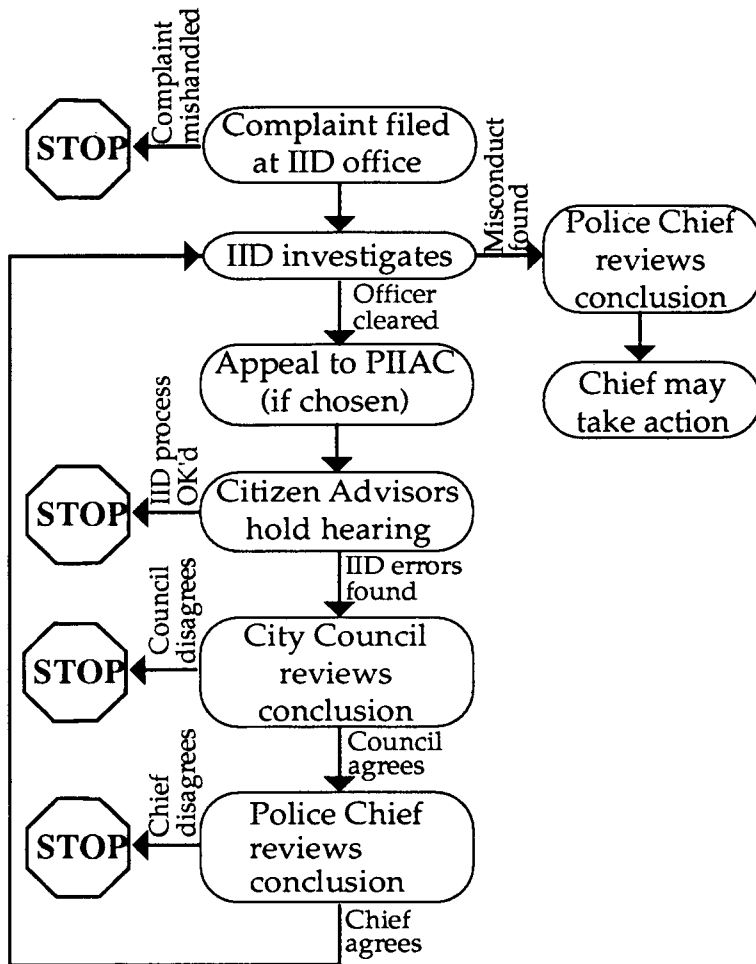
POPSG'S PROPOSAL FOR AN EFFECTIVE CIVILIAN POLICE REVIEW BOARD, IN BRIEF

Members of the public and many of the experts agree that Portland's system of civilian police review is ineffective and must be changed. Based on national research, the City Auditor's report, and months of community work, POPSG recommends the following:

- The Board** **The Review Board will be comprised of a number of civilians who reflect the diversity of the city, with the combined powers now assigned to both City Council and the Civilian Advisors to PIIAC. Board members will be limited to two one-year terms. No current sworn officers, and no more than one former officer, will sit on the Board.**
- Responsibilities:** **Among the Board's responsibilities will be: conducting public hearings; policy and training reviews; creating quarterly reports; overseeing the hiring and the actions of investigators; and overseeing the offices of intake and mediation.**
- Powers:** **The Review Board will have subpoena power. The Board, by majority vote, will**
Subpoena **have the power to compel testimony and presentation of evidence. For police officers, giving such testimony will be part of their regular duties.**
- Training & Policy Issues** **The Board will hold public hearings on a regular basis (separate from individual case hearings) to review training and policy issues and hear suggestions.**
- Recommend Discipline** **The Board will have the power to recommend discipline, as well as training and policy changes, based on their findings. Public disclosure of hearing outcomes, analysis and recommendations will guarantee public confidence. The Chief of Police will respond to the Board, reporting what action was taken, if any.**
- Investigators** **The Board will be supported by a number of non-police investigators who will investigate all complaints. The investigators will receive the full cooperation of the police. The Board will conduct reviews regularly to ensure that investigations are conducted effectively and without bias. Investigators shall not be former police officers. All records presented to the Board at its hearings will be public. (The Police Internal Investigations Division (IID) may conduct a simultaneous investigation.)**
- Intake** **Intake of complaints will be made through an independent office which records all complaints submitted. Such an office will be set up in each of the neighborhood coalition offices. Complaint forms will be available in most city buildings. Complaints will be filed and then directed to the central intake and investigative office. From time to time, the Board will observe intake to ensure that all complaints are handled properly and without bias.**
- Mediation** **An impartial system of mediation will be available as an alternative to full-scale investigations and public hearings. If all parties agree to undergo this process, a mediator will facilitate reconciliation between officers and civilians (or officers and officers). When both parties come to an agreement, the mediation is considered successful and no investigation will follow. Although the parties will retain the right to sue, statements made in the course of mediation will not be used as the basis of legal action. Criteria will be developed to define satisfactory resolutions for the parties. Mediators can be drawn from the city's office of mediation and their performance will be supervised by the Review Board.**
- Assured Results** **Complainants will be assured results in 4 months (120 days), save for special conditions such as criminal conduct pending.**
- Financial Concerns** **This Board and its investigators would be cost-effective. Mediation and intake will be handled at minimal cost by offices that already exist. Most of IID's budget can be redirected, since their caseload will be greatly reduced. Use of mediation will minimize the cost of investigations. With mediation and policy review in place, there will be fewer misconduct lawsuits, which will mean less taxpayer money paid out to victims. Although there will be costs associated with investigations and mediations, a nominal stipend for Board members is the only direct cost associated with the Board itself.**

Two Systems of Police Review

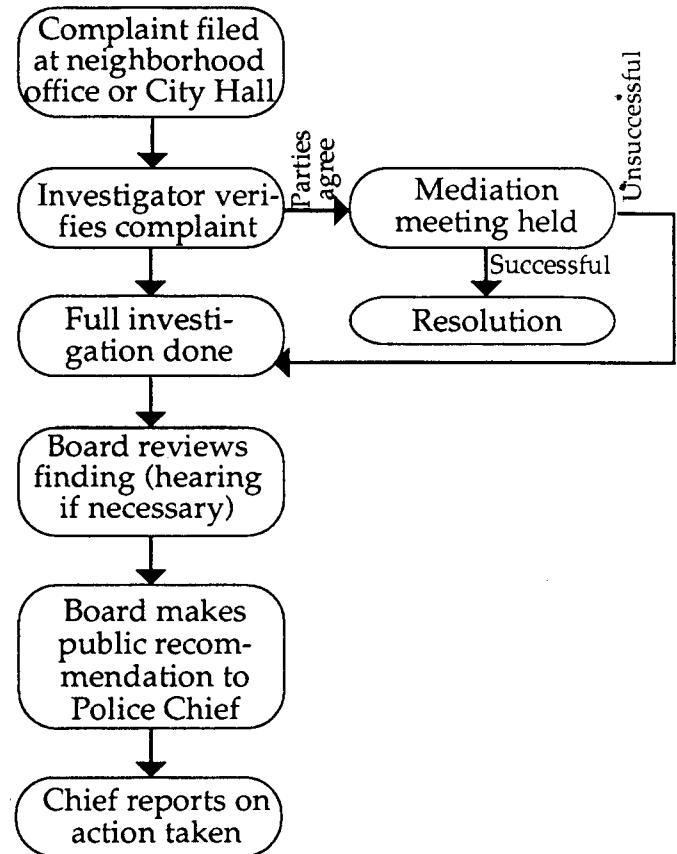
Portland's Present System



The current system: Civilians must file complaints at the Internal Investigations Division (IID) office in Central Precinct. IID often mishandles complaints and sometimes refuses to investigate them. When IID does investigate and finds misconduct, the Police Chief reviews the case and may take action, though any action is not necessarily made public. When, as in 94% of cases, IID finds no misconduct, the civilian may appeal to the eleven Citizen Advisors of PIIAC*. This board, if it chooses to review the case, may only examine IID's documents and decide if errors were made—they may not conduct any investigation of their own. Their findings are further reviewed by City Council and the Police Chief, and if all agree, IID reopens the case for further investigation.

* PIIAC stands for Police Internal Investigations Auditing Committee. Technically, PIIAC consists of the members of the City Council, who appoint a group of Citizen Advisors to assist them. In practice, City Council rarely meets as PIIAC and the Citizen Advisors do almost all the day-to-day oversight work. In fact, the Citizen Advisors are commonly referred to as PIIAC.

POPSG's Alternative



POPSG's alternative: Civilians file complaints at a local neighborhood office or in City Hall. Independent, non-police investigators do an initial check of the facts of the complaint. If both parties agree, mediators from Portland's Office of Mediation meet with the officer and the civilian to resolve the issue. If mediation fails to satisfy both parties, or if either objects to use of mediation, a full investigation is performed. Within 4 months, the investigator produces a finding of no misconduct, insufficient evidence, or a sustained complaint. He or she then forwards that result to a diverse board of civilians, appointed by the Mayor and City Council with consultation from community groups. The board has the power to subpoena witnesses to testify before it. The board reviews the investigator's finding in a public hearing and forwards a recommendation for action to the Police Chief. The chief then decides what action to take and makes a public report to the board.

PROPOSAL ARGUMENT

I. Portland's Current System of Police Review

Portland's current civilian review system, the Police Internal Investigations Auditing Committee (PIIAC), does not have enough power to be effective. PIIAC is limited to conducting reviews of completed police internal investigations. Citizens take their complaints of police misconduct to the police department. The Internal Investigations Division considers whether to investigate the complaint. If the complaint is not investigated, or the citizen finds the outcome of the investigation unsatisfactory, he or she may ask PIIAC to review the findings. Then PIIAC uses IID's information to make its judgment. There is no independent investigation of the misconduct complaint.

Nationally, review systems like Portland's are chronically under-empowered, under-staffed and under-funded. Heavy reliance upon documents provided by the police makes objective review of citizen complaints difficult. For example, IID's investigation sometimes leaves out potential witnesses who never come to PIIAC's attention because of the limitations of PIIAC's powers. In an investigation reviewed by PIIAC in April 1993, witnesses came to testify, but PIIAC did not consider their testimony because they were not part of the initial IID investigation.

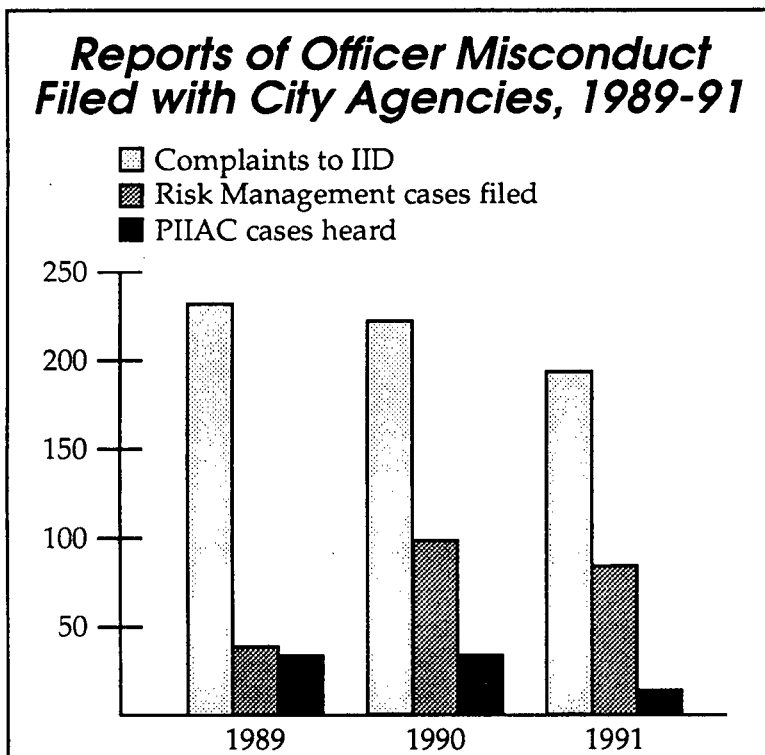
In the eyes of the public (including those mistreated by police), these review systems appear to be mere extensions of the police force. Further, many civilian review experts find these systems to be

ineffective. For one, the ACLU's Police Practices Project "uses Portland and its civilian committee as an example *not* to follow."¹ PIIAC and IID combined found in favor of the complainant only 3-6% of the time between 1989 and 1991. The national average is 10%.²

The public is calling for improved civilian review. The Citizens' Crime Commission, in their report on Public Safety 2000, noted under "Areas of Improvement" that citizens feel "PIIAC does not provide sufficient civilian oversight and accountability."³ Other groups and community leaders encouraging a system change or overhaul are the City Club of Portland,⁴ the ACLU, National Lawyers Guild, the League of Women Voters, KGW-TV,⁵ and the newspapers *The Oregonian*,⁶ *PDXS*, the *Southeast Examiner*, the *Northwest Examiner*, and state Representative Avel Gordly.⁷ (Also see Appendix C)

PIIAC has recently taken some steps to become more effective. The Citizen Advisors are now conducting spot checks of IID investigations.

Also, they will soon begin issuing the quarterly reports required by ordinance. (Although the efforts are worthy, the committee has not publicized them well.) However, no matter what inter-



Sources: Auditor's report and Risk Management statistics

1. *Oregonian*, April 28, 1992, p. A1.

2. *Ibid*, p. A12.

3. Citizens Crime Commission: Public Safety 2000 "Information for meeting on Aug. 25, 1992," p. 31.

4. City Club of Portland, Vol. 72, No. 33, January 17, 1992.

5. Editorial, April 14, 1988.

6. Editorials, February 4, 1993 & October 6, 1993.

7. Letter to Vera Katz, April, 1993.

nal reforms PIIAC adopts, the limitations of its official charter still leave Portland civilians without effective review of their police.

II. A Better System of Police Review

Other cities have civilian review systems that are independent of the police force. The most effective systems have the following features:

- An appointed board with a team of paid, non-police-affiliated investigators.
- Complaints received by civilians, not police officers.
- The power of subpoena vested in the board.
- Reviews of police policy and training as a regular function of the board.
- Many complaints handled through mediation.

Such systems are great improvements over Portland's. Civilians are more willing to file complaints. Investigations are independently conducted, inspiring public confidence in the outcome. Civilians are better able to provide feedback to police, achieving Community Policing goals. Police are held accountable for their actions. In the next section, we explain how and why these changes result from the improvements in the system we recommend.

III. The Benefits of Effective Civilian Review

a. Better Government

Our system of government is based on the concept of checks and balances. Nationally, there are three branches of government, independent of one another, each with the power to curtail the activities of the other. On the state and local levels, similar models are used in order to ensure that those who represent the interests of

"The price of freedom is eternal vigilance."

--Thomas Jefferson

the people do so in accordance with the laws and without abusing the authority they have been granted.

Police officers, like other government employees, are hired and paid by the

citizens of a community. Furthermore, law enforcement officers are given the exclusive right in our society to exercise physical force in requiring citizens to comply with the laws and with their commands. Police establish policies which affect everyone in the community. Yet there are few checks within law enforcement to protect the interests and rights of civilians.

A properly conceived civilian review system acts as a check and balance to the police force. A truly independent body which has the power to review police policies as well as the behavior of individual officers is fundamental

Civilian Review in 21 U.S. Cities



Civilian Intake



Subpoena Power



Investigative Power



Mediation

B, O Board or Office

Albuquerque, NM	..	B
Baltimore, MD	..	B
Berkeley, CA	..	B
Chicago, IL	..	O
Cincinnati, OH	..	O
Cleveland, OH	..	B
Detroit, MI	..	B
Dade Co., FL		B
Dallas, TX	..	B
Flint, MI	..	O
Hartford, CT		B
Indianapolis, IN		B
Los Angeles, CA		B
New York, NY	..	B
New Orleans, LA	..	O
Milwaukee, WI	..	B
Minneapolis, MN		B
Portland, OR		B
San Diego, CA		B
San Francisco, CA	..	O
Washington, DC	..	B

Source: International Association for Civilian Oversight of Law Enforcement (IACOLE)

to good government. The hallmark of a democratic system is that its governmental institutions (including the police force) are accountable to the citizens for whom they work.

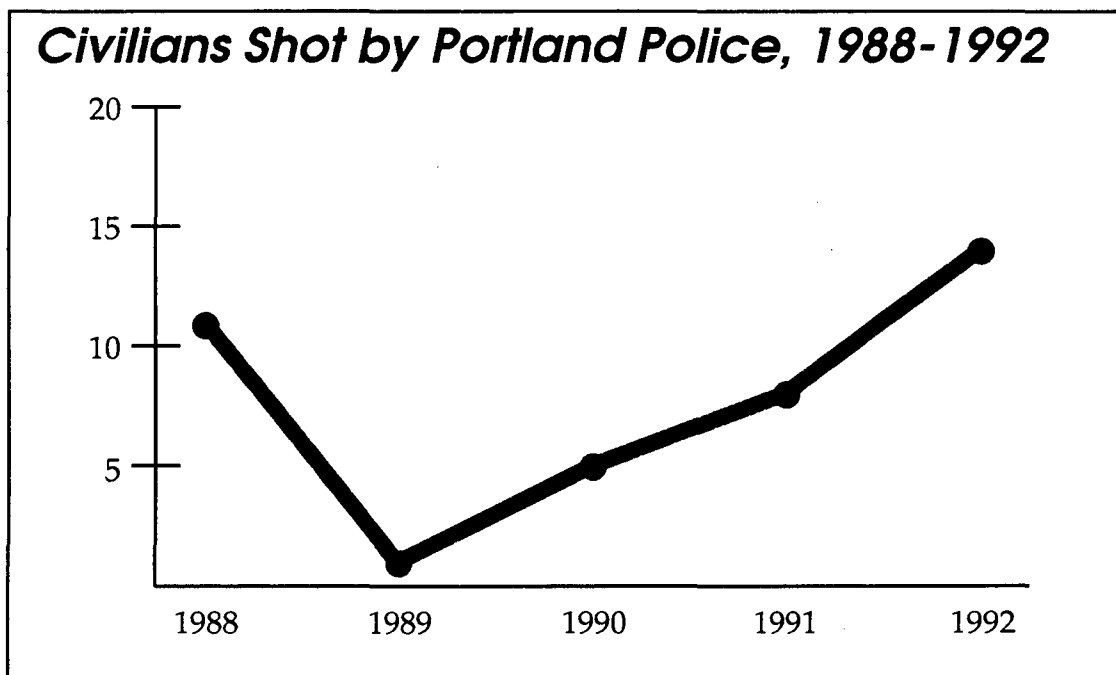
b. Improved Police Management

Prior to 1982, San Francisco had a system similar to Portland's in which civilians who said they had been mistreated by the police had to take their complaints to the police. Then, San Francisco created its Office of Citizen Complaints, allowing police managers to hear from civilians who were previously unable or unwilling to share their concerns with the police department. In fact, the number of people coming forward with complaints about police behavior doubled.

Police managers cannot accurately assess the performance of their officers if they do not receive adequate feedback from the community. Many times, civilians are intimidated by the requirement that they speak to a police officer about their complaint. Further, in the Portland City Auditor's sample of 15 IID interviews, one out of three complaints was discouraged, misdirected, or not taken seriously.⁸

Where there is no independent review process, police managers cannot be sure to what extent problems exist within the bureau. Independent review allows managers to identify particular officers who are misbehaving or policies which are not having the desired effect.

An effective system of police review also improves police management by providing advice about police policy and training. There was an alarming rise in police shootings in Portland during 1992 (see graph). Public hearings in response to these shootings, as well as other trends in use of force, might reveal patterns within the department. Such studies could lead to suggestions for improvements in policy and training. Or such hearings might reveal that no such pattern exists, renewing community trust in the police.



Source: Portland Police Bureau statistics

8. Portland City Auditor, "Portland's System for Handling Citizen Complaints About Police Misconduct Can Be Improved," pp. 18-19.

c. Better Investigations

The City Auditor's report concludes that "there is no evidence that civilian investigation of complaints leads to more thorough fact-finding."⁹

However, a recent study, released too late for inclusion in the City Auditor's report, provides such evidence. The New York Civil Liberties Union's January 1993 report, "Civilian Review of Policing," concludes that civilians "appear to conduct more aggressive investigations."¹⁰ The NYCLU studied the number of cases dismissed due to insufficient evidence in several American cities. The report indicated that the more independent police review processes left fewer cases unresolved due to insufficient evidence. The report concludes that this data "suggests the police department exercises an 'institutional' inhibition upon aggressive investigation of police misconduct by its employees."¹¹

This new report indicates that creating a strong civilian review board with civilian investigators in Portland would mean better resolution of complaints and more effective investigations.

d. Community Policing and Accountability

Recommendation 4.0 of the Community Policing Transition Plan specifically calls for creating accountability within the Portland Police Bureau and accountability to citizens.¹²

Missing from the list of proposals to create such accountability is the one thing that would do the most to ensure it: a plan for an individual citizen to bring forth a complaint of officer misconduct. If the trust relationship which Community Policing seeks to establish between police and civilians is to materialize, the community must be able to hold officers and their superiors accountable for their actions and be part of the evaluation of their policies.

Chief Charles Moose called accountability one of the two most critical elements of Community Policing, speaking before the Neighborhood Congress in October 1993. Tom Potter, in a June 1992 letter to the Citizens Crime Commission, emphasized that accountability means creating proper conduct within the Bureau, and that such reform cannot occur without active public involvement. So far, this has meant citizens give input in the planning and implementation stages of new programs and initiatives. But to create a better working relationship, civilian participation cannot end there.

In order for true accountability to exist, civilians must be involved when the police fail to carry out policies as they were designed, when policies are violated, and when officers break the law. Gabriel Chikes, Special Assistant to the executive director of Washington D.C.'s Civilian Complaint Review Board said, "People are beginning to understand those who advocate for creating a civilian review board don't necessarily render an indictment of the police. Advocates don't have to make the argument for civilian review because the police *can't* do it—that is, investigate themselves."¹³ For civilian participation to be meaningful in establishing accountability, it must extend into the enforcement of policies and the investigation of misconduct complaints.

e. Public Trust

There is a critical link between a community's trust in its police force and the ability of that police force to do its job. Officers rely on the willingness of citizens to comply with their commands and investigations. But if a citizen believes that the officer may not deal with the situation in a fair and humane manner, they may choose not to comply.

Residents of the Laurelhurst neighborhood described such a breakdown in trust at a meeting of the PIIAC Citizen Advisors.¹⁴ In August 1992, police officers had gone door-to-door near Laurelhurst Park, asking neighbors if they were disturbed by gay men "cruising" in the park. Though

9. City Auditor, *op cit.*, p. iv

11. *Ibid*, p. 14.

13. NYCLU, *op cit.*, p. 24.

10. New York Civil Liberties Union, "Civilian Review of Policing", p. 14.

12. Portland Police Bureau Community Policing Transition Plan, pp. 63-68.

14. PIIAC Citizen Advisors Meeting, April 8, 1993.

most neighbors said they were not bothered by such activity, the police swept the park anyway, arresting and allegedly beating several men. The Laurelhurst residents said that they believed the police had not listened to them and that, as a result, they could no longer trust the police.

If community policing has any hope of achieving its goals, it must begin on a foundation of public trust. Extensive research shows that one of the best ways to build and maintain public trust is to create an effective civilian review board. Even Douglas Perez, whose study is often cited by opponents of civilian review, admits that civilian review boards increase public confidence in the police.¹⁵

When civilians believe that their trust has been violated, as in the Laurelhurst case, a strong civilian review board can repair this breach in two ways. First, an impartial mediation process allows the civilians and the police to communicate openly, so that each can understand the other's position. Second, any complaints not taken care of by mediation will be fully and fairly investigated. While the civilians may or may not be pleased with the result of the investigation, they can have confidence that the process was impartial.

POPSG has developed a plan that includes nearly all the features of the most effective civilian review systems and is specifically tailored to Portland's needs. In the next few sections, we detail this plan and explain why each part is desirable.

IV. The Board

a. Composition

Currently, PIIAC's Citizen Advisors lack ethnic, cultural, and economic diversity. While there is a balance in both gender and age, the Board is strikingly weighted toward the white middle-class. While in certain circumstances this might not be an issue, when it comes to the police, having an ethnically and socio-economically diverse oversight committee is crucial.

People in more prosperous neighborhoods are likely to have different experiences with the police than those in poorer neighborhoods. In poorer neighborhoods, the police are a regular presence. Special tactical plans, like the Spring 1993 "Operation Verdict," focus their attention in these areas. Increased police presence is a double-edged sword; it serves as a deterrence to crime, but also lends a sense of mistrust and suspicion of neighborhood residents.

Moreover, a disproportionate number of complaints of police misconduct come from minority members of our community. 17% of Portland's population is non-white,¹⁶ while over 25% of all complaints come from non-white complainants.¹⁷ In addition, cultural differences, including immigrants who do not speak English and do not understand the American justice system, lead to difficulties in relations between police and civilians.

Attitudes toward the police vary widely among people from different communities and different backgrounds. To have truly balanced and unbiased oversight of the police, the civilian Board must, therefore, represent the diversity of our community. Potential appointees to the Board will be considered according to this factor. The goal in composing the Board is not to seek those most expert on police affairs. Instead the Board will be seen as a jury, and its members will be appointed in order to give each case the most balanced, unbiased consideration.

The Board will not, for reasons of public confidence, contain any current sworn police officers. No more than one former sworn officer may serve on the Board.

b. Appointments

The Board will be appointed by the Mayor and City Council based on nominations by a specific list of community groups. These groups will reflect the gender balance, racial diversity, diversity of

15. City Auditor, *op cit.*, pp. 42-43.

16. Census Bureau data.

17. City Auditor, *op cit.*, p. 6.

sexual orientation, economic diversity, and diversity of religious belief in the city of Portland. When PIIAC's citizen advisors were first chosen, they were similarly recommended. We propose that established community groups be permanently involved in the appointments to the new board, and that the number of groups involved stay constant. However, which groups on the list provide input will change from year to year. As suggested, the selection of groups will coincide with the diversity of the community.

Board members will serve one year terms. They may be reappointed to only one additional term.

c. Board Responsibilities

The Board will conduct public hearings on specific complaints as recommended by investigators. The Board will notify complainants when their hearing is scheduled. Hearings will result in sustaining some or all of a complainant's claims or finding them to be unsubstantiated. The Board will make recommendations for improved policies and training routinely when deciding the outcome of cases and as a result of regular public hearings held to discuss policies and training.

PIIAC is currently empowered to conduct spot audits of the Internal Investigations Division, checking for thoroughness, fairness and accuracy. These audits will become the business of the City Auditor once the Board has its own independent investigators.

The Board will create quarterly reports, indicating the number of complaints, hearings and investigations. The reports will also include statistical information about the nature of complaints as well as the outcomes of Board recommendations. The Board will also oversee the hiring and actions of investigators, as well as the processes of intake and mediation.

d. Board Powers: Subpoena

The Review Board will have the power, by majority vote, to compel testimony and presentation of evidence. For a police officer, giving such testimony will be part of his or her regular duties. The officer's superior will order him or her to appear before the review board.

"Without [subpoena power], the Board will not have the necessary underpinnings to establish credibility and have meaningful input."¹⁸ In other words, the investigation is not complete without all the evidence, and without full cooperation of the police, justice cannot be served.

PIIAC fought for and gained the court's approval to subpoena witnesses in a drawn out battle that ended in 1988.¹⁹ However, the City Council altered the PIIAC ordinance in 1989 and subpoena power is currently vested in the City Council and not the Citizen Advisors.

e. Board Powers: Training and Policy Issues

The Board will hold regular public hearings regarding police policies and training. Such forums allow public input on important policy issues and clearly fit the mold of Community Policing. Public involvement in policy matters can help cut down on the number of complaints by improving poor or misunderstood policies. The Board will review Police Bureau General Orders and use patterns of misconduct to determine necessary changes. The Board's function, however, will be purely advisory, its power being in publishing its recommendations.

"I have not come in contact with any police department that openly welcomed the idea of citizen oversight. Most police unions and managers would rather not have it, but it's something that's not going away."

Don Casimere, President, Int'l Ass'n for Citizen Oversight of Law Enforcement (IACOLE). (*The Oregonian*, April 1992)

18. Citizen Review Ad Hoc Committee, Santa Clara Bar Association, "Citizen Review of Police Conduct Task

Force Report", April 28, 1992, p. 18.
19. *The Skanner*, March 24, 1988.

f. Board Powers: Recommend Discipline

The Board will have the power to recommend discipline based on its findings. These recommendations will be purely advisory in nature, but will be made public. The Chief of Police will ultimately decide what discipline, if any, is appropriate. That decision will then be presented to the Board.

V. Investigators

In order to ensure the fair and complete investigation of police misconduct claims, a team of independent—non-police affiliated—investigators will be employed by the City of Portland. Board members will oversee the hiring process.

While some members of the Portland Police Bureau believe that non-police investigators would not be capable of performing adequate investigations, evidence from around the country strongly indicates otherwise. In San Francisco, New Orleans, and elsewhere, city-employed investigators are able to conduct inquiries into the claims of civilians. It is true, however, that their success depends on at least three things: adequate resources, the power to subpoena testimony and physical evidence, and full police department and officer cooperation.

It is critical that investigators be directly responsible for processing and keeping track of all formally filed complaints. Upon receipt of the complaint, the investigator will verify the basic facts. It is possible that complainants will file false reports, but it is imperative that every complaint be given this preliminary investigation. If the complaint proves unfounded, or if no violation of police procedure is alleged, the investigator will notify the complainant and the board that the case will not be pursued. If the complaint is well-founded, but is of a minor nature, the investigator will propose mediation. If the allegations are more serious, or the mediation fails or is refused, the investigator will begin a full investigation.

The Board will have the power to adopt the recommendations, to request further investigation, or to accept the investigation as complete but amend the recommendations. Complainants who believe that the investigation was not done satisfactorily will have the opportunity to testify before the Board to that effect.

The Board will regularly review the actions of its investigators and may take remedial action if a pattern of mishandling cases occurs. The Board may also replace an investigator who does not perform his or her duties well.

Those records which the investigator presents to the Board at the hearing will become part of the public record. In those cases which involve pending criminal conduct charges, the records will become public once the criminal case has been resolved.

VI. Filing a Complaint (Intake)

As part of the effort to make the complaint process more open and less ominous to those who have a grievance with the police, we propose that complaints be filed at non-police locations around the city.

Specifically, a protocol for lodging formal complaints against the police will be developed so that complaints can be filed at any of the seven neighborhood coalition offices in Portland.

Under the current system, a person who believes he or she is the victim of police misconduct can file a complaint either at the nearest police precinct or with Internal Investigations on the top floor of the Justice Center. Neither of these possibilities is inviting to someone who believes they have suffered abuse at the hands of the police.

The person may also notify Risk Management of their intent to sue. However, this usually requires hiring a lawyer, which is difficult, particularly for poorer people. Further, many complaints are not sufficient basis for a suit.

One other possible route is to complain to the new city Ombudsman. This office currently has only two staff people who take complaints regarding every city department. With over 600 complaints in its first three months, it is unlikely that the office will be able to pay close attention to every complaint of police misconduct.

In far too many cases, where a person does find the strength to register a complaint with the very Bureau whose members he or she is accusing of misconduct, the complaint is improperly processed. In the 1970s, the Internal Investigations Division was created in part because complaints brought to the precincts were seldom properly addressed. But, as noted previously, the January 1993 City Auditor's report shows that over 30% of the complaint calls reviewed were mishandled by IID.²⁰ Currently, it is not possible to assess the number and nature of complaint calls that IID receives, because no complete record is kept.

Creating a complaint filing system that is independent of the Portland Police Bureau will make the system more accessible to individual complainants. Under this new system, a complainant will be able to go to the nearest neighborhood coalition office to file a formal written complaint. (M'Lou Christ of Southeast Uplift has agreed that this service could be handled by the coalition offices.) Translators will be provided for complainants who do not speak English. Postage-paid forms will be available in most city buildings, so complainants can easily file by mail.

Complainants, of course, may be officers as well as civilians.

After it is received, the complaint will be copied and sent to the office of civilian investigation, as well as to IID, at the complainant's request. (IID will choose whether to conduct its own investigation.) The office of investigation will log the receipt and nature of the complaint and begin the investigation. The office of investigation will also take complaints directly.

VII. Mediation

The Santa Clara County Bar Association makes an excellent argument for mediation in its report on civilian review:

A non-adversarial, voluntary, informal resolution process should be established for complaints of a minor nature. Some complaints arise from simple misunderstandings or minor acts of rudeness or discourtesy. No one should have an interest in resolving these sorts of issues with an overly formal and time-consuming complaint investigation or hearing.

The officer may be quite willing to apologize or sit down with a complainant and explain things from his or her perspective. A complainant is probably more interested in being treated with respect by the officer and having his or her concerns acknowledged than in having the officer disciplined. Unless there is a pattern of similar conduct by the officer, neither the police department nor the Civilian Review Board should have any independent interest in a formal investigation of these kinds of complaints.

This informal resolution process could range from sitting down with a mediator to a private meeting to a written apology. It should be completely voluntary on the part of both the officer and the complainant.²¹

Of course, the implications of entering into mediation and the exact mechanics of the process will be fully explained before a complainant chooses that route.

20. City Auditor, *op cit.*, pp. 18-19.

21. Santa Clara Bar Association Report, *op cit.*, p. 21

Portland has an Office of Mediation through which such meetings can take place. Board members will periodically attend mediation sessions, with the consent of all parties, to ensure that the process is satisfactory and unbiased. Successful mediation implies that both parties are satisfied with the outcome. If no solution is found through mediation, a full investigation will follow. Although the parties will retain the right to sue, statements made during the course of mediation may not be used in a legal action. In fact, both parties will keep such statements confidential. We estimate that over 40% of complaints can be handled through mediation.

VIII. Assured Results

Complainants will be assured results in four months (120 days), save for special conditions such as criminal conduct investigations pending. The Board will be responsible for contacting the complainant, the Chief of Police, and City Council, and for publicizing its findings. If no result is forthcoming, the Board will advise the complainant and the officer involved, in writing, as to the reason for the delay and the timetable for completion.

The Chief of Police will respond to the Board's recommendations within 30 days. The response, which will be made public, will state the actions taken by the Chief, if any.

IX. Financial Concerns

The costs associated with implementing and sustaining such a system are reasonable. The funds required will be made available by the use of already existing resources, reduction of financial settlements in police misconduct cases, and a greatly reduced IID budget.

In the chart below, we have made rough estimates, based on the costs of other cities' civilian review systems and our own research. We have attempted to err on the side of caution by over-estimating wherever possible. For example, investigators' salaries vary widely across the country. We have assumed a salary of \$45,000 per year, which is near the top of the national scale.

Clerical staff (2 @ \$30,000/year)	\$60,000
Investigative staff (2 @ \$45,000/year)	\$90,000
Chief investigator (1 @ \$60,000/year)	\$60,000
Mediator (1 @ \$36,000)	\$36,000
Board (11 persons @ \$1200/year)	\$13,200
Operating budget (400 complaints/year)	<u>\$60,000</u>
TOTAL COST OF PROPOSED POPSG SYSTEM	\$319,200

The Board will be less expensive than comparable civilian review systems elsewhere. For example, San Francisco, a city of 725,000 people, handles 1400 complaints per year with an annual budget of \$1.3 million.²² We estimate that Portland, with a population of 435,000, will handle 400 complaints yearly for about \$320,000.

The savings would allow a small stipend to be paid to the Board members. Current PIIAC Citizen Advisors complain about a lack of time as volunteers fulfilling their duties. We propose that Board members receive a minimal hourly rate with a maximum of \$100 per month. Berkeley, California, which has a similar system for its Police Review Commission, has found that most members do not need or accept the stipend. Some members find that the stipend helps with child care and transportation.

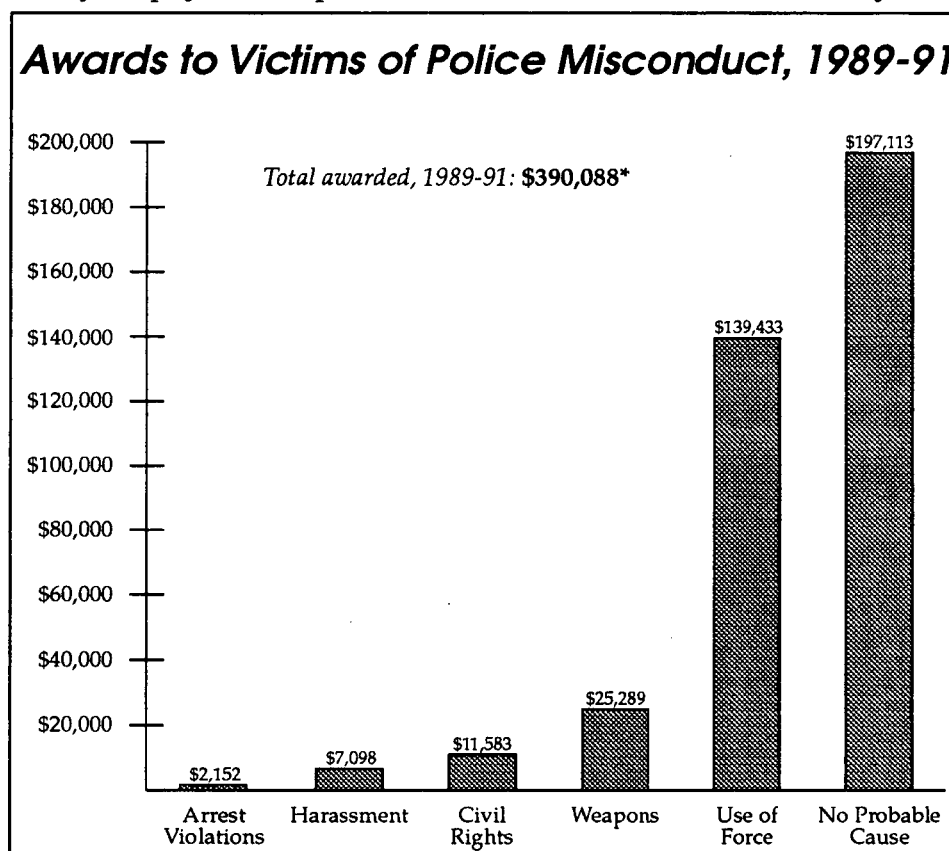
One Chief Investigator will, in addition to handling complaints, perform administrative duties.

22. San Francisco Office of Civilian Complaints.

Use of mediation is one source of savings. Portland is unusual in that it already has a functioning office of mediation. Emmanuel Paris of Portland's Neighborhood Mediation Project agrees that his office could help with the extra load required by this system, with the addition of one mediator. At least forty percent of complaints will be handled by a mediator instead of an investigator, significantly reducing investigative costs.

Further, some of the Board's costs will be offset by savings in other areas. While the Police Bureau may choose to reevaluate the role of IID, its budget can certainly be reduced. With mediation and civilian investigators in place, IID's caseload will be much lower. And while the savings are less predictable, we can look forward to a reduction in the Risk Management settlements paid to civilians who sue the police—currently over \$100,000 each year.

Despite its relatively low cost, this plan for improving Portland's civilian review system will not be free. Remember, however, that the 1993 Portland city budget is almost \$900 million and that the Portland police spend over \$80 million every year, over \$300,000 of it on Internal Investigations. Overall, the cost to city taxpayers will pale beside the benefits to the community.



Source: Risk Management Department, City of Portland

* Total includes some additional categories with minimal award amounts.

X. Summary

By voting for the PIIAC initiative in the 1982 election, Portland civilians demonstrated their support for civilian review of their police department. In the ten years since, PIIAC has not been effective in reviewing the police, despite the often heroic work of its volunteer members. This ought not lead us to abandon the idea of civilian review. Instead, we should carry through the ideals of community policing and implement a strong civilian review board like the one proposed in this plan. Such a board will remove the frustrations of the complex, ineffective PIIAC system while increasing public confidence and providing better investigative results. This will benefit not only civilians, but police as well.

Portland civilians and Portland police both deserve an effective and fair system of civilian police review.

APPENDIX A

PARTIAL RESOURCE LIST

Reports:

- Agendas and minutes of the Chief's Forum, Oct. 1992 – present.
- "Citizen Review of Policing: A Case Study Report". New York Civil Liberties Union Foundation, January 1993.
- "Citizen Review of Police Conduct Task Force Report". Santa Clara County Bar Association, 1992.

Appendices:

- Forms of Civilian Oversight
- Civilian Review in 50 Largest Cities (Sam Walker, U. of Nebraska at Omaha)
- San Jose Police Department Internal Affairs overview
- Santa Clara County Sheriff's Department Internal Affairs overview
- Sunnyvale Police Department Internal Affairs overview
- Letters re: San Jose civilian review board
- San Francisco Office of Civilian Complaints procedures
- Berkeley Police Review Committee procedures
- Minneapolis model for civilian review of police conditions
- Police abuse report (New York Civil Liberties Union)
- "On the Line: Police Brutality and its Remedies"
- International Association of Citizen Oversight of Law Enforcement information
- Report of Judiciary Subcommittee on Peace Officer Conduct (CA legislature)
- Positions on 5th Amendment protection for police officers
- City Club Bulletin*. "Study of Racial and Ethnic Relations in Portland: Report of the Law Enforcement and Administration of Justice Subcommittee". 1992.
- "Civilian Review of the Police: A National Survey of the 50 Largest Cities". Sam Walker, University of Nebraska at Omaha, 1991. Updated 1992.
- "Claims Against Portland Police Bureau, 1989-91". Risk Management, City of Portland, 1992.
- "Community Policing Transition Plan". Portland Police Bureau, 1992.
- "Deadly Force Report". Portland Police Bureau, 1992.
- "Firearms Discharge Study, 1988-92". Portland Police Bureau, 1992.
- "Making the Difference Together — Community Policing". Portland Police Bureau, 1992.
- "PIIAC Advisors' Status Report". PIIAC Citizen Advisors Monitoring Subcommittee (Bill Hamilton, chair), 1992. (1st draft also available)
- "Police Foundation Annual Report". 1991.
- "Police Use of Force: A Community Topic". Portland Police Bureau, 1992.
- "Portland's System for Handling Citizen Complaints about Police Misconduct can be Improved". Auditor's Office, City of Portland, 1993.
- "Status Report on Public Safety 2000". Paul Lorenzini, Public Safety 2000. 1992.

Books:

- Fighting Police Abuse: A Community Action Manual*. American Civil Liberties Union, 1992.

Ordinances and procedures:

- New York City Civilian Complaint Review Board: Enabling legislation.
- Portland Internal Investigations Auditing Committee: Portland City Code section. 1982. Revised 1989.
- San Diego Citizens Law Enforcement Review Board: County Charter amendment, administrative code amendment, rules and regulations, annual report, complaint form. 1992.
- San Francisco Office of Civilian Complaints: City Charter section, policies and procedures, and statistical report. 1993.

Letters:

Avel Gordly to Vera Katz re: improved civilian review. 1993.
Joan Engert to PIIAC Citizen Advisors re: Monitoring Subcommittee Report.
Mark Kramer to community re: Katz review of civilian review board. 1993.
Mark Kramer to Vera Katz re: auditor's report. 1993.
Tom Potter to Vera Katz re: auditor's report. 1993.
POPSG to membership. 1992-93.
Ned and Marcy Kirschbaum to *The Oregonian* and City Council, 1988.

Newspapers and newspaper articles:

"Bad and Blue". *New York Times*.
"Community-based policing: program for police-state communities". *Revolutionary Worker*, September 20, 1992.
"Cop killers? The media target the police". *Rolling Stone*, January 21, 1993.
"Dinkins announces accord for board on police conduct". *New York Times*, June 30, 1992.
"Dinkins denounced police protest". *New York Times*, September 18, 1992.
"Edgy police, suspicious civilians". *New York Times*, October 23, 1992.
"Katz takes control of police review". *Oregonian*, January 28, 1993.
"L.A. case triggers look into police brutality". *Guardian*, April 10, 1991.
"L.A. police atrocities reignite campaign for civilian review board". *Freedom Socialist*, January-March, 1992.
"Minority groups call for changes in police recruiting methods." *New York Times*, November 1, 1992.
National Alliance Against Racist and Political Repression newsletter. 1992.
"New Peekskill police board entitled to fair trial". *Reporter-Dispatch*, July 24, 1992.
"New York's finest mob". *New York Times*, August 18, 1992.
"PIIAC explained". *Portland Observer*, April 20, 1988.
"Police audit panel may face changes". *Skanner*, June 10, 1992.
"Police brutality as a peace issue". *Nonviolent Activist*, September-October 1992.
"Police watchdog lacks bite?" *Oregonian*, April 28, 1992.
"Police-auditing committee power struggle goes public". *Skanner*, March 24, 1988.
"Policing the police: civilian review agencies hold an international conference in Oakland". *San Francisco Weekly*, October 4, 1989.
"Public have wrong impression of PIIAC's authority". *Portland Observer*, February 18, 1987.
"Rhetoric". *Willamette Week*, May 14, 1992.
Seattle's Police Beat. July 1992.

Miscellaneous:

"ACLU: 10 Principles for an Effective Civilian Review Board" (flyer). American Civil Liberties Union.
"Police Brutality: Confront the Racist Reality" (flyer). Task Force to Confront Police Violence, 1992?
"Response to Auditor's Report" (press statement). Marc Jolin, 1993.
PIIAC Membership List, 1992.
"Some Practical Suggestions About You and the Police" (card). American Civil Liberties Union.
"Why Portland Needs a Stronger Civilian Review Board" (brochure). People Overseeing Police Study Group, 1992.

APPENDIX B

PARTIAL LIST OF CONTACTS

Dr. Annette Jolin	<i>Administration of Justice Dept., Portland State University</i>
Duane and Darlene Lemley	<i>League of Women Voters</i>
Chip Lazenby, Stevie Remington	<i>American Civil Liberties Union (Oregon)</i>
Richard Brown	<i>Black United Front</i>
Floyd Landrath	<i>American Anti-Prohibition League</i>
Geoff Wren, Geoff Silver	<i>National Lawyers Guild</i>
Avel Gordly	<i>State Representative</i>
John Canda	<i>Youth Gang Program</i>
Sandy Herman-Moose	
T. J. Browning	
John Ransom	
Dr. Frances Storrs	
Mark Kramer	
Paul Loney	
Marcy & Ned Kirschbaum	
<i>Portland Peaceworks</i>	
<i>Portland Alliance</i>	
<i>Coalition for Human Dignity</i>	
<i>Women's International League for</i>	
<i>Peace & Freedom (Portland Chapter)</i>	
<i>Radical Women (Portland Chapter)</i>	
<i>Urban League of Portland</i>	
Hon. Vera Katz	<i>Mayor of Portland</i>
Ramsey Weit	<i>Assistant to the Mayor</i>
Barbara Clark	<i>Portland City Auditor</i>
Joan Engert	<i>PIIAC Staff</i>
Emily Simon	<i>PIIAC Citizen Advisor</i>
Fred Cuthbertson	<i>Portland Risk Management Dept</i>
Emmanuel Paris	<i>Neighborhood Mediation Project</i>
Chief Charles Moose	<i>Portland Police Bureau</i>
Captain Roy Kindrick	<i>Portland Police Bureau</i>
Sergeant Derrick Foxworth	<i>Public Information Officer, Portland Police Bureau</i>
Lieutenant Dan Elfving	<i>Internal Investigations Division, Portland Police Bureau</i>
<i>Chief's Forum (Portland)</i>	
Patrick Donaldson	<i>Citizens Crime Commission</i>
Michael Zinzun	<i>Coalition Against Police Abuse (Los Angeles)</i>
Michele Hurtado & John Crew	<i>San Francisco ACLU of Northern California</i>
Eli Arumburo	<i>San Francisco Office of Civilian Complaints</i>
Robert Bailey	<i>Berkeley Police Review Commission</i>
<i>Copwatch (Berkeley)</i>	
<i>Santa Clara Bar Association</i>	
<i>New York Civil Liberties Union</i>	
<i>Citizens Alert (Chicago)</i>	
<i>Chicago Office of Police Standards</i>	

Inclusion on this list does not necessarily imply endorsement of the POPSG plan.
Group names are listed for identification purposes only.

APPENDIX C

POPSG ENDORSERS/SUPPORTERS AND CIVILIAN REVIEW ADVOCATES LIST

The following people or organizations have endorsed the POPSG plan:

*Bijou Cafe
Moreland Hardware
St. Francis Apartments
Hey Joe Used Records and Books
The Third Eye Shoppe
Where's the Art!!!? 24 Hour Church of Elvis
Corbett-Terwilliger Neighborhood Association
KBOO-FM Board of Directors
Portland Peaceworks*

The following people or organizations have expressed support for key elements of the POPSG plan:

*Metropolitan Human Rights Commission
American Civil Liberties Union (Oregon)
Buckman Neighborhood Association
Board of directors, Sunnyside Neighborhood Association
American Anti-Prohibition League*

The following people or organizations have expressed support for stronger civilian review of Portland's Police:

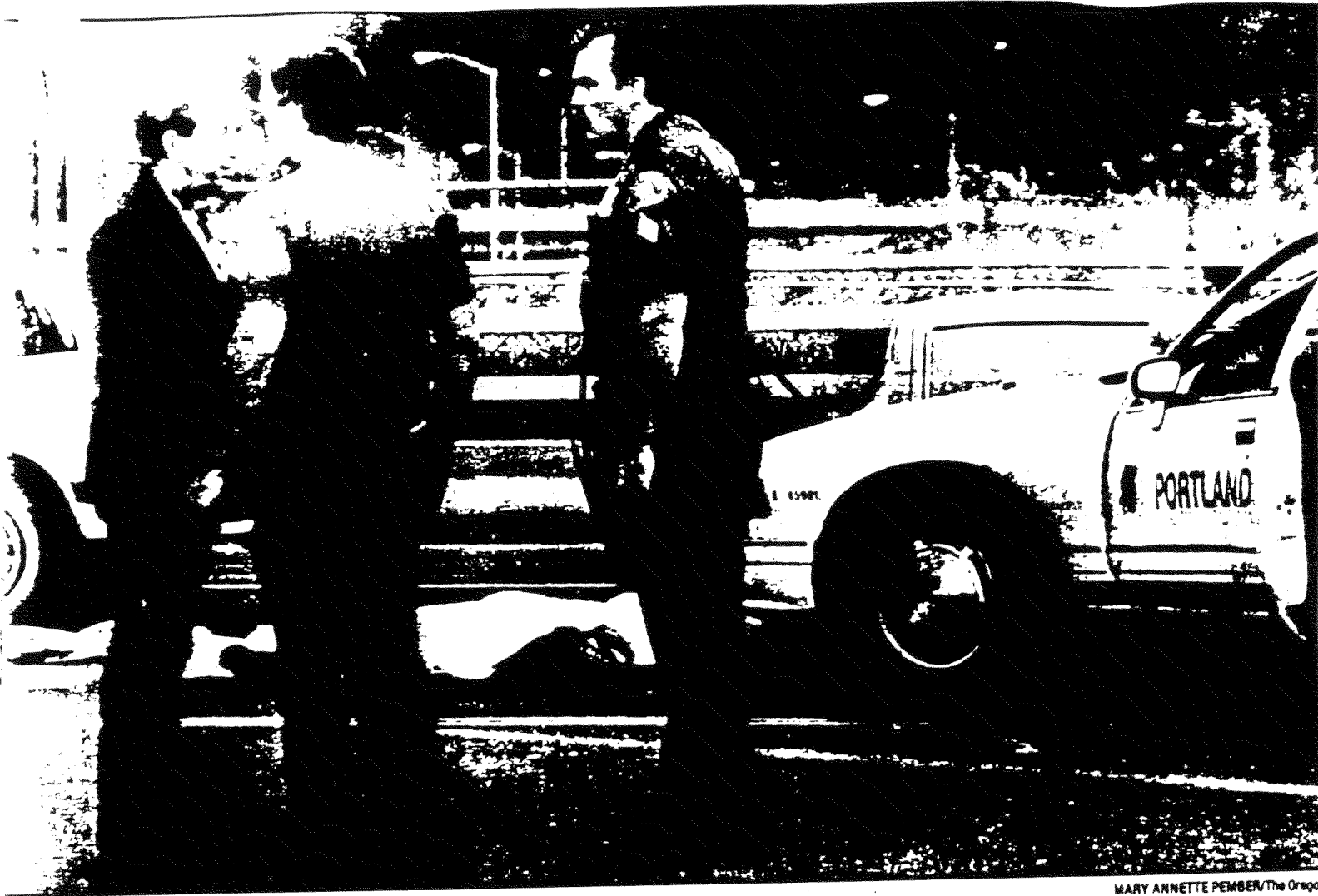
*Geoff Wren, Geoff Silver, National Lawyers Guild
T. J. Browning, Nathan McMurry Thomas Fund, Inc.
Avel Gordly, State Representative
Sandy Herman-Moose
Dr. Annette Jolin
Mark Kramer
Marcy & Ed Kirschbaum
Scott Pratt, attorney
George Fields, attorney
Ed Jones, Multnomah Defenders
Gene Lawhorn, Labor Coalition for Environmental Responsibility
Coalition for Human Dignity
Women's International League for
Peace & Freedom (Portland Chapter)
Radical Women (Portland Chapter)
The Oregonian (July, 1993)
KGW-TV (April, 1988)
The Skanner
The Portland Alliance
The Northwest Examiner
The Southeast Examiner
PDXS
Ecumenical Ministries of Oregon
Albina Ministerial Alliance
East Side Democratic Club
East Side Democratic Central Committee*

APPENDIX D

RECENT CASES OF NOTE

In the past year, there have been several reported incidents involving the Portland Police Bureau that evoked concern and even criticism from various parts of the community. At intervals, these stories may not grab one's attention. They are simply among many tales of violence in a day's paper. But taken together--and recognizing that many less dramatic transgressions by police officers never get media attention--these articles paint a disturbing picture.

Unnecessary and improper use of force by our police officers is not just another story about violence in our streets. The police are entrusted with the special right to use coercive physical force against the people. Therefore, they have a special obligation to respect the boundaries set by the laws of our society. When someone with little power breaks the law, (s)he harms the victim and the victim's relations and friends. When members of the powerful police bureau break the law, they claim two victims--the person(s) involved and the political foundation of our society: The rule of a democratically elected civilian government in accordance with constitutionally established civil liberties and rights.



MARY ANNETTE PEMBER/The Oregonian

Police confer after officers shot and killed a 20-year-old man Tuesday after he apparently tried to back over another officer during a traffic stop.

Police kill suspect at traffic stop

Three Portland officers shoot a 20-year-old man after he apparently tried to run over another officer

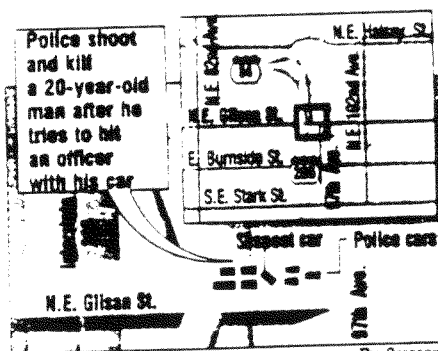
By **ASHBEL S. GREEN**
and **HOLLY DANKS**
of The Oregonian staff

Three Portland policemen shot and killed a 20-year-old fugitive Tuesday evening after he apparently tried to run over a fourth officer on a busy Northeast Portland street.

The man was identified as Anthony Duane Shaw, whose last known address was in Milwaukie. The names of the officers were being withheld. It was not immediately known how many shots were fired, how many times Shaw was hit or where the bullets struck him.

An autopsy is scheduled for Wednesday.

A 15-year-old girl who was in the car



The Oregonian

at the time of the shooting was not injured. Police took her to the Justice Center for questioning and released her.

The shooting occurred about 6 p.m.

on Northeast Glisan Street at 96th Avenue, just east of Interstate 205. It is a bustling intersection where the freeway off-ramp empties and an on-ramp begins.

During a traffic stop, police in four cars tried to box in a vehicle behind a Tri-Met bus and five other cars at a traffic light.

Sgt. Derrick Foxworth, spokesman for the Portland Police Bureau, said the officers shot the driver, Shaw, because he was about to run over another officer and therefore was "a clear and present danger."

It was the fourth time Portland police have shot and hit a suspect this year.

Please turn to
SHOOTING, Page 2

Shooting: Police seek to arrest man in car

Continued from Page One

and the second time they've killed someone. Last year, police shot 14 persons, killing six.

The incident unfolded Tuesday between 3 and 4 p.m., when an unidentified informant told police an address where they could find a man with several outstanding warrants who also was driving a stolen car.

Two of the warrants were for violating probation on a first-degree burglary conviction, and the other was for failing to appear in court on another charge.

Two Portland police detectives in an unmarked car went to the address and found the car, but not the suspect. They waited as long as 90 minutes until the suspect returned.

Foxworth said detectives decided it was safer to arrest Shaw with more backup away from the house.

So when Shaw got into the car with the 15-year-old girl, the detectives followed him and called for uniformed officers to help make the stop.

Four police in three patrol cars pulled up behind the suspect in the Glisan intersection about 6 p.m. and turned on their overhead lights. The patrol cars surrounded the suspect's car before officers got out and confronted the man.

The detectives' car actually was

POLICE-INVOLVED SHOOTINGS

Portland police officers have been involved in four shootings in 1993. Tuesday's shooting was the second time in 1993 that Portland police have killed someone. Last year, Portland police shot 14 people, killing six.

■ **June 2:** Three Portland policemen shoot and kill Lewis Patrick Clark, 41, of North Portland after he pointed a loaded and cocked .357-caliber Magnum revolver at them in a park in Northwest Portland. Police fired 16 shots.

■ **June 18:** Portland police exchange gunfire with two bank robbery suspects after a high-speed chase that ended when the fugitives jumped head first through a window at Holladay Park Medical Center in Northeast Portland. One man was shot in the leg after police fired more than a dozen shots.

■ **July 19:** Two Portland police officers shoot at Gerald C. Gratton, 27, as he ran from them. Officer Douglas Erickson fired 23 times, and Officer David Thoman fired four times as Gratton fled from a bus where he had been drinking. He was hit in the back and elbow but survived. Erickson was harshly criticized by a grand jury for firing so many times at Gratton. Thoman, the grand jury said, acted responsibly and professionally. Gratton was indicted for unlawful possession of a weapon and being a felon in possession of a firearm.

■ **Sept. 14:** Three Portland police officers shoot and kill Anthony Duane Shaw after he tried to flee a traffic stop. Police said Shaw was abruptly backing toward a fourth officer when the others opened fire. It hadn't been determined how many shots were fired.

The Oreg.

next to and slightly ahead of the suspect's car.

At this point, police and witnesses said, the suspect started driving back and forth, apparently trying to escape.

John Simpson, who was parked nearby, said he saw one policeman jump away from the suspect's car, and then he saw the three other officers shoot into the driver's window from about 5 or 10 feet away.

"He was trying to get out of there, and in the process he almost hit one officer," Simpson said.

Simpson said he didn't know how many shots were fired. Other witnesses said they heard as many as 12 shots.

Police said no bystanders were struck by gunfire.

Foxworth said the investigation was continuing.

The police officers who fired their weapons were placed on administrative leave pending a grand jury investigation of the case, which is routine in police shootings.

Police have been cleared of wrongdoing in all shootings in the last few years. They are allowed to use deadly force if they believe someone's life is in danger or if they are trying to prevent a felony, such as an escape.

The shooting was in nearly the same spot that a groundskeeper for Multnomah School of the Bible was shot and killed during a traffic altercation on Aug. 5.

Letter Charging Police Brutality Prompts Investigation

CASE 1
Skanner
Aug 17, 1993

A letter that arrived last week in The Skanner offices has prompted an internal police investigation into the conduct of a North Precinct police officer. The officer is currently up for promotion.

The letter, on Police Bureau letterhead, claims to be from "Four Portland Police Officers," who did not sign their names. The envelope arrived in a Police Bureau envelope and the postmark confirms it was sent from the city of Portland mailroom. It accused a North Precinct officer of following a pattern of beating and macing handcuffed suspects. It went on to say that most of the abused subjects have been Black.

*"had a race going to see who
could mace the most people, and
most of these people were
Black."*

"He has kicked an arrested subject in the face who was handcuffed busting his jaw, several officers observed this," alleged the letter.

The letter alleges that the officer named and another North Precinct sergeant "had a race going to see who could mace the most people, and most of these people were Black."

Attempts by The Skanner to ascertain whether the officer named has been the subject of previous complaints about excessive force have been only partially successful.

The Police Bureau does not like to release internal investigations information.

The Skanner was initially told that internal investigations records were confidential and not available to the public. After establishing that the records were indeed available, we were then told--several times--that collecting the records was "a non-priority item."

The confirmation letter the bureau sent in reply to our records request emphasized that the law allows 21 days to return the material.

It also said that internal investigation records on the officer accused in last week's letter "consist of 305 pages and two tapes."

The cost for compiling those "open to the public" records was given as \$655.

Lt. Dan Elfving, who heads up the police Internal Investigations Division, said the bureau was "very concerned" about the allegations made in the letter.

"We are investigating this matter," he said.

New Chief Charles Moose also promised action on

Please See LETTER on Page 3

Commission to the Oregon State Police.

LETTER Continued from Page 1

the issue but cautioned against putting too much faith in anonymous complaints.

"We are very concerned about these complaints," he said, but pointed out that the officer involved had been singled out for appreciation by St. John citizens. Moose was captain at North Precinct for several years. He confirmed that during his tenure there he had heard "some complaints" about the officer named in the letter, but added "a lot of officers have complaints against them."

Elfving confirmed that it would be "highly unusual" for police officers to send such a letter. A possible motive appears in the letter writers' allegation that, "This problem has been reported but nothing has been done about it." In addition, a recorded message alleging the same information contained in the letter was left on The Skanner's readerline prior to the paper's receiving the letter.

If the letter is indeed from police officers, it indicates a great deal of concern on their part about the accused officer's conduct.

Also of concern are the racial aspects of the alleged abuse. North Precinct headquarters is moving to the corner of Martin Luther King Jr. Boulevard and Killingsworth, where a majority of residents are African American.

Man wins lawsuit but only wanted apology

■ A federal court jury awards a Northeast Portland resident \$10,000 for being handcuffed and shaken down by a policeman without sufficient cause in 1992

By DAVE HOGAN
of The Oregonian staff

Donald W. Hunter was walking home late one night last year when a Portland policeman arrested him for jaywalking, handcuffed him and searched him. The officer freed him after finding he had no drugs and no criminal record.

Humiliated and angry, Hunter asked the Portland Police Bureau for an apology for the way he was treated Feb. 29, 1992.

He kept asking, but he never got the apology.

"I've been in this area all my life," Hunter said Thursday at Northeast Grand Avenue and Mason Street, remembering his arrest there 17 months earlier.

"That's the first time I've ever been handcuffed, the first time I've ever been in a police car. I'm 36 years old. I'm a law-abiding citizen. Then to have that happen as I'm walking home from my brother's house is kind of crazy."

On Wednesday, a federal court jury awarded Hunter \$10,000 for being wrongly arrested and handcuffed by the policeman last year.

The officer lacked probable cause to arrest Hunter for jaywalking because he had not seen him cross a street, U.S. District Judge Robert E. Jones ruled. The officer also did not have sufficient cause to handcuff Hunter, he concluded.

But the jury said a flat no to Hunter's claim that the city had a policy or custom of letting police arrest people for jaywalking to search for drug evidence.

This all started as a simple walk home. Hunter had been at his brother's house, playing dominos that night.

Because of the late hour, he walked in the street, about four feet from the curb, where he felt safer.

About 12:45 a.m., Portland policeman Michael W. Lee stopped to check on Hunter. He later said he suspected that Hunter might be looking to buy or sell drugs because of the time of night and the neighborhood drug activity together with his knowledge that drug dealers and customers



Donald W. Hunter says he just wanted an apology from police after his arrest for jaywalking at Northeast Grand Avenue and Mason Street. (U 4)

Please turn to
SUIT, Page C3

Suit: Man sues city for 'insult'

■ Continued from Page C1

sometimes advertise their availability by walking down the middle of a street.

Lee asked Hunter if he had ever done drugs and had any drugs on him. No, Hunter told him.

Lee, a Portland policeman since 1989, asked if he could search Hunter, who again said no.

"I told him, 'In fact, I'm offended and insulted. I'm just walking home and you ask me if I have drugs, and after I tell you I don't have any, you ask me if you can search me for drugs?'" Hunter recalled. "That's where things changed."

After telling Hunter that he could arrest him for jaywalking, Hunter again said that he would not consent to a search. Lee then handcuffed him and went through his pockets, pulling out the contents and placing them on the police car. When he pulled out Hunter's lip balm, he shook the container, Hunter said.

He patted down Hunter and placed him in the police car while he checked by radio for warrants. He let Hunter go after finding he had no arrest warrants and Hunter walked home.

That Monday, Hunter complained to Charles Moose, then the commander of the police's North Precinct and now the police chief. Moose said he would check it out.

Moose told Hunter later that he had spoken with Lee and saw nothing wrong with his actions.

On April 8, Hunter sent a six-page letter to then-Chief Tom Potter.

"I believe that I was stopped and treated in this manner simply because I fit Officer Lee's stereotype of a criminal — a black man, walking in the Albina area, late at night," Turner wrote.

The letter was directed to Moose, who responded with an April 24 letter saying the officer was doing his job and Hunter would not be getting a written apology.

Finally, Hunter contacted attorney David D. Park, who sent a May 13 letter to the city that went unanswered. In December, Park filed the suit against the city.

Hunter, who now works for the city as a parking patrol deputy, said he was glad the court case was over. But all he originally wanted was an apology, he said, and he never did get it.

"He just asked to be treated with respect," Park said.

Officers explain why they shot man

■ The fleeing suspect was armed, and the police tell investigators they were afraid that he'd take a hostage or commandeer a car

By ASHBEL S. GREEN
of The Oregonian staff

A Portland police officer told investigators that he shot at a fleeing man Monday night because the man was armed with a gun and might have taken a hostage if he had escaped.

The man, who was hit in the back and the elbow, did not fire his 15-caliber semiautomatic handgun, and police investigators do not believe he pulled it out of his waistband, said Sgt. Derrick Foxworth, spokesman for the Portland Police Bureau.

The man, Gerald Frank Gratton Jr., 27, of 8802 N. Hartman St., was in fair condition Wednesday night in a Portland hospital. He was under police guard.

The shooting followed a complaint by a Tri-Met driver about two men drinking on a bus and threatening her. When police tried to take Gratton off the bus, he broke free and was shot as he ran away.

Police investigators talked Wednesday with the two Portland police officers who fired a total of 27 times at Gratton on North Lombard Street near Interstate Avenue. Officer Douglas Erickson, 33, fired 23 times, reloading his 9mm Glock after emptying the weapon once. Officer David Thoman, 38, fired his Glock four times.

Investigators do not yet know which officer's shots hit Gratton.

Foxworth said members of the Police Bureau have expressed concern about the number of shots that were fired. He said investigators should scrutinize the shooting closely.

"We ask ourselves the same questions that everyone else does," Foxworth said.

The officers involved gave investigators the following story:

They boarded the No. 4 bus at the request of the driver, Marcia Owens, who complained that Gratton and his brother, Devon Simms, 24, of the same address, were drinking beer.

The officers frisked Simms and handcuffed him, and Thoman took him off the bus. By then, Officer Cheryl Swenson had arrived and boarded the bus.

Swenson and Erickson told Gratton to raise his hands. When he did, Swen-

Please turn to
SHOT, Page F4



Angela Sanders and Devon Simms are angry over the shooting of their brother, Gerald Frank Gratton Jr. They are waiting in Simms' North Portland home Wednesday night for Gratton's wife to return from a hospital visit.

Shot: Suspect bolts out of k runs across N. Lombard Street

■ Continued from Page F1
son saw a gun in his waistband and yelled that he was armed.

Gratton pushed Swenson and Erickson away and ran out the back door of the bus. Erickson followed. Gratton ran behind the bus and across Lombard. Erickson pulled out his Glock, stopped behind the bus and fired 13 times at Gratton.

Thoman, who had been watching Simms by a patrol car parked in front of the bus, heard the shots and ran to the rear of the bus. He fired four times at Gratton. Thoman then ran back to Simms, who had run in front of the bus into the middle of Lombard.

Erickson ran after Gratton. About this time, the gun fell out of Grat-

“
We ask ourselves the same questions that everyone else does
”

Sgt. Derrick Foxworth
Portland Police Bureau

ton's waistband. Erickson told investigators he never saw the gun fall out and emptied his own pistol, believing Gratton was still armed.

Erickson reloaded. Gratton turned and faced Erickson, who fired four more shots. Gratton then fell to the ground.

Erickson said he fired because he believed Gratton might commandeer a car or go to a nearby 7-Eleven store and take a hostage.

When officers fire their weapons they must consider where the bullets will lodge. In this case, Gratton was running in front of an open field. Foxworth said he did not know whether the investigators had specifically asked Erickson and Thoman whether they had considered the ramifications of firing at someone with an open field as a backdrop.

The Multnomah County district attorney's office is investigating whether the police were justified in using deadly force.

As is routine, the Police Bureau also is investigating.

Moose fires policeman for extreme use of force

Officer Douglas Erickson is dismissed not for the 22 times he fired at a man fleeing from a bus but for the fact that he shot at all

JOHN SNELL
Oregonian staff

Portland Police Chief Charles Moose fired Officer Douglas Erickson on Friday for excessive use of force after the policeman fired 22 shots at a man running from a Tri-Met bus in July.

The dismissal of the North Precinct policeman is the first time the bureau has fired an officer, or for a matter disciplined one in any way, for his role in a police shooting.

Mayor Vera Katz, who also is police commissioner, said that she has reviewed the shooting and agrees with Moose. Both declined to comment further.

Erickson was fired effective 5 p.m. Friday for his role in the July 19 shooting of Gerald F. Gratton who was hit in the arms by the gunfire.

Gratton and his brother had been drinking and about the back of the bus, Erickson followed and fired a total of 22 shots until Gratton fell.

Widespread community concern has been voiced over the number of shots fired by police when a suspect draws a gun or shoots their guns.

The concern was particularly heightened after the bureau's 1988 decision to let police use high-caliber semiautomatic pistols such as the 9mm Rem-UMC, which holds three times as many cartridges as the old six shot revolvers.

Erickson, however, was fired not for the number of times he shot at Gratton, but for the fact that he shot at all at the 27-year-old North Portland man.

Chief Moose said in his termination letter to Erickson that the officer was unable to give a satisfactory explanation for why he opened fire in the

Firing: Moose said officer violated rules

Continued from Page One

first place or why he continued firing as Gratton ran away.

Moose found that Erickson violated the bureau's general orders, which say police can use deadly force only when they believe their life or the lives of others are being threatened.

Police also can shoot in limited cases to stop certain kinds of fleeing felons. Officers are trained to shoot until there's no longer a threat.

A grand jury in July reviewed the shooting, as is routine, and determined that Erickson hadn't violated the letter of the law in shooting Gratton.

The grand jury, however, did take the extraordinary measure of asking District Attorney Michael Schrunk to write Moose.

"The grand jurors were concerned about the number of shots fired, the reckless manner in which they were fired and the officer's inability to justify or explain why he fired when he did," Schrunk's letter said.

At the time of the shooting, Erickson said, he shot at Gratton because he thought Gratton might take a hostage, even though Gratton was running toward an unoccupied schoolyard in the middle of the night.

Police originally said that Erickson shot at Gratton 23 times, but a subsequent investigation showed that his gun was fired 22 times instead.

Gratton said late Friday that he wasn't surprised Erickson was fired and that he considered himself "the luckiest man on Earth to survive all those bullets."

Gratton said he'd gone through two surgeries already and needed to schedule a third. He refused to say why he had a gun on the bus or why he ran when police tried to frisk him.

But he said he ran away from Erickson the night he was shot because he wanted to survive.

"I knew I was being shot at and that this officer was out of control," he said from his St. Johns home. "I just hoped I could get through this. He (Erickson) didn't say anything at all. The only thing I heard was gunfire."



Gerald Gratton Jr. and his wife, Christy, are glad that a Portland policeman who shot him last July got fired. A bullet and bone fragments still lie in a lamp just under the skin on his arm.

Bureau policy requires that the Internal Investigations Division investigate police shootings and report to the officer's precinct commander.

The precinct commander — Capt. Al Orr in Erickson's case — made his recommendation to a review committee made up of deputy chiefs in the bureau. Together, they sent a recommendation for dismissal to Moose, who then met with Erickson to give him the chance to argue for his job.

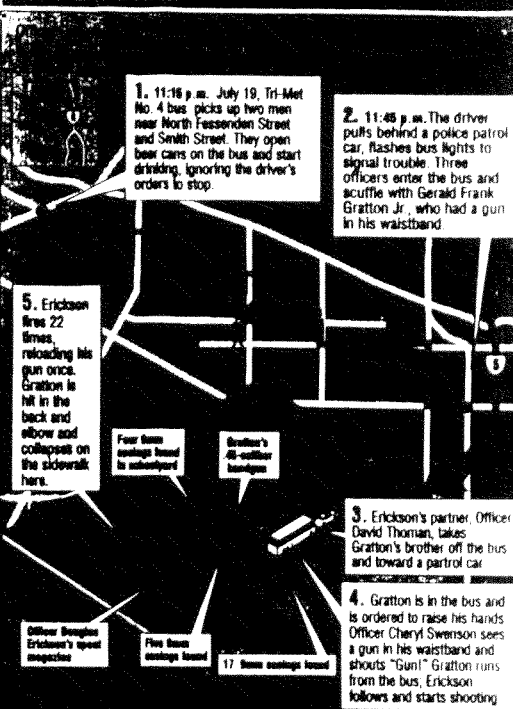
Erickson began working for the Portland Police Bureau in September 1984, according to records at the Board on Public Safety Standards and Training in Salem. Before that, he was a deputy in the Douglas County Sheriff's office from Sept. 12, 1983, to May 29, 1984, according to sheriff's records in Roseburg.

At North Precinct, some officers expressed concern over Erickson's firing; others tersely rebuffed interview requests.

A policeman who asked to remain anonymous said that officers in the precinct knew for weeks that some kind of disciplinary action would be taken against Erickson. He said a petition, signed by many officers, was circulated among the ranks asking that any action against Erickson stop short of termination.

"There's plenty of room for mistakes to happen on the job," the officer said. "You hope that when you shoot that you don't do it out of mal-

BUS SHOOTING



The Oregonian

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FIRING, Page A18

Erickson has prior excessive force complaints. On March 4, 1992, Erickson broke a man's nose and cheek after kicking him twice in the face during an arrest. The man, Arles VanMer, 28, of 13301 S.E. 4th St., filed a complaint with the bureau saying he was the victim of excessive force.

Moose was Erickson's precinct commander at the time, and after an internal investigation, he found Erickson had used excessive force. Then Police Chief Tom Potter assumed Moose's decision and exonerated Erickson on July 5, 1992.

Erickson also was the subject of a complaint in June after he used his stick to break out the car window of a man who tried to drive around traffic leaving Portland International Raceway during the 17th and 200 Indy car race.

The man claimed his car was threatening and refused Erickson's order to pull off to the side of the road. Erickson tried to arrest the man after breaking the window and saved the man's eyes with pepper spray when he resisted.

In the Gratton shooting, Erickson's partner Officer David Thomas opened fire on Gratton.

Thomas shot four times after seeing that his partner was shooting at a fleeing suspect, but then stopped when he determined that Gratton posed no threat. Foxworth said at the time of the shooting. The grand jury that investigated the case determined that he "acted responsibly professionally."

HEARSAY

is a partial list of Portland police officers who have been fired or forced to leave the bureau in the past 15 years.

CHAE L. CALLAGHAN A sergeant, fired in 1978 for allegedly stealing firearms from a grocery store while drunk.

AUG C. WARD

RES E. GALLAWAY Both officers, fired in 1980 for dumping dead opossums in front of a black-owned North Portland restaurant. Both were reinstated, although Ward has since resigned.

JOE L. DEPPE

LIAM L. DUGAN JR.

IL W. GEARHEART

ANK R. OTONNELL

RES W. SWETMAN All officers, fired in 1981 during an investigation of allegations of misconduct by the local investigations Division.

JL A. WICKERSHAM

HARD A. MONTE Both officers, fired in 1984 for producing and selling 100 "Em, Snake, Em" T-shirts. They were reinstated, but only Wickersham still works for the bureau.

VIN HARRINGTON Police chief, left 986 after a special commission stonned her leadership.

DAVIS Fired as police chief in 1987 for insubordination and retired as a captain.

RY NEWMAN A detective, fired in 1971 after he was charged with aiding a former girlfriend.

JO YAMASAKI A detective, fired in 1972 after his name was found in the files of a massage parlor investigation or promoting prostitution. He has been reinstated.

ice or gross negligence, and that if you felt it was justified you will be backed up."

The officer said he was a personal friend of Erickson.

The Police Bureau seldom fires officers, and when it does it's usually for something done while off-duty. It is rare that the bureau has found a need to dismiss someone for the way in which duties were performed.

Not counting Erickson, six of the bureau's 900 sworn personnel have

been fired or forced to resign in the past 10 years. All but two of them returned to jobs in the bureau.

Roger Morse, president of the Portland Police Association, said the union had no comment on Erickson's dismissal. Morse said that as a general rule, the appeal of discharge can take "months and months" before it is settled.

— Stuart Tomlinson of The Oregonian staff contributed to this report

FRIDAY, JULY 23, 1993

Where did all the bullets go?

And could anything like Monday night's police shooting happen in a residential neighborhood?

A key question raised by Monday night's incident in which Portland police shot 27 times at an armed man fleeing from possible arrest is where all the bullets went.

Stray police bullets can kill people just as stray gang bullets do.

So investigators must make every effort to determine not only whether it was necessary for officers to shoot that many times, but whether it was necessary to shoot at all and whether any of their shots could have endangered innocent lives.

Sgt. Derrick Foxworth, Police Bureau spokesman, says those questions will be answered as best they can be. Portlanders should expect no less.

Thankfully, this incident happened late at night on North Lombard Street near Interstate Avenue — not a densely populated residential neighborhood but an area of businesses, open lots and an elementary school.

However, a service station was still open, there were bus-stop kiosks on either side of Lombard Street that could have held people, and the intersection is a busy one for auto traffic.

The man who was wounded three times by police gunfire, Gerald Frank Gratton Jr., 27, reportedly had a

.45-caliber pistol stuck in his belt when two officers searched him on a Tri-Met bus. After a brief scuffle, he broke away and ran.

Gratton didn't use his gun, nor is there any indication so far that he drew it or threatened anyone. He ran apparently because he was an ex-convict in possession of a firearm. He was fleeing toward Kenton Elementary School when the shooting started.

Officer David Thoman fired four times. Officer Douglas Erickson fired 23 times, pausing to snap a new magazine into his 9mm pistol after emptying it at Gratton, then firing again.

That was a lot of shooting, and The Oregonian continues to be concerned about the fusillades that have become all too common when Portland police unholster their weapons.

Ex-convicts clearly have no business carrying guns, but we wonder whether there was any reason for the officers to shoot. Thoman and Erickson couldn't have known immediately that Gratton was an ex-convict, Gratton's companion (his brother) was in custody, and Gratton was running away, not threatening anyone.

Such questions need to be answered fully, quickly and publicly — not just in the secrecy of a grand jury room.

Policy

Public

City to pay man who was maced

■ An attorney for Herbert Jones says his client's only crime was being black in a white neighborhood after midnight

By JAMES MAYER
of The Oregonian staff

The Portland City Council has agreed to pay \$22,400 to a man who was maced and handcuffed in his own home last summer because, according to police, he was speeding and ran a yellow light on the way home.

Herbert Jones' only real crime, according to his lawyer, was that he was a black man in a white neighborhood after midnight.

Jones, 33, declined to be interviewed about what happened to him that night, saying it was

too painful.

"It was a grueling thing to go through for a traffic matter," said defense attorney Constance Crooker. "My heart went out for the guy. He was so disillusioned. He had done everything he was supposed to do to make it in the system."

Some of the facts are disputed, but even if the police report is accepted as accurate, the officers' actions were "outrageous," Crooker said.

Through his lawyer, Jones gave this account:

Please turn to
JONES, Page A13

Jones: Police officer gives different account

■ Continued from Page One

Driving home after visiting with friends about 1:30 a.m. on July 12, Jones noticed a police car behind him on Northeast 39th Avenue, but he didn't pay much attention. He came to the intersection at East Burnside, turned right, and then immediately turned left into his own driveway at 3915 E. Burnside. He went in the back door of his house.

At no time did the police try to pull him over, he said.

In his report, officer Joseph Welp gave a different account. Welp said Jones was speeding and that after Jones' car rolled through a yellow light at 39th and Burnside, Welp turned on his overhead lights.

Welp said his partner, Steve Larkin, got out of the patrol car and yelled at Jones to stop, but Jones went inside the house yelling, "Get off my property."

Jones said the first he knew the police wanted to talk to him was when they knocked on his front door.

In his report, Welp said he and Larkin attempted to discuss the traffic infractions, but Jones asked them to leave. Jones said they never mentioned his driving. Instead, he said, the police demanded to know whose house it was, and whose car.

Jones said he tried to explain that both the car and the house were his, but the officers never asked to see any proof.

"They were so sure they had a black burglar in a white neighborhood," Crooker said.

The stories agree on this point: The tenor of discussion then took a turn for the worse. Jones opened the screen door, and bumped or pushed Welp in the process.

That's when it happened. In his report, Welp said Larkin sprayed Jones, a large man, with pepper mace because of his "hostile actions and emotional state." He was then taken into custody and cited with attempting to elude, a misdemeanor. He also was given a ticket for running the light.

The officers had Jones' 1979 Datsun towed.

A Multnomah County District Court jury cleared Jones of the criminal charge. The traffic ticket was dismissed.

"I said to the jury, 'If you were followed by the police in traffic to your house in Beaverton, into the driveway of your own house, there's no way in the world they would have maced you,'" Crooker said.

After the jury verdict, Jones filed a lawsuit against the city and the police officers in U.S. District Court, alleging that his civil rights were violated.

The city didn't file an answer to the complaint but went straight into negotiations.

"These are settled if it looks like there's a significant risk that the city will be found liable," City Attorney Jeff Rogers said. "We don't settle nuisance cases," Rogers added.

The council approved the settlement without discussion last month.

Sgt. Derrick Foxworth, police spokesman, said no internal investigation of the incident had been conducted. Police officials had no comment on the case.

Jones, who was an accounting student at Portland State University at the time, has since earned his degree. He sold the house in Laurelhurst and now lives downtown.

OCE April 13, 1993

Money

CLOSED SHOP

Cops "sting" in Laurelhurst

Police action against gay cruisers draws criticism

by Jim Hunger

An undercover police action against gay cruising in Laurelhurst Park resulted in few citations, much controversy and an internal investigation following a complaint filed by one of the victims. Shortly after midnight of Aug. 21, Portlander Jack Griffith was surrounded by four policemen out of uniform and cited "for being in the park after hours." There are, and continue to be, no park hours posted anywhere in the park.

In a written account, Griffith related hearing "some guys in the park by the trees yelling 'fag-got!' and then five to 10 minutes later one of them pushing another person off the trail, demanding to know what he was doing in the park. "One of the four people who approached me and handcuffed me was the person who pushed another person about 20 minutes earlier," he said, noting that he also "smelled alcohol on at least one of the men's breaths."

Confused by the unorthodox manner of the police action and the men's earlier behavior, Griffith feared that he had been singled out. "The procedures were all wrong. They scared the hell out of me—I thought I was going to get raped, beaten or killed." When he asked to be shown identification, Griffith says one of the men showed him a faded police patch on his shirt, and another showed him a badge, saying, "I have a gun, too. Do you want me to show it to you?"

Falling down when the men pushed him down a dark path, Griffith says that the men locked him to make him stand up again, one of them commenting, "He is enjoying this too much." His fears were eased when he was brought to a police car, where he was issued a citation stating 30-day notice of exclusion from the park.

Following the night's events, Griffith filed a formal complaint with the Police Bureau, tacked up posters around the park soliciting witnesses to the action and wrote a chronology of events. He also contacted a lawyer. The simple flyers Griffith posted have generated an outpouring of witnesses and concern. Several neighbors living adjacent to the park have contacted the police as well as the Laurelhurst Neighborhood Association.

Arlene Curth, who lives across the street from the park, reported that on the night before Griffith's arrest she was awakened by somebody outside her home screaming for help as he was being beaten by a group of six men. Noting the time, she called 911 and was put on hold for five minutes while the beating continued. "I thought he would be dead by the time someone answered," she said. When she asked the dispatcher to send the police out, she was told that the men doing the beating were the police. "They looked like and acted like cops," she said. Another neighbor, T.J. Browning, said she was interviewed by East Precinct officer Bill Sinnott before the police sweep action, and although he asked her many questions about park use, he only took notes about gay activity. This apparent prejudice concerned her. Sinnott has admitted to being one of the six officers involved in the beating outside Curth's house.

The situation has been deemed serious enough for the Laurelhurst Neighborhood Association to discuss it during a recent board meeting and at a general meeting with East Precinct Commander



Dave Butzer and newly appointed afternoon shift Lieutenant C.W. Jensen. They intended to answer questions and explain the police side of the controversy. Lt. Jensen had been reassigned to the East Precinct immediately after the incidents occurred. He had been working in the Bias Crime Unit downtown. Lt. Jensen expressed deep concern that this incident might destroy all the trust that he has been working to establish with the lesbian and bisexual community. The officers were unable to answer any questions specifically related to Griffith's complaint since it is currently under investigation in internal affairs. "It was a decoy mission," Butzer said. "No one in the precinct is happy with the way the entire mission turned out. The officers have said that they would not want to do the mission in that way again."

There was some confusion about the period of time over which the police action took place, how many and what kinds of citations were made. Butzer said three citations were issued on the night, with no one being jailed, but the beating that Curth witnessed and Griffith's citation occurred on two successive nights. One neighbor said he knew of an individual who was beaten or jailed for several hours without being allowed to make a phone call. Butzer said that once a person was at the jail, they would be under the purview of the jailers and not the responsibility of the police.

One neighbor commented, "I cannot allow children to play in the park if there's a danger they'll encounter sperm-filled rubbers and hypodermic needles under the bushes in the end of the park." Another neighbor expressed concern about the implied connection between gay men and intravenous drug use, and said she has noticed no change in the level of drug activity in the five years she has lived across from the park. She questioned the priorities of having six officers involved in the cruising bust when there are no police available to respond to call burglaries and car break-ins. Another person said, "Public sex is as old as all of us combined. As parents we can work together to clean up the park."

The primary concerns of the neighborhood association seem to be the parking problem at night as well as finding used condoms lying around.

UNDERCOVER

Beating

OCTOBER, 1992

CASE 8 CONTD.

We blew it!

Police say they won't repeat undercover sweep of gays in Laurelhurst Park



About 50 Laurelhurst neighbors came to hear Police Lt. C.W. Jensen explain how the undercover operation in Laurelhurst Park was conceived.

by Allen Classen

Undercover Portland police swept through Laurelhurst Park in the early morning hours of Aug. 20-21 on a controversial mission that has been described by some as gay bashing.

At least two complaints of police misconduct have been filed as a result of the sweep, in which four men were arrested for public indecency.

Even Capt. David Butzer, the commander of East Precinct who authorized the project, admits now it was a mistake, though he denied that gay men were the target of the after-curfew sweep.

Lt. C.W. Jensen, who spoke to the Laurelhurst Neighborhood Association board Sept. 14, did, however, indicate the main thrust was sexual offenses. "We asked the D.A. what was needed to make arrests for sexual activity in the park," Lt. Jensen said of preparations for the operation.

"We're not happy with the way the operation went," Capt. Butzer told the *Southeast Examiner*.

"Our intent was to clean up the park, but I want to do that in a way that is acceptable to the community.... Some people don't like us coming in undercover. I'm certainly listening to that."

Lt. Jensen was more emphatic. "We will no longer be doing those kinds of missions in Laurelhurst Park," he told about 50 citizens at the neighborhood association meeting.

The goal, Butzer said, was to deal with all types of criminal activity occurring in the park after the midnight closing time, including drunkenness, loud noises and illegal sexual activity.

Four men were arrested for public indecency, a Class A misdemeanor punishable by up to one year in jail, as part of the operation, according to Police Bureau public information officer Derrick Foxworth. One of the four was also cited for breaking curfew and for drinking alcohol in the park. Police reports indicate that none were injured.

please turn to page 6

Bird man

page 5



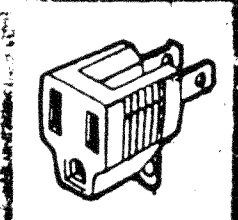
She's an uncle

page 12



When Yaw's opened

page 14



Elec-tricks

page 17



Not smiling now

page 18

Police admit Laurelhurst sweep a mistake

from page 1

As a result of the sweep, two police misconduct complaints have been filed with the bureau's Internal Investigations department. Butzer said no information on those cases will be released for at least 30 days, probably longer.

The reaction from Portland's gay and lesbian community so far has been subdued. Ariel Waterwoman, editor of *Just Out*, said she could not yet comment on the veracity of reports. "The story, if it's true, is an abomination and there's no reason for this in the Portland Police Bureau," she said.

She emphasized that she did not want to undermine good relations with Police Chief Tom Potter, an outspoken defender of equal rights for gays and lesbians.

"Potter is looking probably harder than anybody at the facts," Waterwoman said.

Potter was out of town and could not be reached for comment.

Witnesses to three incidents have spoken to the *Southeast Examiner*, and their stories follow. It is important to note that these may not be the same as the four cases police associate with the sweep.

Incident No. 1

Arlene Curths was awakened early the morning of Aug. 21 by screams. "Please help me! Please help me!" cried a man's voice. She ran down the stairs of her Southeast Ankeny home, but fearing for her own safety, did not go outside. Her husband and niece also got up to see what was happening.

Later, Lt. Jensen described the incident as a "terrific fight ... I think waking up the entire block."

"I could hear a person being beaten," she recalled. The incident took place in the driveway separating her house from her neighbor's and she did not see it happen, but she could hear that something dire was happening. She called 9-1-1, but was put on hold for what she

"I thought, my God, this person is going to be dead."

continued. "I thought, my God, this person is going to be dead by the time they come back on the line... It went on so long, blow after blow, cry after cry."

The 9-1-1 operator said a car would be sent. Then the beating stopped. Some men in street clothes came out from between the houses and said, "We are the police. It's OK." A white van and white cars, which her husband thought were unmarked police vehicles, were parked in front of the house.

Curths wasn't convinced that these men were in fact police officers. "I've never seen the police acting like this," she said later.

When no police car responded, she called 9-1-1 again and was assured that the men on the scene were police officers and everything was in hand. Curths told the operator that these men couldn't have been law officers.

The operator explained in more detail, saying the police were conducting a sweep of the park for illicit sexual activity.

The next day Curths called Chief Tom Potter's office but her message was not returned.

On Saturday, however, Officer Sinnott came to her door to explain what had happened. She said he told her that the park had become unsafe, due to obscene and drunken behavior ... all stages of nudity. She said he likened it to "Sodom and Gomorrah."

He further explained that the victim fought fiercely and it took six officers to subdue him. Sinnott told her that some of the blows she heard were actually delivered by the suspect. He also added

prevent the suspect from breaking into a house and taking a hostage, a reference to the fatal incident in Laurelhurst earlier this year.

But she was not reassured by the explanation. "Nothing you're saying is changing my mind," she told Sinnott.

She told the officer that she would not be satisfied until she could talk to the victim and know that he was all right. She pressed Sinnott for the man's name, but she said he wouldn't tell her and discouraged her from pursuing it.

Incident No. 2

Lost, Missing, Marriage or Divorce? Free Brochure. Sample: 800-322-0112, Ex. 660.

WANTED: Anyone who witnessed or was a victim of anything unusual that took place at Laurelhurst Park last Thursday night, 8/20/92, regardless of police involvement. Please call 225-4010. You may remain anonymous.

A 28-year-old Hawthorne area resident contacted the *Southeast Examiner* with this story. He said he is gay and asked that his name not be published in fear of retaliation.

He was walking alone in Laurelhurst Park after midnight on the morning of Aug. 21. He was approached by four men who identified themselves as the police and then slapped handcuffs on him. They were not in uniform. They told him his violation was being in the park after hours. (Though not posted in Laurelhurst Park, Portland parks close at midnight.) Doubting that the men were police, he asked to see a badge. A badge was flashed at him but he remained skeptical. The men led him down a path.

"I was extremely frightened and believed that I was going to a place to be raped, beaten, or—the frightening thought—killed, hesitating to walk further, I slipped landed on my buttocks. An odd guy grabbed me. I was pleading, 'please, no ... no,' while the guys were grabbing me and kicking my lower legs to make me stand. One of the guys kicking me said, 'He is enjoying this too much.'"

"I yelled, 'Please, somebody help me as loudly as I could,'" he said.

He was led to a paddy wagon, where two uniformed officers wrote up a 90-day exclusion from the park. He was assured that the citation would not appear on his record.

Later he filed a formal complaint with internal investigations. He also posted a flyer in the park asking that witnesses contact him. He placed a personals ad in *Willamette Week* soliciting responses from witnesses or other victims. He also told his story to an *Oregonian* reporter.

This case was not listed in police reports as part of the sweep. Police spokesperson Foxworth said that probably means he was arrested because he happened to be in the vicinity during the operation and it was after park closing time.

Incident No. 3

A man yelling through the night and flashing lights awakened Mary Ann Erb at 3 a.m., Aug. 21. From her front window on Southeast Oak Street she saw two uniformed officers wrestle with a man on her lawn. The suspect swore loudly, resisted efforts to roll him over and tach handcuffs. From his behavior, Erb thought the man may have been drunk. One officer finally kicked him ("It was not a big kick") while the other put his foot on the man's head. After about 45 minutes another squad car came.

"They weren't brutal to him or anything," Erb said. "I really didn't feel that they abused him."

See related comments in T-6. Sent on page 7.

City looking into way police handle probes

■ Citizen oversight is getting a renewed look after the shooting death of 12-year-old Nathan Thomas in January

By PHIL MANZANO
of The Oregonian staff

City officials are examining how Portland police handle allegations of misconduct in two studies, both due in October.

Depending on the outcome, the studies may prompt changes in the police internal investigation process.

Portland Mayor Bud Clark and Commissioner Gretchen Kafoury have asked the citizen advisers of the Police Internal Investigations Auditing Committee to review the effectiveness and role of the committee.

In addition, Auditor Barbara Clark has begun reviewing the police internal investigations process. She is examining case histories and trends involving the division that investigates allegations of police misconduct.

"As you well know, there has been a great deal of recent publicity and controversy over the role and future of the PIIAC," Clark and Kafoury wrote to the citizen advisers using an acronym for the committee. "Many of the articles have stressed the need for a more active presence."

The advisers review police internal investigations cases. If a complainant is dissatisfied that his allegation of misconduct was investigated thoroughly or objectively.

The advisers examine the case and can recommend to the City Council, whose members technically make up the internal investigations auditing committee, that it order police to reinvestigate a case.

Citizen oversight of police is getting a renewed look in light of the shooting of Nathan Thomas, a 12-year-old boy who was accidentally killed Jan. 16 while he tried to free him from his car, who also died in the gunfire.

The shooting resulted in deep an-

guish within the department and prompted a re-examination of police use of deadly force and how police shootings are investigated.

Kafoury said the review of Police Bureau internal investigations and the auditing committee should not be interpreted as a desire for a citizen review panel with separate powers and abilities to investigate police shootings or charges of police misconduct.

"I'm not, at this point, going to recommend a beefed-up citizen review" panel, Kafoury said. She hopes the audit and committee study would help identify strengths and weaknesses in the way complaints about police are handled.

The auditing committee was harshly criticized in January by a City Club of Portland report for being ineffective and powerless. And in a series about police shootings in The Oregonian, national experts pointed to Portland's citizen review of police as among the weakest in the country.

The Chief's Forum, a 25-member citizen's panel that advises Chief Tom Potter, said the report's claims were not backed up by research. The forum would not go along with the report's recommendation that the oversight committee be scrapped and replaced with a different police review process.

Ever since Portland voters narrowly approved the creation of the committee in 1982, the group has often been controversial as members struggled with their role and grappled with the Police Bureau and union over their powers of review.

Over the years, former members have quit in frustration over the committee's lack of authority, although current members have expressed satisfaction at the current role the committee plays in reviewing internal investigation cases.

Kafoury has asked the committee to have a final report ready for the council by late October. The report along with the audit will be studied and used by the council to discuss possible changes later this year.

Barbara Clark's audit of internal investigations was originally requested by Potter in the months following the Thomas shooting.

Review police shootings

ORE J 21
1993

Family wants something positive to come from young Nathan Thomas's death

The parents of 12-year-old Nathan Thomas, killed accidentally by Portland police last year, have agreed to drop a claim against the city in exchange for an independent review of the shooting. The City Council ought to require independent reviews for all police shootings.

If the council approves the settlement Wednesday, as it should, the city will hire former Eugene Police Chief Pierce R. Brooks, a noted criminal investigator and law-enforcement consultant, to review the shooting. The city also will pay \$15,000 in attorney fees, though the family has not filed suit. Rather, the family gave formal notice of intent to file a claim against the city last January. The settlement was negotiated with the city attorney.

Young Thomas was accidentally shot by police as they tried to rescue him from a burglar in his family's Laurelhurst home. The bullets were meant for 20-year-old Bryan French, who was holding the boy and threatening to kill him. French also died in the gunfire.

The family's lawyer, Jeffrey Foote, said the family hoped to have "someone take a truly independent look at the whole situation, not with the idea of assigning blame, but more with the idea of asking, are there areas where there can be changes in policies or procedures?" That is a praiseworthy

response to their personal loss, which was also a community tragedy.

Every police shooting should be examined with such goals in mind. The Oregonian has long urged public inquests, also not to point fingers of blame, but to discover and consider causes and effects. Police internally investigate their shootings. Grand juries hear testimony and weigh evidence, also secretly, to determine if laws have been broken.

Police policies and procedures certainly should be revisited after each tragedy. And they were after the shootings of Thomas and the man holding him hostage, French. But review and recommendations for change should be public, and they should reach beyond police policies and tactics and the laws that bind grand juries and prosecutors.

What, for example, was the path French took that ended up with his breaking into the Thomas home? Were there signals of mental illness or other problems that, if attended to early enough, might have changed the behavior that eventually led to a police shooting?

Can we as a state and community do more than we're doing to avoid putting police into situations such as resulted in a boy's fatal shooting?

The traumas visited on the families, and on the police officers, too, require that the City Council make every effort to answer such questions fully, and openly after every fatal shooting.

APPENDIX E

THE POLICE BUREAU AND THE CITY

Recent events--in particular, the Nathan Thomas shooting--and an audit of the civilian complaint system done by the City Auditor's Office, prompted City Council and the Police Bureau to reassess the current role of PIIAC. People Overseeing Police Study Group has been on the outside, helping organize those who feel that this reassessment should lead to very fundamental reform of the current system, including independent, public investigations of misconduct claims and regular public forums for discussing police policy.

Mayor Katz will be making her own recommendations concurrent with the release of this second edition of our proposal. We are concerned that she will not recommend substantial alterations of some critical elements of the review process. The articles reprinted in this section provide a sense for where the Bureau and the City are in their thoughts on this issue.



Charles Moose: No revolutionary

Cop Watching

the results of probes by the Police Bureau's Internal Investigations Division.

Moose, however, opposes the prospect of assigning citizens, rather than police detectives, to investigate charges of misconduct. "Detectives have access," he said during an interview Monday. "They know what questions to ask." He said disciplinary decisions

that, and it would be the expectation that that behavior has changed. That is the purpose of discipline."

The new chief does, however, have some thoughts on revamping police review, among them allowing citizens to file complaints in a location other than a police station. And, he says, he's open to other PIAC reforms. "Citizens still need a window into the process," Moose said. "I'm just not sure how you go about creating that window."

Although PIAC is under the purview of the mayor and the City Council, not the police chief, Moose expects the panel to be at the top the agenda when he meets with Mayor Vera Katz next week.

Moose and the mayor will begin their PIAC tête-à-tête faced with an unusually bold proposal from four of the committee's eight members, which is sure to meet fierce resistance within the Police Bureau.

The renegade committee members are Todd Olson, a Portland State University student who has been a leading critic on the panel, and three members—Portland lawyers Emily Simon and Sue Porter and paralegal Sheri Humble—recently appointed by city commissioners.

The Gang of Four sent a memo to the rest of the board June 17, addressing the "Laurelhurst incident" in which several gay men allege they were beaten last August by Portland police officers at the Southeast Portland park, a popular pick-up spot for men seeking men. Police officials,

speaking at neighborhood meetings, denied that they used excessive force, and claimed the sweep of the park was prompted by large numbers of people remaining in the park after it was closed.

In their memo, the four members said they want to ask that the Portland police officers involved in the Laurelhurst incident and one of the alleged victims voluntarily appear at the August PIAC meeting to respond to questions from the panel.

"In the event that the officers or [the alleged victim] do not voluntarily agree to appear," the memo states, "the undersigned move that we recommend to the City Council that they exercise their subpoena power" to force the cops and witnesses to appear before PIAC.

That alone is sure to rankle the rank and file, but PIAC's crusading quartet further recommends that Mayor Katz direct the bureau's internal investigations unit to launch a formal probe into "the origins of sion itself and to [ensure] the Bureau General Orders and/or cics were followed in every regard."

Moose, who had not seen the June 17 memo, said he would oppose any move to force the officers to testify in front of PIAC. If panel members "want to bring officers over just to ask questions, just to do a witch hunt, just to revisit what they think might have happened or didn't happen, that's just not a forum that we would participate in," he said. ■

—Rachel Zimmerman

■ Although **Charles Moose** is married to one of the most outspoken critics of Portland's police review process, the city's new top cop is in no hurry to give more power to citizens probing police misconduct.

In a public meeting before the City Council last month, Moose's wife, **Sandy Herman**, lashed out against the the Police Internal Investigations Auditing Committee, calling it a "low-budget operation" that was an "insult" to Portland residents.

Herman, a former PIAC staff member, complained that the citizens panel had no authority to investigate allegations of police wrongdoing on its own. It could only look at cases where citizens with complaints about police conduct were unsatisfied with

should remain in the hands of the mayor and the police chief.

At the June 2 council meeting Herman also questioned the wisdom of putting Lt. **Dan Elving** in charge of internal investigations. She noted that Elving was the supervising officer when some East Precinct cops sold T-shirts that said, "Don't Choke 'Em, Smoke 'Em" following the 1985 death of a black man at the hands of police ("Murmurs," NewsThins, WW, June 3, 1993).

Moose, when asked about Elving's qualifications, seemed to contradict his wife's harsh critique, simply saying, "Everyone makes mistakes."

"It's not fair to go back to a day when he made a stupid decision," Moose said. "He's been punished for

Sandy Herman

Katz pledges recommendation soon on police review system

■ The Portland City Council hears pros and cons from residents about how allegations of misconduct are handled

By BARNES C. ELLIS

of The Oregonian staff

The Portland City Council heard Wednesday from people who want to abolish the city's system for reviewing allegations of police misconduct and others who think it works fine.

Mayor Vera Katz said residents had asked for a public hearing on the issue, and she thought it was a good idea. Although the council had no specific plan to debate, Katz said she would make recommendations "in the very near-term."

The Police Bureau handles complaints about police misconduct itself through an Internal Investigations Division. A Police Internal Investigations Auditing Committee, which really is the City Council, hears appeals and may refer cases back to the police for more work. As a practical matter, PILAC delegates its authority to a group of advisers from the community.

Critics say PILAC, created in 1982 by a narrow public vote, has serious and inherent flaws. Emily Simon, a lawyer and the newest adviser, said the committee suffers from confusion over its mission and focus. It relies on the Police Bureau for information.

As a result, she said, the public perception is that PILAC is "not the place to go," and many victims of misconduct take the Police Bureau to court instead.

One of the most popular suggestions for reform involves creation of a strong citizen review board. A group called People Overseeing Police Study Group proposed such a board, which would "represent Portland's ethnic, cultural and economic diversity."

Under the plan, independent investigators would check into complaints and report to the board. The board could order mediation or launch a thorough investigation, including public hearings. The board, which would have subpoena power, would make recommendations for discipline to the police chief and the City Council.

"If community policing is truly going to happen, accountability has got to be part of that plan," said Dan Handelman, a part-time carpenter and spokesman for the group. Sever-

al of its members have had run-ins with police.

Chief Tom Potter did not attend the hearing. But Roger Morse, president of the Portland Police Association, said those who would change PILAC "ignore its history."

Morse said the committee was designed to provide "a window into the Police Bureau." Although it worked in the beginning, he said, defense lawyers in the 1980s changed the cry to, "We need more power."

William Aitchison, a lawyer who represents the union, said Portland has a "tremendous amount" of public involvement already. He cited the Chief's Forum, Potter's advisory group. Aitchison also said residents are likely to be more lenient on police than the police themselves.

Testimony on the issue tore open old wounds over police controversies ranging from the 1981 possum incident, in which police officers left dead possums at the door of a North Portland restaurant, to the death of Peter Kirschbaum in July 1988.

Kirschbaum died of cocaine-induced psychosis after police left him handcuffed and face-down in a police car, screaming, while they searched his home for drugs.

With testimony from political activists and self-proclaimed victims of police brutality, some found the hearing a bit of a time warp. Patrick Donaldson, executive director of the Citizens Crime Commission, said the Police Bureau had made "major strides" in regaining public trust and credibility in the past 10 years.

As part of her pledge to open city government, Katz scheduled the hearing into the evening. However, council members left until at one point the mayor was the only one listening to testimony. Commissioner Gretchen Kafoury noted she was not notified of the hearing until the day before and had a conflict.

Commissioner Mike Lindberg said the mayor's office had made similar mistakes in the past.

"They've dropped the ball a couple of times, frankly," he said.

POPSG
Plan

APPENDIX F

The Police Internal Investigations Auditing Committee (PIIAC)

In the late 1970's and early '80s, rising tensions between the Portland Police and communities of color led City Commissioner Charles Jordan to convene a citizen panel to study police review. In 1982, this panel, the Storres Commission, drew up a charter for a citizen review panel similar to the present Police Internal Investigations Auditing Committee (PIIAC). The plan was that a citizen's board would perform their review and City Council would take action if necessary. But before City Council voted on the proposal, an unrelated but alarming event occurred. Several Portland police officers tried to racially intimidate a Black business owner by throwing a dead possum on the porch of the business. The ensuing public uproar ensured that City Council would adopt the proposed charter, though they did make some amendments to weaken PIIAC. In response, the police union placed the charter on the November 1982 ballot and spent hundreds of thousands of dollars to defeat the measure. In spite of the police union's efforts, the Portland voters decided to keep the police review system in place.

After the public and the media had forgotten the "possum incident", PIIAC slipped out of the news. Although a man died in 1985 as a result of the "sleeper hold" used on him by a Portland police officer, the only response was a series of public forums on the use of force by the police; PIIAC did not become involved. Busy with other issues, City Council exercised little of the oversight power that the Storres Commission had envisioned. The citizens' board was left alone, with little to do.

In 1987, many PIIAC civilian members became frustrated with the group's lack of power. They held public meetings to discuss changes in PIIAC's structure but got little response from the public or City Hall. Ultimately, several PIIAC members turned in their resignation simultaneously, citing the group's ineffectiveness. In response, City Council amended the PIIAC charter in January 1989. While the changes did not give the police review system more teeth, they did put much less of the bureaucratic burden on City Council. Now the City Council's abandonment of PIIAC had been etched into law, and the Council could ignore the citizens' board with a clear conscience.

Only recently, in the wake of several unfortunate incidents— including the shooting of Nathan Thomas — and after growing pressure from organizations like POPSG, have City Council and PIIAC become more focused on establishing true police accountability. The articles gathered in this section discuss civilian review of police both theoretically and in direct relation to Portland and its current system.

Police review process 'dysfunctional'

■ Saying this is his last term, the chairman of the citizens committee labels the results "next to meaningless"

By JAMES MAYER
of The Oregonian staff

The chairman of the citizens committee charged with reviewing police internal investigations says the review system is "dysfunctional" and the city should throw it out and start over.

"It's time to blow the whistle, have the referee step in, and call time out," said Bill Hamilton, the chairman of the committee, which is assigned by the City Council.

In a letter to Mayor Vera Katz, Hamilton said he wants out.

"I will not accept another term because of increased demands on my time, and because the results are next to meaningless," he said.

Hamilton's call for surrender joins many other voices who have sought reform of the system in the last couple of years, including the City Club of Portland, the ACLU,

City Auditor Barbara Clark, a citizens group, and the committee itself.

Here's how it works: The Police Bureau handles complaints about police misconduct itself through an Internal Investigations Division.

The Police Internal Investigations Auditing Committee, which really is the City Council, hears appeals and may refer cases back to the police for more work.

As a practical matter, the council delegates its authority to the citizen advisers committee.

But this system, created in 1982 in response to a narrow public vote, has serious and inherent flaws, critics say.

It suffers from confusion over its mission and focus. It cannot launch its own probes of police practices or review any incident in which police officers use deadly force.

The committee has no authority to conduct investigations, no power to demand that police or citizens testify before it, and no authority to do much of anything other than review police paper work.

And recently, new members have

pushed for greater power and independence, creating a growing polarization on the committee between those who generally support the police and those more likely to question police behavior.

The mayor and four city commissioners each appoint two members to the advisers committee. Hamilton was appointed by Commissioner Earl Blumenauer. He said he had not yet told Blumenauer about his decision.

Hamilton said his decision to leave the committee was attributable in part to the demands of his day job as president of the Easter Seal Society of Oregon.

But he also feels a deep frustration with how the committee works — or doesn't work. The committee is a "dysfunctional political appendage," he said.

"What we are — without sounding too sarcastic — we're sort of like the clerks. We do all the paper work, but we don't have any real authority."

The advisory committee presented a series of recommendations for fix-

ing the system to the City Council nearly a year ago. These included asking for the authority to review police policies and practices, and to review cases other than those brought to it by citizens.

"Council has been kept safe from any decision that might cause them anxiety," the citizens report said. "This should not be our concern or motivation as to how to do our job."

The council has yet to act on the report.

Katz took over direct control of the Police Internal Investigations Auditing Committee this year after an auditor's report said the council should become more involved.

Sam Adams, the mayor's executive assistant, said Monday the issue has received a lot of attention internally in the last few months, and that the mayor planned to announce her recommendations soon.

"She will be making recommendations on how best to restructure the system, given the stated purpose of maximizing direct accountability between the bureau of police and its customers, the citizens of Portland," Adams said.

Hamilton said that either the city should establish an independent citizen review board with the power to investigate police misconduct, or the council should directly assume the responsibility.

He favors the second approach.

WEDNESDAY, OCTOBER 6, 1993

Police the police

City Council is 'dysfunctional,' not the citizens panel that the elected commissioners continue to hide behind

Once again, the city's handling of complaints against Portland's police is called into question. How long are residents going to tolerate inaction by their City Council?

Bill Hamilton, chairman of the Police Internal Investigations Auditing Committee, says the city's system for overseeing police investigations of complaints against officers is "dysfunctional" and the city should throw it out and start over. That isn't necessary. The council simply should assume its proper role in the process.

Maybe that's asking too much of an elected body that has hidden behind a buffer of citizens to do its job of auditing police internal investigations since 1982. Voters asked the council that year to ensure police credibility in the complaint-investigations process.

Instead of meeting as the auditing committee, the council appointed citizens to do the job. Then, when the citizens reported back, not once but time and again, that they lacked the guidance and tools to do a proper job, the council remained in hiding.

The panel's last plea for help from the council was a 12-point letter dated Nov. 12, 1992, nearly a year ago. It has yet to be answered. Maybe no one's home?

Mayor Vera Katz early this year said she would improve the complaint-investigation and police-auditing process. We're waiting . . . and waiting.

Maybe the mayor is making the changes more complicated than they need to be. Here's what's needed:

- Add to the Office of Neighborhood Associations or the mayor's staff an ombudsman to field citizen complaints about police performance. Residents often are wary about complaining to police about police behavior, as the current system requires.

- Send those complaints to police internal investigations for fact-finding, and then to the City Council, meeting as the Police Internal Investigations Auditing Committee. The council has the authority its appointed committee lacks to test the credibility of police internal investigations. If the council is not satisfied with police investigation and response to a complaint, it can, for example, subpoena witnesses — both complainants and officers. It also has the authority to make changes in the city's policing policy, practices and, if necessary, personnel.

- Remove the internal investigations auditing process entirely from the city auditor's office. Her independence as the elected auditor of city performance was clouded when the council placed the citizens committee in her office.

Finally, thank the citizens committee and abolish it. The only reason to retain it would be to audit not police internal investigations, but the council's nonfeasance in this area. And voters do that best.



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black police association

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October 6, 1993

Ms. T. J. Browning
~~9915 8th Avenue~~
Portland, OR 97214

Dear Ms. Browning:

The National Black Police Association is an advocacy organization, comprised of 150 chapters representing over 30,000 African Americans in the Criminal Justice System. Historically, the National Black Police Association has addressed those criminal justice issues that negatively affect African Americans in law enforcement as well as policies and practices that negatively impact the African American community.

One of today's most important concerns is the issue of civilian review of police misconduct. This is a matter that has surfaced in our community with substantial evidence that the police department and its leadership cannot properly discipline their colleagues. As a result of citizen's recognizing that police departments would not clean their own house, affected communities began to call for and support the use of civilian review of police misconduct.

Most traditional police associations and police unions are strongly opposed to citizen's review of police. The reason for the opposition may vary from organization to organization, but the common thread in most has to do with the public's lack of knowledge and ability to pass judgement on police officers that mistreat individuals in our community.

The latest contradictions are coming from Chiefs of Police who believe in the partnership/relationship component of community policing, but not in the citizen impact and involvement in the civilian review of police misconduct. Community policing, if implemented properly, is an inclusive arrangement between the community and the police. This should not be an on again, off again relationship under the control of the police department.

Ms. T. J. Browning
October 6, 1993
Page two

In conclusion, these are a few of the reasons that have led the National Black Police Association to strongly support the implementation and use of civilian review of police misconduct.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ronald E. Hampton", is written over the typed name and title. The signature is fluid and extends across the width of the typed text.
Ronald E. Hampton
Executive Director

REH/fl1

International Association for Civilian Oversight of Law Enforcement

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The Significance of the Verdicts In The Rodney King Case

By Donald L. Casimere, IACOLE President

On April 29th, 1992 the verdicts were announced in the trial of four white Los Angeles Police Department (LAPD) officers who were videotaped as they beat and kicked black motorist Rodney King. In the wake of these verdicts, social unrest, manifested by violence against people and damage to property, rocked numerous cities in the United States. In Toronto, Ontario, Canada, a protest over the King verdicts, and the shooting of a black male by police, escalated into looting and property damage in the downtown area.

In light of the pronounced concerns regarding police accountability that have surfaced in the Rodney King matter, it is imperative that I comment on these issues.

When the four accused officers were acquitted on all except one charge in this case, shock waves reverberated, literally and figuratively, across the country and elsewhere. There was a sense that this was a classic example that police officers are "above the law," that a double standard of justice truly exists. People of all races and ages expressed a sense of outrage and disbelief, that the four police officers had not been found guilty of ANY wrongdoing. Based on a nationwide poll, 92% of Black or African American citizens, and 75% of white citizens in the United States expressed the feeling that there was a miscarriage of justice with these verdicts. Citizens in Canada and other countries have expressed similar concerns.

Almost immediately after the verdicts were announced, one of the involved officers, with a wide grin on his face, said in a nationally televised news conference that he was "greatly relieved" at the outcome of the trial. Another of the officers said that he had plans to "write a book" about his exploits and opinions. The attorney for yet another of the officers said that he would seek to have the officer reinstated to his job, WITH BACK PAY.

People around the world watched the videotape which clearly showed the police officers excessively beating and kicking Rodney King. Many of those people are still attempting, with much discomfort, to digest the verdict. Now, we have heard what can be construed as insulting comments from unremorseful officers.

What are the immediate and long term implications of the acquittals? The implications are too numerous to list. There has been, and will be, much dialogue and action in many quarters. What is quite clear, however, is that citizens in many communities of the United States and elsewhere, are now demanding that their elected officials take steps to provide for COMPLETE ACCOUNTABILITY of police officers. They are demanding that systems be established and strengthened to identify problem officers. They are demanding that all police officers be held fully accountable for their actions, and that errant officers be punished for their improper actions.

My sense is that the vast majority of law abiding citizens in the USA and abroad respect and support their police. This is particularly true in recent times

when drugs, gangs and/or increasing violence threatens the public safety in many of our cities. It is a fact that most police officers conduct themselves professionally and in a manner that is acceptable to the citizens that they serve. However, the wrongful actions of aberrant officers can cause significant damage to police-community relationships that can literally take years to repair.

The District Attorney of the County of Los Angeles has publicly said that justice was not served in the Rodney King case. It is his intention to seek another trial for one of the four officers on a single charge relating to excessive force. At least three of the involved officers still face administrative disciplinary hearings with the LAPD. Additionally, civil suits will likely follow, and there is the possibility that the officers may be prosecuted in federal courts.

Although the matter is not yet completely resolved, action must be taken on many fronts to restore public confidence in police.

As President of IACOLE, I have recently handled numerous inquiries about establishing civilian oversight agencies, and other strategies to insure police accountability. I have been in contact with the U.S. Justice Department and the U.S. Civil Rights Commission. I have discussed the benefits of civilian police oversight/review agencies, with representatives of many local, state and provincial governments. Past and present IACOLE Directors have also addressed the federal, state and provincial governments of this and other countries on the important role of civilian oversight pertaining to police accountability and community relations.

IACOLE supports the equal enforcement of laws irrespective of class, ethnic origin or occupation.

IACOLE encourages the development and maintenance of positive and productive relationships between police and ALL of the law-abiding citizens that they serve. We promote true partnerships between police and civilians, with the sharing of power and priorities.

IACOLE promotes the strengthening of effective internal and external controls of police.

Lastly, IACOLE strongly advocates the use of civilians in the oversight and/or review of police actions and policies. We stand ready to offer whatever assistance we can to facilitate dialogue and appropriate action to this end.

VIEWPOINT

Let the People Control the Police

By Marc Jolin

IN CAMPAIGNS FOR CHANGE there are critical moments where months of tedious groundwork can find their reward. Seizing such opportunities can mean big steps towards one's final goal.

Such a moment has arrived for those seeking a truly independent and empowered civilian review system in Portland. Mayor Vera Katz, with the help of her Staff Assistant Ramsey Weit, is in the middle of a three-month review of the current system for handling civilian complaints of police misconduct. At a meeting of the Citizen Advisors to the Police Internal Investigations Audit Committee (PIIAC), the Mayor went so far as to say she would consider rewriting the ordinance that created PIIAC if the current ordinance is shown to be inadequate.

Many people in Portland already know that the current complaint system is inadequate. First and foremost there are those who have tried and failed to have justice served by going through the current system. Then there are groups like the City Club, the League of Women Voters, the Rainbow Coalition, the Multnomah County Citizen's Convention, and the People Overseeing Police Study Group, who have taken a position that the system needs a fundamental overhaul.

We're in the Henhouse.

In the existing system complaints are taken care of and investigated by the accused agency itself—the Portland Police Bureau. A complainant unsatisfied with the Bureau's investigation of itself can then turn to the Citizen Advisors of PIIAC. These citizens, appointed by City Council, will look over the investigation done by the police to see if it was done properly. If so, the case is closed. If not, they can recommend further investigation or that an officer receive discipline. Last year two out of fifteen were returned for more investigation. The rest closed.

PIIAC will not do an independent investigation. They rely entirely upon the evidence as presented in the police's case file. Only on rare occasions does a complainant even testify to the committee.

Around the country, PIIAC is known as the police review system *not* to emulate if you want to see justice served. There are no consequential checks and balances built into this system. A truly effective civilian review system must have at least four things:

Civilian Control

Civilians should not have to take their complaints to the Police Bureau. The recent Auditor's report on the civilian complaint system found that a full 30% of complaint calls were being seriously mishandled by the Internal Investigations Division (I.I.D.).

Independent Investigation

A review board needs to employ non-police-affiliated investigators who can do their own interviews, conduct their own reviews of the evidence, and present a recommendation to the board that is not from the outset heavily biased toward the Police Bureau.

Required Testimony

A board must have the power to require testimony from officers and complainants at a public hearing. Records of the testimony and of all aspects of an investigation should be public—just as arrests and trials of civilians are public.

Policy & Training Review

A board must have the resources necessary to also conduct regular public review of police policy and training procedures, and to make recommendations.

The Portland Police Bureau and the 1993 City Auditor's Report both claim that review systems which are truly independent and public are no more effective than the one we have now. Hogwash. Not only is the academic work cited by both parties known to be completely lacking in rigor, but we know of individual models around

the country that are—by all reasonable, unbiased measures—working far better than what we have.

Berkeley Sets a Good Example

Berkeley, California's review system meets all the criteria laid out above and more. It independently investigates all cases brought by civilians—no matter how strange or unlikely—and still sustains twice the number of complaints that Portland's Internal Investigations does. (I.I.D. "weeds out" those calls it takes to be too unlikely). All investigations are easily available to the public, and the Review Commission (whose members are representative of the City's diverse population) can require testimony of all relevant parties in public hearing. Finally, Berkeley's commission holds monthly public meetings on police policy issues of concern to the citizenry.

If we in Portland had such a system, we might be able to see "community policing" as more than just a tool to divide the community. Police accountability to the public is critical if truly supportive relationships are to be formed. Without effective checks and balances, how can we be sure that the police are acting in accordance with their charge to "serve and protect" all of us? Especially in the face of numerous instances of known police misconduct.

If you agree that we need a better system of civilian review in this City, now is the time to let Mayor Katz know. Send a letter (or call). This is an opportunity to achieve some real improvement in the process.

Police Review

the city.

The Afghan capital's 1.5 million people were caught in the middle as battle lines shifted throughout the city.

A convoy carrying members of a guerrilla-led interim government that supported more moderate factions left Pakistan for the arduous 120-mile journey to Kabul. The rebel leaders planned to formally replace the fallen regime of President Najibullah.

Roughly 90 percent of Kabul was under

an Afghan woman keeps outside a Kabul hospital after learning her son has died.

the control of a coalition commanded by Ahmed Shah Masood. But Masood's troops, supported by soldiers and even a warplane, failed to dislodge the radical fighters of his bitter rival, Gulbuddin Hekmatyar, from their strongholds.

Please turn to
AFGHAN, Page A13

outside the urban growth boundary.

Metro approved the boundary change in 1988, but Lake Oswego residents Bill Atherton, a businessman and land conservation activist, and his wife, Carole Atherton, a Portland lawyer, waged a lengthy legal battle to block it. The case went to the state Land Use Board of Appeals and then to the state Court of Appeals. And the Athertons ultimately won.

But Derby got the last word. The developer, left with the existing 5-acre zoning,

finally, it would be an indication of affection and respect, but I don't think there's affection here, maybe respect."

But Atherton, who also happens to be running for a seat on the Metro Council, definitely doesn't appreciate his opponents in the race planting their signs next to the Atherton Heights sign.

"It's confusing voters," he said. "People think I'm trying to break the urban growth boundary. But I'm the guy defending it."

Police watchdog lacks bite?

□ The Police Bureau's civilian oversight panel is deemed "important" but currently "ineffective" and "ignored"

By JOHN SNELL and PHIL MANZANO
of The Oregonian staff

Sandy Herman believes civilian oversight of the Portland Police Bureau is a joke. And it's not one people should be laughing about.

"It's totally ineffective. It's absolutely ignored," said Herman, who was the first staff member hired by the Portland Internal Investigations Auditing Committee in 1982. Herman, the wife of a Portland police captain, resigned in 1990.

The auditing committee was formed by a community that felt the Police Bureau was indifferent to its concerns. But PIAC was created without authority to conduct its own investigations, instigate its own probes of police practices or review any incident in which police officers use deadly force.

"It's a failure because it's not meant to do anything," Herman said. "It's meant to

DEADLY FORCE

Last of 3 parts

give the illusion that we will look into your allegation and we will take you seriously."

Herman is not alone in her view.

• Cities around the country are turning to civilian oversight boards to monitor their police. In helping communities form these groups, the American Civil Liberties Union's Police Practices Project uses Portland and its civilian committee as an example not to follow.

• PIAC's authority has been challenged from the time of its inception. Officers and their union refuse to comply with the committee's demands for information about citizens' complaints against the police.

The erosion of its power apparently continues. The group considered disbanding last year — a year in which police shot and wounded six people and killed four others — because so few citizens turned to it for help.

• A number of PIAC members have resigned, citing their frustration with the all-volunteer board. Some of those who quit

felt the public expected them to be watchdogs, but said that they never had the chance because the committee had no power and little money. In addition, the committee's enabling ordinance specifically says, "The committee shall not investigate complaints about police officer misconduct."

The result for Portland, said John M. Crew, director of the ACLU's Police Practices Project, is "a watchdog with no bark, no bite and, as far as I can tell, is never fed, either."

Although he acknowledges PIAC has had its problems, Portland Police Chief Tom Potter believes there is no need for outside, civilian oversight of the Police Bureau.

Potter said the bureau has a good relationship with the community and has earned public trust. He said that any police misconduct is monitored well by the bureau's Internal Investigations Division, the district attorney, the grand jury system — and as a last resort — by people who file lawsuits.

"I think first of all you've got to find out if there is a problem and does it need fixing?" Potter said. "In terms of investigating the

Please turn to
POLICE, Page A12



It's a failure because it's not meant to do anything. It's meant to give the illusion that we will look into your allegation and we will take you seriously.

Sandy Herman,
former staff member of the
Portland Internal Investigations
Auditing Committee

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DEADLY FORCE

Police: Portland's approach called 'inherently weak'

Continued from Page One
 police, I haven't heard any allegations that somehow or another we have done something improper or weren't investigated properly."

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PIIAC was created by a citywide vote in 1982 after community concern grew over police investigation of citizen complaints.

A special commission headed by Dr. Frances Storrs studied the way the bureau investigated complaints against officers. In July 1981, the commission recommended a committee be formed to monitor the bureau's Internal Investigations Division.

The proposal gave PIIAC no authority to conduct investigations, no power to demand that police or citizens testify before it, and no authority to do much of anything other than review Police Bureau paperwork.

Six months later, Police Commissioner Charles Jordan appointed a task force to study the idea. A few months later, the city was rocked by the "possum case."

In that incident, two police officers on night patrol in North Precinct killed an opossum and threw it on the doorstep of the Burger Barn, a black-owned restaurant.

The act offended many people who felt it was racist. The officers, who called it only a prank, were fired. But an arbitrator reinstated them, saying their punishment was excessive. The reinstatement enraged the community even more.

Then mayor Frank Ivancie, who enjoyed considerable political support from the Police Bureau, vehemently opposed the formation of PIIAC. But the City Council created it over his objections.

The police union was adamantly opposed to outside review and immediately began a petition drive to refer the issue to voters.

The PIIAC proposal passed by 677 votes on Nov. 4, 1982 — despite the police union outpouring of propensities of the measure by a ratio of more than 8-to-1.

The bureau and the police union fought PIIAC at every early turn, brawling over the kinds of records that committee members would be allowed to read, which complaints could be investigated, and whether the committee had the right to subpoena witnesses.

John Ransom, a former PIIAC chairman who resigned in 1988, said that some of the early members wanted to see the group abolished. Some were blood relatives of police officers.

It was, by most accounts, a group that aggravated many and accomplished little. The aggravation level is lower today, but the level of accomplishment is essentially unchanged.

□□□

Circle throughout the counties



John M. Crow of the American Civil Liberties Union's Police Practices Project believes that Portland's system of civilian oversight of police does not work because citizens have no real power.



That's pretty typical of most police departments. They are more likely to discipline them for the misuse of a baton or a flashlight.

Donald Van Marloes,
 former chief and police consultant



We don't try to second-guess (the police) or look at the facts again. We are not a judicial agency.

Richard E. Paul,
 PIIAC chairman



Each year its powers and influence and credibility have diminished considerably. It was a good concept that has been watered down.

Charles Jordan,
 former police commissioner

But would Jordan — who is currently head of the Portland Parks Bureau — change it now to a stronger public body?

Not necessarily. "If you really want them to have credibility, then they need to be an independent body with their own investigative unit," Jordan said.

Jordan said that Potter opened the bureau more to the public during his 1 1/2 years as chief. Potter created the "Chief's Forum" to bring 24 community leaders in every other week to discuss police issues and policies. He's pushed for public meetings to explain bureau positions after incidents like the Nathan Thomas shooting.

And Potter has scheduled a community meeting May 30 where he and others will talk about the recent spate of shootings and deadly force.

Potter also draws high marks for his commitment to community policing — which makes the public an active partner with police in combating crime.

Jordan said with Potter as chief, "I don't know what I would propose."

Potter said that he believes the bureau's relationship with the community has improved, that people think police are accountable and current systems meet the need for oversight.

"But then again, it's not me who has to be satisfied," he said. "It's the public."

The Police Bureau may, indeed, be

an agency. This is done in Toledo, Ohio, and in Toronto.

Civilian inclusion. Police complaints are investigated by people hired by police, and the citizen commission recommends the form of discipline, if any. Chicago's Office of Professional Standards is one such system.

External review. An office separate from the police department accepts, investigates and resolves citizen complaints and makes recommendations to the mayor or some other public official. This type of system is in use in Cleveland, New York, Flint, Mich., Cincinnati, San Diego County, and San Francisco, where the Office of Citizen Complaints has authority to hire and fire the police chief.

The newest civilian oversight committee in the country is San Diego County's Citizen's Law Enforcement Review Board. Eileen Luna, executive director, said the types of agencies can be divided into two groups — those that conduct their own investigations and those that don't.

Committees that conduct inquiries typically hire experienced investigators, like those who work for attorneys, and give them special training. Their investigations generally take place while police are doing their own internal probe.

For these kinds of committees to work, committees have to be given true subpoena power, where officers

brawling over the kinds of records that committee members would be allowed to read, which complaints could be investigated, and whether the committee had the right to subpoena witnesses.

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Cities throughout the country are moving toward establishing independent organizations to monitor the actions of police and to conduct their own investigations into the use of force and into allegations of abuse and misconduct.

Of the 60 largest cities in the country, 32 now have some form of civilian review, according to an ACLU study. Seventeen were established in the past six years.

"We've always pointed to Portland as the way not to do it," said Crew, director of the ACLU's Police Practices Project.

Crew said that Portland's system only gives the oversight committee the authority to read police investigation paperwork and report to the City Council if it thinks something is amiss.

That kind of system, Crew says, is inherently weak.

"If you have no access to witnesses and can conduct no hearings, it's very difficult to be a meaningful form of civilian oversight," he said.

In Portland, police shootings are investigated on two fronts.

First, an officer who shoots and kills or wounds someone is interviewed by homicide detectives. Those investigators also talk to any witnesses and write reports for the district attorney and grand jury. The grand jury, which reviews all police shootings, determines if a crime was committed and if the officer should be charged.

Second, the Police Bureau reviews



That's pretty typical of most police departments. They are more likely to discipline them for the misuse of a baton or a flashlight.

Donald Van Blaricom, former chief and police consultant



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Charles Jordan, former police commissioner

the shooting to see if general orders or department policies were violated and whether the officer showed good judgment. Officers can be disciplined or even fired.

But the bureau's review does not involve the Internal Investigations Division. And because PIAC can only review complaints handled by Internal Investigations, the citizens committee never has the authority to look into fatal shootings.

For example, the Jan. 16 accidental shooting of 13-year-old Nathan Thomas, a death that police say was the greatest tragedy to hit the bureau, was never reviewed by PIAC.

Potter argues that it was subjected to citizen review when it was sent to the grand jury.

But the grand jury review is limited to whether a crime was committed and if the officer should be charged. The grand jury never is asked whether the shooting was necessary or unavoidable.

Only once in the bureau's 123-year history has the grand jury returned an indictment against an officer. In 1969, Patrolman Steven M. Sims was charged with first-degree murder after he shot and killed an unarmed fugitive. The fugitive was hiding in bushes outside his home and made no attempt to flee when Sims confronted him. And as it turned out, Sims was having an affair with the

fugitive's wife.

Sims was found guilty of manslaughter, sent to prison and dismissed from the force.

"Anyone who has practiced criminal law understands and recognizes a grand jury is essentially a tool of the district attorney," said John Ransom, the former PIAC chairman who works as a defense attorney. "The district attorney is the only person who presents evidence to the grand jury."

Police Bureau officials remember no one other than Sims ever disciplined for a shooting.

Donald Van Blaricom, a private police consultant and former police chief of Bellevue, Wash., said that it's rare for police to be charged or disciplined when they shoot someone.

"That's pretty typical of most police departments," he said. "They are more likely to discipline them for the misuse of a baton or a flashlight," he said.

Without clear evidence — like the amateur videotape of Los Angeles police beating motorist Rodney King — it's difficult to make a charge stick.

The department, the officer, commanders, district attorney and city attorneys all line up behind the officer, Van Blaricom said, to protect themselves from a lawsuit.

"In Portland, today, there truly is no oversight of Portland police activities other than a citizen going to court and filing a lawsuit," Ransom said.

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Gretchen Kafoury is the least senior member of the City Council and therefore the one given the job of overseeing PIAC. Given its limitations, Kafoury said, the committee is now a governmental dinosaur.

Kafoury said the committee's original charter of reviewing Internal Investigations paperwork and not conducting probes of its own may now be too narrow.

Richard E. Paul, the committee's current chairman, said that he accepts PIAC's limitations and says the group serves a purpose. He said that committee members are doing a good job by just giving people a chance to be heard.

"We don't try to second-guess (the police) or look at the facts again. We are not a judicial agency."

Charles Jordan, who was a city commissioner when PIAC was created, has noticed the committee's influence eroding.

"Each year its powers and influence and credibility have diminished considerably," Jordan said. "It was a good concept that has been watered down."

And Potter has scheduled a community meeting May 30 where he and others will talk about the recent spate of shootings and deadly force.

Potter also draws high marks for his commitment to community policing — which makes the public an active partner with police in combating crime.

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Potter said that he believes the bureau's relationship with the community has improved, that people think police are accountable and current systems meet the need for oversight.

"But then again, it's not me who has to be satisfied," he said. "It's the public."

The Police Bureau may, indeed, be more accountable under Potter. But critics say that attitude could change under a different chief.

Also, Potter's Chief's Forum is precisely that — people picked by the bureau to come in and advise it.

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Civilian oversight can take many forms.

Each city should find the system that works best for it, said Robert G. Bailey, director and chief investigator for the Berkeley, Calif., Police Review Commission.

"You can't just take a model commission and kind of clone it to other jurisdictions," he said. "Frankly, there is no substitution for the quality of leadership in any given department and how mobilized the community is."

Around the country, most of the oversight committees seem to fall into one of five categories:

• Auditing. This is the system used by Portland and by the city of San Diego. Citizens review the thoroughness of police investigations of officers. The citizens have no power to investigate complaints.

• Monitoring. In addition to auditing the police internal investigation, the commission can comment on the intended discipline ordered by the police chief. The Investigative Review Board in Hartford, Conn., is such a system.

• Appeal. Citizens can appeal police decisions on discipline to a civil-

plaintiff has authority to the police chief.

The newest civilian committee in the country is San Diego County's Citizen's Law Enforcement Review Board. Eileen Lu, executive director, said the types of agencies can be divided into two groups — those that conduct their own investigations and those that don't.

Committees that conduct inquiries typically hire experienced investigators, like those who work for attorneys, and give them special training. Their investigations generally take place while police are doing their own internal probe.

For these kinds of committees to work, committees have to be given true subpoena power, where officers can be forced to appear before the committee and testify, said Don Casimere, president of the International Association for Civilian Oversight of Law Enforcement.

The best way to do that, he said, is put it in the police union contract as a condition of employment. Officers who refuse to appear or refuse to testify can be disciplined and even fired.

"I have not come in contact with any police department that openly welcomed the idea of citizen oversight," Casimere said. "Most police unions and most police managers would rather not have it, but it's something that is not going away."

□□□

Renée Mason, who was PIAC chairwoman from 1989 to 1990, believes Portland's system of monitoring police is weak and that keeping an eye on officers is important.

"I did a ride-along with an officer," she said. "It was a real eye opener for me."

"It gave me clearer understanding of what those individuals go through. But at the same time, these are people to whom society gives the guns," Mason said.

Civilian oversight, she said, tells police "You're the ones we want to have the guns, and if you've got the guns, by God, we want to make sure you are handling it responsibly."

"This is our army, and we invest them with a lot of trust."

Complaints against officers get more than a once-over — by police

Cases undergo internal investigation by bureau, reviews, actions by brass — files closed to public

When someone files a complaint against the police it goes through a process of check and double-check before a decision is made whether the officer should be disciplined.

The case is assigned to a detective in the Police Bureau's Internal Investigations Division. These detectives, rotated from other assignments, serve one-year stints in the division.

The first step is the officer's in-

terview with the detective. A representative of the Portland Police Union usually attends.

Once the internal investigation is completed, it is forwarded to the division commander, who reviews it and sends it to the officer's commander. That commander decides if the complaint should be approved, rejected or if there is insufficient evidence for any conclusion.

If the complaint is approved it goes to a third level of review — a panel consisting of three deputy

chiefs, the bureau's lawyer, personnel director, assistant chief and sometimes the chief.

If the panel also approves the complaint, it is up to the chief to decide the punishment. The officer can be reprimanded with a letter in his or her personnel file, suspended, demoted or fired. The officer can appeal the decision to an arbitrator.

The case file is closed to any public inspection and the punishment is kept secret. Overall the process can take six weeks to a year.

In 1989, 88 people complained to the Internal Investigations Division

about police excessive force. Investigators aided with officers in all but six of the cases.

In 1989, 76 people complained of excessive force and the division found in favor of the officer in every case.

In 1991, 76 people filed excessive-force complaints. The division upheld two of them.

Nationally, police departments tend to side with the public in about 16 percent of their excessive-force complaints, said Sam Walker, a professor of criminal justice at the University of Nebraska in Omaha who studies complaints against

police.

If a person's complaint is rejected by the Police Bureau, that rejection can be appealed to the City Auditor's office. That's where the Police Internal Investigations Auditing Committee begins its work.

After an appeal is filed, committee members examine the case to decide whether or not to accept it.

PIAC reviews only the quality of investigation and whether evidence supports the finding. It does not re-investigate the case.

If accepted, it is assigned to a committee member who reviews the case, listens to tapes of inter-

views conducted by the bureau's Internal Investigations Division.

The case is then presented to committee members who usually hear from the complainant and Internal Investigations Division commander.

The full committee then votes whether to take the case to the City Council. If yes, the committee recommends whether the council should reopen the case for additional investigation or say if no additional investigation is required.

The council then votes on these recommendations.

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INTERVIEWING TECHNIQUES:

DO'S AND DON'TS OF
INTERVIEWING VICTIMS,
WITNESSES, AND SUSPECTS

presented by
LT. LARRY FINDLING
PORTLAND POLICE BUREAU

A. Interviews of Witnesses.

1. Control the interview.
 - a. In a place comfortable to the witness.
 - b. Where you won't be disturbed.
 - c. Separated from other witnesses.
2. Let the witness talk.
 - a. Ask general questions.
 - b. No yes or no answers.
 - c. No suggested answers.
 - b. Let them tell their story.
 - e. Keep them on track.
 - f. If you must make suggestions, give them multiple suggestions.

B. Interviews of Victims.

1. Control the interview.
 - a. Interview alone, if possible.
 - b. If others are there, make sure that they know their role.
 - c. Interview in a place, where the victim feels safe and comfortable.
2. Let the victim talk.
 - a. Ask them to tell you what happened.
 - b. No yes or no questions.
 - c. No suggested answers.
 - b. Let them tell their story.
 - e. Keep them on track.
 - f. If you must make suggestions, give them multiple suggestions.
3. Let the victim give descriptions.
 - a. Don't suggest parts of the description.
 - b. Don't suggest who may be suspect.

C. Interviews of Suspects.

1. Control the interview.
 - a. Environment.
 - b. Not comfortable for them.
2. Let the suspect talk.
 - a. Lies are often as good as truth.
 - b. Complete story.
 - c. Get details.
 - d. Not inconsistencies.
 - e. Record in notebook.
 - f. Be aware when writing reports you may testify from them one year later.
 - g. Note observations of suspects gestures, posture, physical appearance.
3. Confront suspect with inconsistencies.
 - a. Repeat back to make sure you understand.
 - b. Make suspect define terms to use (*drunk, tweaked, etc.*)
 - c. Explain why what he said doesn't match.
 - d. Note new story.
 - e. Keep on the run once he begins to change story.

NOTE: For all - watch your body language and demeanor.

CLE AGENDA

ROUNDTABLE: WITNESS PROBLEMS YOU WISHED YOU NEVER HAD

February 8, 1995
5:00 to 7:00 PM
Multnomah County Courthouse, Room 602

PRESENTERS: John Bradley, First Assistant
Lt. Larry Findling, Portland Police Bureau
Greg Horner, Senior Deputy District Attorney
Keith Meisenheimer, Senior Deputy District Attorney
Nancy Popkin, Deputy District Attorney
Amy Holmes Hehn, Deputy District Attorney
Eric Bergstrom, Deputy District Attorney

I. WELCOME AND INTRODUCTION -- Michael Schrunk

II. INTERVIEWING TECHNIQUES -- PPB Lt. Larry Findling

The Do's and Don'ts of Interviewing Witnesses, Victims and Suspects.

III. WHAT WORKS WITH DIFFERENT WITNESSES -- Moderator and DDA Panel Members

This will be a roundtable discussion moderated by John Bradley. Panel members and members of the audience will be asked prepared questions dealing with effective techniques that are helpful in typical situations prosecutors encounter with witnesses.

The discussion will cover, but not be limited to, child witnesses, hostile witnesses, police witnesses, disabled witnesses, witnesses who need translators, witnesses who change stories, who recant, who withhold information, who are not truthful, and who are inappropriate.

In addition, discussion will focus on refreshing recollections, inconsistencies among witnesses and how to most effectively use voir dire, openings, closings to counter problem situations.

IV. CLOSING COMMENTS

WITNESSES

Avoiding and Minimizing Problems

CLE

February 8, 1995

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WITNESSES ¹

I. GENERAL WITNESS PROCEDURES

A. Witness Preparation

The most vital aspect of trial is witness preparation. Cases are made or lost with witnesses. Strong points of evidence may be lost with a weak witness, and moderately strong points may become very strong with a strong witness. Therefore, preparation of witnesses is critical to trial.

The type of case and the type of witness dictate the number and timing of the witness interview and witness trial preparation. The more complex the case and the more involved the testimony of the witness, the more need for multiple interviews with the witness. Where multiple interviews are warranted, it is best for the prosecutor to conduct the first interview as early as possible.

Face-to-face meeting is essential. This meeting should be in your office, especially if the witness is a friend or lives in the same area as the defendant.

The purpose of the first interview is to measure the quality of your witness, to test his or her ability to recollect, to determine whether further investigation must be done, and to determine if any contradictions exist on paper, and what explanations, if any, exist for those contradictions. You interview your witness using direct and cross-examination techniques.

Have the witness give a narrative account of everything he or she knows about the crime and defendant. Do not interrupt. Ask about rumors, hearsay, or any knowledge, regardless of admissibility.

After the narrative, use a question and answer format to pin down the facts. Establish the witness's basis of knowledge. Did the witness see it happen or does the witness infer it?

In the case of witnesses whose testimony overlaps, some prosecutors believe it is advisable to jointly interview those witnesses in the first interview session. This provides a time-saving benefit as well as an aid for witnesses in refreshing their recollections. It also serves to expose any conflicts in their recollection. The prosecutor can then analyze the strength of each witness as well as look for any logical explanation for conflict. The witnesses should be told, however, that their own recollection of what

¹ The following materials are taken from a compilation of articles published in "Trial Techniques" (5th Edition, National College of District Attorneys 1984).

occurred is controlling. Each of them is to truthfully testify according to his own independent recollection. The witness should be told that if what another witness says recalls something that he had forgotten or corrects an erroneous recollection, he may testify concerning the refreshed or corrected version. If, however, his recollection conflicts with that of another, he must testify to his own version. The main problem is that if the defense finds out about this the jury is going to know that you did it, so be sure to tell your witnesses not to fudge here if asked.

In the best of all worlds, the preferred practice is to interview witnesses at the crime scene. However, time and reality may preclude this practice. At a minimum, you should visit the crime scene.

B. Witness Re-Interview

The importance of contact with witnesses cannot be overemphasized. Although familiarity is said to breed contempt, it also establishes rapport.

1. Sex crimes involving small children require great trust between you and the child witness.
2. Be sure in preparation to include the families of victims since they can help maintain the confidence necessary between you and the victim.
3. Interview the prospective witness as many times as your schedule permits and prepare the witness for cross-examination as well as direct examination.
4. Certain techniques may be employed when preparing the witness. An example will include the identification witness. Compare the following:

Question: "Can you identify the man who robbed you?"

Answer: "Yes."

Statement by Prosecutor: "I will have you do so in the courtroom for the record," etc.

.....

Question: "Can you identify the man who robbed you?"

Answer: "Yes."

Statement by Prosecutor: "Can anybody get you to say otherwise? Is there any question in your mind that he is the man?"

C. Prepare Your Witness

1. This is a crucial part of trial. You must do two things at once: You must not only prepare each witness for your own direct examination, but you must also prepare each witness to survive on cross. If you ignore the second prong of this task, you will live to regret your mistake. A witness should rarely be called to the stand without being talked to in detail about his or her testimony.
2. Immediately prior to trial, bring each crucial witness back for "dress rehearsal." Run through direct and anticipated cross-examination just as if you were in court. Many times it is necessary to bring the witness back again so that you can be sure that the witness is confident and fully prepared to testify. Premark all exhibits and show them to the witness in the manner and order in which they will be used in court. By premarking exhibits, you are forced to prepare in advance the most organized and structured presentation of tangible evidence.
3. You should develop a ritual or routine for actual witness preparation and use this ritual or routine in dealing with every witness. The procedure should always incorporate the following:
 - a. An outline of what the witness will testify to at trial;
 - b. Inquire of the witness's work and personal background for possible preliminary questions on direct examination;
 - c. A list of exhibits the witness will be shown and the order in which those exhibits will be shown to the witness;
 - d. An explanation to the witness of what function the witness serves at trial;
 - e. An explanation that pretrial interviews are proper and necessary; and
 - f. An explanation of "mistrial evidence."
4. Preparation of each witness should include having the witness read or listen to his prior statements or testimony as well as verbatim questioning from those materials.
5. In your preparation for trial, you must also remember that each witness will be uncomfortable in this "new" role. Therefore, you must make sure that each witness approaches the witness stand with an understanding of what is to take place in the courtroom. Explain who will be present in the

courtroom (i.e., clerk, sheriff, court reporter, etc.), and if it is possible and necessary, bring the witness into the courtroom before the date of the trial to show him the logistics of the courtroom (this is essential with children). Explain to each witness how to use the microphone, how to sit, where to look when questioned. All these things will make each witness more relaxed and thereby will ensure a more positive flow of his or her testimony.

6. Explain any peculiar questions you will ask. Many nonleading questions sound unusual to a layman. Also explain to a witness the purpose of his testimony if it is not obvious--e.g., owner of burglarized premises, life and death witness. If you must bring out certain embarrassing facts (e.g., prior conviction), explain why this must be done.

A person's recollection of an event can be influenced by the way in which he is questioned about it. A witness who is asked "How close were you to the defendant?" as contrasted with "How far were you from the defendant?" will provide a lesser distance to the first question than to the second. Similarly, a witness will provide a greater speed if asked "How fast were the cars going when they crashed?" rather than "How fast were the cars going when they hit one another?"

The questions "Did you see the knife?" as opposed to "Did you see a knife?" illustrate the principle that even the manner in which seemingly innocuous words are used in a sentence is important because the first question implies the existence of the knife, whereas the second leaves open the possibility that a knife was not seen. Two different groups were shown the same film clip of a multiple car accident in which a car appeared which did not have a broken tail light. One group was asked, "Did you see the broken tail light?" and the second, "Did you see a broken tail light?" The group which was asked if they had seen the broken light provided a higher response than the second group which was asked about a broken light.

7. Explain to your witnesses any particular areas you want them to avoid. The mention of an illegal confession, polygraph, prior conviction of the defendant, or a previous trial may cause irreparable harm. If such an error inadvertently occurs, a prosecutor is in a better posture if specific instructions were previously given to avoid such areas.
8. Explain to your witness the difference between "I don't know" and "I don't remember." Admonish the witness to use the proper answer. Caution the witness against guessing at answers. Witnesses generally think that they must give an answer to every question. If they didn't have an answer, why would the attorney have asked the question? Therefore, urge

your witness to admit that they "don't know" or "don't remember." But there are some questions for which a "don't know" or "don't remember" answer is never acceptable. For instance, you can't say, "I don't remember" if the defense attorney asks, "Didn't you take a case bribe yesterday to come in here today and lie?"

9. If you are going to ask witnesses to estimate time or distance, have them practice before trial. If the estimate is of time, you conduct the experiment with them. If the estimate is distance, take them to the courtroom and have them practice. Instruct witnesses to give their estimates in ranges, not specifics. For example, "He was about six to ten feet away from me;" not, "He was seven-and-a-half feet away from me." Ranges imply estimation. Specifics imply exactitude. Answers with "exact estimates" invite cross-examination.
10. Show the witness all prior statements he or she has made. If there are inconsistencies, see if they can be reconciled.

The prior consistent statement may be a "composite" version of events taken from numerous witnesses.
11. Ask if the witness has a prior record. If he denies one, check with your police identification bureau. Ask if there are any "skeletons in the closet."
12. Determine if the witness has any relationship with the defendant or victim to determine bias.
13. Advise the witness of the nature of the defense or the issue that his testimony is important in proving. For example, if the witness knows that the defense is impaired mental condition, he will be more careful in concluding that the defendant was drunk during the offense. Likewise, in preparing the eyewitness for motions to suppress identification, advise the witness that the defense allegation is that the witness identified the suspect because the police suggested that he or she do so and therefore is unreliable.
14. Get as much background information from the witness as possible. Determine who will always know the whereabouts of the witness should he or she move.
15. If the witness is the victim of an assault, remember to get a medical release so the hospital records can be readily obtained.
16. Determine what demonstrative evidence will be helpful in aiding the witness to tell his story.

If the witness is going to be expected to draw a diagram, preview the witness's drawing ability.

Preferably, a prepared diagram should be used. Make sure the witness has viewed the diagram and can orient himself to it.

17. Determine if the witness has any physical infirmities. If you are going to have to yell at a witness who is hard of hearing, you will need to prepare the jury for that fact during voir dire and opening statement.
18. If you intend to use demonstrative evidence and exhibits, you must present them to your witnesses before they testify. Witnesses should be afforded the opportunity to examine physical evidence to refresh their memory and establish identity of the article.
19. If you intend to use photographs or diagrams, they should first be viewed by the witnesses through whom you intend to introduce them. If the witness draws a diagram it should be done outside of court for your observation. This will allow you the opportunity to ask questions, clear up ambiguities and ensure an understandable exhibit.
20. Jurors will begin forming their impressions of a witness from the moment the person enters the courtroom. If the initial impression is unfavorable, it will thereafter cloud the witness's testimony and credibility. After the first two minutes of meeting a prospective witness, what's your opinion of him? Was it good or bad? Why? Your initial impression of a witness will probably mirror a juror's first impression. Therefore, identify those things which impressed you as unfavorable and move to correct them.

Explain to the witnesses that their effectiveness depends on more than just testimony. It includes all those factors which contribute to a person's believability. Identify and explain why disturbing mannerisms detract from their presentation. Give them a crash course in "body language" and explain why slouching is slovenly.

21. Stress the use of assertive language and caution against hedging on answers. "I think," "maybe," and "I guess" are not verbal bridges to persuasion.

D. Explain the Process

1. Explain to your witnesses the vagaries of the trial process. Prepare them for unanticipated adjournments and sitting in the hallway for hours waiting to testify. This advance warning will help prevent a friendly witness from turning antagonistic between your office interview and the witness stand.

2. It is better practice for the prosecutor to request all witnesses be sequestered. Tell your witnesses the reasons why they are being asked to remain outside the courtroom and not to discuss the case with anyone.

E. The "Other Side"

1. A witness should be informed that the defendant's attorney has a right to attempt to speak with him. You can also explain that the witness has a right to refuse such discussion or to have a third person (you) present during such conversation. The better practice is the latter. The refusal of a witness to talk to the defense attorney can be effectively used on cross-examination.
2. Explain to your witnesses about cross-examination and what to expect. Prepare the witnesses for objections and caution them to hold their answer until the court makes a ruling. Tell the witnesses about leading questions on cross-examination and how the defendant's attorney will try to put words in their mouths. Caution the witnesses to always be polite and friendly on cross. Inform them that a "snotty attitude" toward the defense attorney can be misread by the jury. Explain to the witnesses that the accused is a "defendant," not Mr. Johnson or Bob Smith. The accused should always be referred to as "the defendant," not by a name.

F. Reducing Fear

1. The prospect of being a witness in a criminal prosecution is terrifying for an average citizen. The fear is premised upon a media-distorted perception of trial and a general fear of the unknown. Anything you can do to lessen a witness's apprehensions will improve his testimonial ability.
2. In extreme cases with important consequences or critical witnesses, an actual direct examination "dry run" in the courtroom is advisable. At the outer limits of preparation, a mock jury can be empaneled to provide feedback to the prosecutor on the witness's testimony and performance.
3. Finally, instruct the witnesses that it is perfectly proper that they have talked with you before trial. When asked on cross-examination if they have discussed the case with anyone, they should be told to freely admit talking to you, police officers and anyone else about the case. Too many witnesses have destroyed their credibility by initially refusing to admit on cross-examination that they have discussed their testimony with anyone. Explain that there is no evil attendant with the prosecutor preparing for trial and talking to witnesses.

G. Specific Warnings to Witnesses

The following list of admonishments to witnesses have come into being because of real life tragedies created on the witness stand. In order for a reenactment of those tragedies not to occur in your case, make the following admonitions to your witnesses:

1. Tell the complete truth to the best of your recollection.
2. Don't try to figure out whether an answer hurts or helps; just answer truthfully.
3. Listen carefully to the questions.
4. If the witness is being vigorously cross-examined, don't look at me for advice on answering the questions, just tell the truth.
5. Don't make up anything or guess.
6. Don't answer a question you don't understand. If you don't understand the question, say so; don't guess.
7. If you didn't hear the question, say so; don't guess.
8. If you don't know the answer, say so; don't guess.
9. If you don't remember, say so; don't guess.
10. On the other hand, don't go to the opposite extreme and say, "I don't remember," to every question, merely because the defense attorney is badgering you. Don't use, "I don't remember" as a shield to protect you from the questioner.
11. Don't volunteer information; if appropriate, give short answers.
12. Don't feel you have to justify or explain your conduct; you are not on trial; just answer the question and tell the truth. Don't go off into a long explanation or justification.
13. Don't give snap answers without thinking or without fully understanding the question; listen closely to the question.
14. If you are sure about something, stick to your guns despite defense attorney's weird questions or his badgering.
15. Don't be a smart-aleck or be cocky.
16. Don't lose your temper--especially when the defense attorney is impolite, overbearing, or abusive.

17. Do not argue, hedge, play games with, or try to outsmart the defense attorney.
18. Be polite and courteous--"Yes, sir"--especially with the defense attorney; this can be extremely impressive.
19. Look at the jury, whenever possible, or the questioner.
20. Speak up so the farthest juror can hear you; don't cover your mouth with your hand.
21. Gum is forbidden.
22. Say "Yes" rather than "Uh-huh"; don't just nod your head; the court reporter has to take your answers down.
23. Be serious.
24. If your answer is wrong or unclear, correct it immediately.
25. Do not exaggerate.
26. Give positive, definite answers, where possible; thus avoid, "I think" or "I believe" or "sort of like."
27. Where you are estimating or approximating, be sure to say so.
28. Objections will be made by the lawyers and will be sustained or overruled by the court. If sustained, you don't have to answer.
29. Stop instantly when an objection is made or when the judge interrupts; don't try to "sneak in" an answer.
30. You should not object to or refuse to answer any questions; I will object to all legally improper questions.
31. Be on your best behavior in and around the courtroom; when court is not in session, jurors may be in the corridors, on the elevators, etc. By the same token, do not discuss your testimony within earshot of anyone in and around the courthouse.
32. Tell the truth that prior to your testimony you talked about the case with the police and the prosecutors. Admit that you discussed your testimony with the prosecutors.
33. If asked whether the prosecutor told you what to say, I believe the only correct answer is that I told you, as I am now telling you, to tell the complete truth to the best of your recollection.

34. Dress appropriately.
35. If your witness is a police officer, don't assume he or she knows how to testify.
36. Advise police to act appropriately in and around the courthouse.

H. Prepare the Witness for Cross-Examination

1. Ask the witness questions you feel will be asked by defense counsel. This will depend, in large part, on what you anticipate to be the theory of the defense--mistaken identification, personal vendetta, consent, etc. Go into detail. You might even ask some objectionable questions in order to determine whether refraining from making an objection would produce favorable answers. Prepare the witness for unpleasant attacks--e.g., with a rape victim, evidence suggesting consent or questions concerning her sexual conduct.
2. For the purpose of anticipating impeachment, go over all prior statements of the witness--descriptions and statements to the police, prior testimony, etc. Ask the witness whether he gave any statements to defense investigators or anyone else, and make sure the defense complies with discovery and tenders you a copy of the statements. (You might mention, if sufficiently early in the prosecution, that discussing the case with the defense is not mandatory; whether to do so is completely up to the witness.) The witness should be familiar with his prior statements so that he can truthfully and accurately testify that he gave a certain description or statement to the police and so that he can truthfully and accurately respond to the query regarding prior testimony, "Were you asked this question, and did you give this answer?"
3. Significant prior inconsistent statements by your witness should be dealt with honestly and explanations should be given to the jury, (e.g., "I didn't tell the police officer I knew the murderer because I was afraid," or "I didn't tell anyone I witnessed the crime," or "because I didn't want to get involved," or "I lied to the grand jury because I didn't want to get my friend in trouble.") By supplying the jury with the explanation for why a witness's testimony has changed, your witness can become a more believable "human being," complete with human frailties.
4. Prepare your witness regarding explanation, which will be made on redirect examination, to any prior inconsistent statements. Ask the witness to help you account for the apparent inconsistency.

5. If, on the other hand, your witness tells you during preparation that he never said what is attributed to him in some written document, then check with the police officers, or whoever documented the statement, for inaccuracies in the typing or transcription. Experience has shown that police make errors on occasions.
6. Make sure that the witness understands the difference between an oral and a written statement. Refresh his recollection regarding the type of statement he actually gave. If the witness "signed something" at the police station, determine whether it was a statement or merely the complaint.
7. Most judges relax the rule that the cross-examiner may not go beyond the scope of direct examination. Therefore, prepare the witness regarding events occurring both before and after the events testified to on direct.
8. Ask the witness whether there is anything in his past which you ought to know about--e.g., criminal record, relationship with defendant or other witnesses, prior incidents related to crime on trial, whether civil suit has been filed or is contemplated.

II. Specific Witnesses, Specific Problems

A. The "Expert" Witness

The expert witness can make or break your case. Never accept a stipulation to your expert's qualifications (unless your witness has lesser qualifications than a proposed defense expert). Don't qualify only your expert; qualify the discipline as well. Have him explain why the profession is scientifically accepted. Establish both the profession's and the professional's qualifications. After establishing his qualifications, always ask the court to affirmatively declare him an expert. The court's ruling will enhance importance and credibility.

1. Never stipulate to the qualifications of an expert unless, of course, the expert's qualifications are marginal.
2. Write out hypothetical questions in full and provide the expert with a copy.
3. Make sure the expert is well-versed in the law of the area in which he is rendering an opinion. For example, if your expert is giving an opinion that the defendant was capable of forming specific intent, make sure he can recite the legal definition of specific intent.

4. Expert testimony lends itself well to the effective use of demonstrative evidence, e.g., large blow-ups of fingerprint comparisons. Rather than using a large blow-up, consider using an 8" by 12" exhibit. Have the expert walk directly in front of the jury and point to the items he is describing. This engenders a feeling of closeness and joint cooperation between the jury and the witness. It is especially effective when the pathologist is showing the position of wounds on the body of the deceased.
5. With multiple wounds, have your pathologist use a doll or mannequin to demonstrate location and trajectory. Make sure your color photographs of these injuries have been admitted first. If you don't, the judge may preclude the introduction of the photos as being cumulative.

Experts have a tendency to speak in professional jargon. Don't permit their technical terms to hide the substance of the testimony. Strike a balance between professional terminology and understandable layman's language. Your questions to experts should be short. Their answers should be long.

6. A consultation with the expert before trial is essential. Experts will not readily admit they need the preparation, but they, and certainly the prosecutor, will be more effective if such a conference is held.
7. Learn as much about the field as you can absorb.
8. If tests were performed, make sure the witness can lay the proper foundation. For example, was the machine in proper operating condition?
9. Ask the witness before trial if there is any scientific dispute in the area of his ultimate opinion. If there is, learn how to defeat attacks on your test.
10. If you know who the defense expert is, see if your expert can assist you in preparing an effective cross-examination. Does the defendant's expert have a deficiency in his credentials?
11. Determine how the expert wants to be qualified. For example, an expert in firearms identification is rarely a "ballistics" expert.
12. Oftentimes experts will have material in their background. Obtain any such information.

B. The "Child" Witness

Unfortunately, children many times are victimized or are witnesses to serious crime. The fear of testifying is magnified by the child's tender years. Therefore, extreme caution must be used in preparing and presenting child witnesses.

Children are easily led. All adults are viewed as authority figures. You must be extremely cautious in your terminology and pretrial questioning of children. Don't put answers in their heads or words in their mouths. They must tell the story in their words while you gently nudge them in the proper direction. Be wary of unintended "coaching" of a child.

The secret with child witnesses is again preparation. They must learn to personally like the direct examiner. Always question children at the crime scene. It will refresh their memory and prevent in-court errors of estimating distance, time, and chronology. Your initial interviews should be conducted with a parent, friend, or relative present.

A cardinal rule of child witnesses is taking them to the courtroom before trial. Don't stop with just showing them the courtroom. Put them on the witness stand and turn on the microphone. Explain to them who will be in the courtroom during the trial. Practice your questions and answers. Make sure you introduce them to the judge, court reporter, clerk and bailiff. Spend a few moments with each of the court personnel. At trial, a friendly face will do much to lessen a child's fear. Besides, the introductions demonstrate to the court that you really care about the case. Judges have been known to become extremely protective of children. Foster it!

A child of tender years must first be established competent to testify. It is preferable for the judge to conduct the inquiry. It should be made in the jury's presence. When the court announces the child competent, it will enhance credibility. The jury may not differentiate between "competency" and "credibility." They may believe that the judge has just made an official ruling that the child is to be believed. Foster it!

With children, there is no magic about the formal witness box. If you can get away with it, place two chairs in front of the jury and sit next to the child. Conduct a discussion or conversation in front of the jury.

Eliminate the formality and distance of normal direct examination. Unlike other witnesses, you want to move as physically close to the child as is tactically effective.

The most difficult and sensitive child witness is one who has been sexually assaulted. Do everything possible to engender jury

sympathy for the witness. Don't coach the child to use the words penis and vagina. Let them use whatever terminology is natural.

Use anatomically correct dolls for the child to demonstrate the assault. Refer to the assailant as a "bad man" during your question. For identification, have the child point out the "bad man" who did those terrible things.

C. Accomplice

With accomplice witnesses or people who are getting some form of leniency in return for their testimony, you have a real problem. In going over expected testimony, dig as deeply as you can for possible corroboration. Above all, hammer into the witnesses until it is coming out of their ears to tell the truth no matter who asks the question and no matter who it helps or hurts. Get absolutely clear what the witnesses are receiving for their testimony, and tell them to lay it all out when you ask them. Tell them they have nothing to worry about from you except perjury. Ask them, "Now, what are you going to answer when I ask you what you have bargained for in exchange for this testimony?" Make sure they have the answer straight. Then ask them what their part of the bargain is. Their answer should be "To tell the truth no matter who asks the questions."

It's too bad we can't choose all our witnesses from a church congregation or a corporation board room. The very nature of our profession dictates that we deal with "dirty" witnesses. These are people who have a preexisting impediment to their credibility.

You can't solve a "dirty" witness problem by waiting until he enters the courtroom. You must begin a pretrial preparation. If there's nothing obvious, ask all witnesses if they have a criminal record or any skeletons in their closet. Your first step is to identify the problem. Next, instruct the witness to admit the impropriety without a self-serving explanation. In your office, ask the witness why he's done something strange, odd or bad. Ask the "why" question in your office where the witness has time to reflect upon a proper answer. If his answer is halfway plausible or acceptable, ask that same question in the jury's presence. Explain to the witness why you are going to bring out the prior record, bad acts, indiscretions, etc. Don't let him think you are only doing it to publicly embarrass him.

The next step is to alert the jury on voir dire. Ask them outright if they can't, under any circumstances, believe an addict or convicted felon or accomplice or snitch, etc. Don't go overboard in bringing out the bad in your witness. Prepare the jury for only that which you reasonably anticipate the defendant could disclose. Excuse any juror who's honest enough to truthfully answer your question about not believing your witness.

The "principle of preemption" must always be used with a "dirty" witness. In other words, you must blunt the impact of damaging facts by first producing them yourself on direct examination. The principle of preemption literally means that you "steal the other guy's thunder." You minimize the impact by disclosing the defect first. The principle of preemption allows you to disclose the defect at a time of your own choosing, preferably after lunch when the jurors are sleepy. The principle also gives you an appearance of honesty and fairness. If you've properly prepared your witness, ask him why the defect exists (conviction, addiction, etc.). Any halfway plausible explanation is better than no explanation.

The principle of primacy and recency can effectively be used in conjunction with the principle of preemption on "dirty" witnesses. In other words, use direct examination to disclose a defect. However, bury the information in the middle of testimony. Even with "dirty" witnesses, begin their testimony with positive information and end on an upbeat note. Research discloses that when contradictory information is presented in a single communication, there is a tendency for the first items presented to dominate the total impression received. Don't dismay when your key witness has a prior conviction. Convicted felons make good witnesses! In your summation, you're always able to use the "birds of a feather" argument. Ask the jury what kind of person they'd expect to find who could tell them in detail about this rotten defendant's criminal activities?

Any "agreements" with witnesses must be communicated to the jury. Don't wait for cross-examination; reveal it on direct. Posture the agreement to serve your best interest. Agreements should be in writing. The witness should have a copy. Irrespective of all else, the agreement should specifically require that the witness tell the truth and may be required to pass a polygraph or truth serum test to verify credibility. Obviously, the polygraph and truth serum information is inadmissible. However, on cross-examination the defense attorney will be hard-pressed to hammer the area. The written agreement might get into evidence. As a general rule, always draft written agreements from a viewpoint of their introduction into evidence. Make them self-serving to your interest, i.e., justice.

Remember: In Oregon, at the end of the case, the jury will be instructed to disbelieve your witness. Don't wait until the end of the case to bring this to the jury's attention.

D. Eyewitness Identification

Eyewitness identification frightens most juries. An effective defense lawyer will drive hard the point that an innocent man has been misidentified instead of the real criminal. Eyewitnesses frequently make their observations of the criminal act under less than ideal circumstances and for a short period of time. Your goal

during direct examination is to recreate the incident so vividly to the jury that there can be no reasonable doubt. It takes more than a five-minute recitation of the facts by the eyewitness to so convince the jury.

1. Have the witness first tell what happened to them in brief narrative form.
2. Get the defendant identified early in the direct examination. Thereafter, refer to the assailant as "the defendant." For example, "What did the defendant do after he demanded your money with the revolver pointed toward your head?" and, "What was your mental state while the defendant had the gun pointed at you?"
3. Make the identification with as much drama as possible. Have the witness step from the witness stand and walk to the person they are identifying and point their finger at him. Occasionally, the defendant will avoid the gaze of his victim and look guiltily to the floor. The jury will see this reaction and consider it an admission without the record ever reflecting the defendant's action.
4. Introduce your diagram and have the witness go through the event again in detail pointing out the sequence of events on the exhibit. Example:

Q: "Show the jury where the door is located through which the defendant entered before the robbery."

Q: "Where were you when you first saw him walking toward you?"
5. You can then demonstrate in the courtroom the position of the defendant and victim at certain times. By now you have taken forty-five minutes in recreating a one-minute robbery.
6. Bring out the facts surrounding the out-of-court identification procedure. Frequently, the victim of a violent crime will exhibit an involuntary physical reaction to the first confrontation with the assailant after the crime. If the witness fainted, cried, or merely had sweaty palms when seeing the defendant in the line-up, bring this fact out during direct examination.

E. Hostile Witnesses

If you call a hostile witness, make sure the jury knows it. Keep in mind that if a hostile witness is partial to the defense, the defense attorney will have a field day with him on cross-examination. Experience again is the best teacher in this area. "Once burned is twice shy" of hostile witnesses.

Never call a difficult, hostile or bad witness unless absolutely necessary. However, if you know the defense will call a hostile or unfavorable witness, you might want to blunt that witness's effect by calling him yourself. As a general rule, never "fall on your own sword" by intentionally calling a problem witness. If you must call one, keep your direct examination to a minimum and pray the cross-examination will be likewise.

If you must call a problem or unfavorable witness, consider placing him on the witness stand after lunch. Hopefully, the jury and judge will have full stomachs and be sleepy. You might blow the witness by them.

The most important thing you can understand about the use of a hostile witness is the set of rules -- substantive and procedural -- governing what you can do with him before, then, and after he takes the stand. A hostile witness can be dynamite, but just as in the mining industry, if you know how to make it work for you instead of against you, it can be very helpful. If you call him, can you call him as a "hostile witness" -- gaining some procedural advantage there -- or are you stuck with him as "your witness"? Can you ask him leading questions, can you cross-examine him, can you impeach him? Are you bound by his answers? If you believe part of his testimony but not the rest, what's your obligation with respect to the requirement that we not use perjured testimony? Do you understand fully the use of prior inconsistent statements for the truth of the matter asserted therein?

When you feel compelled to call a hostile witness, try to make sure to the extent possible that he won't be able to get away from you. You should be confident that whatever evidence you are calling the witness to secure will be available in some form, i.e., prior statements, etc., if the witness crosses you. When you have the witness on your side, get a signed statement. This helps keep people in line.

There are two basic rules for hostile witnesses. First, never attack a hostile witness who is an inherently sympathetic type, e.g., senior citizen, physically handicapped, young child, mentally retarded, etc. These persons invoke a natural jury sympathy. Those jurors won't appreciate your attacking this apparently defenseless witness. Irrespective of the witness's hostile nature, you will become the "bad person."

The second general rule is never attack a hostile witness unless you are first convinced that the jury has now shared your perceived need for the attack. For instance, make sure the jury shares your belief that the witness has been evasive, coy, snotty, antagonistic, etc. Don't attack a witness until everyone in the courtroom shares the belief that a hostile witness exists.

You can "tip" the jury to your attitude starting with how you call the witness to the stand. If permissible in your jurisdiction, you can say, "Your honor, we'd now like to call Joe Shputzz, who we believe may be a hostile witness to the prosecution!" When Mr. Shputzz stands up or enters the courtroom, turn your back on him. Your demeanor should reflect a belief that Shputzz is the "enemy."

Know the law. What's necessary to have a witness declared hostile? When you believe you've reached that point, you have an important decision. If you're confident the court will honor your request, make it in the jury's presence. If you're not so confident, approach the bench or make the request after the jury is excused. The last thing you want is for the jury to know that the court has denied your request to declare a witness hostile.

If your hostile witness is giving evasive or unresponsive answers, let the jury know it! Ask the identical question again and again and again until the witness gives you a straight answer. If that doesn't work, ask the judge to direct the witness to answer your question. If the witness "rambles," jump into the middle of the answer with your next question.

Never get honestly mad or emotional with a hostile witness. Emotions and your reflected demeanor should only be used as a tactic, not a mirror of your true feelings. Don't allow temper to impair your professional ability. Don't you become hostile, too!

F. Police Witnesses

In almost every felony trial, law enforcement officers will testify. Certain common matters relevant to examining police officers should therefore be considered.

1. Never assume a police officer knows what is in their report. Never assume the police officer has thoroughly read their report. Never assume the officer can I.D.
2. Probably the greatest and most often repeated mistake made in putting the police witness on the stand is assuming that he knows what he is doing in the courtroom. Aside from the very experienced detective who has been prepared many times to testify in criminal courts, the great majority of police witnesses need the same meticulous preparation as any other witness.
3. Policemen are, by instinct, biased against the defendant, and a competent defense attorney can find many ways to expose this bias. It is important to warn the officer, and to instruct him to strive toward projecting the image of the impartial, objective truth-seeker.

4. Some officers become accustomed to testifying, and they may begin to enjoy trying to match wits with the defense lawyer. Nothing reveals his bias more than an arrogant, adversary dialogue with the cross-examiner. The police witness should be instructed to be courteous to defense counsel and to appear anxious to assist the cross-examiner to finding answers to his questions.
5. It is a mistake to introduce the police witness as the officer in charge of the investigation in question. Jurors tend to expect too much from the man in charge.
6. Policemen speak a language known only to themselves and, perhaps, prosecutors. Policemen should be asked to speak in plain English and to tell time like everyone else does.
7. In preparing the police witness, the prosecutor should inform him of the overall trial plan so that the witness understands the part he will play. Otherwise the policeman, who is generally aware of the entire investigation, may in his testimony attempt to volunteer facts which he thinks the examiner has forgotten to ask about.
8. Regarding the exculpatory matters about which the defense will inevitably inquire, the best response by the officer is an unhesitating affirmation.
9. Most judges do not honor the rule that the cross-examiner may not inquire in areas beyond the scope of direct. Therefore, regardless of the purpose of the officer's direct examination, you must prepare him for all possible areas of inquiry.
10. The two areas of inquiry which the defense is most likely to cover, and regarding which the officer must always be prepared, are what the officer did and neglected to do in the investigation, and what other state's witnesses said to the officer regarding the crime.
11. Regarding anticipated impeachment by the police officer's report, have your policeman prepared to answer the question: "What is this report?" That report is in actuality a written communication to his supervisors in summary of what he saw or heard in his assignment. Words which he attributes to witnesses are not quotations of their exact words (in most instances). The report is not everything the officer saw or heard but rather merely a capsulization or summary.
12. Remind the officer to be truthful in his testimony regarding what force, if any, was used at the time of the arrest.
13. Also remind the officer to speak in plain English, if possible, rather than police jargon.

G. The "Boring and Dull" Witness

A trial attorney's nightmare is the witness with key testimony but a boring delivery. The lawyer's greatest challenge is to keep the jurors awake. How can you make a dull witness interesting? You'll have to work at it but there are tactics and techniques to make a "silk purse from a sow's ear."

First, don't you look bored with the testimony. Your facial expressions and demeanor should display rapt interest in the witness. You can keep the jury awake by varying the volume of your voice and the pacing of your questions.

The boring witness is the one through whom demonstrative evidence can be introduced. The exhibits will provide islands of interest in a sea of boredom.

Attempt to liven the testimony by asking how things looked, smelled, felt, etc. Ask the witness to draw analogies.

Use "words of imagery" in your questions. If answers are boring, at least attempt to put life into your questions. Instead of asking the witness, "Did the defendant stab you?," ask "Did the defendant plunge the knife into your chest?"

Attempt to draw the jurors into the direct examination by sporadically asking the witness to, "Tell the jury..." or "Tell these folks" or, point to the jury and say, "Tell them...". If jurors know that you and your witness will occasionally be looking at them, they are less likely to sleep.

Your primary objective with dull witnesses must be to get them on and off the stand quickly. Never present these witnesses to the jury immediately after lunch!

H. Interpreters

Interpreters are of two types: sign and language. If you require an interpreter, make sure he understands what the case is about and how the witness fits into the total picture. A pretrial overview session will preclude mistakes when the interpreter first knows the context of the questions and answers. Never use an interpreter who is a friend or relative of the witness.

During voir dire ask prospective jurors if they know the intended sign or voice language. If any answer "yes," discreetly get them off the jury. You don't want your interpreter's answers to be second-guessed by a juror during deliberations.

If your principal witness has first been sworn in English, have him resworn through the interpreter. However, make sure that the

interpreter is first sworn as a witness. Failure to swear the interpreter can be fatal.

Have the interpreter stand or sit next to the witness so the jury can see both of them. You maintain your normal direct examination position and direct your questions to the witness; not the interpreter. Prepare the interpreter to give answers to the jury; not you.

I. The "Frightened" Witness

Nothing strikes terror in the heart of an average citizen quite like the receipt of a criminal subpoena. The impending court appearance can cause anguish and sleepless nights. The average citizen is "frightened" of the criminal justice system and of being a witness.

A scared witness can present problems. Their minds go blank and their demeanor lacks confidence. A witness's fear can directly impact upon a jury's assessment of credibility. Hence, you must solve or minimize the fear quotient.

The most effective solution is, again, preparation! The fear of most lay witnesses is premised upon the "unknown." Their perception of criminal justice was fashioned from books, television, and the movies. It's a distortion of reality. Your job is to make these witnesses knowledgeable and confident. This can only be accomplished outside the courtroom before trial.

On direct examination, begin with social foreplay questions; i.e., name, age, address, occupation, etc.

These introductory questions are nonthreatening and are designed to place the witness at ease. If the witness's demeanor reflects nervousness, as the witness, "Are you nervous?" Let the jury know why the witness is acting strangely. Don't let the jury assume it is because the witness is lying. Jurors can relate to nervousness and will sympathize with the witness.

Use "topic sentences" to help frightened witnesses point their direct examination answers. A "topic sentence" is one which alerts the witness and jury to the forthcoming area of inquiry. For example, "I'd now like to ask you some questions about..." or "Let's now focus in on..." or "Why don't we now shift gears and talk about...". The use of a prefatory "topic sentence" permits the witness's testimony to be verbally outlined and permits the person to mentally shift gears and be prepared for a new line of inquiry.

If a frightened witness misses an area of his testimony, ask a follow-up question. For example, "Do you recall any (more) (further) (other) (different) (additional) etc...?" Fear causes

memory lapses. You must constantly monitor answers to ensure completeness. If necessary, ask an occasional leading question.

If you feel the witness is frightened by the defendant's presence in the courtroom, you must take corrective action. You can stand between the witness and the defendant during questioning. If there's an objection, ask the judge to instruct the defendant to stop trying to intimidate your witness. If nothing else, the jury will sympathize with the witness, not the defendant. The better practice has the direct examiner standing in a position where the witness is forced to look away from the defendant toward you when answering questions.

If you again want extreme drama in the courtroom, have a frightened witness physically touch the defendant for identification purposes. Be careful! This procedure may be tantamount to pulling the pin from a grenade.

J. The "Missing" Witness

Sometimes a witness is unavailable for trial. Perhaps death, injury, or disappearance will preclude a personal appearance. You may have a transcript which can be used in lieu of corporeal testimony. You'll need a witness (court reporter) to authenticate the transcript and introduce it into evidence.

In some jurisdictions, you can introduce transcript testimony of a witness who is not physically absent. If a witness takes the Fifth Amendment or feigns amnesia, you may be able to have him declared "legally unavailable." The prior transcribed testimony can then be used.

The direct examiner should never read the questions and answers to a jury. Acquire the services of a surrogate witness from your staff. Have the surrogate sit in the witness chair. You read the questions and the surrogate reads the answers. Prepare your surrogate. Permit him to read the transcript before trial. Impediments to a smooth tempo of question and answer should be eliminated before trial. Submit the transcript to the judge and defense attorney for review. Have all defense objections made and ruled upon before trial. Things will be hard enough; you don't want frivolous objections interrupting the performance.

Choose your surrogate carefully. You may want to audition several for the part. Who should the surrogate look like? If it is self-serving, pick a surrogate who looks like the absent witness. If the absent witness is a "scumbag," select a preppie-looking surrogate.

Remember, the physical appearance and demeanor of the surrogate are important!

III. Order of Witnesses and Theories of Presentation

A. The Order of Witnesses

Be coherent and cohesive in structuring the order of the appearance of your witnesses. You are telling a story. It should be either chronological or, at least, very logical. To draw an analogy, "a joke doesn't begin with its punch line." Avoid juggling witnesses for their personal convenience unless it is absolutely necessary. Pretty soon, you'll have everything out of sequence and mixed up. A witness's convenience may be your confusion.

First impressions are lasting. With this in mind, open your case with an appropriate witness whose testimony is strong and who will make a good impression.

If two witnesses are in conflict on details, separate them as much as possible so the inconsistencies won't be glaring to the jury.

Call a weak witness between two strong witnesses, or introduce real evidence that corroborates the weak witness.

Avoid a break in the proceedings between direct and cross-examination. Don't give the defense time to think about his cross-examination.

Before lunch and before the evening recess, the jury will be tired. Avoid calling your dynamite witness when the jury is tired.

Finish strong. This rule applies not only just at the very end of your case but also at the end of a session, the end of a day, and the end of a week. Look for convenient stopping points and use them accordingly. Timing can be a useful tool. Avoid at all costs putting on a crucial witness at a time when the jury won't be paying attention, such as at a quarter to 12 or 4:15 in the afternoon. The jury will be thinking about lunch, or going home -- not your witness.

Time the resting of your case so that the defense will begin its presentation late in the day.

B. Theories of Presentation

There are four basic theories of witness ordering. The first and most prevalent is "chronological." This theory presents each witness in a logical sequence paralleling the crime chronology. Each witness is called to the stand but a single time for direct examination.

The "modified chronology" is an ordering practice whereby a sequence is maintained, but a single witness may be recalled to the stand one or more times. If a particular witness has information

regarding several aspects of the case, their testimony will be delivered in pieces directly paralleling a strict chronological recounting of events.

The third theory of ordering is called the "flashback" technique. In this procedure, the first witness is generally an eyewitness to the crime. This witness details the offense. The following witnesses then revert back to a chronology starting with those events leading up to the crime. This procedure adds drama to the overall presentation.

Lastly, we have the "confused" theory of witness ordering. In this practice, witnesses are called in a helter-skelter manner. There is no rhyme or reason behind their appearance. Most times they appear at their personal convenience and not in a logical sequence. This theory of witness ordering is most often practiced by soon-to-become civil practitioners.

Oregon State Bar Minimum Continuing Legal Education

MCLE Form 1. Recordkeeping Form *(Do Not Return This Form to the Bar)*

Instructions:

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in accredited CLE activities. You may wish to use this form to record your CLE activities, attaching it to a copy of the program brochure or other information regarding the CLE activity. Do not return this form to the Oregon State Bar. This is to be retained in your own MCLE file.

Name:		Bar Number:	
Sponsor of CLE Activity: MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE		Course # Assigned by OSB	
Title of CLE Activity: ROUNDTABLE: WITNESS PROBLEMS YOU WISHED YOU NEVER HAD			
Date: 2/8/95	Location: MULTNOMAH COUNTY COURTHOUSE ROOM 602		
<input type="checkbox"/> Full Credit. I attended the entire program and the total authorized credits are: _____ General _____ Ethics _____ Practical Skills		<input type="checkbox"/> Partial Credit. I attended _____ hours of the program and am entitled to the following credits*: _____ General _____ Ethics _____ Practical Skills	

***Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration, introductions, business meetings and programs less than 30 minutes. MCLE credits may not be claimed for any activity that has not been accredited by the MCLE Board. If the program has not been accredited by the MCLE Board, you must submit a Group CLE Activity Accreditation application (See MCLE Form 2.)

With the kind permission of the author, The Honorable Robert P. Jones, the attached material was taken from:

Tips for the Litigator: A Handbook of Oregon Trial Procedure,

published by Oregon Law Institute.

Two copies of this publication are in the library in Room 600.

Preparing the witness

In sports, coaching is a respected occupation. However, the expression "coaching the witness" conveys a cynical innuendo—putting words in the witness' mouth.

- ✓ Nonetheless, witnesses and clients need both coaching and reassurance.
- Lawyers do not fully appreciate how stressful testifying can be. The inadequately prepared or apprehensive witness/client may damage your case.

Witness/client preparation must include more than a review of testimony. Take the witness to an empty courtroom. Rehearse the witness in the witness chair. Demonstrate where the witness should stand while using the easel, how to draw diagrams and the procedure for identifying exhibits.

A substitute for a courtroom visit is a videotape that you can readily prepare depicting a typical courtroom with voice-over audio instructions covering courtroom procedure.

Acquaint the witness/client with the oath-taking process; stress the importance of "primacy," the first impression! ✓ Explain the need for eye contact and that the witness/client should talk to the jury, not the attorneys.

Many people find a microphone intimidating. They overreact by bobbing their heads back and forth while talking or neglecting to maintain adequate space between their mouth and the mike. Pretrial schooling will easily overcome this awkwardness and markedly improve the witness' testimony. The most helpful advice about microphones is to ignore them.

Calm the fears of cross-examination. ✓ Lethal cross-examination is myth created in Hollywood and nurtured by some trial attorneys. There is not much that can be achieved by cross-examination of the truthful witness.

✓ Depositions and prior written statements must be carefully reviewed.

An appropriately schooled witness/client *should never* be impeached by a prior inconsistent statement!

While conventional wisdom mandates instructing a witness not to volunteer testimony, this advice can be too restrictive. Adroitness and ability to communicate are factors to evaluate before shackling a witness/client with this stereotypical warning. Moreover, the ultimatum to answer only "yes or no" can be a curtailment of helpful testimony.

✓ But always forewarn the witness not to engage in a duel of wits with your opponent. The clash may be ego gratifying but is frowned upon by the jury and can have calamitous results. Make certain your witness recognizes the peril!

Witticism, comedy, quips, and wisecracks have no place in the witness box. ✓ A pleasant but earnest attitude is respected by jurors.

Dress and demeanor are significant factors in obtaining the jurors' positive response to your witness/client. Jurors relate to the friendly, candid, unpretentious person.

✓ Conversely, the pompous, boring, ill-natured, or hostile witness will alienate the jury.

Advising a witness/client how to dress for court can be awkward, but it is important. The witness/client should dress in a comfortable manner. Conservatism is a wise yardstick to follow in selecting a wardrobe. It may require considerable tact on your part to broach the topic of grooming with a witness, yet it should be done. Keep in mind that visual impressions are critical in influencing a juror's reaction to your witness.

Remind your witness that jurors move about throughout the courthouse and that they should be circumspect in the corridors and elevators. ✓ Instruct clients that as they sit at counsel table during trial, they must appear interested and pay attention to the testimony. They are never, regardless of the perceived provocation, to make any comment or non-verbal facial expression.

✓ Don't assume that the expert that you plan to use is an adept witness. Technical skills do not necessarily encompass forensic savvy. Whether the witness be lay or expert, first evaluate his or her courtroom appearance before you call the witness to the stand! Even though a witness has testified often, carefully review how to behave on the witness stand.

Pointers For Your Witnesses

1. **Tell the truth**—In a trial, as in all other matters, honesty is the best policy. Truthful testimony is an absolute insulation against the most intense cross-examination. Discourage the friendly witness from attempting to be too helpful—that's when they get into trouble.
2. **Don't guess**—Tell them if they don't know an answer, to say so, but remind them that they are permitted to estimate.
3. **Understand the question** before answering. Discourage asking the lawyer to repeat the question unless they are truly confused.
4. **Take your time**—Do not give a snap answer. But overly-long pauses can create the impression that the witness is making up an answer.
5. **Answer the question** that is asked and then stop and wait for the next question. Stick to the point and don't wander.
6. **Talk loud enough** so everyone can hear you. Very important!
7. **Give an audible answer** rather than nodding your head yes or no.
8. **Don't look at your lawyer for help** when you are on the stand.
9. **Beware of questions involving distance and time**—If you make an estimate, make sure that everyone understands that you are estimating.
10. **Speak to the jury**—Project your voice to the jurors.
11. **Avoid hostility or aggressiveness**—Be candid and cooperative. Don't get angry.
12. **Don't be a comic**—A pleasant smile is nice but no wisecracks.
13. **Don't argue or engage** in a duel of wits with the attorney.
14. **Don't make personal remarks.**
15. **Ignore the microphone**—Don't bob your head up and down towards the mike as you talk.
16. **Make eye contact** with jurors as you talk.

Translators

Selection

Bonding

Technique in the courtroom

Court appointment

Selection:

Translators in the courtroom are a routine occurrence. The selection criteria are critical. Certification and experience are the key. Whenever possible pick the certified person. In many judicial districts the trial court administrator's office will keep a list of certified court translators. Contact with foreign consulates can be productive.

Signers (sign language communicators) can present a problem. While stranger-to-stranger signers can communicate, it is sometimes wiser to use a family member who has lived with the handicapped person.

Bonding:

It is imperative that the translator and the witness/client have an adequate opportunity to spend some time together before trial. After they have met and conversed, then check with the witness/client and assure yourself that the two are communicating effectively and accurately and that your witness/client is comfortable with the translator.

Technique in the courtroom:

At the first opportunity introduce the translator to the jury. Explain the need. Position the translator close to the witness, but keep the witness in the forefront. Before the translation starts, the clerk will swear the translator and then the translator will translate the oath for the witness.

Ignore the translator—direct your questions to the witness just as if the translator was not present. Examine in the usual manner, but keep in mind that your questions should be brief. The long question can be asked by breaking it into segments, but that is an awkward process that can be avoided with pretrial preparation.

Never question in this manner: "Ask the witness...." Remind the witness to speak to the jury and not the translator. Occasionally the witness will have a question for the translator. Jurors are puzzled by a side conversation. To avoid this problem, instruct your translator in advance to translate for the jury what the witness asked by saying, "The witness asked...." Be sure that in your pretrial preparation the witness understands that every word will be translated for the jury!

Court appointment:

Upon a showing that a person is indigent, in either a criminal or civil case, the court will appoint a qualified interpreter and/or provide an *assistive communication device*.
ORS 45.275, 45.285.

MEETING DATE: FEB 09 1995

AGENDA NO: R-2

(Above Space for Board Clerk's Use Only)

AGENDA PLACEMENT FORM

SUBJECT: Ratification of a Revenue Agreement with Oregon Department of Human Resources

BOARD BRIEFING Date Requested: _____

Amount of Time Needed: 5 Minutes

REGULAR MEETING: Date Requested: _____

Amount of Time Needed: _____

DEPARTMENT: _____ DIVISION Community and Family Services

CONTACT: Carolynne Webber TELEPHONE #: 248-3691 x2583
BLDG/ROOM #: 161/200

PERSON(S) MAKING PRESENTATION: Lorenzo Poe/Rey Espana

ACTION REQUESTED:

☐ INFORMATION ONLY ☐ POLICY DIRECTION ☒ APPROVAL ☐ OTHER

SUMMARY (Statement of rationale for action requested, personnel and fiscal/budgetary impacts, if applicable):

Approval of the attached Intergovernmental Agreement between the Multnomah County Community and Family Services Division's Community Action Program Office and the Oregon Department of Human Resources. This agreement passes on \$12,500 in funds and the terms for an Integrated Service Project at Marshall High School.

SIGNATURES REQUIRED:

ELECTED OFFICIAL: _____
OR

DEPARTMENT MANAGER/DIVISION DIRECTOR: Lorenzo Poe

ALL ACCOMPANYING DOCUMENTS MUST HAVE REQUIRED SIGNATURES

Any Question: Call the Office of the Board Clerk 248-5222

(WPDOC)

6/93

*Originals sent to Carolynne Webber
on 2-14-95.*

BOARD OF
COUNTY COMMISSIONERS
1995 FEB - 1 AM 11:48
MULTNOMAH COUNTY
OREGON



MULTNOMAH COUNTY OREGON

COMMUNITY AND FAMILY SERVICES DIVISION
ADMINISTRATIVE OFFICES
421 S.W. FIFTH AVENUE, 2ND FLOOR
PORTLAND, OREGON 97204
(503) 248-3691 / FAX (503) 248-3379
TDD (503) 248-3598

BOARD OF COUNTY COMMISSIONERS
BEVERLY STEIN • CHAIR OF THE BOARD
DAN SALTZMAN • DISTRICT 1 COMMISSIONER
GARY HANSEN • DISTRICT 2 COMMISSIONER
TANYA COLLIER • DISTRICT 3 COMMISSIONER
SHARRON KELLEY • DISTRICT 4 COMMISSIONER

M E M O R A N D U M

TO: Board of County Commissioners

FROM: Lorenzo T. Poe, Jr., Director *Lorenzo Poe*
Community and Families Services Division

DATE: January 13, 1995

REQUESTED PLACEMENT DATE:

RE: Approval of a Revenue Agreement with Oregon Department of Human Resources

I. Action Requested:

The Community and Family Services Division, Community Action Program requests approval of an Intergovernmental Revenue Agreement with the Oregon Department of Human Resources.

II. Background/Analysis:

The purpose of this Agreement is to define the roles and responsibilities of each of the project participants. The goal of this project is to develop a system of multi-agency integrated social services from a site located at Marshall High School.

III. Financial Impact:

The agreement passes on \$12,500 to Multnomah County to help fund a project coordinator located at Marshall High School.

IV. Legal Issues: N/A

V. Controversial Issues: N/A

VI. Link to Current County Policies:

The approaches and goals used will ultimately be tied to the Oregon Benchmarks. The Benchmarks applicable to this project are High School Graduation Rate, Teen Pregnancy and Percent of Oregonians Who Are Economically Disadvantaged.

VII. Citizen Participation: N/A

VIII. Other Government Participation:

This is a joint project with Portland Public Schools, Multnomah County and the State of Oregon.

MULTNOMAH COUNTY
CONTRACT APPROVAL FORM
(See Administrative Procedures CON-1)

Contract # 104215

Amendment # _____

CLASS I	CLASS II	CLASS III
<input type="checkbox"/> Professional Services under \$25,000	<input type="checkbox"/> Professional Services over \$25,000 (RFP, Exemption) <input type="checkbox"/> PCRB Contract <input type="checkbox"/> Maintenance Agreement <input type="checkbox"/> Licensing Agreement <input type="checkbox"/> Construction <input type="checkbox"/> Grant <input type="checkbox"/> Revenue	<input type="checkbox"/> Intergovernmental Agreement <input checked="" type="checkbox"/> Intergovernmental Revenue <div style="text-align: center;">APPROVED MULTNOMAH COUNTY BOARD OF COMMISSIONERS AGENDA # <u>R-2</u> DATE <u>2/9/95</u> <u>Carrie A. Parkerson</u> BOARD CLERK</div>

Department: _____ Division: COMMUNITY & FAMILY SERVICES Date: JANUARY 11, 1995
Contract Originator: _____ Phone: _____ Bldg/Room: _____
Administrative Contact: CAROLYNNE WEBBER Phone: 248-3691 X2583 Bldg/Room: 161/200
Description of Contract: An agreement for Revenue from Oregon Department of Human Resources to provide \$12,500 and terms for an integrated service project at Marshall High School.
RFP/BID #: N/A Revenue IGA Date of RFP/BID: _____ Exemption Expiration Date: _____
ORS/AR # _____ Contractor is ☐ MBE ☐ WBE ☐ JQRF

Contractor Name: <u>OREGON DEPARTMENT OF HUMAN RESOURCES</u> Mailing Address: <u>500 SUMMER ST, NE</u> <u>SALEM, OR 97310-1012</u> Phone: <u>503-378-3033 (FAX 378-2897)</u> Employer ID# or SS#: <u>N/A</u> Effective Date: <u>JULY 1, 1993</u> Termination Date: <u>JUNE 30, 1995</u> Original Contract Amount: \$ _____ Total Amt of Previous Amendments: \$ _____ Amount of Amendment: \$ _____ Total Amount of Agreement: \$ <u>12,500</u>	Remittance Address (if different) _____ Payment Schedule <input type="checkbox"/> Lump Sum \$ _____ <input type="checkbox"/> Monthly \$ _____ <input type="checkbox"/> Other \$ _____ <input type="checkbox"/> Requirements contract - Requisition Required Purchase Order No. _____ <input type="checkbox"/> Requirements Not to Exceed \$ _____ Encumber: Yes <input type="checkbox"/> No <input type="checkbox"/>
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REQUIRED SIGNATURES:
Department Manager: *Lorenzo Ramirez* Date: 1/23/95
Purchasing Director: _____ Date: _____
(Class II Contracts Only)
County Counsel: *Katie Gault* Date: 2/1/95
County Chair/Sheriff: *Beverly Stein* Date: 2/9/95
Contract Administration: _____ Date: _____
(Class I, Class II Contracts Only)

VENDOR CODE				VENDOR NAME				TOTAL AMOUNT: \$			
LINE NO.	FUND	AGENCY	ORGANIZATION	SUB ORG	ACTIVITY	OBJECT/ REV SRC	SUB OBJ	REPT CATEG	LGFS DESCRIPT	AMOUNT	INC DEC IND
01.	156	010	1261						REVENUE-2338	12,500	

If additional space is needed, attach separate page. Write contract # on top of page.

DISTRIBUTION: Contracts Administration, Initiator, Finance

Multnomah County Contract # 104215

Agreement #40577

INTERGOVERNMENTAL AGREEMENT

This Agreement is between the State of Oregon, acting by and through its Department of Human Resources, Office of the Director, hereafter called "DHR", and Multnomah County, hereinafter called "COUNTY".

I. BACKGROUND

In response to the Governor's request for consolidation of services between DHR and local governments and school districts, DHR is establishing service integration projects.

The project is designed to develop a single entry access to human services in an accessible location; to link health, educational and social services to meet multiple and/or complex needs of individuals and families, and to provide services which respect the goals of individuals and families and assist them in accomplishing their goals through focus on inherent strengths and resources.

The approaches and goals used will ultimately be tied to the Oregon Benchmarks. The Benchmarks applicable to this project are High School Graduation Rate, Teen Pregnancy and Percent of Oregonians Who Are Economically Disadvantaged.

II. TERM

This Agreement begins July 1, 1993, and ends June 30, 1995, unless otherwise terminated or extended in writing.

III. STATEMENT OF WORK

The purpose of this Agreement is to define the roles and responsibilities of each of the project participants. The goal of this project is to develop a system of multi-agency integrated social services from a site located at Marshall High School and staffed by a project coordinator. Therefore it is mutually agreed that the parties shall participate to achieve the objectives listed below:



Barbara Roberts
Governor

500 Summer Street NE
Salem OR 97310-1012
Salem - (503) 378-3033
FAX - (503) 378-2897
TDD - (503) 378-8313

IV. RESPONSIBILITIES OF EACH PARTY

A. DHR agrees to:

Provide a state manager to expedite resolution of issues related to DHR functions and resources.

Provide a minimum of one staff person each from AFS and CSD to be available as necessary for outstationing as determined in the planning process.

Provide services and materials to support outstationed staff.

Provide assistance in the acquisition of a DHR terminal to allow on-site data entry and access to information and phone system.

Provide assistance in overcoming confidentiality barriers in agency-to-agency and agency-to-school communication of client issues.

Provide training and technical support regarding operation of state services, budgeting and branch office flexibility.

Provide technical assistance toward the development of family service teams.

Facilitate access of referrals to appropriate DHR Programs.

B. Portland School District 1J agrees to:

Provide an administrator to expedite resolution of issues related to Portland Public School functions and resources.

Provide space as necessary for outstationed staff.

Coordinate installation of furniture, partitions, carpeting and phone system to prepare site for multi-agency use.

Provide utilities and janitorial services for site.

Identify and refer students and families appropriate to the project.

provide assistance in acquiring services or materials as necessary in support of the project's day to day operation.

C. Multnomah County agrees to:

Provide an individual to expedite resolution of issues related to County functions and resources.

Encourage providers to deliver services on-site where practical and appropriate.

Work with providers to facilitate access of referrals to appropriate programs.

Provide leadership in structuring the project to maximize procurement of monetary resources and reduce duplication.

Encourage providers to offer consultative and/or referral services when appropriate.

Establish a link with county agencies serving children and families, i.e. health and mental health services..

D. Mutually the parties agree to:

- 1. Conduct regular meetings, to be scheduled at a time convenient to all parties, to work on project objectives and responsibilities.**
- 2. Provide leadership in removing barriers to service.**
- 3. Assist in evaluating the project.**
- 4. Provide leadership and support as necessary to accomplish the goals and objectives of this project.**

V. CONSIDERATION

A. DHR agrees to pay the County an amount not to exceed \$12,500 for a project coordinator described in Section III, STATEMENT OF WORK.

B. Payment shall be made to the COUNTY in two payments. Ninety percent of the total amount shall be paid upon execution of this agreement and upon receipt of a budget with project personnel costs. Payment adjustments shall be based on actual expenditures upon receipt of a final expense statement, no later than 60 days following the end of the agreement period.

The COUNTY shall reimburse DHR for any funds not expended, or additional funds shall be paid to the COUNTY from the final 10 percent of the agreement total.

- C. COUNTY shall not exceed, and DHR shall not pay any amount in excess of the maximum compensation set forth above. If this maximum compensation amount is increased by amendment of this agreement, the amendment must be fully effective before COUNTY performs work subject to the amendment. COUNTY shall notify DHR's Project Manager in writing thirty days before this agreement expires, of the upcoming expiration of this agreement. No payment will be made for any services performed before the beginning date of the agreement. This agreement will not be amended after the expiration date.

VI. DESIGNATED LIAISONS

Liaisons for the term of this agreement shall be as follows:

COUNTY: Jo Ann Allen, Community Partnership Specialist
DHR: Grant Higgison, Manager, Child Health
Portland School District 1J: Sue Parker, Cluster Director

VII. GENERAL PROVISIONS

A. Effective Date and Duration

It is provided that the passage of the Agreement expiration date shall not extinguish or prejudice DHR's right to enforce this Agreement with respect to any default or defect in performance that has not been cured.

B. Subcontracts and Assignments

COUNTY may not enter into any subcontracts for any of the work scheduled under this agreement, or assign or transfer any of its interest in this agreement, without obtaining prior written approval from DHR.

C. Funds Available and Authorized

DHR and the DISTRICT certify at the time the Agreement is written that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within the DISTRICT's and DHR's appropriation or limitation.

D. Termination

1. This Agreement may be terminated by mutual consent of both parties, or by either party upon 30 days written notice, and delivered by certified mail or in person.

2. DHR may terminate this Agreement, effective immediately upon delivery of written notice to the parties involved, or at such later date as may be established by DHR, if DHR funding from federal, state, or other sources no longer available or if federal or state regulations or guidelines are modified or changed in such a way that the services are no longer allowable or appropriate for purchase.

Any such termination of this Agreement shall be without prejudice to any obligations or liabilities of either party already accrued prior to such termination.

E. Access to Records

DHR, the Secretary of State's Office of the State of Oregon, the Federal Government, and all duly authorized representatives shall have access to the books, documents, papers, and records of Multnomah COUNTY that are directly pertinent to this contract for the purpose of making audit, examination, excerpts, and transcripts.

F. Amendment

The terms of this Agreement may not be waived, altered, modified, supplemented or amended in any manner whatsoever, except by written agreement signed by the parties.

G. Waiver

The failure of DHR to enforce any provision of a contract does not waive DHR's right to enforce any other provision.

VIII. SIGNATURES

APPROVED:

_____ Director, DHR	_____ DATE
<u>Beverly Stein</u>	<u>2/9/95</u>
Chairman, Multnomah County Board of Commissioners	DATE

REVIEWED BY:

_____ SDSD Contracts	_____ DATE
-------------------------	---------------

_____ DHR Project Manager	_____ DATE
------------------------------	---------------

_____ Service Integration Manager	_____ DATE
--------------------------------------	---------------

REVIEWED:
LAURENCE KRESSEL, County Counsel
for Multnomah County, Oregon

By Katie Duff
Assistant County Counsel

Date 1/31/95

By Lorenzo T. Poe, Jr.
Lorenzo T. Poe, Jr., Director
Community and Family Services

Date 1/23/95

APPROVED MULTNOMAH COUNTY
BOARD OF COMMISSIONERS
AGENDA # R-2 DATE 2-9-95
Carrie A. Parkinson
BOARD CLERK