

## The Oregonian

# Report: Don't allow Portland Cops Involved in Shootings to View Video Evidence Before Interview

*By Maxine Bernstein  
February 9, 2018*

Consultants want Portland police to prohibit officers who use deadly force from viewing video evidence from a shooting scene before they're interviewed. The bureau also needs to place a greater focus on whether an officer's tactics before a shooting complied with bureau training and policy.

The recommendations are among 26 offered by the consultants, California-based Office of Independent Review Group in a new report released Thursday. They reviewed three Portland police shootings in 2014 and three in 2015. The report, the consultant's fifth review in the last eight years, will be presented to City Council on Feb. 15.

Some problems the consultants identified in shootings from this period echoed concerns that arose in past cases: sergeants who don't retain their supervisory role but get involved in tactical action, delays in providing emergency medical aid to wounded suspects and lapses of days before officers involved in a shooting are interviewed by investigators.

Other concerns were new. The consultants questioned why the Police Review Board, which analyzes officer-involved shootings and determines if any policies were violated, no longer considers critiques done by the police training division. The training analysis used to be shared with the board, but under a recent policy change, the bureau decided to have the training review done after the board makes its findings.

"We fail to understand the rationale for the decision to delay the preparation of the training analysis until after the Review Board renders its determination," the consultants wrote. This would deprive the board of the training division's insights and expertise, their report said.

Chief Danielle Outlaw said she supports each of the recommendations and will work to have the bureau adopt them.

"Over the past several years, the Police Bureau has made significant changes to its directives, procedures and training," Outlaw wrote in a response to the consultant's report. "However, there is still room for enhancements."

Yet while Outlaw said she agrees with prohibiting an officer from viewing video of a critical incident before the officer gives a statement to investigators, she noted that changing the practice may require collective bargaining with the police union, specifically if it involves footage from body-worn cameras.

The bureau, however, hasn't equipped its patrol officers with body cameras, and there's no timeline to do so.

The video evidence cited in the report was obtained from nearby businesses that captured a shooting or police encounter. The bureau's current policy is to evaluate on a case-by-case basis whether video can be shown to officers ahead of an interview. But the consultants criticized the policy and argued that it should never occur.

"It is critical that officers' recollection not be influenced, consciously or subconsciously, by a video or audio account of the incident," their report says.

The Police Bureau needs to develop clear policy that protects the integrity of investigations by "insulating officers from having their recall contaminated by video evidence prior to being interviewed," the consultants wrote.

Investigators need a "pure statement" from an officer involved in a shooting. Afterwards, they can play a video for an officer to help them recall additional details or clarify their initial statement, the report recommends.

Going forward, any decision to show a video to an officer involved in a shooting before a detective's interview will require the Portland police chief's approval, according to Chief Larry O'Dea.

The consultants praised the city for eliminating the so-called "48-hour rule," which required officers who fired their guns to be given at least a two-day notice before they were interviewed by internal affairs investigators about their actions. Internal affairs investigators should interview an officer about a shooting the day of the incident, the consultants wrote.

"We look forward to the time in which we review officer-involved shootings where this best investigative practice has been implemented," they wrote.

The consultants also criticized Multnomah County prosecutors' handling of a grand jury review of an officer's shootout with a suspect in Southwest Portland in March 2014. They found the prosecutor presented extremely "prejudicial" information about the man who fired at Officer John Romero that was unnecessary and tainted the jury.

Romero, 36, was wounded in a shootout that day with fugitive Kelly Swoboda. Swoboda was wanted in connection with a late January 2014 kidnapping in Clackamas County and was confronted March 12 on Southwest Cheltenham after police responded to a report of a suspicious van near the Hillsdale library branch. There had been earlier reports of a suspicious van in the neighborhood approaching students walking to and from school. Romero was shot once in the right hand and returned fire, killing Swoboda.

During the grand jury hearing, a prosecutor called as a witness a Clackamas County detective, who was investigating Swoboda for the prior kidnapping of a woman. The prosecutors also asked leading questions, eliciting agreement from the Clackamas detective that Swoboda had transformed his van into a "moveable dungeon or torture chamber," which was "speculative and of the highest level of prejudice," the consultants said.

Prosecutors countered that they believed the information was relevant because it explained that Swoboda was likely fearful of detection by police when he encountered Romero because the van held evidence of his prior alleged offense.

Consultants disagreed, citing their past experience as federal prosecutors and trial attorneys.

"The grand jury presentation should have focused on the overwhelming evidence that Officer Romero acted in self-defense when he used deadly force," the report said. "Unfortunately the grand jury proceeding was infected with evidence about Swoboda's history, character, and presumed intent that was prejudicial, speculative, extraneous, and of extremely slight probative value."

Recently, lawyers for 17-year-old Quanice Hayes, who was shot and killed by police a year ago in Northeast Portland, complained that the grand jury hearing was "inherently one-sided" with evidence designed to "vilify Quanice" while painting the officer in a "highly positive light, making it seem as if the officer had no choice but to shoot Quanice."

The consultants reviewed the police shootings of Swoboda, March 2014; Paul Ropp, April 2014; Denoris McClendon, September 2014; Ryan Sudlow, February 2015; Michael Harrison, May 2015; and Alan Bellew, June 2015. In four of the six shootings, the person police shot were either armed with a gun or a replica of a firearm.

Some of the consultants' other findings and recommendations:

--An officer's commander and the Police Review Board should make separate findings on whether an officer's tactics leading up to the use of force followed bureau training and policy.

--Police should use ballistic shields to approach a wounded victim or suspect in order to get them medical care as soon as possible.

--Don't allow an attorney who is accompanying an officer who was involved in a shooting and is doing a walk-through of the scene with a detective to point out evidence or speak for the officer about where the officer was standing at the time or their line of fire. That could improperly color an investigator's evaluation of a scene.

--In the review of the 2014 police wounding of a man who was pointing a gun on I-84, the bureau never found out why the man, Denoris McClendon, was released from a 72-hour police hold at a hospital, where he had been brought the night before when it was deemed he was a danger to himself and others. That question should have been asked and answered.

--An initial training review of the police attempt to "box in" a suspect at a busy gas station in Gresham in February 2015, which ended in a police shooting when the suspect rammed the police car behind him, found the maneuver and an officer's firing through a windshield inconsistent with training. But the training analysis was revised after one lieutenant retired. It changed dramatically, finding the tactics "generally acceptable."

## **Willamette Week**

### **Portland Children's Levy Backers Will Seek Another Five Years of Funding**

*By Nigel Jaquiss*

*February 8, 2018*

**Program started by City Commissioner Dan Saltzman raises \$18 million a year for education and development programs.**

The Portland Children's Levy will seek a five-year renewal on the May 2018 ballot.

The levy raises nearly \$18 million a year for a variety of child development and educational programs. The Portland Tribune first reported the City Council will refer a renewal to the May ballot.

City Commissioner Dan Saltzman, who will retire when his term ends in January 2019, initially came up with the Children's Levy in 2002.

Saltzman will end his career as the longest-serving city commissioner in Portland history and the Children's Levy—should voters approve it in May—will be a big part of his legacy.

Supports of the program have sought to create a permanent taxing district, as the Multnomah County Library did in 2012, so they don't have to go back to voters every five years for re-authorization.

That concept has kicked around in Salem in previous sessions and Sen. Chuck Riley (D-Hillsboro) has introduced again in the current February short session but lawmakers have been slow to warm to the idea.

The idea of making the levy into a permanent taxing district faces an uncertain future. But the levy is in no danger of going away: It's hugely popular with Portlanders. Voters re-authorized it in 2013 by a margin of 74 percent to 26 percent.

## **The Portland Mercury**

### **Hall Monitor: Wheeler's War Chest**

*By Dirk VanderHart*

*February 7, 2018*

#### **After a Year in Office, the Mayor Is Already on a Fundraising Spree**

A LITTLE MORE than a year into his four-year term, Mayor Ted Wheeler is already in fundraising mode.

The cash began trickling in last October: a couple hundred bucks from the head of the Portland Business Alliance; thousands from Oregon electricians.

It picked up last month, with thousands of dollars in donations from property managers and developers landing in Wheeler's campaign account. So far, this year, the mayor has raised at least \$7,250, according to disclosures his political action committee filed with the state.

He seemed poised to rake in thousands more on Tuesday night, at a reception hosted by prominent Portland property managers and developers at the Central Eastside's Produce Row Café. Suggested contributions for the event: \$2,500 to be listed as a "co-host," \$1,000 to be put down as a "sponsor," and \$250 to qualify as a mere "guest."

This is early for Wheeler, who won't stand for re-election until 2020 (that is, if he decides to buck the precedent of his three most recent predecessors, all of whom declined to run for a second term). Former Mayor Charlie Hales, for comparison, raised only \$506.02 in his entire second year in office.

The conventional wisdom is that this sort of money sends a message: The mayor has firepower to mount a massive campaign, and would-be challengers should think twice. Teresa Raiford, a leader of the group Don't Shoot Portland, has plans to run against Wheeler in 2020.

"While he is relatively popular in these first two years, it is time to begin to build a campaign war chest for the next race," said Pacific University politics professor Jim Moore when I asked what he made of Wheeler's fund-raising spree. "It sends a message that he is looking to the future, and it sends a message to potential opponents."

But the timing struck me for another reason. Portlanders can (and do) debate Wheeler's popularity in the city, but what's not up for debate is the fact the mayor is accepting cash from developers as he pushes policies they almost certainly appreciate.

As Portland struggles to address a housing shortage, the mayor is beating the drum for denser development downtown, and in the fast-growing commercial pockets that dot the eastside. As we reported last week, the mayor is also planning to offer more incentives to developers in order to jumpstart apartment construction.

To be clear, developers are a mainstay of pretty much every mayor's campaign. They've given to Wheeler in the past, and they're giving to him now. It's not new. It is early.

But there's also this: Wheeler's clearly looking at the possibility he'll be yet another single-term Portland mayor.

Last weekend, he appeared with the mayors of Seattle and Vancouver, BC, at a Seattle conference to discuss the cities of Cascadia. At the event, Wheeler sketched out his plan for Portland's growth, and acknowledged it might not prove popular.

"That may be the new reality: In order to do the right thing and provide the right kind of long-term view for the city, it may mean that you're only in politics for a little while," Wheeler said. "And I made a decision that that's okay with me. I'm totally okay with that."

His campaign account suggests otherwise.

## **Quanice Hayes' Family Brought a Notice They Intend to Sue to the Mayor's Office. The Mayor Was Out.**

*By Dirk VanderHart  
February 8, 2018*

In days to come, the family of Quanice Hayes will sue the city for their 17-year-old relative's February 2017 death at the hands of police. They will name the officer who killed Hayes, Andrew Hearst, in a claim of excessive force. They will name the City of Portland as a defendant in a claim of wrongful death.

That's the plan, at least. Today was more about symbolism.

At noon, a group of family members including Hayes' mother, Venus, and cousin Terrence ascended to the third floor of City Hall to formally present Mayor Ted Wheeler with a notice they intend to file a lawsuit. They'd announced their plans to do this yesterday—around the same time their attorney, Jesse Merrithew, had actually filed the formal notice to sue. But the family wanted something more visible than that.

The mayor wasn't around, though. He was at a meeting in East Portland, his office said, so the Hayes family met Chief of Staff Maurice Henderson and Deputy Chief of Staff Michael Cox instead.

It was a short affair. The family handed Henderson an envelope. The TV cameras rolled. The family spoke.

"It's not a secret what the intentions of our family was today," said Terrence Hayes. "Instead of the mayor prioritizing something like this or at least show[ing] some type of faith that he understands, that he's sympathetic, and that he has a sense of what my family's going through...they're not really concerned."

Hayes was killed almost exactly a year ago, on February 9, 2017. According to police and the grand jury investigation that wound up clearing Hearst of wrongdoing, the teen had robbed a

homeless man using a fake gun in the early morning hours. Responding officers eventually found Hayes in the alcove of an East Portland home, and ordered him, at gunpoint, to crawl toward them on his knees. While cops had been informed Hayes could be armed, none of them testified to seeing a gun on the teen, who was shot three times when he reached behind his back. A replica gun was found near his body.

Following the shooting, the Hayes family made repeated requests for all records involving the incident. Family members also convinced Portland City Council to give them their own hearing to air their grievances about the shooting—a possibly unprecedented occurrence.

Terrence Hayes said today his family can't wait for 2020, when there will be another mayoral election. He also hinted to having a preferred candidate in that race. Teressa Raiford, the Don't Shoot Portland leader who has said she'll run for mayor in 2020, was on hand.

Meanwhile, Merrithew, the family's attorney, says the city has a lot more to answer for.

"If you look at the broad picture here, you have a 17-year-old kid that's killed by police," he told the Mercury this afternoon. "The only process that's happened is a grand jury proceeding that, if you look at the transcripts, it's a joke. We say give us the records. Let us see what happened."

Among records he's seeking: photos from the scene and from Hayes' autopsy, as well as dispatch recordings.

Even without that, Merrithew says his clients have a case.

"There's enough there that we can make a good faith claim that the shooting wasn't justified," he said. "It's clear that none of the police officers saw a gun and they shot him anyway."

Merrithew has agreed not to take attorney's fees unless a lawsuit is settled or shakes out in the Hayes' family's favor, he says. The family is hoping to crowdfund other costs associated with the suit.

## **OPB**

### **Family to Sue Portland, 1 Year After Police Shot And Killed Their Son**

*By Conrad Wilson  
February 8, 2018*

UPDATE (Feb. 8, 4:33p.m. PST) — One day before the one-year anniversary of when a Portland Police officer shot and killed Quance Hayes, his family hand-delivered a letter declaring its intent to sue the city of Portland.

“This is your notice that Venus and Steven intend to sue the city and the police officers involved for wrongfully causing Quance’s death,” the family’s tort claim states.

State law requires the family file a notice to sue within a year.

Surrounded by family, Quance’s mother, Venus Hayes, hand delivered the tort notice to Portland Mayor Ted Wheeler’s chief of staff, Maurice Henderson, Thursday at Portland City Hall.

Venus Hayes speaks to media outside the Portland mayor's office Thursday, Feb. 8, 2018. Hayes delivered notice of intent to sue the city and the Portland Police Bureau over the 2017 fatal police shooting of her 17-year-old son, Quanice Hayes.

Venus Hayes speaks to media outside the Portland mayor's office Thursday, Feb. 8, 2018. Hayes delivered notice of intent to sue the city and the Portland Police Bureau over the 2017 fatal police shooting of her 17-year-old son, Quanice Hayes.

Wheeler's staff said the mayor was in east Portland "meeting with constituents" at a previously scheduled event. Still, members of the Hayes family criticized the mayor for not being there.

Terrance Hayes, Quanice's cousin, said the fact that the mayor wasn't there was indicative of the treatment the family has received from the city.

"They not really concerned, they don't really care," he said. "For them, the matter of a 17-year-old being killed is least important to the fact that another officer didn't get an indictment."

Wheeler is also Portland's police commissioner. A spokesman for the mayor declined comment because of the pending litigation and referred questions to the city attorney's office, which declined comment.

"Quanice Hayes was only 17 years old when he was killed and taken from a family and community and loved him dearly," the tort states. "In a city where young black men are discriminated against at every stage of their interactions with police and the criminal justice system, we expect that the damages in this case far exceed the limitations set by the Oregon Tort Claims Act."

Hayes, an African-American teen, was shot in the head and killed by Portland Police Officer Andrew Hearst on Feb. 9, 2017. He and other officers were responding to a report of an armed robbery.

Hearst fired his assault rifle three times, believing Hayes — who was on his knees when he was shot — was armed with a gun. At the time Hearst fired, officers had not seen a gun.

Police later found a fake gun nearby that Hayes had been carrying. Police say he pointed it at an individual near East 82nd Avenue in Portland.

Last March, a grand jury did not indict Hearst, who has used lethal force once before.

The family's tort claim said the shooting investigation process was one-sided and that the Multnomah County District Attorney's Office "presented evidence designed to vilify Quanice while painting the shooting officer in a highly positive light, making it seem as if that officer had no choice but to shoot Quanice," the family's claim states. "We disagree."

In March, Portland Police confirmed Venus Hayes found out about her son's death on social media.

Speaking at Portland City Hall on Thursday, Venus Hayes said pursuing litigation was not a difficult decision.

"Since no criminal charges were brought against Officer Hearst that there can be some kind of accountability, which is what we (are) lacking all over the country," she said. "My son was just one, one kid."