

## **The Oregonian**

# **Retired DA Weighs in on Portland's Proposed Policy to Compel Cops to talk After Shootings**

*By Maxine Bernstein*

*August 24, 2017*

A retired veteran Multnomah County prosecutor has been quietly watching from the sidelines the City Council's evolving efforts to draft a police policy that would allow internal affairs investigators to compel Portland police officers to be interviewed within 48 hours after using deadly force.

But now he's speaking out.

Former chief deputy district attorney Norm Frink, who retired in 2012 after 35 years working in the district attorney's office, said he supports the city's move to conduct parallel, but separate criminal and internal administrative investigations into an officer's use of force.

But he has several concerns about the revised proposal.

He cautions that the internal affairs investigation needs to be sufficiently walled off from a criminal investigation, and he's concerned the current proposal doesn't ensure that. He questions why the language doesn't clearly require discipline of an officer who refuses to give a compelled statement. And he wonders why the city would allow officers who are witnesses to a police shooting to give a detailed statement to union representatives before they're required to talk to internal affairs.

He said it's incumbent on city officials and the city attorney to consult with U.S. Department of Justice lawyers, as well as the Multnomah County district attorney (despite their legal differences) to iron out the details of the policy before they regret adopting one that doesn't accomplish what they're seeking.

District Attorney Rod Underhill had advised police in March to hold off on internal affairs interviews until completion of criminal investigations in deadly force cases. He was concerned that compelled statements could violate an officer's due process rights and make an officer immune from prosecution.

The City Council initially intended to adhere to Underhill's advice, but then reversed course after hearing a torrent of community criticism.

Under the proposed policy now, internal affairs would be able to compel an officer who used deadly force to give a statement within 48 hours of the incident.

Frink called Underhill's concerns reasonable and he had shared them for many years.

But now he said he supports the city's move to press ahead for compelled statements from officers soon after a deadly force encounter, as long as the criminal and internal affairs investigators are kept completely separate.

To keep a sufficient wall between the criminal and internal administrative investigations, Frink said any information from the internal affairs inquiry must not be input into the same computer database as the one used by homicide detectives, and each side shouldn't report to the same chain of command. The different divisions now report to different assistant chiefs, but ultimately to the chief of police and police commissioner.

Frink said he'd support the city having an outside agency conduct criminal investigations of Portland police shootings and suggests the city seriously consider that, with those inquiries subject to oversight by the county district attorney.

"We were frankly late to the game in eliminating that rule," Mayor Ted Wheeler said of the 48-hour rule that required police internal affairs to give an officer involved in a fatal shooting that much time before taking their statement

Frink said he's concerned that language in the current proposed police directive would allow for a compelled "public safety statement" at the scene of the shooting, which would be shared with criminal investigators, and thus grant that officer immunity from any potential prosecution.

If directed by an on-scene supervisor, the proposal states, the officer who has used deadly force "shall provide a public safety statement," compelled to answer seven questions at the scene: Did you fire a single or multiple shots? Did the suspect fire any shots? What is the direction of the shot (s) fired by officers and suspects? What is the location of injured persons? What are the description of at-large suspects and direction of travel? When was suspect last seen? What is the description of any weapons that a suspect had?

"That's what some unions across the country have wanted: A compelled statement to eliminate any possibility of a criminal conviction," Frink said.

City Attorney Tracy Reeve said the public safety statement will only be compelled from an officer who has used deadly force in "extremely limited circumstances." It will only be sought when an on-scene supervisor finds it necessary to immediately get such information "to protect life and/or to ensure public safety," and that information can't be obtained from other officers or other witnesses to a shooting or other use of deadly force.

"The City acknowledges that the District Attorney has concerns that were a criminal prosecution to occur in a case in which a public safety statement was taken from an involved officer, an argument could be made that the compelled public safety statement violate the defendant's right against self-incrimination," Reeve said. "We believe an Oregon court would conclude that the Public Safety Statement should not be admitted into evidence in any criminal trial of the officer for that reason."

Frink , who has reviewed each iteration of the proposed directive, said the most recent revision doesn't make that crystal clear.

Frink further argued that the proposed policy doesn't make it clear enough that an officer who declined to grant an interview to internal affairs investigators when compelled to do so would face discipline.

Under the revised proposal, an officer would be informed when ordered to give a statement to internal affairs that they would be "subject to discipline, up to and including termination, for failing or refusing to answer the questions."

Frink questioned why the city wouldn't use stronger language, saying an officer who refused to give such a statement "will" or "shall" face discipline.

The City Council will hear the latest proposal at 2 p.m. Thursday in Council Chambers.

# The Portland Mercury

## Why the Larry O'Dea Shooting Still Matters

*By Dirk Vanderhart*

*August 23, 2017*

In the last year, no case has demanded the attentions of Portland's civilian police oversight office like the Larry O'Dea shooting.

The Independent Police Review (IPR) assigned two of its seven investigators to piece together the morning in April 2016 when O'Dea, the city's former police chief, mistakenly shot a friend during a camping trip, and the various actions (and inactions) that followed.

And now, we finally know a bit about how the investigation shook out. Last week, the Mercury broke the news that both Mayor Ted Wheeler and Portland Human Resources Director Anna Kanwit had found O'Dea violated three city rules after the shooting.

O'Dea brought "reproach and discredit" to the bureau and city by not being more forthright about the incident, they found, and lied to city investigators about what he told his top adjutants at the police bureau about the matter.

"If you were still employed by the police bureau," Wheeler wrote in a memo to O'Dea dated July 6, "I would terminate your employment."

Taken one way, the outcome doesn't much matter. O'Dea retired under a cloud in June 2016, as both an internal city review and criminal investigation played out. While his violations will go into the former chief's personnel file from nearly three decades at the city, it's unclear that will hamper him going forward.

Still, the imprint of the O'Dea shooting lingers. As Portland prepares to welcome a new police chief in October, fallout from the case has raised questions of a cover-up, and soured the relationship between the police bureau and the independent office assigned to investigate its officers.

"We had the chief shoot someone and we didn't have a city investigation for a month," Constantin Severe, director of the IPR, tells the Mercury. "There have been a lot of consequences that have flowed from that. There are some of these consequences that are going to be with us for a long time."

O'Dea was camping with friends in remote Harney County on April 21, 2016 when the shooting occurred. The party was hoping to kill ground squirrels that morning, but an errant shot from the chief's .22-caliber rifle struck his old friend Robert Dempsey.

The authorities were called, and a Harney County deputy's report suggested that O'Dea appeared intoxicated at the scene, something he has denied. O'Dea told the deputy that he thought Dempsey must have mistakenly shot himself while holstering a pistol. He made no mention of the fact that he was Portland's police chief, and he went home without being questioned further.

By the time the following Monday rolled around, O'Dea was willing to cop to his involvement. Records show he alerted Mayor Charlie Hales to the incident, and that he then explained what happened in a routine meeting with his four assistant chiefs.

According to a memo Kanwit sent to Wheeler in June of this year—heavily redacted for public consumption—O'Dea left a distinct impression on his assistants that the matter was being handled via proper channels and investigations were under way.

Mike Crebs, then an assistant chief, told investigators he assumed a criminal inquiry was happening. It wasn't.

Most of the assistants also believed O'Dea had informed the bureau's Professional Standards Division, which investigates cases of police misconduct, by the time he met with them. He wouldn't inform Professional Standards Captain Derek Rodrigues about the shooting until after the meeting.

"The overall impression from the investigation is that O'Dea allowed certain assumptions to be made but that he took no action to ensure that important and critical information was shared," Kanwit wrote.

The result of that obfuscation? A criminal inquiry into O'Dea's involvement didn't begin until mid-May 2016, when the Harney County Sheriff's Office finally learned O'Dea had shot Dempsey (via an interview with Dempsey himself).

More outrageous, neither PPB staff nor Hales' office bothered to mention the incident to IPR, the appropriate office to investigate misconduct by the police chief. IPR learned of the shooting via a report by Willamette Week on May 20, 2016, nearly a full month after it occurred.

"Multiple IPR staff met with multiple people in the police bureau and this just never came up," says Severe. "It is confounding. It definitely had an effect on the relationship between the police bureau and IPR."

As the Mercury noted in a story at the time, O'Dea appears to be the only Portland cop in recent memory who was involved in an off-duty shooting and not immediately placed on leave.

The silence around his gaffe is especially conspicuous given something Kanwit noted in her memo to Wheeler: On April 25, 2016, the same day O'Dea was misleading people about the status of investigations into his own mistake, an on-call Portland cop named Daniel Chastain was arrested for crashing a city-owned vehicle while driving drunk.

"O'Dea had insisted that information about the arrest of an officer for driving under the influence be made public," Kanwit wrote.

O'Dea was ultimately indicted in Harney County. Following an investigation, a grand jury there found probable cause to charge him with negligent wounding, a misdemeanor. But due to a deal struck with Dempsey, his friend and victim, the case was dismissed and partly blotted from existence (it does not appear in an online database).

Though he's clear of criminal consequences, it's still possible O'Dea's numerous breaches of city policy—which also include lying to human resources and internal affairs investigators looking into whether he properly reported the complaints of a subordinate—could affect his prospects.

Kanwit tells the Mercury that she'd consider releasing the former chief's personnel file to prospective employers. The state's Department of Safety Standards and Training (DPSST), which is responsible for the licensure of law enforcement officers, is also looking into O'Dea's conduct.

"If the chief is found to violate the moral fitness standards of the board it could result in the revocation of his certifications," says DPSST Investigator Kristen Hibberds. The agency is waiting on more information from the City of Portland before making a conclusion.

In the meantime, questions remain as to why no one told IPR that the police chief had shot someone. Much of that information might come to light when the PPB issues findings in IPR's

investigation of Rodrigues, the professional standards captain who learned of the shooting four days after it occurred. That investigation ended in February|

O'Dea collects an annual pension of \$176,229.72.

## **Hall Monitor: Nick Fish's Next Fight**

*By Dirk Vanderhart*

*August 23, 2017*

### **Faced with a Cancer Diagnosis, the City Commissioner is Staying on the Job—And Mulling Next Steps**

During a recess in last week's Portland City Council session, I chased down Mayor Ted Wheeler.

I was interested in getting more details on a letter he'd sent to former Police Chief Larry O'Dea that laid out some stark findings in strong language. But before I could ask my first question, Commissioner Nick Fish intervened.

"I need to speak with him," Fish told me matter-of-factly, urging the mayor over to his office. Wheeler said he needed coffee. Fish said no, they had to speak.

It was an uncharacteristically gruff moment for one of City Hall's more affable and savvy operators. I wondered what sort of fight the two elected officials, frequently allies, were having behind the closed door of Fish's personal office.

The next day, it made sense.

On Thursday morning, Fish's staff released a statement announcing the eight-year city commissioner had been diagnosed with stomach cancer.

"Over the past few months, I experienced weight loss, poor appetite, indigestion, and abdominal pain," Fish said in a statement. "A recent CT scan rang a number of alarm bells. A follow-up laparoscopy this week confirmed our worst fears: adenocarcinoma of the abdomen."

It is frightening news for Fish and his employees, of course, and the outpouring of support—from colleagues, from community members, from social media antagonists—has been enormous. When I visited Fish's office last Friday, Commissioner Chloe Eudaly had popped in from vacation to wish him the best.

And given the uncertainties, it was good to hear Fish repeating his bullish outlook last week. He's confident in the abilities of his doctors at OHSU, and plans to keep a full schedule as he undergoes outpatient chemotherapy.

"The medicine will weaken my immune system, but should not prevent me from continuing to serve on the city council," Fish said in his statement.

That's in the short term. Fish has yet to figure out what this means for his long-term service on city council.

Prior to his diagnosis, the 59-year-old commissioner, in office since 2009, made plain his intention to run for re-election. But in light of the fight ahead, he's trying to determine whether a potentially grueling campaign is worth it.

Don't expect word on that to come too soon. There are too many outstanding questions.

If Fish does decide to run (he's already got one confirmed challenger in environmental advocate Julia DeGraw), he'll be the formidable incumbent he was during his last race in 2014, with the name recognition and financial backing to run roughshod over those who would unseat him.

Yes, it's true that Portland's still trying to figure out precisely what the formerly ironclad incumbent's advantage means in light of Eudaly's victory over Steve Novick last year. But it's hard to think Fish would be anything other than the heavy favorite.

If Fish makes the decision to duck a political fight to focus on his health, though, it may be a free-for-all.

Would candidates like Jo Ann Hardesty—currently planning a run against Commissioner Dan Saltzman—gravitate toward a potentially easier race? Would other seasoned local politicians throw their hats in the ring? It's too early to tell, and far, far too early to count Fish out.

Regardless: We wish him the best.

## OPB

### Tensions Rise Between Portland Neighborhood and Homeless Village

*By Cass Ray  
August 24, 2017*

**A Portland neighborhood association scrapped a proposed rule that would have excluded some houseless residents from becoming voting members.**

The Overlook Neighborhood Association — under pressure from the city of Portland — pulled support for the bylaw amendment last week. Hazelnut Grove, a houseless village within the neighborhood, benefited from the decision, but tensions escalated.

Vahid Brown, co-founder of Hazelnut Grove and the village's liaison to the city, said in a recent interview on "Think Out Loud" that the proposal amounted to disenfranchisement of houseless community members.

"They're making decisions about houseless people. Houseless people are a part of that community and should be involved in that conversation," he said.

Kaylee Domzalski/OThe proposal would have required prospective neighborhood association members to provide a legal address. The changes would have made exceptions for registered nonprofits and members of city-recognized houseless communities. Association board chair Chris Trejbal acknowledged in an interview last week that the proponents of the bylaw change sought to exclude transient campers and other homeless people in the neighborhood from participation.

"We would like many voting members to come out," Trejbal said. "But for our neighborhood, we think that it's more than just walking in, dropping a sleeping bag in Overlook Park, and then showing up and saying, 'I get to vote.'"

Overlook came under scrutiny when city officials learned about the bylaw proposal. The Portland Office of Neighborhood Involvement (ONI) sent a letter on Aug. 11 warning that the association risked violating city standards prohibiting income-based discrimination and striving to foster diversity in neighborhood involvement.

“If the Overlook Neighborhood Association were to move forward with adoption of such a restriction, ONI would have to consider exercising its authority to suspend, and perhaps eventually terminate, the Overlook Neighborhood Association’s benefits of formal recognition,” the ONI’s Brian Hoop wrote in the letter. “This is not a decision that ONI would lightly make.”

Trejbal pushed back against questions about whether Overlook sought to specifically exclude members of Hazelnut Grove, which has been a point of contention in the neighborhood since Hazelnut Grove’s founding in 2015.

“I would welcome one of them on the board, because honestly, we don’t have good communications right now,” Trejbal said. “If they were coming to our meetings on a regular basis, we could really improve relations. But they don’t come.”

Marvin Ross, a resident of Hazelnut Grove, says he has come to about four neighborhood association meetings over the past two years. He said he felt disregarded when the association brought up the proposal to exclude houseless residents like him.

“Even though we may be houseless, we are not invisible,” Ross said. “Just to take that away from people, to say, ‘You’re useless, you’re worthless,’ that’s degrading in and of itself.”

Trejbal’s says he’s unhappy with the city’s approach to Hazelnut Grove. He claims that the city had initially promised to move the site.

Jamey Duhamel, director of policy for Portland City Commissioner Chloe Eudaly, argued that the city has worked hard to address the neighborhood’s concerns about Hazelnut Grove, but that moving the camp is not a viable option.

“We’ve really tried to work very actively with the neighborhood and Hazelnut Grove to identify issues and mitigate those concerns,” she said. “So we’re doing our part to make sure that things are safe and they’re working well, and we’re very confident that Hazelnut Grove is doing the same.”