

Minutes  
Citizen Review Committee  
January 30, 2013

Date Approved: March 6, 2013

Meeting Location: Room C, Portland Building, 1120 SW 4<sup>th</sup> Ave. Portland, Oregon

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, Rodney Paris, Dr. Rochelle Silver, Steve Yarosh

City staff: Rachel Mortimer, Assistant Program Manager, Independent Police Review (IPR); Linly Rees, Deputy City Attorney

Appeal Process Advisors (APA): Hank Miggins (appellant); TJ Browning (officer)

National Lawyers Guild (NLG): Dana Gross, Jason Kafoury, Liberty Straney

Portland Police Bureau: Captain Dave Famous, Professional Standards Division; Lieutenant Larry Graham, Internal Affairs (IA); Lieutenant Elmore (Rapid Response Team (RRT) Commander

Community and Media: Dan Handelman (Portland Copwatch and Flying Focus Video), Regina Hannon (Portland Copwatch), Henry Herring, Barbara Ross, Ann Brayfield, Audrey Potter, Ms. Endicott, Denis Theriault (Portland Mercury)

**Appeal Hearing #2012-C-0005/2012-X-0005**

Chair Troy introduced the participants in the appeal hearing. He noted that both the appellant and the involved officer had indicated to him before the hearing that they have chosen to use their names during the hearing even though they are not required to do so. The appellant, Miss Penelope Welsh, was present with Ms. Dana Gross, her volunteer NLG advocate, and Mr. Hank Miggins, her APA. Miss Welsh's witness was to be available via speaker phone. Officer Endicott was present with Ms. TJ Browning, his APA. Lieutenant Elmore was present to represent the decision maker from the Police Bureau. Ms. Mortimer was present from IPR, and Captain Famous and Lieutenant Graham were present from IA.

All CRC members verified that they had reviewed the entire IA and IPR files, including the supplemental investigation. Mr. Paris, who was not able to attend the original hearing, also listened to the recording of that hearing.

Chair Troy described the appeal process.

Mr. Bissonnette presented the CRC appeal summary.

*Statements by Ms. Welsh (Appellant) and Witness*

Miss Welsh made the following statement:

Miss Welsh introduced her statement by saying that what she was wearing tonight at the hearing was exactly what she was wearing on the night of the incident, so there could not have been any question about her being an Occupy protestor.

“My name is Penelope Welsh, and at about 8:40 p.m. on Saturday, December 3<sup>rd</sup>, 2011, I left my downtown apartment that is located near the South Park Blocks, at 710 SW Madison, and I walked west to the end of the block. Then I turned north onto Park Avenue and began walking down the sidewalk on the east side of the street. I was moving in the direction of the South Park Block known as Schemansky Park. At that time I didn’t see any other pedestrians on the sidewalk. So when I was about halfway down the block, and was [garbled] by the north end of the First Congregational Church, Officer A suddenly appeared, coming toward me at a near run, and he pushed against my upper body with his arms like this, and he said, ‘Leave the area now.’ I complied with his order immediately. I turned around and started to walk back in the direction I had just come from, and as I turned around, I said, ‘Why?’ So even though I was in immediate and full compliance with his verbal command, he maintained continual physical contact with me. He was pushing and jabbing at me in the back with what felt like a lot of force. I don’t know what he was using to push exactly, but it was hard, and it felt like it might have been his fist or his forearm. I don’t remember him having a billy club or anything like that.

“So we continued like this for about 12 or 15 [garbled], and during this time, when I started getting scared, and I asked him several times at this point why he was pushing me, and I said, ‘I’m walking as fast as I can.’ And you’ve already heard, but I have arthritis in both knees, and I have foot drop, which means I cannot really [garbled]. It’s a neurological thing, and so I kind of have to walk like Trigger. You know, I prance and move on, so I can’t walk very fast. And he was pushing me, and I was trying to walk, and I started to stumble, and then I knew I was going to fall down, and at this moment we were alongside of the church wall, and we were pretty close to it, so I turned around and fell up against the church wall with my hand out like this. And then we just kind of stood there for a period of time that seemed like maybe even fifteen seconds or so. And we were just standing there silently, and I turned around, and I said, ‘I can see your name badge, and why are you doing this to me? I’m 67 years old. Can’t you see I’m an old lady? My knees don’t work. I figure you know I’m going to file a complaint against you.’ And I did not use any profanity in any of this. I want to make that clear. Nor did he. There was no profanity.

“So at this point, he seemed to be making eye contact with me, but he didn’t respond to my questions about why he was doing this. And then there was another brief pause, and we weren’t talking to each other, but he backed away and gave me enough room to back away from the wall, and I continued walking back up the block again. And as I was walking, he just kept pushing away on the right side of my back, and I was again very much afraid that I was going to fall down, and if I had, that time I wouldn’t have had any church wall to hang onto. So when I got to about six feet of this corner of Madison and Park, I did become aware that he was no longer in physical contact with me, but I thought that he was still behind me, and I kept walking until I got to the corner. And when I got there, I just stood there for a few seconds, and then I turned around to see what he was doing, and I saw he was already halfway down the block, going back down Park Avenue, and that was the end of the encounter. And I should say also that since then, I always feel fearful if I see a uniformed police officer, [because] he just walked up and started shoving me around for no reason. There was absolutely nothing that could be seen, and referring to, if I can, this sound truck – I have no idea what that is referring to. I heard nothing. And so I’m very angry about my being pushed around, but I’m primarily just fearful now – I’m fearful tonight when I see these [garbled] that are here. ...”

Ms. Gross asked Miss Welsh a few follow-up questions and then called the witness, Michellene Frizzell, on the speaker phone and asked her what she witnessed happening when she saw Miss Welsh and the officer interacting.

Ms. Frizzell said the following: “I was getting into the car with some friends..., and I looked down the sidewalk. It was empty around. People were gone. It was all blocked off. No one could get anywhere. There was a woman taking pictures on the corner, and I saw a cop run up to her and push her and tell her to get the hell out of there, and she ran with her camera while he was shoving her. Then he went up the sidewalk. He came towards us, and I saw Penelope coming down. And he immediately – from what I remember he put his hands on immediately and was telling her to get out of there and didn’t explain anything to her, and she wanted to know what was going on. Was pushing her. And I said something. I was like, ‘What are you doing?’ ‘Cause, like, she did nothing. She was just walking down the street, and he ran up on her. And then I saw her go against the wall and watched as she got it together and was walking away, before he left and ran into her later....”

Ms. Gross asked Ms. Frizzell some follow-up questions.

CRC members Silver and Troy directed questions to Ms. Frizzell.

*Statement by Officer Endicott*

Officer Endicott said the following:

“On that night that we had contact, she was also wearing that but she was wearing a ‘99 Percent’ pin on her coat. But regardless, that wasn’t the issue. That night, when we were down there [garbled], we had parked our vehicles along Park Avenue – along

Main Street and both sides of Park Avenue. We were also taking the block and on Madison we had vehicles down there. Schemansky Park is where the actual event was taking place. [Garbled] we were giving directions that it was emergency park closure and that the park was being cleared, and the directions were clear. We had cleared the park already, and Lincoln Square Park, so that there were no people, and then as individuals entered the park from SW Madison and went north on the Park Blocks, that's when I would make contact and ask them to leave – let them know that the park was closed and asked them to leave, and let them know that they could walk around down to Broadway or up 10<sup>th</sup>, and they could go around that way, but that the park right through there was cleared and was closed due to an emergency park closure.

“And the night that we had contact, and I came up to her. I did not run. I walked up to her and met her at midblock. But with police training and – I'd been doing this for, at that time, it had been nineteen years, approximately. We don't – this is not a police thing. We do not do this. First off, I got a vest and all my gear on, and it's, like, very uncomfortable. Tactically that is not how you do it. When I meet somebody, my hands are down at waist level. That way I can react quickly if there's unusual things. So I just never stand with my hands crossed when I'm in uniform, which is not something I do.

“I identified myself, made contact with her, told her the park was closed, asked her to leave, and gave her directions. And when she tried to – she stopped and tried to interact with me, I've always felt, no we've been directed by our sergeant and the lieutenant in our team, and also through years of experience I know that there's a time and a place to have discussion, and during a demonstration event is not the time nor the place to have a discussion about the aspects of the law. And so I refused to engage her, and I just continued to reaffirm that the park was closed due to an emergency closure and that she needed to leave the park.

“She would walk a few steps, walked a few steps south, and try to engage me. When we reached the wall of the church, approximately twenty feet from the SW Madison sidewalk, [garbled] and the wall of the church. I did not push in on her. That would be unacceptable, first off, [garbled] because it leaves me very exposed and vulnerable. A person could have access to my weapon or all sorts of things. Distance is what you try to maintain if you can. [Garbled.]

Going back, she stopped, and at that point I continue to reiterate. I pointed which direction she needed to go, and she just continued to stand there, refused to go, and till finally, that's why I reached out and grabbed her with my left hand. Grabbed her left hand – arm, right here, and spun her around and began to walk her, with my hand to her [garbled], as you would walk a child that was refusing to go. She was leaning back against me as we walked. She was complaining that I had no right to do what I was doing. I continued to walk her out. She called me some names. She's a citizen. She has the right to use profanity if she chooses to. What people say, that's up to them. I can't control any of that stuff. And they're allowed to talk, and they can say what they want... [garbled] to call me names and berate me. Well, that's their [garbled]. But I always try to treat people the way that I would hope people – I would want somebody to treat my own mom. I try to treat people with respect and dignity. We live in tough

times, so I don't cuss, and I try to be nice, be as nice as I can. But I have to be forceful. I do have a job to do, and I did need to clear the park. I needed to move her away from there.

"So I continued to gently push her. I know she is a senior citizen, and that they don't walk as fast, like grandmother – my great grandmother – they walk slowly. So we walked slowly. At ten feet I just stopped, and then she continued walking the rest of the way until she reached the sidewalk, at which time she told me she was going to file a complaint, she used some verbal abusive language toward me a bit more, and I just turned [garbled] to go back to my duties."

[ . . . ]

Officer Endicott concluded: "I didn't use any – what we would determine as force. It's considered an escort. I simply took my hand to her back and moved somebody who wants to be moved. I mean, that's about the least amount of force that, if I'm going to actually touch a person, that I can use to use to move them out of a location without causing any injury or damage. And I didn't want to. There was no need to."

Ms. Browning made a statement on behalf of the officer.

Captain Famous stated that as far as the investigation goes, IA had nothing to add at this time.

Lieutenant Elmore provided an explanation of the Command Staff findings. He explained that Officer Endicott is a member of the Portland Police Bureau's Rapid Response Team, which is a specialized team assigned to address crowd management and crowd control. He has been a member of that team for ten years and is considered one of the senior members. At the time of this incident, the Police Bureau had been dealing with Occupy Portland encampments in downtown Portland parks. Schemansky Park had been closed on an emergency basis by City of Portland officials at 8:30 p.m. Lieutenant Elmore stated that Officer Endicott used a trained and approved escort hold to effect Ms. Welsh's removal from the area and did everything he could to avoid confrontation.

IPR Assistant Program Manager Mortimer stated that IPR Director Baptista concurred with the Bureau's findings, and although she believed that Unproven would have been a more appropriate finding, she did not believe it would be a good use of limited resources to controvert the finding.

Dr. Silver: "It seems to me that if the Director of IPR saw the finding should be different than what the police people's finding was, that she usually controverts that finding, and in this case she did not, and that's confusing to me... because it seems like a decision should be made about the controverting separate from the consequences of that controverting."

Mr. Yarosh: "I don't think resolving that question has any bearing on how we're going to make a decision regarding this appeal. It doesn't bind us one way or the other what she wrote or said there. All of our options remain exactly the same."

At this point Chair Troy asked Mr. Bissonnette to re-read the allegation, the finding, and the possible options available to CRC, followed by CRC questions and discussion.

### *Public Comment*

Ms. Hannon, Mr. Herring, Ms. Ross, Mr. Handelman, and an unidentified person provided public comment.

Miss Welsh, Ms. Gross, and Mr. Kafoury presented rebuttal comments. Ms. Gross asked that the allegation be Sustained or Unproven with a Debriefing.

Ms. Browning presented rebuttal comments on behalf of Officer Endicott.

Captain Famous thanked the participants in the appeal hearing.

Ms. Rees read the standard of review: "You are to determine whether the finding is supported by the evidence, and a finding is supported by the evidence when a reasonable person could make the finding in light of the evidence, whether or not the reviewing body agrees with the finding." She added: "There could be a number of reasonable findings in any given case. You may agree with one reasonable finding more than another, but your job is to figure out if there is a logical connection between the series of events that have happened and the conclusion, whether or not it is reasonable to use those facts to get to the conclusion that the RU manager did."

In response to a question from Ms. Gross regarding whether or not the APA was allowed to take an advocacy role in the proceedings, Chair Troy explained that the APA role has been recently modified. He stated that the APA formerly had a very limited role, and CRC wanted their role to more robust, although not an advocacy role.

Mr. Denecke made a motion to affirm the Police Bureau's finding. Chair Troy seconded the motion.

Mr. Denecke supported his motion as follows: "I think there is evidence to support the Bureau's finding, and – sure, there's evidence going both ways, but I think there's more than enough evidence to have supported the decision that the Bureau has made and the review process that went into that decision."

After further discussion, a roll call vote was taken.

Dr. Silver: "No."

Mr. Paris: "No."

Mr. Bissonnette: "I'm almost there, but we have a decision maker that says it should be Unproven. ... Because of that, I have to say that I can't affirm the decision, so I will vote no."

Chair Troy: "The Chair votes yes."

Mr. Bigham: "It's a really close call for me, but I vote no, also."

Mr. Denecke: "Yes."

Mr. Yarosh: "I vote yes."

Chair Troy: "The motion to affirm the Bureau's finding fails by a four to three vote. Is there another motion on the floor to challenge the Bureau's finding?"

Mr. Bigham made a motion to challenge the Bureau's finding and make it Unproven."  
Dr. Silver seconded the motion.

After further brief discussion, a roll call vote was taken.

Dr. Silver: "Yes."

Mr. Paris: "Yes."

Mr. Bissonnette: "Because we did have a decision maker weighing the preponderance of the evidence, I'm more comfortable with an Unproven. If this had a difference in discipline, I wouldn't be there, but because it doesn't, I would have the close call go this way, so I vote yes."

Chair Troy: "Troy votes no."

Mr. Bigham: "Yes."

Mr. Denecke: "Yes."

Mr. Yarosh: "And I vote no. I think it's the wrong thing to do. I think it would have been reasonable if that's what came down from the start, from the chain of command. I don't think it's reasonable for us to substitute one reasonable solution for our own preferred reasonable solution. I don't think that meets the standard, so I vote no."

Chair Troy: "The motion carries, so CRC by a five to two vote is recommending that the Bureau revisit the decision in this case and change Exonerated to Unproven."

Mr. Miggins, the APA for the appellant, thanked the officer for attending the appeal hearing.

### *Policy discussion*

Dr. Silver said that she had suggested in a previous meeting that police training involve real people. She said that she received a message from Ms. Mortimer that Captain Famous had checked on that and this cannot be done because of liability.

Mr. Bissonnette said that he thought that the allegation in tonight's case should have been classified as a Courtesy rather than Force. He suggested that de-escalation of a situation would be better served if officer were trained to give citizens a little more information on the reasons that a given police action is taking place. Mr. Bissonnette thanked IA for the quality of the investigation but thought that the investigator should have questioned the complainant about the officer's allegation regarding her use of profanity.

Mr. Yarosh said that after tonight's appeal hearing, he can understand why officers rarely appear for appeal hearings. He said that despite tonight's hearing involved a very marginal allegation of use of force, "the officer had to sit there as darts were repeatedly thrown at him." Mr. Yarosh was concerned that the officer would advise his fellow officers not to go to the appeal hearings.

Mr. Yarosh stated: "What we want to do is we want to bring the citizens and the officers together into a single community, and to me, what happened in this process worked against that. ... The only time we talk about officers is to criticize them in this body. We never bring officers forward to commend them at the CRC. I know that there's a commendation process, and it's on the printout, and that some officers get commendations; but when we invite public comments, when we hold hearings, when we hold our formal get-togethers, it's never to say, 'You did great. That's a great example.' And I think we could do that. I think we should do that, because what's happening is there's the PR avalanche that the only time you hear about police is when something bad happens; and so pretty soon, when you think of the police, you think of something bad. ... I don't think our job is to represent the interests of the community. I think our job is to create community and create a relation that is healthy, not to advocate for citizens, because I think that just cleaves deeper into this division that we felt here tonight."

Mr. Denecke: It was said before, but I think it clouds the issue – and this goes for Mary-Beth Baptista – it clouds the issue to put a comment in her findings about, 'I would have done this, but I did that.' That doesn't help us for the process, I don't think."

Ms. Mortimer announced that recruitment of CRC members will open on 2/13/13, and applications are available. The closing date for applications is 3/13/13.

### **Adjournment**

Chair Troy adjourned the meeting at 8:26 p.m.