

Text of email sent from Portland Copwatch to City Commissioners and Mayor Ted Wheeler on Feb. 23, 2017 at 1:13 p.m.

FOLLOW-UP: Comments on Council Hearing from Citizen Review Committee appeal

To Mayor Wheeler and Commissioners Eudaly, Fish, Fritz and Saltzman:

We wanted to follow up on yesterday's appeal to City Council by the Citizen Review Committee in the case of Matt Klug, who was tasered multiple times by Portland Police following an altercation with a motorist. Our first comment and of utmost concern is that the City Attorney did a poor job laying out the Council's options for findings. When you voted 3-2* to change the finding from "Exonerated with a Debriefing" to "Not Sustained" (insufficient evidence) because of those poor explanations, your motion did not contain the request to change the finding to "Not Sustained with a Debriefing." This means, technically, that although Commissioner Fritz explicitly said she thought the officer should be talked to, such a debriefing is not required to happen.

Second, in a related matter, while we understand the City's strict adherence to code in not allowing public testimony during the appeal hearing, there is no reason you couldn't have opened the floor for testimony after the hearing was over. We could then have offered the above observation and others in person before the session came to an end. The notion of community involvement in our oversight system-- one of the key reasons the CRC system (and its predecessor) is in place-- was further frustrated by the fact that only a handful of community members made it into the Council Chambers due to the over-reach of City Hall's security lockdown. While it's true the morning session was interrupted, there could have been better options to allow members of the public to attend rather than forcing them to watch by remote in the Portland Building. Several people who've observed not just the CRC but this particular case over the years were unable to attend, but should have been there.

Third, and also related, I should have alerted Council about the lack of a "Debriefing" by calling out a "point of order." This is (unfortunately) a role I often play at CRC hearings, including when I tried to support Mr. Klug's correct assertion that the wrong Directive was used at the May 2016 hearing. (Had the City Attorney not incorrectly pushed back, the CRC could potentially have been able to complete their hearing that night rather than come back again several months later.) I think several factors held me back from interjecting: Primarily, this was the first Council hearing since 2003, and I think we all were feeling out how the protocols would work. Secondly, I'm usually at meetings #1 as a member of Portland Copwatch and #2 as a member of Flying Focus Video Collective. At the hearing yesterday that was reversed since my primary mission was to be a member of the media. Thirdly, the formal structure of the hearing and the setting-- while mostly appropriate-- made it more intimidating to speak out, especially since the Appellant, who had a few concerns, was shut down fairly quickly and/or given time at the microphone but only if the PPB got a chance to rebut him. (Which they declined.)

Fourth-- and last on this subject-- it is disappointing that for the first time in well over 10 years, a public hearing about officer misconduct heard through our community representatives retreated into an "Executive Session." Using state law to shield what is meant to be a public deliberation by a civilian review board is unhealthy for our community trust in the system. Moreover, it was announced that the gist (but not the details) of the Executive Session would be reported back once Council returned to Chambers, but the closest that happened was Commissioner Fish expressing that "watching the video, even with the sound, didn't [clarify whether the officer was in policy or not]."

That brings me to point 5-- the video was shown, numerous times, by Chief Marshman and Captain Bell without audio. It's not clear whether this was to fit City Council decorum (Mr. Klug can be heard on the audio using the words "you stupid motherf*er" several times) or an attempt by the Bureau to hide Mr. Klug's screams of pain when the Taser was applied. Either way, since the video with sound was shown at one of the CRC hearings, and it's publicly available, it should have been played in full at the Council Hearing. This is especially true since Chief Marshman kept emphasizing the definition of "Active Aggression" and noting that verbal threats were part of that definition. Mr. Klug was clearly not making threats.

Sixth, we want to remind Council that, as listed on the docket, this was the Citizen Review Committee's appeal to Council, asking you to support their analysis that the finding was not supported by the evidence and that the

finding should have been "Sustained." CRC Chair Kristin Malone did an excellent job outlining not only the CRC's reasons for questioning why the officer's supervisor thought it was reasonable for the Taser to be activated so many times, but also the City's role in making this case take so long to come to resolution.

That said, we wish that Ms. Malone had repeated to you one of the things she said at both the final hearing and the Conference Hearing with Chief Marshman-- that if the Officer had been holding a different weapon and "accidentally" discharged it (as was stated about taser shock #6), we'd be having a different conversation. Council did ask pointed questions about the officer carrying a "test weapon" in the field which made it easy to trigger by mistake, but didn't move to that next and crucial point which helped bring CRC to their "Sustained" finding. We all should be glad Mr. Klug is still alive today to tell his tale.

Seventh, while it was great that Mr. Klug was accompanied at the table by Eric Terrell, his Appeals Process Advisor, it is too bad the Council did not solicit input from Mr. Terrell, especially after Mr. Klug spent much of his time talking about his criminal and civil cases rather than the original incident. Council further added to this imbalance by asking dozens of questions to the police and then strictly limiting further input by Mr. Klug (as referenced above). We've thought about bringing chess clocks to CRC meetings to see who talks and for how long. Perhaps that would have been helpful yesterday.

Eighth, the Chief repeatedly stated that there are "no residual effects" from Tasers. While it was mentioned that some people do in fact have lasting psychological effects at least, it's also important to note that Amnesty International's 2016/2017 report says over 700 people have died from the use of electroshock weapons since 2001. Also, "drive stun" use can leave burn scars on a person's skin, and the puncture wounds from the deployed probes can leave permanent scars as well.

Ninth, while it was mentioned in passing that one of the delays in the case had to do with CRC asking for more witnesses to be interviewed, the salient point was who those people were and what they said. Internal Affairs had only gone back to talk to a security guard witness who supported the police actions. CRC asked IA to talk more to the civilians who'd told initial investigators that they felt the use of the Taser was not necessary.

Tenth, it's not clear whether anyone from the US Dept of Justice attended the hearing either in Chambers or at the Portland Building, but this case-- because it involved use of force against a person with mental health issues-- should have piqued their interest. Chief Marshman told CRC at the Conference Hearing that he didn't want to find the officer out of policy because he would then be disqualified to be part of the Enhanced Crisis Intervention Team. Given how quickly he escalated the situation-- and how many times he used the Taser-- that is exactly why the DOJ Agreement says officer who use excessive force can't serve on the ECIT.

Eleventh, and finally for now-- but perhaps most importantly-- we were very glad to see the appeal system used to its ultimate conclusion, even if this was only the second time ever in IPR's 15+ year history. It wasn't surprising that the outcome was exactly the same as the case of Merrick Bonneau heard in 2003 (when Mr. Terrell was still on CRC)-- that rather than side with the Bureau (who found the officer in policy) or the CRC (which found the officer out of policy), Council split the difference and said there wasn't enough evidence to say one way or the other. One key change was that the Director of the "Independent" Police Review Division was asked last time to opine on what finding the Council should reach, and offered his opinion in contradiction to CRC, which Council adopted. Five members resigned a week later. (Mr. Terrell was not one of the five.) That said, we've often criticized IPR for writing narrative summaries which are biased toward the police point of view and would argue that the one given by Assistant Director Anika Bent-Albert was biased in that way, focusing on Mr. Klug's alleged criminal activity more than the officers' questionable conduct.

We look forward to future appeals to City Council to refine the process, ensure the entire Council (not just the Commissioner) takes responsibility for our police, and gives greater insight into how the accountability process works.

Thank you for your time
dan handelman
portland copwatch

*- Historical footnote: In 2001, at one of the last cases City Council ever heard as PIIAC (prior to IPR's creation), the vote outcome was similar. One member wanted to affirm the Bureau's finding of "Unfounded" (the facts did not support the allegation) that an officer had not used excessive force against Dora McCrae, a grandmother who helped needy people, one wanted to "Sustain" the allegation, and two thought there was not enough evidence to prove or disprove it. The Council member who wanted to "Sustain" the complaint was Dan Saltzman, who served as police commissioner for almost two years in the interim and in this case was one of the only two "No" votes, along with Police Commissioner Wheeler. In McCrae's case Mayor Katz reluctantly decided to vote for "Insufficient Evidence" to break the logjam. This time that effort fell to Commissioner Fritz, who changed her vote from "Sustained" to "Not Sustained" (Insufficient evidence) to avoid what the City Attorney advised would be a default to the Bureau's Exonerated finding.