



CITIZEN REVIEW COMMITTEE MEETING

Community Oversight of Portland Police Bureau

City of Portland / City Auditor
Independent Police Review (IPR)
Citizen Review Committee (CRC)

Minutes

Date: Wednesday, February 6, 2019 (meetings are typically held the first Wednesday of each month)

Time: 5:00 pm * *Please Note: agenda times are approximate*

Location: **Lovejoy Room, Portland City Hall**. 1221 SW 4th Ave. Portland, OR 97204

Present: Kristin Malone, Vadim Mozyrsky, Albert Lee, Candace Avalos, Jihane Nami, Julie Falk, Daniel Schwartz, Kayla Wade, Neil Simon, Clifford Bacigalupi, Jacob Clark, Constantin Severe, Dan Handelman, Debbie Aiona, Regina Hannon, Pamela Fritziimon, Christopher Kutruff

AGENDA

5:30 pm—5:35 pm Introductions and Welcome (CRC Chair Kristin Malone)
(Approved of December 5, 2018 meeting minutes)

5:35 pm – 5:40 pm Director’s Report (IPR Director Constantin Severe)

5:40 pm – 5:45 pm Chair’s Report (CRC Chair Kristin Malone)

- Chair Malone made a comment the comments by the OIR group were consistent with her thoughts on the case

5:45 pm – 6:45 pm **Appeal Hearing:** 2017-C-0264/ 2018-X-0004

Appellant alleged Officer A used inappropriate force when he pushed the Appellant to the ground during a protest. Appellant also alleged Officer A failed to provide direction to move back prior to their interaction.

- Chair Malone reminded the Committee that they are voting on this case based on the standard of review.
- Director Severe provided IPR’s summary of the investigation:
 - The case first came to the CRC at the September 5, 2018’s meeting. The Committee sent the case back for an additional investigation regarding videos that were not included in the original case file, and as well as additional witnesses that the Appellant would like to be interviewed.
 - IPR Investigator re-interviewed the Appellant, interviewed an additional officer and a civilian who witnessed the incident.
 - The investigator also took photos of the location of the incident at the intersection of SW 3rd and Salmon.
 - IPR gathered all the videos that was provided by the Appellant and some other videos from another case so that there would be multiple angles for this incident. There was a total of 4 videos.
 - The additional investigation did not change the RU Manager’s findings.
 - The Appellant was at this protest where he attempted to document an arrest of an individual by the Involved Officer and Witness Officer.
 - While documenting the incident, the Appellant was pushed from behind which caused him to step on a police bike which then drew Officer A’s attention and caused him to report concerns about his and the Witness Officer’s safety. Prior to this incident, there were other incidents where projectiles were being thrown at the police and other use of force events.
 - There was an NLG witness that IPR interviewed who observed the push. When asked to rank on the scale of 1-10 of the amount of force the Officer A used to push the Appellant, she ranked it as a 7.
 - The NLG witness did not see the Appellant kick or step on any bike. She was focusing on the individual being arrested.

- There was a Witness Officer. He was aware of the push, but he was focusing on another individual.
- The decision that the Committee needs to make is whether the push is appropriate and followed Bureau's policy.
- Chair Malone asked all Committee members to confirm that they've reviewed the file and received a confirmation that everyone had reviewed the file.
- The Appellant gave permission for the Committee to use his name.
- Mr. Kuttruff made a statement regarding his case:
 - On September 10, 2017 I was assaulted by Officer A while volunteering as an observer for the National Lawyer Guild wearing a bright green NLG hat. I was recording Portland Police arresting a person while taking her onto the ground.
 - No officer gave me any instruction to back off. I was trying to document the incident of the officers arresting the person as evidence. I wasn't able to do so because my video was lost when I fell onto the ground and dropped my phone.
 - NLG observers go through training and have standard protocols on how document and to interact with the police.
 - Without any instruction given to me, Officer A stood up, lunged toward me, and shoved me hard to the ground. I've sustained significant neck and back injuries.
 - In the case summary, Officer A went into great lengths to describe how he perceived me as a threat.
 - I had not crossed the police line and followed all instructions.
- Lt. Clark provided RU explanations for the findings:
 - Regarding allegation 1, Officer A described seeing the Appellant stepping on the bike.
 - The video evidence shows that Officer A and other officers repeatedly ordered the crowd to step back.
 - One of the videos filmed from behind the Appellant clearly shows the Appellant approaching Officers A and B. He was then nudged from behind by someone. The Appellant lost his balance fell toward Officer A and tripped over the bicycle. Officer A shoved the Appellant back by placing both of his hands on the Appellant's chest.
 - The Appellant during his interview stated that he was about 7-8 feet away from Officer A, but the video shows the Appellant was about 2 feet away from him. Officer A only took 1 step forward to push the Appellant. The Appellant was already standing on the police bicycle at the time.
 - Officer A did not violate the Bureau's use of force directive 1010. It was reasonable for the officer to believe the Appellant's action was a threat. His decision to shove the Appellant back was the least amount of force needed to create a separation needed to create safety for Officer A and B
 - It was unreasonable to expect Officer A to know that the Appellant was tripping over the bicycle.
 - Regarding allegation 2, the Appellant stated in his interview that he saw in a separate video Officer B directed a specific person to move back and it was clear in the video. In a protest event, it is unreasonable to expect officers to give directions to specific individuals. The video clearly shows the officers attempting to keep a group of people back and gave multiple orders for people to step back. It is reasonable for an individual in the crowd to interpret that the order was for everyone to move back.
 - Officer B gave a specific direction to an individual, as seen on the video, because he knew who the individual was. Giving a specific direction in that sense is reasonable. It is not feasible for Officer B to give specific directions to each individual during the protest.
- Director Severe made a comment the facts of this case are very clear. The Committee needs determine that whether or not the RU Manager's findings were reasonable.
- Mr. Simon asked Lt. Clark what Officer B's goal was when asking people to move back. It seems to be an effort to clear the street, but in this situation moving back meant people would be back on the street.
 - Lt. Clark responded that the Officers were trying to arrest an individual. They asked people to move back so that they could create a distance, so they could complete that arrest of the individual.
- Mr. Simon asked Lt. Clark training the officers received in order to use the flash bang grenades.
 - Lt. Clark responded officers who carry those devices all went to grenadier school.
- Chair Malone asked Director Severe to confirm that there were complaints generated from the flash bang incident and that those were separately investigated and evaluated.
 - Director Severe confirmed.

- Mr. Mozyrsky asked Lt. Clark what other options Officer A could have in this situation.
 - According to Lt. Clark, standing up and shoving is the quickest option. Another option is pepper spray, but it takes some time for the pepper spray to be effective. Another option is punching or use of a baton.
- Mr. Mozyrsky asked Lt. Clark if pepper spray is a higher or lower level use of force than a push.
 - Lt. Clark responded that it is a higher use of force.
- Ms. Falk asked Lt. Clark to explain his earlier statement regarding allegation 1 about how he found that it is reasonable for the Officer to perceive the Appellant as a threat.
 - Lt. Clark responded that Officer A was trying to arrest someone and in the corner of his eye, he saw the Appellant coming closer to him. Had he not been facing the ground and trying to arrest someone, he could have seen the Appellant tripping over the bike, but his actions were reasonable based on what he did perceive.
- Mr. Lee asked Lt. Clark whether his analysis would be the same even if there was another officer on the side.
 - Lt. Clark said that you can see in the video that people were surrounding officers. People were throwing projectiles at officers. Officers don't know where people are going to come at you. When officers are trying to make an arrest and then look up to see someone coming right at them, it is reasonable to perceive that as a threat.
- Chair Malone made a comment that there's a logistical and commanding issue in this situation. The officers were under-manned and surrounded. This would not have happened if there was a different tactical decision was made prior to the incident. Given the standard that the Committee has to follow, she is having hard time challenging the findings in this case about the specific officers' actions toward the Appellant rather than the decisions that put them in that position.
- Ms. Nami asked Lt. Clark if there's any training or directive that talks about engaging with 3rd parties like the media.
 - Lt. Clark responded that officers are expected to make decisions based on an individual's behaviors. There's no separation between media and regular individuals.
- Vice Chair Avalos said she is frustrated about using the standard of review to judge officers' use of force. She is concerned about Officer A's level of force.
- Mr. Simon asked the Appellant to elaborate on the training he received as an NLG observer when it comes to complying with police officers' orders.
 - The Appellant said legal observers were given clear directions on how to respect police barriers, comply with orders, and not interfere with arrests.
- Mr. Lee asked the Appellant if he was told to comply with both general and specific directions from the police?
 - The Appellant said there is no distinction made. They have to comply with any directions from the police.
- Chair Malone asked the Appellant if he tripped over a bike while falling backward.
 - The Appellant said that, yes, someone shoved him from behind and he gently stepped on a bike. As he regained his balance, he stepped back.
- Mr. Lee asked Lt. Clark regarding whether the investigator measured the Appellant's distance from Officer A. He asked whether Lt. Clark's findings would be different if it was 2-3 feet versus 4-6 feet?
 - Lt. Clark said no measurement had been taken, but that his estimate was based on the fact that Officer A took one step forward and did the shove. If the Appellant was further away, Officer A would have not have been able to reach him.
- Chair Malone made a comment that police bikes were used as a perimeter to keep people out, and that it seemed from the video that the Appellant tripped over a police bike that was behind him, suggesting he was inside the barrier.
 - The Appellant responded that the police bikes were brought in behind him after he had taken his filming position, and he was not aware that they were there until after the fact.
- Public comments:
 - A community member who did not share her name reported that she was at the protest. Officers were giving confusing directions and they need to take responsibility for their actions. Officer A should have assessed the situation before pushing the Appellant.
 - Mr. Handelman made several comments:
 - The end of the arm is 2 feet away from the body and the Officer had to take a step to reach the Appellant.
 - Officer A should have given directions before pushing the Appellant

- The amount of force the Officer used wasn't being questioned by the Bureau.
 - Bikes laying on the ground should not be assumed as a barrier
 - Commands given by officers were confusing since stepping back is meant to step on the street
- A community member who did not share her name made a comment that Officer A should have been able to determine what is a threat and what is not. If officers cannot determine that then they need better training.
- Mr. Kutruff made some rebuttal comments:
 - The distance estimated by the Bureau is clearly false. The video clearly shows that is not the case.
 - Allegation 2 should not be a point of dispute
 - Officer A should have taken the time to assess the situation and notice my legal observer's hat
- Ms. Falk made a comment there should be a debriefing to Officer A regarding allegation 1.
- Mr. Mozyrsky said that in light of the standard of review, it is important for him to recognize that Officer A's statement of the event makes sense to him. There's no question that people were told to move back, and a person could believe his version of events.
- Chair Malone made a comment that directive 1010 section 3 requires that "members" shall issue a verbal warning when possible prior to use any force. The directive did not require the member using force to be the same member that issues the warning. If other officers issued the warning to the Appellant, Officer A would still be within the policy as written.
- Mr. Schwartz said that allegation 2 was written in a way that make it sounds like Officer A has to actually give the verbal warning.
- Mr. Simon and Ms. Wade agreed that regarding allegation 1, it was reasonable for Officer A to shove the Appellant, but there should be a default to debriefing officers in this kind of cases. Officer A could have de-escalated the situation by giving verbal warnings.
- Ms. Falk and Vice Chair Avalos said they had a hard time seeing the Appellant as a threat to officers.
- Mr. Lee said he felt that Officer A was stressed about the whole situation and lashed out at the Appellant since he was the closest person.
- Ms. Wade asked Lt. Clark if he would have changed the findings if the Appellant were more than 2-3 feet away?
 - Lt. Clark responded that if the Appellant was far enough away then Officer A would have time to stand up and address the person.
- Ms. Falk asked Lt. Clark if there will be an informal debriefing to Officer A.
 - Lt. Clark did not know.
- Mr. Schwartz asked Captain Bacigalupi what the process is for a formal debriefing.
 - Capt. Bacigalupi described it as a debriefing performed by the RU Manager or whoever is in charge of that unit. It is also documented in a written memo and becomes part of the officer's file.
- Director Severe explained that if the Committee decides to add a debriefing, then the Committee must articulate what they would like to be debriefed.
- Mr. suggested that as part of the debriefing process, the Officer should watch the video and observe his and the Appellant's behaviors.
- Mr. Lee expressed his belief that the debriefing process is worthless.
- Chair Malone suggested that a debriefing should address the way officers should assess the situation and evaluate threats when it comes to dealing with members of the media.
- Vice Chair Avalos asked Lt. Clark if his exonerated finding means the use of force was appropriate and still within policy or the use of force was inappropriate but still within policy?
 - Lt. Clark said that the use of force was appropriate and within policy.
- Chair Malone made a motion to affirm allegation 1 and add a debriefing regarding how Officer A should interact with media and legal observer according to directive 635.10. There's also should be a conversation about role of different officers during this kind of situation. Officers who are maintaining the perimeter vs. officers who are arresting people. The debrief should also include the evaluation of alternatives outside of shoving. This was seconded by Mr. Schwartz:
 - Ms. Falk: YES,
 - Ms. Nami: YES,
 - Mr. Simon: YES, internal dialogue is essential for officers to do better.

- Mr. Schwartz: YES, Officer A should consider using less force.
- Vice Chair Avalos: YES
- Chair Malone: YES, Officer A should be debriefed
- Mr. Lee: NO, the debrief does not make sense.
- Mr. Mozyrsky: NO, the debrief does not make sense.
- Ms. Wade: YES, an alternative option to not use force should have been considered.
- Committee voted 7-2 to affirm allegation 1 and add a debriefing.
- Symbolic vote as if evaluating based on the preponderance of evidence standard:
 - Ms. Falk: ABSTAINED
 - Ms. Nami: EXONERATED with debriefing
 - Mr. Simon: ABSTAINED
 - Mr. Schwartz: SUSTAINED
 - Vice Chair Avalos: SUSTAINED
 - Chair Malone: NOT SUSTAINED
 - Mr. Lee: SUSTAINED
 - Mr. Mozyrsky: ABSTAINED
 - Ms. Wade: SUSTAINED
- Mr. Schwartz made a motion to affirm allegation 2. This was seconded by Mr. Mozyrsky:
 - Ms. Falk: YES,
 - Ms. Nami: YES, based on the standard of review
 - Mr. Simon: YES, based on the standard of review
 - Mr. Schwartz: YES, based on the standard of review
 - Vice Chair Avalos: YES, based on the standard of review
 - Chair Malone: YES, based on the standard of review
 - Mr. Lee: YES, based on the standard of review
 - Mr. Mozyrsky: YES, based on the standard of review
 - Ms. Wade: YES, a general verbal warning was given
- Committee voted 9-0 to affirm allegation 2.
- Symbolic vote using the preponderance of the evidence standard:
 - Ms. Falk: ABSTAINED
 - Ms. Nami: EXONERATED
 - Mr. Simon: EXONERATED
 - Mr. Schwartz: EXONERATED and add a debriefing
 - Vice Chair Avalos: EXONERATED
 - Chair Malone: EXONERATED
 - Mr. Lee: SUSTAINED
 - Mr. Mozyrsky: ABSTAINED
 - Ms. Wade: EXONERATED

6:45 pm – 7:00 pm New/Old CRC Business

- Chair Malone explained that Commissioner Fritz, who originally supported bringing the Committee’s proposed code changes involving the standard of review to City Council, is now changing her position at the recommendation of the City attorney and would like to wait a year for the settlement agreement to be over and as well as for collective bargaining negotiations with the PPA.
- Chair Malone, Mr. Mozyrsky, Mr. Lee, and Mr. Simon met with Commissioner Hardesty’s Policy Director who also expressed similar concern as Commission Fritz.
- Ms. Falk said she and Ms. Houck met with Commissioner Eudaly about the standard of review and the Commissioner was very enthusiastic about changing it.
- Chair Malone asked the Committee if they would like to continue pushing this issue. Another option is to wait a year for the settlement agreement to be over and push this issue as part of bargaining.

- Mr. Simon said he is optimistic that the Committee can continue to build public support and keep this on Commissioner Hardesty's agenda.
- Mr. Mozyrsky noted that Commissioner Hardesty is currently focusing on getting out of the Joint Terrorist Task Force. The Committee should continue engaging her office after the vote.
- The Committee agreed to continue meeting with Council members and stay ahead of the bargaining negotiation.
- Mr. Simon recalled that Commissioner Hardesty's staff requested that the Committee send him couple bullet points about barriers in the PPA contract. He was also interested in the idea about a public event about this issue. Mr. Simon is more than happy to draft the concept note on what a public event would look like.
- Chair Malone said she would like it if any CRC member who can would show up to the Council Appeal Hearing. She wrote a memo to City Council that highlighted the history and the Committee's opinion on the case and will make sure it is circulated to the group.

7:00 pm—7:20 pm Workgroup updates: Please provide the following information —

- 1) Brief summary of the goals and objectives of your workgroup
- 2) Date of last meeting
- 3) Brief summary of the work done at your last meeting
- 4) Next scheduled meeting
- 5) Main topic to be discussed/addressed at the next meeting
- 6) Any assistance from IPR or CRC needed to achieve your goals

ACTIVE WORKGROUPS

1. Outreach Workgroup (5 min.)

MISSION STATEMENT: The Outreach Workgroup engages the community to raise awareness about the Citizen Review Committee (CRC), gather concerns about police services and accountability, and identify issues for the CRC to address. Following up with appellants and others community requests will supplement current work group tasks. Additionally, outreach committee members will serve as point for ongoing communications with IPR, the City, the Bureau, community members and/or act as the face of CRC.

Chair: Neil Simon / Members: Vadim Mozyrsky

IPR staff: Irene Konev, Community Outreach Coordinator

- Mr. Simon made a comment the Workgroup can help with doing outreach for the Crowd Control Forum and the Council Appeal Hearing.

2. Recurring Audit (5 min.)

MISSION STATEMENT: The Recurring Audit Workgroup seeks to improve accountability of IPR and the Portland Police Bureau by reviewing closed cases to ensure procedures, policies and protocols are followed and will recommend improvements, if necessary.

Chair: Daniel Schwartz / Members: Hilary Houck, and Jihane Nami

- Recurring Audit Workgroup is reviewing the files that IPR has identified to get a feel of specific categories that the Workgroup would like to focus on

3. Crowd Control Workgroup (5 min.)

MISSION STATEMENT: The Crowd Control Workgroup examines existing crowd control policies, training, and tactics of the Portland Police Bureau, reviews crowd control best practices, legal standards and other information, and makes appropriate recommendations.

Chair: Candace Avalos /Members: Andrea Chiller, and Kayla Wade

- Vice Chair Avalos said the Workgroup has been meeting to discuss logistics for the Crowd Control Forum. The Forum is currently set for February 27 at PSU. The format will be multiple table discussions on various crowd control related topics. There will be a facilitator at each table who will be taking notes.
- Vice Chair Malone would like people to reply to her email if they can attend the Forum.
- The Workgroup is partnering with LECC in hosting this event.
- Mr. Schwartz asked Vice Chair Avalos if the Workgroup would like to ask PPB to participate in this.
 - Ms. Avalos said the group is trying to gather community concerns and community members may not feel comfortable having PPB officers present. PPB members might be invited to follow-on events at later stages.
- Vice Chair Avalos said she will have the flyer for the forum ready for the Committee to distribute by next Tuesday.
- Ms. Nami asked Vice Chair Avalos if the flyer will be in other languages, and whether there will be free parking at PSU for this event.
 - Ms. Avalos said Ms. Konev had brought this up before and we could make that work. Part of the reason why the Workgroup decided to have this event at PSU because it is a centralized location and accessible via transit.
- Mr. Simon asked Vice Chair Avalos if people need to RSVP for the Forum.
 - Ms. Avalos said people can just show up.
- Ms. Avalos noted that she is still waiting for Assistant Director Mortimer to get back to her on whether if the Workgroup can use Google Drive to collaborate.
- Director Severe said he will check with Assistant Director Mortimer.

4. Use of Force Workgroup (5 min.)

MISSION STATEMENT: The Use of Force Workgroup examines Portland Police Bureau use of force policies, directives, training and implementation in order to recommend and support any needed change in Portland Police Bureau use of force.

Chair: Kristin Malone / Members: Kayla Wade

7:20 pm —7:45 pm Public comment and wrap-up comments by CRC members

8:45 pm Adjournment

- Ms. Aiona made a comment that she discussed the standard of review issue with Mr. Hager several times and he keeps telling her the DOJ will not object the CRC's proposal. She also would like the Crowd Control Workgroup to reach out to the disability community about the Forum and have a sign language interpreter
- Mr. Handelman made several comments:
 - He thanked Director Severe for reading the whole Director's Report out loud.
 - IPR just hired a new investigator who was previously a police officer. Mr. Handelman's understanding is that IPR doesn't hire former police officers anymore, so he would like to hear more about it.
 - He was able to testify at the OIR hearing this afternoon.
 - The Training Advisory Council had recommended the Bureau not to use the word "good guy" and "bad guy".
 - The City can open bargaining anytime. The Committee should continue to push hard to include the standard of review as part of the bargaining.
 - There's no info about the Crowd Control Forum on IPR's website.
 - Regarding the language on the standard of review, the Committee could propose: "if it is consistent with the collective bargaining agreement then the CRC standard of review will be preponderance of evidence otherwise it would be reasonable standard ...in the interim, CRC will always take a vote on the preponderance of evidence."
- A community member who did not share her name commented that, in Portland the media can be anyone with a that names themselves media. It might be helpful for the CRC to attend some of these protests.

To better serve you, a request for an interpreter or assisted listening device for the hearing impaired or for other accommodations for persons with disabilities should be made three (3) days prior to the meeting—please call the IPR main line 823-0146 (or TYY 503-823-6868).

Visit the website for more information regarding the Independent Police Review division, Citizen Review Committee, protocols, CRC meeting schedules, and approved minutes: www.portlandoregon.gov/ipr.

CRC Members:

- 1. If you know you will not be able to attend a CRC meeting or that you will be missing a significant amount of a meeting, please call or e-mail IPR in advance so that the CRC Chair may be made aware of your expected absence.*
- 2. After this meeting, please return your folder so IPR staff can use it for document distribution at the next CRC meeting.*

**Note: agenda item(s) as well as the meeting date, time, or location may be subject to change.*