

Minutes
Citizen Review Committee
June 6, 2012
Date Approved: October 3, 2012

Meeting Location: Room C, Portland Building

Chair Troy called the meeting to order at 5:30 pm.

Introductions and Welcome

Citizen Review Committee (CRC) Members Present: Jamie Troy (Chair); Michael Bigham (Vice-chair), Jeff Bissonnette (Recorder), David Denecke, K.A. Lalsingh, Andre Pruitt, Dr. Rochelle Silver, Steve Yarosh

CRC Member Absent: Rodney Paris (excused)

Appeal Process Advisor (APA): Robert Ueland

City staff: Lavonne Griffin-Valade, City Auditor; Mary-Beth Baptista, Director, Independent Police Review (IPR); Constantin Severe, Assistant Director, IPR; Kelsey Lloyd (IPR); Linley Rees, Deputy City Attorney

Portland Police Bureau (PPB): Captain Dave Famous, Professional Standards Division; Captain Pat Walsh, North Precinct; Lieutenant John Scruggs, North Precinct; Liesbeth Gerritsen, Training Division

Office of Independent Review (OIR) Presenters: Michael Gennaco, Robert Miller, Julie Ruhlin

Community: Dan Handelman, Portland Copwatch and Flying Focus Video; Regina Hannon, Portland Copwatch; Debbie Aiona (League of Women Voters); Kalei Luyben, Ted Luyben, Ann Brayfield, Henry Herring, John Berrout, Fallon Niedrist, Robert Costello, Hank Miggins, Mark (Last Name Unknown)

Approval of Minutes of the 4/8/12 CRC Meeting

A motion was made by Dr. Silver and seconded by Mr. Denecke to approve the minutes of the 4/8/12 CRC meeting. The motion passed unanimously.

OIR Presentation:

Mr. Gennaco, Mr. Miller, and Ms. Ruhlin presented the OIR Report to the City of Portland on PPB Officer-Involved Shootings and answered questions from CRC members about the report.

PPB Response to Appeal #2008-C-0336/2011-X-0001

Director Baptista reported that she received a letter from Director Kuykendall informing CRC that Chief Reese will accept CRC's recommendation and has directed Captain Famous to ensure that the record reflects that Allegation 1 will be Unproven for Officer A. The appellant will be notified of this.

Appeal Hearing for IPR Case #2011-C-0170

Chair Troy introduced the appeal hearing scheduled for tonight's meeting. He noted that Mr. Ueland, Appeal Process Advisor, and one of the appellants were present for the hearing. The involved officer was not present. Mr. Pruitt recused himself from the hearing and left the meeting at this point.

Chair Troy stated that all of the remaining CRC members had reviewed the IPR and IA materials relating to this appeal. A case file review was previously held in which CRC recommended additional investigation, and Internal Affairs (IA) declined the request. For the purpose of confidentiality Chair Troy requested that the name of the officer and the names of the appellants not be used during the hearing. He asked that the officer be referred to as "Officer A." He noted that the person about whom the complaint was filed has passed on. The brother of the deceased, who was present for the hearing, asked that his brother be referred to as Craig.

- Chair Troy explained the appeal process.
- Dr. Silver presented the CRC appeal summary.
- Craig's sister-in-law read a written statement of Craig's sister, one of the appellants, who was not able to be present for the hearing.
- The co-appellant made a statement.
- Craig's brother, who was not an appellant, was asked if he would like to make a statement.
- The co-appellant introduced three friends of Craig, who presented their observations about Craig's physical appearance, behavior, and state of mind prior to his death.
- Director Baptista and Captain Famous made the case file materials available for CRC members to refer to if needed during the hearing.
- Captain Famous presented a summary of the IA investigation.
- Captain Walsh presented an explanation of the Command Staff findings on this case.
- IPR had no comments on this case.

- Dr. Silver repeated the allegation and CRC's options regarding the hearing.
- CRC members directed questions to IPR and the Police Bureau representatives and discussed the appeal.

Mr. Yarosh asked Captain Walsh to address the reasoning for the findings with regard to the handcuffing and the dislocation of Craig's elbow. Captain Walsh said that he did not see any discrepancy between the officer's and Craig's description of the actions that led to Craig's arm being dislocated.

Dr. Silver asked Captain Walsh to comment on how he factored in Officer A's statement that things had been rather slow in his district, so he decided to do more self-initiated activity than usual that night. Dr. Silver wondered if Officer A would have even initiated a traffic stop on Craig if it had been the night before, when Officer A had not yet stepped up his self-initiated activity, and we might have had a different end of this situation. Dr. Silver then asked: "Also, during the investigation, Officer A was asked if he recognized that Craig was mentally ill, and Officer A said that he did. With that, I also wonder – I know mentally ill people are held to account for crimes, etc. But if the man was mentally ill, and in the totality of the circumstances, we're talking about a reflector light on a bicycle..., could Officer A have said, 'I'm writing you a ticket. I'm giving you a warning. Don't do this again'? And even in your comments about the findings, you said, 'Did he have to push [Craig] down?' And so I'm just wondering about all of this.

Captain Walsh: "You're kinda asking me to answer the question what you think Officer A might have been thinking. The reflector on the back of the bike is a minor traffic violation. I get that. And then when a person doesn't stop, kinda like, 'Okay, what's up here?' And then when they tell you pretty much, 'No, I'm not stopping,' you're like, 'Okay.' So you have to build on this. You just think about this incident. Now you don't know what you have, and then doesn't respond to the light, doesn't respond to the P.A., doesn't respond to you twice rolling up next to him and, 'Hey, stop.' 'Nope, not doing it.' So now you go, 'What's up with this guy?' and then he kinda rolls through the stop sign. And you know what? I'd want to know what's up with that guy if it was me, and I think that's what Officer A was thinking. And he finally cuts off Craig, and they're starting a conversation, and he is pretty much non-compliant, period..., if I'm reading it correctly. And now you have somebody that's – they're face to face, it's different, you're smelling alcohol, you don't know what you got. Maybe mental illness, maybe drugs and alcohol mixed. You don't know. And now, you know what? Okay, I'm gonna handcuff you. This is where the officer has to make that decision. He made that decision. You know, what's the alternative? 'You know what? Okay, you're not gonna comply – you can leave.' It's hard to tell an officer that's what I want you to do, 'cause it's kind of I don't want him to do that. I want to get to the bottom of what's going on.... If I was to speculate, he probably thought, 'You know what? I'm gonna get handcuffs on this guy and figure out what's up.' 'Cause a lot of times we do, we get the handcuffs on, we realize they're not a danger to anybody. So it could have changed, but it didn't. We didn't go that way,

so if we're going to sit and talk about this tonight, that didn't happen. He was noncompliant... You still have to get to the bottom of it. It was a quick encounter. You know, once they were face to face, it was quick. As soon as Craig said, 'You know what? You don't got probable cause. You've got no reason to search my bag. He starts to say, 'I'm out,' and Officer A had to make a quick decision and he did. He took enough time to think about the grass behind him – I'm glad he did that.

Mr. Bissonnette asked Captain Walsh how he weighed Officer A's statement versus Craig's written statement as to whether or not Craig was making an attempt to leave the scene on his bike after he was stopped.

Captain Walsh: "To me, I weigh them the same, because the way Officer A said that he sort of pushed his bike like he was going to swing his leg and go, and he didn't use the term 'swing his leg,' but I can't remember what he said in the police report, but it was like he was going to attempt to push off. And I think what Lieutenant Scruggs was trying to say in the finding memo was if he was just standing there, not getting ready to leave, and he gets shoved to the ground, that's excessive force." Lieutenant Scruggs agreed that it was his opinion that if Craig had been just standing there, it would be excessive force if he pushed him down.

Mr. Bissonnette: "Is there any reason why the officer wasn't clearer upon the stop he made – it seems like he made his decision to arrest him relatively quickly because he was noncompliant and that sort of thing and was getting the response from Craig that, 'No, you don't have probable cause to do that.' I couldn't find any reason or proof or substance that the officer actually said, 'Look, I'm arresting you. I do have that. Just I need to take off your backpack to put cuffs on you, etc.' But it was sort of, 'Take your backpack off.' 'No.' 'Take your backpack off.' 'No,' and then there was a shove. Is there any reason why the officer wasn't more communicative, do you think?"

Captain Walsh: "Well, I would say to that, is that it seemed like from the beginning until they get to that point there wasn't compliance, and it seems like Craig portrayed a very committed individual. We tell our officers, 'Please, take the time and explain your actions, schmooze people.' We like people to be talked into the handcuffs. It makes everybody's life better, but there are individuals you come across that you pretty much you know right away that you're not gonna get compliance, and it could get violent pretty quickly. I'm just supposing what maybe Officer A was thinking, that 'You know what? I'm not getting compliance. Something isn't right here. I smell alcohol. Let's get some cuffs on him before it gets to a force incident.' Then he starts to shove off and boom. You've already made your mind up. You're gonna move in. He starts to go. You know, it's a quick decision."

Mr. Bissonnette, recalling the training CRC had been provided, asked Ms. Gerritsen if she had stated in the training that body rigidness and clenched fists could be an indicator of mental illness. Ms. Gerritsen said she did not recall saying that, and she did not think that was something she would say. Mr. Bissonnette asked Ms. Gerritsen if officers are trained in Crisis Intervention Training to make an evaluation

of whether mental illness could be a factor in a given situation. Ms. Gerritsen said that officers are trained to at least recognize some signs or symptoms of mental health issues, but they are not expected to diagnose anybody. Ms. Gerritsen said: "The training adds another lens to how you interpret behavior. We can interpret a lot of different ways, and now there's also a mental health lens that we want to make sure that you're also considering, does this person have a mental health issue? That should be a question that you ask yourself."

Mr. Bissonnette asked if the investigation on the use of force included both the shove and the dislocation of the elbow or just the shove or just the elbow. Director Baptista replied that both were considered.

Mr. Denecke asked if Craig was not justified in refusing to allow Officer A to search his backpack when Officer A asked him for his backpack, as it did not state in the police report that Officer A had not told Craig that he was going to arrest him. Mr. Denecke then cited PPB Directive 1010.20, which states that officers will use as little reliance on force as is practical. He asked Captain Walsh how he came to the conclusion that Officer A had used as little force as was practical.

Captain Walsh: "I didn't really come to that conclusion, because it was an unfounded conclusion. It's not an Unproven conclusion. I can't prove it. Do you see the difference? If I said that I completely exonerate it, that would be different. But it's a person's written testimony against the officer's recollection, and what I'm saying is that I think he had legal standing. I think if Craig was compliant, none of this would have occurred, but I think that it's beneficial that we sit down with the officer and say, 'Okay, let's talk about this' and go through everything and talk about the future and go back over our directive and make him read Grant vs. Connor and put another level of professionalism in his tool box...."

Ms. Lalsingh asked for further clarification of how the amount of force used in this situation makes sense, given the totality of the circumstances. Both Captain Walsh and Lieutenant Scruggs addressed this question.

Captain Walsh: "First off, you don't know if he had a weapon or not. You know now, after the fact, but at the time, you have to put yourself in Officer A's shoes. It starts with a light to the rear of the bicycle, a pretty small infraction. It kind of ramps up when they start having dialog through the window, that 'I'm not gonna comply with you. I'm going on my way.' Runs a red light. Could have got run over and killed. Goes into the neighborhood – gets off the main drag and goes into the neighborhood. In police work, that's a red flag, whether you're on a bicycle or car. When a car gets off the main drag and starts going into the neighborhood, they're gonna ditch, run, or draw you into a nice dark place to take care of business with the police officer. It's happened to me. I've been doing this for a long time. So it just kind of starts to step up. And you don't know what's in Craig's backpack. You don't know what's in Craig's waistband. Officer A makes a decision: 'You know what? He's not gonna leave. I'm done chasing him. I'm gonna put him down on the ground, away from the bike. 'Cause you know what? Officer A's not gonna catch

Craig if he does get on his bike. I don't care how frail Craig is, he's probably gonna get away from an officer on a bicycle. It's hard to chase somebody on foot. You have to run back to the car and start the whole incident over again. So, in my opinion, he made a decision, 'I'm gonna get him away from his bicycle,' and then when Craig pulls his arm toward the ground and towards his middle section, we teach them that's where weapons are, and he could go for a weapon. I don't think Officer A thought he was, but there's the potential. And you know what? As soon as you make the decision to put handcuffs on, make sure you control, because if you play around in this area, you could end up using more force. Okay, now you have Craig on his back, you're ordering to comply, and you stand there, and you're two, three feet away from him, and you don't go hands on like Officer A wrote in his police report. Well, what *if* Craig has a weapon? Now you've put yourself in. Now you've enraged Craig. If he did have a weapon, now he's coming up with a weapon, and you're shooting him, and we have another shooting in Portland. So once you make the decision to make an arrest, you gotta put handcuffs on him. You've got to do it quickly and secure the person before it gets out of control. A lot of our uses of force that are a lot bigger than this use of force start with an officer not having the ability to make a quick decision and use the force they need right now and do it quickly. They kind of mess around, and they start to use control holds, and next thing you know, they've lost control of the situation.... So we teach them that. And Officer A unfortunately dislocated his arm. That's unfortunate, but it's better than the alternative.... That's where I think the officer's coming from."

Lieutenant Scruggs: "Can I piggy-back onto that? One of the things that we have in this incident – and I take this incident very seriously, being the supervisor of 54 people – most people stop for the police. In fact, about 99 percent of the people that we try to pull over actually stop. In this case, that did not happen. Second of all, we teach our officers not to telegraph that they're gonna take someone into custody, and we affirm that. And I just counseled an officer the other day about trying to take somebody into custody and tell them, 'You're under arrest.' The person got up and ran. They actually happened to be armed with a gun, and they ended up getting tackled. But that could have turned out a lot differently. So we try not to telegraph people, that we're gonna say, 'We're gonna take you in custody.' We wait till we have cover there. And I think, in this case, reading between the lines and reading the reports and looking at the totality of circumstances, I think Officer A was making a decision to have Code One cover come by, and I think, at some point, he was gonna make a decision to take him into custody, further investigate what is Craig up to tonight. We do have a lot of burglaries that occur at night. A lot of the people that do it are riding bikes, they're walking, they're in cars, and we encourage our officers go out and contact these folks. And I think his reason for calling for Code One cover is he was hoping that officer would stop by, that he'd have a conversation with Craig and be able to really get to the bottom of it. Is Craig just going to be going with a warning or not? In my assessment of this situation, something there occurred where Craig was either unwilling to stop or just thought he was gonna leave again, and this is what is unproven. We can't prove it. Did Craig start to take off, and the officer made the decision before cover arrived? 'I'm gonna have to end this now. I'm gonna have to get this guy down now. I don't have cover yet. I have to be decisive, and I

have to take action. And I think Officer A, in this case, that was his decision-making process, and ultimately Craig was taken to the ground and he was handcuffed, and unfortunately in this case his arm was dislocated. But all along, Craig had the ability to stop for blocks. And then when we go to mental illness, and I think it's a really important thing to think about in this city, where we have a lot of mentally ill that are untreated and uncared for and walking the streets. If you took somebody to get evaluated at a hospital, it's a matter of hours sometime to actually ascertain their mental health status or illness. You don't just walk in and in five minutes the doctor says, 'Yeah, you're bipolar.' No, they go through a series of tests. We are asking officers to make a judgment call in a matter of moments. If you look at when Officer A initiated this traffic stop to when it ended, it was a matter of moments. There is not a doctor in the world that will make an assessment of someone's mental health illness in that amount of time. You can't do it, it's not possible, and in this case we're expecting Officer A to make a decision about that, and I think he was getting to that. I think he was assessing that was a possibility. But we also have it by the complainant's own statements, we have a person who's been a chronic alcoholic who's under the influence that night, according to the officer. We're also masking a mental health problem, and that makes it even harder for the officer to decide what is the appropriate course of action in this particular case. Officer A realized as this person did not stop – as Craig did not stop – in his mindset, he is going, 'Why would someone not stop for really a minor traffic violation, when 99 percent of the citizens of Portland will stop immediately.... So that is upping the ante. It isn't the officer's fault, and with Craig's mental health issues, it's probably not all his fault either. But that's the reality of this case. He continued. It keeps on amping up. The officer finally pulls his cruiser in front of him and makes him stop and then tries to engage him in conversation. And I think the officer in this case was trying to assess, 'What do I really have here? Do I have a person with mental illness? Do I got a guy who just did a burglary? Does the guy have a warrant?' I mean, that's pretty common behavior for people who are wanted.... So the officer has to go through all these things, and we are here looking at about six to eight minutes total of action, and we're discussing it for hours, and the officer, in my opinion, looking through all the police reports, did a pretty good job of summing it up. We have a couple of points here that Craig doesn't agree with the officer and the officer doesn't agree with Craig, but it is very rare in a case like this that I've looked at that we literally have a play-by-play where the complainant and the officer actually agree about 95 percent of the story. There are some small points in there, and they're important points, and I looked at those when I made this finding. It is very important, and I took it very seriously, but there is a lot of evidence in here that suggests that the ante was going up and up and up, and this officer had to make a decision at some point: Do I stop this person or do I not? And that's where we ended up today. It is a completely unfortunated set of circumstances, but in no way can we look in the record here and say, This is absolutely definitely what Craig was thinking and this is absolutely definitely what Officer A was thinking. We can't do that. We can't get into their minds and say these are all the things they were thinking at the time."

Dr. Silver asked if it is in dispute whether or not Craig was trying to flee after he had been stopped. Captain Walsh pointed out that Officer A stated that Craig started to

push his bike as if he were going to go. He said that Craig's written statement that Officer A had no probable cause to search him and no right to stop him suggests that Craig was intending to leave. However, Captain Walsh agreed that there was no indication that Craig actually did try to leave.

Mr. Bigam stated that Witness C was adamant at the scene that excessive force had been used, but the IA investigator did not ask him what he meant by that, nor did he ask the witness if he saw Craig trying to leave with the bicycle.

Mr. Yarosh expressed sympathy for Craig's death and thanked Craig's family members and friends for their presence. He said that it would be a mistake for CRC to strongly rely on the testimony of the witnesses as the basis for their decision. He pointed out that Officer A and Craig each wrote a fairly consistent version of what happened. Mr. Yarosh said that he thinks that the decision of Unproven is the right decision.

Director Baptista: I just want to make one point to clarify what I said at the last meeting, that there is case law directly on point that says that you do not have to tell someone they are under arrest or what they are under arrest for, and they can still be charged with resisting arrest.

Mr. Bissonnette said that although it still troubled him that Craig's statement that Officer A made a statement to another officer was not delved into more deeply, he is leaning toward agreeing with the finding of Unproven. However, Mr. Bissonnette noted that he thought the Disposition Letter was inadequate.

Mr. Denecke stated that Officer A's intent is very critical as to whether or not he used excessive force and if Officer A used force which was designed to injure Craig, then it is clearly excessive. Mr. Denecke said that is why further research regarding his Officer A's statement to the other officer is important. Mr. Denecke said that in his view the force that Officer A used to deal with Craig's refusal to give him his backpack was unreasonable.

Chair Troy stated that it is documented that on the night of this incident Officer A was making a number of stops on bicyclists, and he does not believe that Craig was singled out. However, Chair Troy thought that if it had been clear why Officer A was requesting the backpack, this might have turned out differently.

In response to an unidentified person's protestation that the officer should have been at the hearing, Chair Troy stated that although it is helpful when an officer is willing to be present, there is no requirement for the officer to be present. Mr. Bissonnette added that when officers are interviewed, they are ordered to testify truthfully under the penalty of possible termination.

- A rebuttal statement was provided by one of Craig's friends who had spoken earlier on his behalf.

- Public comment

Craig's brother said that he suspects that Officer A was angry, and that he had a right to be angry. He said that if Officer A had waited for his back-up to arrive, Craig would have backed down. He suggested that this be addressed as a training issue.

A community member who identified himself only as "Mark" said that he was invited to the CRC meeting by Clay Nelson or Neilson from the Mayor's Office, He stated that he witnessed the arrest of a woman with a backpack, and the backpack did not have to be removed before the handcuffs were put on, so he does not see why the backpack is significant in this case. He thought that the persons who sat down with the officer seemed to be taking his side rather than coming to terms with whether or not excessive use of force took place and felt that the officer's actions served to escalate the situation.

An unidentified person said that, given the totality of the circumstances, there is no way that that force was necessary; he said that CRC has asked some very powerful questions, but now they are backing off on what they need to do.

An unidentified person asked for clarification about CRC's standard of review. Chair Troy replied that CRC's task is to determine if a reasonable person could have made the same finding as the Police Bureau, whether or not they personally agree. However, he noted that CRC has lobbied to change this standard.

An unidentified person said the community would be grateful if the officer had waived his right not to make himself available for the hearing.

Ms. Hannon said that she thought it was outrageous that IPR and IA refused to contact Officer B to ask him if he heard Officer A's remark. Ms. Hannon said Captain Famous's memo explaining why further investigation would not be done on this case was disingenuous.

Mr. Handelman said a lot of things disturbed him. He did not understand why the push to the ground and the arm being dislocated were not treated as separate allegations. He also thought that retaliation should have been regarded as an allegation. He thought that Officer B should be asked if Officer A said that he broke Craig's arm on purpose. He thought that the officer's application of his Crisis Intervention Training in this situation should have been analyzed by command staff. He said that it was not appropriate for the PPB representatives at the hearing to speculate on what Officer A might have been thinking at the time. He said that if this case is sent back for additional investigation, Officer A should be asked why he did not include Witness C's statement about excessive force in his police report. Mr. Handelman wondered why no Police Review Board was held on the use of force even though Craig was taken to the hospital. He said that he believes there was enough to warrant sending this case back for additional investigation. He said that he intends to talk to Flying Focus Video about making the recording of the statements made by Craig's family and friends available for Officer A and all officers.

The co-appellant stated that Officer A did not include Witness C's statement in his report police report.

Mr. Robert Costello, who identified himself as a friend of Craig's, said that the police investigation seemed like a pointed attempt not to get information. He said the Police Bureau could have been gotten information about the most incriminating statement attributed to Officer A by asking one of their own officers, but they failed to do so. He also thought the questioning of the witnesses was limited.

Captain Walsh noted that Officer A documented the names of the witnesses so that they could be further questioned if a complaint was made; he said that if Officer A had wanted to hide the witness information, he could have just walked away from them.

- Ms. Rees explained CRC's standard of review.
- Chair Troy reviewed the three options available to CRC: to affirm the Police Bureau's finding; to challenge the Police Bureau's findings; or to request additional investigation.

Chair Troy asked Mr. Minor if he would be concerned if CRC voted to reaffirm its request for additional investigation, knowing that a final decision would not be rendered at tonight's meeting. Mr. Minor replied if he would be supportive of this. Before accepting a motion, Chair Troy clarified the process as follows by stating that if CRC is dissatisfied with the investigation that was done, it is not appropriate for them to vote to challenge the Police Bureau's findings on that basis. He said that CRC could challenge the findings only if they disputed that a reasonable person could have made the finding. He said that CRC can only request additional investigation, and what would happen if the the Police Bureau still refuses is not clear.

- Mr. Denecke made a motion to challenge the Police Bureau's finding and recommend a Sustained finding. Dr. Silver seconded the motion.

Yarosh: "I vote no. I think the record is sufficient for us to make a finding of affirming the Bureau's decision of Unproven. I think for the reasons that I already stated in detail, that there was probable cause to make the stop. The record is replete. Even [Craig's] own statement says he was not compliant and trying to avoid being stopped and refusing to stop. The officer continues to follow him several blocks, urging him to stop, finally has to cut him off. [Craig] resists at that point. He's defiant. The officer decides to take him into custody and does what he needs to do to bring him physically under control, and an unfortunate thing happens. [Craig's] arm gets dislocated. I think there was probable cause to make the stop. I think the force used was well within reasonable. And so I will vote no."

Ms. Lalsingh: "I have to tell you, this is a challenge. If I'm going by the Reasonable Person... I guess I must be unreasonable. Challenge to Sustain. (Aye)"

Mr. Denecke: "I'll vote aye. I think this was a case of over-reaction to the situation and involved a muddled situation which is really created by the officer not letting this person know what he was doing and why he was doing it, as far as his backpack was concerned."

Mr. Bigam: "I'm going to vote no. In my gut, I feel that the force was excessive, but I just don't have enough information, and I think that, as I said before, I thought the investigation itself was sloppy. I think there needs to be more questions asked, but at this point, I can't reasonably say there was excessive force, without further information. So I vote no."

Chair Troy: "I also will vote no. I have a lot of concerns about this interaction, and I think that Mr. Denecke did a great job of pointing out specifically what the policy says, which is only the force reasonably necessary under the totality to perform their duties and resolve confrontations effectively and safely... and I don't necessarily think that the fact coming before us is a brilliant demonstration of that policy, but I believe that whether or not he was trying, after the stop, whether or not he was trying to leave is a factual dispute, and if he was trying to leave, and the officer went hands-on, while it wouldn't be my approach, and it seems strident, I think it is within policy and that a reasonable person could make that conclusion, and that's the standard that we're held to. So I am voting no."

Mr. Bissonnette: "I'll vote no, because I do not believe that the evidence that came before us supports changing the finding to Sustained. I vote no."

Dr. Silver: "I vote yes. Based on the totality of the circumstances, I don't believe that force was needed in this situation, and therefore any force was excessive force."

The vote to challenge the Police Bureau's finding, overturning it to Sustain, failed by a vote of 4 no and 3 yes.

No: Bigam, Bissonnette, Troy, Yarosh

Yes: Denecke, Lalsingh, Silver

- Mr. Bissonnette made a motion to send the case back for additional investigation on two points: One, to talk to the second officer indicated in Craig's notes, to answer the question of whether Officer A said, "Yes, I did," to Craig's accusation that "You broke my arm on purpose." Second, to ask for additional investigation regarding the subsequent conversation that Witness C had with the senior officer, to see whether or not that would shed any light on the subject. Dr. Silver seconded the motion.

Mr. Bigam proposed the following friendly amendment: "I would like to ask both Witness C and D – they both expressed that they thought the force was excessive. I would like them to explain why they thought that. The initial

interview didn't really address that issue." Mr. Bissonnette accepted this friendly amendment and added it to his motion. Dr. Silver again seconded.

Dr. Silver: "I vote yes. I think it would be healthy to get all the possible information available on this case."

Mr. Bissonnette: "Because the incident is being looked at in its totality, and there's a question on the table by a statement made by Craig, in a statement that was written but was given equal weight to the officer's, that he said, 'You broke my arm on purpose,' and Officer A said, 'Yes, I did,' that we ought to know that before we make a decision on the finding. I vote yes on the motion."

At this point Chair Troy asked CRC members to vote on each element of the additional investigation separately or to specify that they were voting for all three.

Dr. Silver: "I supported all three."

Mr. Bissonnette: "I supported all three."

Chair Troy asked Captain Famous if he understood what CRC was asking in the motion. Captain Famous requested that IPR itemize the elements that CRC wanted further investigated and provide them in writing to the Police Bureau. Director Baptista said she would do this in writing.

Chair Troy: "I, at the case file review, requested additional investigation. I had a meeting with Captain Famous, concerned about the quality of the investigation, and I continue to believe that not asking, whoever the officer was, that Craig said responded, was a cover officer or whoever that person was, whether or not they heard the officer essentially admit that he had purposely broken this man's arm, is a critical piece of information. And if indeed he did admit that to a fellow officer, in front of Craig, I think that under the totality of the circumstances that should impact the Bureau's decision about whether or not excessive force was used. And so I would re-assert a request for that to be done and to re-interview Witnesses C and D about why they thought the force was excessive, and ask more probing questions related to that. I don't share the concerns of a need to talk to the supervisor who showed up. I don't feel strongly about that. I'm not requesting that."

Mr. Bigham: "I will vote yes on all three. I think I talked about it before, so I won't have to..."

Mr. Denecke: "I will vote yes on all three for the all the reasons that have been given."

Ms. Lalsingh: "I will vote yes on all three on what's stated already."

Mr. Yarosh: "So it's already passed, but for the record, I'll vote no. Let me address them one by one. First, let's talk about the statement of the officer. When Craig wrote this diary of the event, he quotes himself as saying, 'You broke my arm on purpose,'

and then he quotes Officer number one, saying, 'Yes, I did.' And then in parentheses it says, 'Officer number one spoke this to Officer number two, not me.' So, should that have been covered? Yes, absolutely. I think any good investigator would have followed up on that. They should have asked the right questions about that. I think from a debriefing standpoint, that's worth covering with the investigators. I don't need that answer to reach a conclusion, because Officer number one, the arresting officer, has testified in his statement at length about why and how he handcuffed [Craig]. The idea that somehow, on the scene, he's going to [garbled] up a reason to believe that he's confessing to deliberately breaking his arm. He didn't break it. The elbow dislocated. But the idea that he would confess on scene is frankly ridiculous. But it is something that should have been followed up in the questioning, and maybe, even if you had followed it up after we first asked you to, it wouldn't be at points number two and three, which are the two witnesses, who self-described as intoxicated, who self-described as four or five beers. So it's not that we're coloring them. And I think that, if you read the statement Witness C said, excessive force, yes, but that [Craig] was not complying and that he thought that [Craig] was acting like he was high. So it's not clear exactly what he meant. Could have used some more good questions by the investigator. It would have been helpful. But I didn't see anywhere where Witness D said force was excessive. He said he didn't know – he had a hazy memory – and that he knew that the guy wasn't complying. So I don't see, given what our duty here is... was it a reasonable decision with a logical chain of events – even if we could have reached another reasonable decision – was the decision based on facts, reasonable, and I think that it unquestionably was. Is it a great investigation? I mean sufficient – it certainly could have been better. I think these points being raised are legitimate points. This is a very healthy process, and what we're doing by kicking this back downline is going to improve the process. For individualized justice on this one case, I don't need it. I think that we're breaking that standard. I think it's unquestionably the decision that the Bureau reached that this was unproven is unquestionably reasonable based on the facts of the case.

The vote for additional investigation passed by a vote of 6-1 and 5-2 for additional investigation on all three points.

Yes: Bigam, Bissonnette, Denecke, Lalsingh, Silver.

No: Yarosh, Troy (in favor of additional investigation but not in favor of all three elements of the motion.)

Chair Troy: What happens next is that Captain Famous decides whether or not he is going to acquiesce to that request made a second time with pretty please and sugar on top, and the Police Bureau will formally respond to CRC in writing as to whether or not they plan to do additional investigation. If the Bureau does decide to do additional investigation, then they'll do that investigation – it was called a supplemental investigation, I think is what we call it – and then the hierarchy within the Bureau has to review that in making a determination again, because they have to consider all of the material before them to make a conclusion. That process takes some time, and we would be in touch with Mr. Ueland to notify you guys about where are we on that

process and what happened; at which point we would have another appeal hearing, because we've asked for additional review, and we'd come to discuss that. If the Bureau is unwilling— we don't have the power to compel the Bureau to do additional investigation. If the Bureau is unwilling to do that additional investigation, then I think it is unclear what happens. I think that there is some thought that we could go to City Council and ask them to compel the Bureau to do additional investigation. I'm getting strange thoughts from Ms. Rees and Ms. Baptista.”

Ms. Rees: “Where in the ordinance was it that you saw this authority?”

Chair Troy: “Well, I think what the ordinance does, under 321.160, which defines our appeals... [pause]... ‘At the appeal hearing, the Committee shall decide by majority vote to recommend further investigation or.... If the Bureau accepts the recommendation, Bureau advises the Director in writing and closes the case.’ We wouldn't close the case if there was a request for additional investigation.”

Ms. Rees: “[garbled] ’if you, under 1c, determine the finding was not supported by the evidence and challenge [garbled]” [Side conversation taking place. Unidentified CRC member is heard speaking to Chair Troy: “If Bureau does not accept the recommendation, [garbled] will schedule a conference hearing.’ Chair Troy responds, “You're right.... no, 'cause that's only under....” Unidentified speaker: “It's four... four.”]

Chair Troy: “What does Director Baptista believe would happen?”

Director Baptista: “I'm going to let the City Attorney answer this.”

Chair Troy: “All right. And what does the ordinance – and tell us where you're reading in the ordinance.”

Ms. Rees: “You have one of three options every time it comes to you. Then it could come back to you, and you would then have three options in front of you. There's nothing in the code that says what happens if you continually recommend further investigation other than that this is just not going to get resolved, because you don't have the power, the Council is not giving you the power to compel that investigation.”

Chair Troy: “Right. Which is why I'm saying I think I would go to City Council.”

Ms. Rees said: “I don't think Council has the power to do that. The way this works, this is an appeal procedure. You're an appeal body. You have to make one of these three things happen before it could go to Council, and Option A doesn't get you to Council. Option B doesn't get you to Council. The only option that gets you to Council is Option C, which is, you make a determination that the finding is not supported by the evidence. [Reading from the ordinance:] ‘In a case where a majority of the voting members of the Committee challenges one or more of the Bureau's recommended findings by determining the finding is not supported by the evidence and recommends a different finding, the Director shall formally advise the Bureau.’ That's when you get into the

Conference Committee and its determination. So that's the only way that it ends up in front of Council – the appeal.”

Chair Troy: “So I think the answer is, it's unclear what would happen. It *is* unclear. We could say, ‘Okay, then we're having another appeal hearing.’ ‘Do additional investigation.’ ‘No.’ ‘Okay, let's have another appeal hearing.’ ‘Do additional investigation.’ ‘No.’ And I think at some point that's ridiculous and would lead to probably the Mayor intervening or Council taking notice of it.”

Mr. Bigam: “Well, I also would like to point out that we're short two members tonight, so if we have other appeal hearings, the results might be different.”

[Inaudible remark from a CRC member.]

Captain Famous: “I have a question.”

Chair Troy: “Sure, Captain Famous.”

Captain Famous: “My recollection this evening is the CRC did vote and come to a decision that was four to three.”

Chair Troy: “There was a vote to challenge, and that was declined – to challenge Exonerated. There was not a vote to affirm. So the only vote before you was the failed vote to challenge and a vote to request additional investigation.”

Mr. Bissonette: “Which did receive a majority and is currently where the [garbled.]

Captain Famous: “Okay.”

Chair Troy: “Okay. Well, that's about as clear as mud, and fairly unsatisfactory to, I'm sure, folks here, but we will notify you of the Bureau's response to the request for additional investigation. We had many trainings on the CRC, and at one of those, we had another member from Ms. Rees's office [David Woboril] come and talk to us about our requests for additional investigation and what would happen if that was made and not followed through upon, and I think he said something about there'd be a very loud and boisterous discussion to the media, or something about how this should happen. We have all of that taped, so we can pull up his exact quote if we need it.”

Ms. Rees: “I think [garbled] what's clear from his discussion is the power the Council gave you is not to force an investigation, but you clearly, as a Committee of the City, have the ability make your voices and your feelings about something heard, and I think he was simply making that clear. You don't have the power to force an investigation. You have the ability to say you don't like the way some things are done.”

Chair Troy: “Right. And I'm hoping that there won't be any force needed. I think that the Committee has tried to make clear that we've done a thorough review of the investigation, that we had concerns about the investigation, and that a critical piece of

information for many members is missing, and we're hopeful that, while reasonable people can agree to disagree, that we won't on this particular point. So we will be in touch with Mr. Ueland.

At the request of Mr. Ueland, Chair Troy restated CRC's decision for the appellants to make sure that they understand the findings recommendations that were reached.

Chair Troy: "Okay, I will resummarize: We have three options available to us. We can vote to affirm the Bureau's findings. We can vote to challenge the Bureau's findings. And we can vote to request additional investigation. There was a vote to challenge the Bureau's finding, overturning it from Unproven to Sustained. Sustained means that the Bureau member violated Bureau policy. You heard that vote. It was a close vote, but it was voted down. And so that was not the finding of the Committee. There was then a vote to request additional investigation. That vote was supported. We have three specific inquiries that were made, and we're hopeful that Internal Affairs folks will follow through on that investigation. It is within their discretion as to whether or not they're going to perform that request. If they're unwilling to perform that request, they will notify us in writing, and we'll scratch our heads and try to figure out what we're going to do at that point. If they are willing to do additional investigation, then that would be done, and it will be run through channels, as they like to say. The Bureau, Captain Walsh or maybe somebody else will make that decision, and we'll have another – we'll continue the appeal at that point, and we'll notify you of those dates and try to accommodate your schedule."

Mr. Bigham: "The next hearing is what they call 'Supplemental Hearing,' so it isn't as involved as this one."

Mr. Yarosh: "I would just like to say one thing, that despite what you might think, we don't get paid to sit..."

One of the persons who spoke on behalf of Craig said the following: "I just have one question. Which one of the findings gets you to the next step? To Council, I think you said."

Chair Troy: "So if we voted to affirm their finding, that would sort of be the end. If we voted to challenge their finding, we recommend – we do a lot of recommending on this Committee – that they revisit that decision. If they revisited that decision and decided that they were not going to modify it, to switch it from Unproven to Sustained, then we would have a Conference Committee, where we discuss that further, and then if we couldn't come to an agreement, then it goes on to City Council for an appeal. There's not been an appeal in front of City Council in quite some time. It's a rare event, but it's certainly a possibility [garbled] by the ordinance. Does that answer your question?"

Previous speaker: "I 'm probably not understanding it correctly, but it seems to me that several of the members voted no on the challenge because they needed more information..."

Chair Troy: "Right."

Previous speaker: "...if they can't get more information to make a vote to challenge, then..."

Chair Troy: "That is a head scratcher, isn't it?"

Mr. Bigham: "And I think the other thing that we have to remember is there's two members who were not able to vote here tonight, so that would probably change the dynamic of the Committee if they're here for the next hearing."

Appellant: "They potentially could be here and could be able to vote?"

Mr. Bigham: "Yeah, they have to listen to the tape of all this."

Chair Troy: "I don't think I'm going to say anything that's going to make you change that expression, Ma'am. It's had its ups and downs, and the system is, believe it or not, improved from what it used to be. So there you have it. I want to thank you all for your time this evening, and this concludes our appeal at this point. Thank you all."

IPR Director's Report

(Attached.)

CRC Chair's Report (Chair Troy)

Chair Troy said he has been spending a lot of time dealing with appeals and talking to IPR and other CRC members about various issues.

Old Business

None.

New Business

Dr. Silver said that it would be preferable to her if appeals were scheduled on separate day from meeting nights.

Workgroup Updates

- Crowd Control Workgroup (Chair Troy for Mr. Paris): The workgroup has met and is working on its mission statement and brainstorming how they want to approach their topic. The next meeting is scheduled for Friday, 6/15/12, at noon, in Chair Troy's new office.

- Outreach Workgroup (Dr. Silver for Mr. Pruitt): The workgroup met today with Donna Maxey of Race Talks. The next community forum, on Tuesday, 11/13/12, from 7:00 p.m. to 9:00 p.m. will be held in combination with Race Talks.
- Recruitment, Retention, and Promotion Workgroup (Mr. Yarosh): The workgroup met on Friday, 5/18/12. Office Deanna Wesson was the guest speaker. The next meeting is scheduled for Friday 6/15/12 at 10:00 a.m.
- Recurring Audit Workgroup (Mr. Bissonnette): The workgroup met last month to talk about the completion of the review of dismissed cases. The next meeting is scheduled for 6/21/12 at 11:00 a.m. in the Audit Services Library.
- Taser/Less-lethal Force Workgroup (Mr. Bigham): The workgroup has not met recently. It is hoped that the workgroup report will be voted by the full CRC at next month's meeting.
- Use of Deadly Force Workgroup (Mr. Denecke). The workgroup met at the end of last month. The next meeting is scheduled for 6/14/12 to meet with Training Division personnel and will meet again at the end of the month.

Public Comment

- Mr. Handelman asked CRC to consider briefly re-opening tonight's appeal hearing to state that there are new allegations that CRC would like to have investigated and also to ask that Officer A be reinvestigated to ask him directly if he said that he broke the person's arm on purpose, and to find out why he did not include the witness in his police report and any other information that might be drawn out from Officer A. Mr. Handelman said that the CRC summary report tonight was much better than the last hearing, but he suggested that there be some sort of template. He suggested that the first thing on the summary should be a synopsis of the complaint, so that everyone knows the purpose of the hearing.
- "Mark" said that he enjoyed the meeting. He said that excessive use of force by the police is a serious issue in people's perception if not in actuality.

Wrap-up Comments

None.

Adjournment

Chair Troy adjourned the meeting at 9:35 p.m.