Portland Police Bureau

A report to the community James Jahar Perez

November 2005

Mayor Tom Potter Chief Derrick Foxworth







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CITY OF PORTLAND, OREGON



Bureau of Police

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Chief's Letter

Dear Community Member:

It has been over one year since the March 28, 2004 officer involved shooting of Mr. James Jahar Perez. Anytime a life of a citizen is taken, no one wins: the community or the Police Bureau. This report outlines the significant changes we've made as an organization; from how we train officers, to how we investigate officer involved deadly force incidents, to how we revised Bureau policies.

I asked command staff to research the best practices from other law enforcement agencies and compare what policies or procedures Portland has in place. I talked to several organizations—Albina Ministerial Alliance, City Club, Police Assessment Resource Center, our police advisory groups—to hear their feedback on what issues and changes they believe need to be addressed.

I want to share with you some updates and changes:

- On March 30, 2004, I made a written request to the Federal Bureau of Investigation (FBI) that a civil rights investigation be initiated by the FBI into this incident, and pledged the full cooperation of the Portland Police Bureau to assist in any way possible. Civil rights investigations are opened by the FBI and then passed on to the Department of Justice in Washington, D.C. to determine if a full criminal investigation is warranted. The local offices of the FBI and US Attorney have completed their investigation. They are awaiting a prosecution determination from the Department of Justice Civil Rights Division.
- The Detective Division made changes to their investigative protocols for deadly force incidents and included these new protocols in the Standard Operating Procedures #37. Written communication restrictions are issued to members who use or are involved in deadly force incidents. Supervisor checklists and summary reports have been revised and incorporated into Detective Division protocols.
- We have a new executive order on deadly physical force. New language on the sanctity of life and restrictions on shooting at moving vehicles is included. We have two review boards to look at employee performance and discipline, the Performance Review Board and the Use of Force Review Board. Both boards have community and peer members. Additionally, the directive on Tasers references the formation of a Taser Medical Safety Committee to review medical concerns involving the use of the Taser.

- In 2004, I reinstituted 40 hours of in-service training for every sworn member. This training included instruction on de-escalation techniques, cultural competency and awareness, communications and tactics during traffic stops with a focus on getting people in and out of vehicles, and tactical communications. In addition, officers received Taser training and certification. In 2005, we are continuing to build on 2004 training.
- The Police Bureau has a full time recruiting officer. I believe it is important that our officers reflect the make-up of the city. Our recruitment efforts are focused locally, looking for those qualified candidates who believe in our goals of reducing crime and the fear of crime, improving the quality of life in neighborhoods, improving the community and police partnerships, developing and encouraging personnel, and accountability.
- I am committed to open dialogues with all community members to ensure that this agency is transparent with broad representation from a diverse community who serve on our police advisory committees. The committee members provide feedback to the Police Bureau from the community. The Bureau maintains nine advisory groups: African American Advisory Committee, Arab Muslim Police Advisory Council, Asian Law Enforcement Advisory Council, Bureau Budget Advisory Committee, Chief's Forum, Crisis Intervention Team Advisory Committee, Developmental Disability Advisory Committee, Latino Advisory Council, and the Sexual Minority Roundtable. Our community partners are vital to our agency's success in achieving our community policing goals. I also reinstated the Community Policing Academy and monthly community policing newsletter to help inform the public on police tactics and training.
- It has been a challenging time for the community and for all Bureau members. This incident affected us in many ways. Almost five months following the shooting, Officer Jason Sery resigned from the Police Bureau on August 23, 2004.
- In 2003-04, we participated in a statewide dialogue on officer-involved shooting investigations being led by State Attorney General Hardy Myers. Many of our current training practices and investigative policies were shared as model policies for other law enforcement agencies.

The Police Bureau conducted a community survey this year. While the Police Bureau has done community surveys for more than a decade, the 2005 survey also contains questions dealing with police stops. These questions ask community members, and minority citizens in particular, about the degree to which they believe that Portland police officers are fair in their stop decisions. The survey data will be available on line.

We have the support of Mayor Potter for our problem solving activities. The Mayor and I are committed to community policing. In August 2004, then Mayor Katz and City Council recommitted to community policing and the partnerships involved in order to reach our goals through two resolutions unanimously adopted. In addition, I have shared these resolutions and our community policing activities with the Albina Ministerial Alliance during ongoing meetings with the members.

This report informs our community on the progress we made to improve training practices and investigative protocols. It is an ongoing process and never ends. In partnership with the community, we will continue to reexamine our officer training needs, review our investigative procedures, make sure our directives are current, and complete and strive to reflect successful approaches from lessons learned here in Portland and across the country.

We will continue to research what is working for others around the country, as well as address concerns from our local citizens, to develop quality training and best practices. These efforts will ensure that we are meeting the needs of our employees and providing the best service to the communities we serve.

Sincerely,

DERRICK FOXWORTH

Chief of Police

Overview of Traffic Stop

On Sunday, March 28, 2004, Officer Sean Macomber and Officer Jason Sery began their 4:00 p.m. afternoon shift patrolling in the St. Johns neighborhood. The officers were conducting a routine patrol that focused on self-initiated activity where officers do not respond to calls for service but address problems that neighbors have identified.

Officer Macomber had been assigned to the St. Johns neighborhood for about four years and had also been assigned to the Pier Park Apartment complex as a patrol officer.

Shortly after 5:00 p.m., Officer Macomber observed a white 4-door Mitsubishi sedan stopped in the area of N. Fox St. and N. Oswego Ave. As Officer Macomber drove past the vehicle, which was facing in the opposite direction, Officer Macomber noticed there were two individuals in the car. Officer Macomber's attention was drawn to the vehicle for a number of reasons, which included a comparison to the type of car and neighborhood demographics, as well as dark tinted windows.

Some community members have expressed concerns on the initial reason Officer Macomber articulated for his attention being drawn to the vehicle. Macomber stated "that the kind of car that didn't belong in the neighborhood." Some community members believe this to be an "unacceptable prejudicial statement."

Pretext traffic stops are a vital tool for officers to reduce crime and improve neighborhood livability. A combination of factors play into an officer's decision to investigate a crime during these stops. The factors may include time of day, location of stop, a particular car type, the officer's experience and training, observations made by an officer, citizen complaints and action so vehicle occupants. Physical characteristics of people in a car, including race, sex, age and clothing may also contribute to an officer's interest in investigating a crime. This topic will be discussed later in this report.

After entering the license plate number into the computer, the information shown indicated the registered owner of the vehicle was born in 1959. Officer Macomber believed that was inconsistent with his observations of the two individuals in the car. Officer Macomber caught up with the vehicle at N. Oswego and N. Fessenden. When the officers reached N. Tioga, the officers saw only one occupant in the vehicle.

The officers saw the right turn signal activated by the driver approximately 20-30 feet before the driveway entrance to the City Food Mart, located at the 7200 block of N. Fessenden Ave., which is less than required by law. Officer Macomber switched on his overhead lights to conduct a traffic stop.

First Contact with Mr. Perez

Officer Macomber asked Mr. Perez to see his driver's license and insurance. Mr. Perez said that he did not have a driver's license. Officer Macomber asked if he had an ID card. According to

Officer Macomber, Mr. Perez mumbled something unintelligible. Officer Macomber asked him to retrieve the card.

According to Officer Macomber, Mr. Perez turned his body toward the center of the vehicle and reached toward the interior of the car with his right hand at the same time he was rolling up the electric driver's side window with his left hand.

Officer Macomber ordered Mr. Perez to stop rolling up the window. Officer Macomber reached down and opened the driver's side door in order to see what Mr. Perez was doing.

Officer Macomber ordered Mr. Perez to place his hands on top of his head. Officer Macomber said that as soon as he told Mr. Perez to place his hands on top of his head, Mr. Perez immediately reached into the center console, which appeared to be covered by a layer of brown napkins. Officer Macomber grabbed Mr. Perez's left arm and pulled it straight. Officer Macomber saw Mr. Perez move his right hand from the center console to his right front pocket.

Officer Sery was moving to get a better view inside the car when he saw Officer Macomber open the car door, grab Mr. Perez's left arm and order Mr. Perez to get his hand out so Officer Macomber could see it. Mr. Perez then turned to look at Officer Macomber, with his right hand going from the center console into his right pocket.

Officer Macomber said he then heard Officer Sery, who by this time had moved to the drivers side of Mr. Perez's car, yell at Mr. Perez to get his hands up. Officer Sery saw Officer Macomber struggling with Mr. Perez and could see that Mr. Perez had his hand concealed in his pocket.

Officer Sery said that Mr. Perez appeared to be digging for something in his pants pocket. Officer Sery said, Mr. Perez was looking over his shoulder, focusing on the officers, while he tried to pull something from his pocket. Officer Sery yelled at Mr. Perez to get his hands up, but he ignored this order.

Officer Sery said he then ordered Mr. Perez to get his hands out or that he (Officer Sery) would shoot. Officer Sery repeated these orders several times.

Shots Fired

Officer Sery said he saw Mr. Perez start to take his hand out of his pocket and the position of the hand and the grip led Officer Sery to say he believed Mr. Perez had a weapon, although no gun was later found in the vehicle or on Mr. Perez, and was attempting to retrieve it in order to use it against Officer Macomber or himself. Officer Sery fired three rounds. Officer Macomber deployed the Taser and held the trigger, which resulted in a continuous Tasing cycle. One of the Taser darts embedded in the driver's seat, while the other made contact with Mr. Perez.

After Shooting

Cover officers responded to the radio call asking for cover. A sergeant also arrived at the scene. Under the direction of the sergeant, the officers then approached the car. One officer felt Mr. Perez's neck for a pulse and could not find one, and a sergeant placed handcuffs on Mr. Perez's wrists. Handcuffing is required per training post-shooting procedure. Medical personnel, who were staged near the scene, were called in to render aid to Mr. Perez. They determined he was deceased.

Command staff and investigators responded to the scene, collected evidence and identified witnesses. The Crisis Response Team was activated and responded to the scene as well. The Crisis Response Team coordinated the arrangements for the family to spend time with the deceased while still a t the scene.

Multi-Agency Investigation and Response

There was a Multi-Agency Investigation and Response to this incident, overseen by the Multnomah County District Attorney.

Oregon State Police Crime Laboratory Findings

Two plastic baggies of rock cocaine were found in Mr. Perez's mouth and totaled 11.9 grams and the one baggie of rock cocaine from Mr. Perez's left front pants pocket totaled 1.1 grams, along with a baggie of marijuana that totaled 0.9 grams.

Blood analysis showed that Mr. Perez had a very high cocaine level, indicating recent cocaine use. Other tests revealed a more remote use of both cocaine and marijuana. Cocaine is a powerful central nervous system stimulant with its primary effects on the brain. Medical Examiner Dr. Larry Lewman said in his report that the effects of this level of cocaine intoxication causes symptoms that include hyperactive behavior, restlessness, irrational and unpredictable behavior, paranoid, psychotic and delusional thoughts, seizures and sometimes death.

Perez Report Grand Jury

Grand Jury

Multnomah County District Attorney Michael Schrunk convened a Grand Jury to determine if Officer Sery shot and killed James Jahar Perez in violation of Oregon Law.

According to the Multnomah County District Attorney's Office webpage:

A grand jury is a panel of seven community members. The Deputy District Attorney will subpoena witnesses to testify before this panel. This is a private, informal hearing in which no judge presides. The purpose of the grand jury is to decide from the evidence presented if the state has enough information to proceed with a felony indictment.

The Grand Jury began on Tuesday, April 20, 2004, and continued through Thursday, April 22, 2004. The information to be considered was presented to the Grand Jury.

The jury returned with a Not True Bill, or no indictment or no criminal culpability.

Public Inquest

Public Inquest Process

Many questions arose about this incident prompting a request for a public inquest. Multnomah County District Attorney, Michael Schrunk convened an inquest, which was supported by Chief Foxworth.

The following are excerpts of questions and answers on the inquest process that Chief Foxworth distributed to all employees of the Portland Police Bureau.

What is a public inquest?

The public inquest originated in England and is part of the Oregon constitution. It was originally called a Coroner's Inquest, but in 1973, a law was passed that gave authority to the District Attorney rather than the Coroner (now the Medical Examiner). An inquest is a public airing of the facts of the investigation. Its sole goal is to answer four questions: name of the deceased; where and when the death occurred; what caused the death; and manner of death (i.e.: homicide, suicide, disease, etc.). The question of who did it is not asked, as the inquest was never meant to be a trial, but a means to establish facts regarding how the death occurred.

Jurors are chosen, usually from the regular jury pool. Six jurors are presented with evidence, including witnesses under oath, under the supervision of the DA. The DA asks questions of witnesses that are relevant and material—keeping in mind that the goal is to keep it narrow and focused. Jurors can submit questions to the DA, and he will ask them if they are relevant. The jury will be asked to come back with the answers to the four questions.

When and how will the inquest occur?

District Attorney Mike Schrunk has stated that the inquest will be held in a courtroom at the Multnomah County Courthouse, and will be televised with a pool camera, due to the limited seating. He has said that he will not have a timeline as to when this will occur until next week. It will take at least a couple of weeks to review the investigation and then prepare for an inquest. The length of the proceedings will be determined on how many witnesses are called, etc., but it is expected to last from 2 to 4 days.

How does the inquest affect the officers involved?

If the District Attorney chooses to subpoena officers involved, he must grant them immunity. Oregon law says that you cannot give partial immunity—it must be immunity for any forthcoming criminal or civil litigation. In addition, the findings of the inquest are not admissible in a civil or criminal proceeding or grand jury.

Why do I support the decision for an inquest?

There are heightened emotions in the community and the public wants and deserves answers. I support the decision for an inquest for the following reasons:

1. I have been assured that this inquest will be conducted in a structured setting with the utmost decorum, and that it won't be a circus-like atmosphere. This is in contrast to past

situations where the Bureau attempted to provide information, but the facts weren't able to be presented due to an uncontrolled setting. In addition, investigations are complex and lengthy, and the average person is not going to wade through a 600-page investigation to determine what really happened.

- 2. The inquest allows information to be shared, including educating the community on why we do what we do. It benefits the Bureau because a public airing of the facts can assist us in terms of increasing our credibility, rebuilding trust, and strengthening our relationship with the community.
 - I have said publicly that we have nothing to hide. We are a strong organization, committed to community policing and openness. We have solid values and good, committed Bureau members, and we have nothing to warrant us withdrawing from public scrutiny.
- 3. Finally, as a government agency, we are accountable to the public and everything we do is subject to review. Over the years, we have faced many controversies, some of which you may have only heard about. But in the 1980s and 1990s, we had many that spurred a great deal of media interest and community unrest. Frankly, we became a better organization because we faced the scrutiny. Sure it was painful and disconcerting. But we involved citizens, took what we learned and applied those lessons—and it only strengthened this agency's credibility and trust.

What is the timeline for the Grand Jury?

District Attorney Schrunk has stated that the Grand Jury will follow the public inquest. His timeline for that will be dependent on when the public inquest is held, and then scheduling a grand jury following it. There are three grand juries seated at all times, and they have an enormous workload. (NOTE: The District Attorney revised the process and the Grand Jury was held first with the Public Inquest held after the Grand Jury reached their decision.)

What is a civil rights investigation and why did I ask the FBI to conduct one? I contacted Portland's FBI Special Agent in Charge, Robert Jordan, on Monday evening, March 29, and asked the FBI to open a civil rights investigation, and he agreed to do so. The reason I did is because I strongly feel that we must be proactive and acknowledge the community's concerns.

Civil rights investigations are the responsibility of the Department of Justice's (DOJ) Civil Rights Division in Washington, D.C. The investigation focuses on if there was criminal intent or criminal negligence committed by the officer to violate a person's civil rights. The FBI opens a preliminary investigation, which involves gathering reports, forensic evidence, autopsy results, etc., and then forwards the information to the DOJ in Washington. The DOJ then determines if there is enough to go forward with a full criminal investigation. It takes several months for the report to be sent to Washington, and the DOJ typically takes six months to a year to make a decision.

Again, we must consider the long-term effects of this incident. Other cities have faced controversies and not been proactive in their approach to resolving conflicts within their

communities. In those cases (such as Detroit and Cincinnati), the DOJ has entered into consent decrees with the cities involved. Consent decrees are an agreement between the government and law enforcement agencies that bind them with certain procedures involving citizen contact. You basically lose the ability to manage and operate your organization.

The Police Bureau will work closely with the DA to provide him with whatever resources are needed. I will continue to try to give you as much information that I can when I have it. But this is a large organization, and even with today's technology, sometimes it is challenging to reach all of you in a timely manner.

This is a defining moment for the Portland Police Bureau, and I am proud of this organization and its people. Thank you for taking the time to read this, for your input, and for continuing to do the good work you do."

End of the Chief's Special Bulletin

Public Inquest Outcome

Beginning on Wednesday, April 28, 2004, Multnomah County District Attorney Michael Schrunk conducted a public inquest into the shooting of Mr. Perez. At the conclusion of the inquest on April 30, 2004, the inquest jury found James Jahar Perez died on March 28, 2004, in the 7200 block of N Fessenden St., the cause of death was a gunshot wound to the heart, and the manner of death was homicide. Homicide is the killing of one person by another and includes: death caused by negligence, justifiable homicide, murder, and non negligent manslaughter.

Letter from the Public Inquest Jury

At the conclusion of the inquest, the members of the Public Inquest jury wrote the following letter to Mayor Katz, Chief Foxworth, and the Perez family.

"As members of a randomly selected inquest jury, we differ in gender, ethnicity, and age. After hearing from nearly forty witnesses under oath, we write as one to state our observations about the death of James Jahar Perez.

We do express our deepest sympathy both to the Perez family and to the two police officers involved in this tragedy. The Perez family lost a loved one and has many unanswered questions. The officers did not come to their shift that night expecting this would happen. Now they must deal with psychological problems that can drive officers in their situation from the profession they intended to make a lifelong career. We hope the City of Portland will ensure that the Perez family and the officers receive any help they may need to withstand the emotional toll they have suffered.

As to public policy, we realize we have no special expertise for drawing conclusions. Nevertheless, although our verdict was limited to four narrow questions and based upon the facts

presented to us, we wanted to offer some broader thoughts and observations in the hope that this regrettable incident may result in positive change.

It seems to us, from the detailed information we received about the events that led to Mr. Perez's death and from the general knowledge we have of the circumstances of the shooting of Ms. Kendra James last year, that the Portland Police Bureau needs to make a fundamental reexamination of its tactics and training for officers in traffic stops of uncooperative motorists—particularly those suspected of drug involvement. While again noting our lack of specialized knowledge, we can only wonder what the end result would have been if tactics and training called for officers to back off and radio for support when Mr. Perez chose to clearly affirm his lack of cooperation by putting up his tinted window. While not wishing to engage in second-guessing, we firmly feel the need for the best minds to re-examine existing policy and implementation of policy through training.

We were concerned about the police officers' ability to articulate racially neutral reasons for traffic stops like this one. We think the officers in this case suspected that illegal drug activity was afoot. This suspicion was ultimately confirmed. Yet, they seemed surprisingly unable to directly state that suspicion. There is an understandable tension between a community's need for aggressive law enforcement—using technical traffic violations as a tool when necessary to ferret out suspected criminal activity—and the need for law-abiding members of a community to know they are not being targeted for improper reasons. We understand from you, Chief Foxworth, that the Portland Police Bureau has a process to examine these kinds of traffic stops for racial neutrality. We further understand there are active recruitment measures to draw officers from a full spectrum of Portland citizens. We urge that these efforts and the results be shared with the public. We also urge that consideration be given to having an independently elected police commissioner.

We learned a great deal about the risk police officers face and the training these men and women receive. The public at large should be similarly informed so that citizens may better understand the dynamics of policing a community made up of all kinds of people. We encourage the Portland Police Bureau to follow up with experts, such as the ones we heard, to test the effects of cultural differences on the reactions of both police officers and suspects in real life situations to determine if other kinds of training are necessary. We also endorse Chief Foxworth's planned expansion of Taser availability and training.

In closing we have learned much from our service on the inquest jury. We hope the Portland Police Bureau and the community will benefit as we have."

End of Public Inquest Jurors letter

Response to the Perez Inquest Jurors

Chief Foxworth responded to the Jurors on May 6, 2004, with the following letter and thanked them for their commitment to serve as a juror in this high profile public inquest jury:

"Thank you for your letter regarding your observations from the recent public inquest. Before I address them, I want to thank you for your commitment in serving on the inquest jury. I have no doubt that serving as a juror for Portland's first inquest in 20 years—on a high profile and sensitive incident—was probably very stressful and overwhelming in regards to the publicity surrounding it. I want to thank you for participating and generating the questions that you did over the three days it was held.

In regards to your letter, I appreciate that you took the time and effort to provide me and the community with your observations. I have summarized these observations and categorized them into the following in order to respond and ensure that I have addressed each one. Once again, however, I have to remind you that I am limited in the scope of my response to general discussion and I cannot address this particular incident because of the pending internal administrative review that will now begin.

Observation 1: Training/Policies. The Police Bureau needs to make a fundamental re-examination of its tactics and training for officers in traffic stops of uncooperative motorists—particularly those suspected of drug involvement.

Response: Numerous community groups have provided input to the Police Bureau regarding its current policies and training in regards to lethal force, less lethal force and the investigations of these incidents. These groups have included the Police Assessment Resource Center (PARC), the Albina Ministerial Alliance (AMA), the Community Police Organizational Review Team (CPORT) as well as the Bureau's many advisory groups. The Police Bureau has implemented a number of these suggestions and will also now evaluate some of the best practices in regards to training and policies on a national level. We want to ensure that the Portland Police Bureau is in line or has exceeded national standards in regards to training and policies—especially in the use of lethal force.

Traffic stops, while frequent in nature, remain volatile and fluid. There is no such thing as a "routine traffic stop." Each situation is unique, and I agree with your assessment that policies and training must be examined, for the Bureau must continue to ensure its policies and training are paramount.

Observation 2: Pretext traffic stops and racial profiling. Inquest jurors feel that officers were unable to articulate racially neutral reasons for traffic stops and that because of this, there is a community perception that pre-text traffic stops are based on race.

Response: I agree that there continues to be a confusion in the community, and that it is simple to intertwine pre-text traffic stops and racial profiling, despite the fact that they are two very different subjects.

The courts have defined—and upheld—a pre-textual traffic stop as one in which police use a legal justification to make the stop in order to search a person or place, or to interrogate a person for an unrelated serious crime for which they do not have the reasonable suspicion necessary to support a stop.

Pretext traffic stops are a vital tool for officers to reduce crime and improve neighborhood livability. A combination of factors may play into an officer's decision to investigate a crime during these stops. The factors may include time of day, location of stop, a particular car type, the officer's experience and training, observations made by an officer, citizen complaints and action so vehicle occupants. Physical characteristics of people in a car, including race, sex, age and clothing may also contribute to an officer's interest in investigating a crime.

For example, an officer may attend a neighborhood meeting in which neighbors voice concerns about a suspected drug house in their neighborhood. They describe vehicles coming and going at all hours, and staying for short amounts of time. They log their observations and ask police for assistance. One tool an officer might use is to begin enhanced patrols in that neighborhood and legally stop vehicles leaving the house after they have made a traffic violation. This stop could lead to reduced activity at the house or the arrest or citation of individuals involved in illegal drug trafficking.

Another example—a very common one—is that a crime has just occurred and the suspect's description or vehicle is dispatched to patrol officers. It could be that this description is very incomplete—sometimes it might be the make of the suspect vehicle or possibly just what the suspect looks like. An officer may stop a vehicle that is similar in description or is being driven by a person fitting the broadcast description. This kind of police work often results in the apprehension of wanted suspects.

Racial profiling is a much more complex subject, and is one of national concern for legitimate reasons. The Police Bureau's Blue Ribbon Panel on Racial Profiling defined racial profiling as the following: "The use of race as the sole basis for justifying stops or other police action."

It is understandable that people are concerned about racial profiling, because other law enforcement agencies in the U.S. have admitted to making stops solely based on race. The Portland Police Bureau does not train, teach, endorse, support or condone any type of race profiling by any law enforcement agency. We do not, however, as stated in your letter, "have a process to examine these kinds of traffic stops for racial neutrality."

In 2001, the Police Bureau implemented a tracking system that collects specific data regarding individuals stopped by officers. This data, however, has not given us the kind of information or answers that I think the public would like to see. The reason is that this data is just raw numbers and must be analyzed—and frankly, there continues to be a debate across the country as to how to do just that.

Numbers on the surface alone do not give a complete picture—racial differences in traffic stops may not signal racial profiling. A 1999 Bureau of Justice survey of drivers stopped by police, struggled with this issue. The report concluded that to form evidence of racial profiling, the

survey would have to show (all other things being equal)—that blacks and/or Hispanics were no more likely than whites to violate traffic laws, and police pulled over blacks and/or Hispanics at a higher rate than whites. Because the survey had information only on how often persons of different races are stopped, not on how often they actually break traffic laws, analysis of data from the survey cannot determine whether or to what extent racial profiling exists.

In Portland, we must continue to discuss the issues of pre-text stops and racial profiling with the community in order for people to better understand the differences between the two. Any Portland Police Bureau officer who engages in racial profiling should be stopped. That is why I urge any citizen who believes he or she was the subject of racial profiling to file a complaint against police with the Independent Police Review Division. In the meantime, the Police Bureau will continue to seek input and evaluate the racial profiling concerns of the community and keep people apprised of the progress made in regards to data collection.

Observation 3: The public at large should be informed [regarding police tactics and risks facing officers] so that citizens may better understand the dynamics of policing a community made up of all kinds of people.

Response: The Portland Police Bureau's communication goal is to be open and transparent, but it is also imperative that we continue to explain to people why we do what we do. This continues to be a hurdle that we try to overcome by attending monthly neighborhood meetings, meeting with the various Police Bureau advisory committees, and involving the media as much as possible. This fall, the Bureau will re-institute the Citizen's Academy, which is designed to give citizens the chance to learn more about police tactics and training, such as the force simulator that you were shown.

Observation 4: The Police Bureau should follow up with experts to test the effects of cultural differences on the reactions of both police officers and suspects in real life situations to determine if other kinds of training are necessary.

Response: Looking at best practices, and certainly cultural understanding of police officers, continues to be a priority in evaluating the Police Bureau's training. Again, we will look to the best practices on a national level in regards to this. As the one expert stated in the inquest, however, no national studies exist currently on the use of force in regards to deadly force and race.

Observation 5: Endorsement of the planned expansion of Taser availability and training

Response: The Portland Police Bureau is in the midst of obtaining additional Tasers, and will begin training more officers on the use of the Taser. We also have reevaluated the current Taser policy and will be making revisions to it to ensure that the Police Bureau is aligned with the best practices of other law enforcement agencies.

However, please note, that the discussion of the expansion of Taser use doesn't in any way reflect upon this particular incident, as the formal internal review has not been completed, and it

cannot be determined at this point on whether the use of a Taser in place of lethal force would have been appropriate or in compliance with Bureau policies.

Finally, I would like to once again thank you for your service and your obvious desire to have the community and the Portland Police Bureau benefit from this inquest. As I have stated previously, I believe this to be a defining moment for the Police Bureau. I was hopeful that the inquest would answer some people's questions as well as impart some knowledge regarding police training and it appears it was able to do so despite the limited restrictions that it is under.

Thank you again for your time and effort".

End of Chief's response letter

Inquest Jury Issues Addressed

The following issues raised by the Public Inquest jurors are addressed in the listed sections:

The letter from the Inquest jury said that the Police Bureau needed to make a "fundamental re-examination of its tactics and training for officers in stops of uncooperative motorists". Responses to this issue can be found in the following sections of this report: Chief's letter, the Chief's Response to the Perez Inquest Jurors, Review Process, and What's Changed: Training and Directives.

The jurors expressed concerns about the police officers' "ability to articulate racially neutral reasons for traffic stops like this one". The issue of pretext traffic stops and racial profiling is addressed through encouraging reporting to the Independent Police Review, stops data collection and analysis, and survey data. The following sections give a more detailed description of our progress: Chief's Letter, Chief's Response to the Perez Inquest Jurors, and Review Process.

The issue of "active recruitment measures to draw officers from a full spectrum of Portland citizens" is addressed in the Chief's letter at the beginning of this report.

Chief Foxworth explained in his letter to the inquest jurors that by attending neighborhood meetings, talking with Bureau's advisory committees, involving the media, and re-instituting the Citizen's Academy, we work to "explain to people why we do what we do". This addresses the issue raised about training the public on the risks police officers face and the training they receive.

The jury members also endorsed Chief Foxworth's planned expansion of Taser availability and training. The following sections address Taser expansion: The Chief's Response to the Perez Inquest Jurors, Review Process, and What's Changed: Training and Directives.

Perez Report Review Process

Review Process

Once the Detective, Internal Affairs and Training Divisions complete their review of the incident, the Review Board is convened. Voting board members are comprised of the three Assistant Chiefs and the involved member's Commander. Advisory members include the Captain of Internal Affairs, Deputy City Attorney, Human Resources representative, the Training Division and the Review Board Coordinator.

For this review, three citizen observers were invited to attend as were representatives from the Portland Police Commanding Officers Association and Portland Police Association. The Independent Police Review Director also attended. The observers were invited to submit questions regarding the information presented. This format was used as the Bureau is forming Use of Force/Performance Review Boards that includes the participation of citizens, peer members and the involved officer.

The Review Board members were charged with determining:

- 1. Was the use of deadly force consistent with training practices and current policy and procedures as defined in the Directives?
- 2. Was the use of any other force, (i.e., less lethal, Taser, etc.), consistent with policies and procedures and training practices?
- 3. Are there any other training or policy action items that need to be referred for follow-up?

Review Board members were provided copies of all pertinent documents for their review. After presentations by Detectives, Training and Internal Affairs, Review Board members looked at each component of the case. The involved employee's Commander then makes a recommendation on whether or not deadly force was in policy.

Review Level Findings and Recommendations:

When the Review Board was convened, members were asked to examine the following factors as they apply to the incident: policy, training, supervision, tactics and equipment. The summary and recommendations are listed below under each factor:

Policy:

The Review Board found that the use of deadly force was within Bureau policy. According to Officer Sery, he believed that Mr. Perez was bringing his hand out of his pocket, clenched around a gun, when he decided to shoot, based on his training and experience. The Review Board compared these statements to the situation and concluded that it was reasonable for a police officer to reach this conclusion given the totality of the circumstances.

The Review Board also found the use of the Taser was within policy.

Perez Report Review Process

Training:

Training has researched successful approaches on how to remove people from vehicles. New techniques have been incorporated into the lesson plans for in-service and Basic Academy. Revised directive 1010.10 reflects new language for the policy and new procedures for officers when shooting at or from a vehicle.

Supervision:

A Sergeant's academy is conducted annually. A new manual for probationary sergeants is being created to cover areas of competency.

Tactics

New protocols for the Taser have been incorporated into the revised directive 1051.00. Also in an October 2003 training bulletin addressed the issue of multiple prolonged discharges. This follows the recommendation from PERF.

Equipment

Full deployment of the Taser is completed.

As part of the new Review Board process, if any issues are identified, they are referred to the appropriate division for action and policy issues would be referred to the appropriate Assistant Chiefs for their action.

During discussion at the Chief's level, it was recommended that for all future Review Boards, the Review Board Coordinator will be responsible for tracking the progress of issues or action items that are identified. New software (AIM) has been designed to assist in the tracking of review level process, identified issues, assignments of action items, and discipline.

When the review level process is completed, the Review Board's summary and recommendations are forwarded to the Chief for review and final distribution.

In reviewing the officer involved shooting of Mr. Perez, Chief Foxworth concurred with the recommendations of the Review Board and found that the use of deadly force and the use of the Taser were within current policies and procedures. The Chief also met with some members of the Review Level Board. The current policy states:

"The Bureau recognizes that members may be required to use deadly force when their lives or the life of another is jeopardized by the actions of others. Therefore, state statute and Bureau policy provide for the use of deadly force under the following circumstances:

- a. Members may use deadly force to protect themselves or others from what they reasonably believe to be an immediate threat of death or serious physical injury.
- b. A member may use deadly force to effect the capture or prevent the escape of a suspect where the member has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the member or others.
- c. If feasible, some warning has been given."

Perez Report Review Process

These conclusions also challenged the Bureau to research and develop successful approaches to training practices and tactics and examine policies from other law enforcement agencies to ensure that all policies are current and as complete as possible.

Highlights of these successful approaches at the time of the Chief's review included:

- New language and significant revisions of use of force directives were reviewed.
- New investigative protocols were put in place.
- Recruited citizens and peers to be members of new use of force and performance review boards.
- New Taser Medical Safety committee was formed.
- Reinstituted a 40 hour in-service training for officers.
- Hired a full time recruiting officer with emphasis on women and minority hiring.
- Partners in the Attorney General's task force on officer involved shootings.

Chief Foxworth also identified a number of issues that the Review Level Board did not include and the Bureau has taken steps to reduce the incidents of deadly force:

- The Training Division now offers officers additional instruction on how to safely remove individuals from vehicles.
- Training concluded that during this incident, the deployment of the Taser did not have the desired effect since one of the probes was deployed into the seat.
- Concerns about racial profiling and the collection of stops data led to further open dialogue in the community. On November 3, 2004, members of the nine police advisory committees gathered to hear from the Police Executive Research Forum (PERF) Director of Research, Lorie Fridell, on her study of stops data collection and analysis, and racial profiling. Chief Foxworth plans to host a police-community forum on this topic in 2006.
- Following the Review Board recommendation, the Chief also met with citizens representing organizations and groups to discuss the findings and sought their feedback and input.

What's Changed

Investigative Protocols

As a result of recommendations made in the August 2003 Police Assessment Resource Center report, a memorandum from the Detective Division Commander, dated September 2, 2003, made the following modifications to protocols on officer involved shootings or in-custody deaths, as well as a revision of the Bureau's deadly force policy. The Police Bureau responses to the first and second PARC recommendation reports are available online. Since August 2003, there have been many more changes out of the 89 recommendations from the first report and the ten recommendations from the second report.

Scene Management

- The Homicide Sergeant, upon arrival, is in charge of the scene and will make that known to on-scene personnel.
- Responsibility for keeping the scene secure rests with the Homicide Sergeant in charge. Only those persons having a necessary function to perform will enter the scene. The Homicide Sergeant will ensure a log is kept.
- The Homicide Sergeant in charge will ensure the involved officers remain at the scene and are kept separate in accordance with the Directive. Departure of involved officers from the scene must be first cleared through the Homicide Sergeant in charge.

Interviews/Investigation

- Investigating Detectives will inquire of involved members what, if any, discussions have occurred prior to the Detective's arrival. Such information will be noted in the Detective's investigative report.
- During the initial stages of the investigation, Detectives will ask involved members to participate in a voluntary interview. The request, date and time and response of the members will be noted in the Detective's investigative report.
- All interviews of involved members wherein the material facts of the case are discussed will be tape-recorded in its entirety.
- A member of the Detective Division command (Homicide Sergeant, Persons Crimes Lieutenant or Division Commander) will issue a written communications restriction to those members who either used deadly physical force, were involved in an in-custody death, witnessed the incident or when in the opinion of the Detective Division command, such a restriction is necessary to preserve the integrity of the investigation.
- Trajectory analysis to determine each shot's bullet path and point of impact, if determinable will be conducted and reported in accordance with Directive 1010.10. The Homicide Sergeant-in-charge will be responsible to ensure this is completed.
- Scene sketches will be prepared by investigating detectives. These sketches will identify physical evidence at the scene and provide all relevant measurements.
- All records, documents and materials obtained, prepared or created in connection with an
 investigation of an officer involved shooting or in custody death will be made and remain
 part of the official Bureau file on the incident. City archiving guidelines will be followed.

In addition, the following investigative changes have occurred:

• The Detective Division investigators incorporated into their officer interviews, questions regarding what each officer heard and from what source did they receive this information.

- If a civilian witness refuses to submit to a taped interview, the investigator will note in their investigation the unwillingness of the witness to submit to a taped interview.
- The Deadly Force Interview Checklist continues to be evaluated and changed to improve its value and fit into the Bureau's investigative model and the Detective Standard Operating Procedures (SOPs) will ensure each item on the checklist is addressed. The Detective Division will use this same checklist for in-custody deaths until modifications are identified.
- Checklists and summary reports have been developed and adopted into Detective Division protocols on officer-involved shootings.
- A summary is now added to case files.
- Investigative files are formatted to include page numbers, investigators logs, and indexes.

Training

Training funds have been increased with one time only dollars in FY 04-05totaling \$371,500. These funds were dedicated to Taser replacement in accordance with minimum deployment levels for \$196,500, increase personnel services to support 2004 In-service increasing to 40 hours, and professional services for Training Division database conversion for \$80,000."

In FY 04-05 additional one time funds of \$95,000 was dedicated to personnel services to support 2004 in-service increasing to 40 hours. Chief Foxworth directed the Training Division to identify any personnel or resources needed to enhance training and equipment. Listed below are highlights of the training enhancements.

Chief Foxworth reinstituted 40 hours of in-service training for all sworn Police Bureau employees. In-service began in October 2004 and completed in June 2005. The 40-hour curriculum included training in:

Cultural competency: developed by the City of Portland's Bureau of Human Resources. This two-hour class focused on self awareness and perceptions individuals may have in their communication with others. The instructors also helped the officers examine the evaluations they made based on their observations of others.

Epilepsy: presented by the Epilepsy Foundation of Oregon. The one-hour class gave specific information on how to recognize and respond appropriately to citizens having partial brain seizures. These seizures are often misperceived as mental illness, substance abuse or other criminal activity. This training is offered as a condition of the Meija Poot settlement issued in December 2003.

Crisis Intervention training: the CIT coordinator provided a two-hour presentation recognizing schizophrenia, bi-polar disorder and major depression symptoms. Additionally, verbal deescalation techniques that have proven effective for communicating with mentally ill citizens were taught. During the second half of the class, officers learned about Project Respond (Project Respond is a 24 hour a day/7 day a week Mobile Crisis Response Team, that is funded by Multnomah County to assist anyone in a Psychiatric Crisis in Portland).

Taser: a 10-hour class certifying all officers in use of the X26 Taser. The class included an explanation of how the Taser works and research into its safety and reliability, as well as its appropriate use. The officers practiced loading, holstering, drawing and firing the Taser in a drill setting, then in scenario settings. Officers were also given the opportunity to volunteer to have the Taser used on them. They were required to pass a written test at the end of the training. The funding to purchase the Tasers and related equipment cost-\$236,000.

PRISim scenarios: The PRISim is an interactive video system and each officer went through at least two different decision-making scenarios using the PRISim simulator, and then is debriefed on his/her performance by a patrol tactics instructor. This is a scenario simulation machine that promotes good decision-making under stress. Chief Foxworth approved the expenditure of

Training Division budget funds for upgrades to the PRISim system that will include use of less-lethal tactical options.

Shooting at moving vehicles: The current Bureau policy allows officers to shoot at moving vehicles based upon the circumstances. Currently, during firearms training, the Training Division informs officers about the challenges associated with shooting at moving vehicles such as the difficulty of handgun bullets that effectively penetrate a vehicle, difficult of identifying the target, problems with a vehicles crashing if the suspect is shot. The Training Division continues to research other law enforcement agencies for best practices and procedures on shooting at moving vehicles.

The current Use of Deadly Force directive includes the following:

The member using deadly physical force must be able to clearly articulate the reason for the use of deadly physical force. Members shall not discharge a firearm at a person(s) in a moving vehicle unless one or both of the following criteria are met:

- a. To counter an active threat of death or serious physical injury to the officer or another person, by a person in the vehicle using means other than the vehicle.
- b. There are no other means available at the time to avert or eliminate the threat.

Members threatened by an oncoming vehicle should attempt to move out of its path instead of discharging a firearm at it or any of its occupants.

The Training Division instructs in three training areas to enhance techniques for officers:

- Officers have been trained in new techniques for how to safely remove people from vehicles. These new techniques will give officers lower level options to consider. A traffic stop video is being developed for community members. The video will address how traffic stops are conducted and demonstrate the techniques officers are taught.
- Officers are provided a refresher course on disengagements. An officer is taught how to evaluate the situation and reminds officers of the options they have. This refresher course gives points on how to gain distance, time and the ability to react from the best vantage point with the best resources available.
- Disengagement techniques are woven throughout all of the training offered. When instructing patrol tactics, in the in-service and Advanced Academy, officers are taught that there are times when a tactical retreat or disengagement is advantageous to avoid using unnecessary force. Another example is during Police Vehicle Operations (PVO) training, officers are taught when to disengage from a pursuit.

Other training techniques that have been instituted are described below:

• Advanced academy: after graduation from the 11 week Basic Academy, new officers attend an 18 week academy that includes classes in patrol tactics (including traffic stop procedures, removing individuals from vehicles, and de-escalation principles). The

academy also provides instruction on PVO, crowd control, and community policing principles and techniques.

- **Citizen Training** council: consists of community members who will work with the Training Division to assist identifying training needs, examine and review current training, and make recommendations on additional training needs. Community input on training issues is a vital component to assessing training needs.
- **Roll call training:** videos are issued on a regular basis to bring training topics to officers throughout the year. The videos update officers on tactical techniques, community policing practices, and revisions to city ordinances and policies.
- **Perspectives on Profiling:** as part of the in-service training, officers are receiving a three-hour course in the ethics and constitutionality of stopping vehicles. The course provides officers another perspective when making traffic stops. The issues of racial vs. criminal profiling, protecting the rights of the driver and maintaining ethical standards are part of the curriculum.

In addition, the Department of Police Safety Standards Training (DPSST) has introduced a new officer standard of 84 hours of training within a three year period for every sworn member. The reinstatement of the Bureau's annual 40-hour in-service now exceeds the state standard.

Directives

Directives encompass all written policy and procedures that Bureau members follow to perform their jobs. The Police Bureau publishes a Manual of Policy and Procedures on a regular basis. Bureau members are provided an individual copy and the manual itself is available online for the public to access.

Chief Foxworth made it a priority to research the best practices from other law enforcement agencies on policies that related to use of deadly force and officer involved shootings. He directed Bureau divisions such as Training, Detectives, and Internal Affairs to gather lessons learned on what should be improved, enhanced and changed regarding training procedures and investigations protocols.

In this report, new directives listed below are in effect. For a new directive, an Executive Order (a memorandum signed by the Chief) is issued that dictates compliance and/or amends a specific directive. The date of the Executive Order or the publication date of a new manual is considered the effective date of all the policies.

Several of these directives had public review. Copies of directives such as Use of Deadly Force, Review Boards, Discipline Process and Taser were distributed to the nine police advisory committees. Additionally, copies were provided to community groups such as the Albina Ministerial Alliance, the Community Police Accountability Review Team (CPORT) and others. The Bureau sought feedback from these same community groups when establishing the Review Board committee and the Citizen Training Council.

Below are some highlights of several directives on what changes were made.

335.00 Performance Review and Use of Force Review Boards

Directive 335.00 Review Boards is a new directive creating a Performance Review Board and a Use of Force Review board. The Chief signed an Executive Order for this directive with the effective date of May 11, 2005. Both boards include citizen and Bureau members.

The function of the Performance Review Board is to review all IAD investigations that have a sustained finding and where the proposed discipline is suspension without pay or greater, or has controverted findings. The PRB reviews cases the Independent Police Review returns for reconsideration, any requests for review by the Chief or an Assistant Chief, and any Equal Employment Opportunity (EEO) complaints.

The Use of Force Review Board's (UFRB) function is to review all officer involved shootings, any serious injury caused by an officer that requires hospitalization, all in-custody deaths, less lethal incidents where recommended finding is out of policy, and discretionary cases referred by the Chief or Assistant Chief.

The Use of Force Board also:

• Determines and recommends to the Chief whether or not the level of force used by an officer was within Portland Police Bureau policies.

Makes recommendations regarding the adequacy completeness of the investigation, the
findings of the investigation, the proper charges, and the level of discipline. The UFRB may
also suggest action items to address training or policy issues that have emerged from an
investigation or various investigations.

• In cases where discipline is recommended, the UFRB recommends a level of discipline that is consistent with the applicable City and Bureau rules, including obligations under collective bargaining agreements.

341.00 Discipline Process

Directive 341.00 Discipline Process became effective July 5, 2005. The new language on the types of discipline that can be administered is explained. The discipline process directive directly relates to directive 335.00 Review Boards (see above). Bureau members go before a Performance Review Board for performance issues or a Use of Force Board for issues involving the use of force.

1010.10 Use of Deadly Physical Force

Directive 1010.10 Use of Deadly Physical Force became effective August 1, 2005 with significant changes. New language on the sanctity of life is incorporated into the policy. All negligent discharges are investigated.

In addition, new language on shooting investigations has been included along with a new Communication Restriction Order that prohibits involved members from discussing the case with citizens and other members until after the investigation is complete. The responsibilities of the members involved in shooting investigations is more clearly articulated and clarified.

New language on shooting at and from moving vehicles is included.

1051.00 Taser

Directive 1051.00 Taser was revised in June 2005. New text includes a section on threat indicators for evaluating suspects prior to deploying the Taser. The policy for using the Taser includes using only the level of force necessary to control the situation. Added sections on the Bureau's levels of control and deployment considerations are included. This section includes reference to children and medically fragile individuals. The section on when medical treatment is required was expanded to also include children and those who are medically fragile.

In addition, a Taser Medical Safety Committee was created to include physicians, Emergency Medical personnel and Bureau members. The intent of this committee is to keep the Bureau up to date on any new medical concerns involving the use of the Taser.