

Minutes
Citizen Review Committee
June 11, 2013

Date Approved: _____ July 10, 2013 _____

Meeting Location: Room C, Portland Building, 1120 SW 4th Ave. Portland, Oregon

Chair Troy called the meeting to order at 5:45 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: Constantin Severe, Assistant Director, Independent Police Review (IPR); Linly Rees, Deputy City Attorney

Appeal Process Advisors (APA): Eric Terrell

National Lawyers Guild Volunteer Advocate: Ms. Swift

Portland Police Bureau (PPB): Captain Dave Famous, Professional Standards Division; Lieutenant Jeff Bell, Internal Affairs (IA); Lieutenant Vince Elmore (East Precinct)

Community and Media: Dan Handelman (Portland Copwatch and Flying Focus Video), Regina Hannon (Portland Copwatch); other community members

Appeal Hearing 2012-C-0187/2013-X-0001

CASE SUMMARY: Appellant states that Officer A and Officer B conducted an improper search of her and her belongings and used unnecessary force to detain her. Appellant also states that Officer A used profanity during this incident.

Chair Troy explained that this appeal hearing had initially been scheduled for Wednesday, June 5, but due to some miscommunication there was no PPB Command Staff present, so the hearing was rescheduled for tonight.

Chair Troy explained the procedure and introduced the participants in the appeal hearing.

Mr. Yarosh presented the CRC appeal summary, including the allegations and findings.

Chair Troy invited the Appellant and/or the Appellant's volunteer advocate, and any material witnesses proffered by the Appellant to make a statement.

(The Appellant had not yet arrived to the hearing.)

Ms. Swift (Volunteer Advocate): “The Appellant was first going to start off by doing a playback of what happened to her and her experience. In the event that she shows up, I will still give her the chance to say that in her own words, so I was just going to just bring up a few procedural and investigative issues that she had with the case. One of the issues that she wanted to bring up was PSF-5.03 states that the appeal must be filed within 30 days of the complainant receiving notification from IPR regarding the disposition of the case. On January 8th she received the letter that the disposition was found, but unfortunately that letter did not contain the actual findings from IA. There was a January 16th letter which confirmed that there was a mix-up and the disposition wasn’t included in the January 8th letter, so it wasn’t until the January 16th letter was received by [the Appellant] that she actually knew what the findings were. On January 14th, two days before she found out what the findings were, it stated that she needed to file an appeal on January 23rd. So if you count those days, it’s about seven days rather than thirty days for her to file her appeal. So she was just worried that that might dissuade a lot of potential appellants from wanting to go through the CRC appeal, so she wanted to voice that concern. She was worried that it would give appellant’s inadequate time to get counsel and consider their circumstances as well, which might dissuade them.

“There was another investigative issue that she had. She was going to discuss in her testimony that when she was frisked, they actually frisked her underneath her clothing, and, as defined by Oregon Revised Statute 131.605, a frisk is an external patting of the outer clothing, so she thinks it was outside of frisking authority to go underneath her jacket.

“In addition there were a few allegations of a few directives that she feels weren’t fully investigated. One of those was retaliation, under section 310.20. And that section reads: “In order to maintain community credibility it is essential citizens do not fear retaliation by Bureau members, including reporting misconduct and asking for members’ names and their Bureau ID.’ [The Appellant] maintains that after she had told officers that she wanted their names, said the officers became hostile with her and told her that ‘You better not pursue this. You need to stop pissing us off’ and that ‘You should be happy we’re not taking you in’ – arresting her. She feels this was retaliatory, and I know the allegation that there were photographs taken – of course IA says that they were unable to find any photographs. She thinks that that was because they weren’t normally taken on any police cameras but rather on cell phones. So she thinks that this is potentially a retaliatory measure [garbled] to put fear in her because they requested their names and their badge numbers. So I don’t know how we can find that out if there is no photograph on file that she says was taken on her cell phone. She thought the police were documenting what she looked like so that if they saw her in the future, they could continue with their conduct, so she was really fearful of this at the time anyway.

“[The Appellant] is involved in a lot of community projects in Portland, where she discusses police encounters and is involved in other access with the community with regard to law enforcement community involvement, so she had been hearing stories

about some fearful issues that have happened and just hearing it through the grapevine, so she already had a sense of fear prior to this occurrence, and it kind of enhanced that.

“Another directive that she feels wasn’t investigated was the duty to report. Section 1010.20 states that ‘a member who takes a person to the ground by applying force must complete a Force Data Collection Report.’ There was no statement in IA’s findings that she was taken to the ground or not, so IPR’s summary has one officer stating that she was not taken to the ground.

“This may have no bearing, but Oregon Revised Statute 810.410 states that ‘a police officer may use the degree of force reasonably necessary to make the stop and ensure the safety of the police officer, the person stopped or other persons present.’ [The Appellant] doesn’t believe that being forced to the ground, as she said, with a knee in her back, and being pulled by her collar to witnesses was reasonably necessary to [garbled].

“Also, the reasonableness of the stop – we know that the CRC summary states that it will not be investigating that – it was declined for investigation by IPR, and as Mr. Yarosh stated, CRC is limited to reviewing only those claims which were accepted for investigation by a chain of command, and accordingly CRC will not be addressing any of the Appellant’s other claims – the unnecessary stop, for instance – which were declined for investigation by the chain of command. So as a result, directives involving prohibited discrimination and bias based policing are essentially out of CRC’s scope. This as a practice the Appellant and the NLG Portland Chapter believes is a real issue. CRC’s mission is to improve police accountability and promote higher standards of police services and to increase public confidence, and if any topic currently stands at the center of community concern, is racially based policing. In fact, in CRC’s own 2010 Disparate Treatment Complaint Report the CRC indicated that the credibility of both CRC would be enhanced if CRC and its workgroups engaged in more regular routine auditing of IPR case files, office, policies and procedures, and case handling decisions. For instance, last year there were 34 allegations of disparate treatment that were received, and only two were investigated, and both of those two were exonerated.

“In a November 2010 memorandum signed by LaVonne Griffin-Valade, it was agreed that investigations conducted by IPR or IAD and reviewed by CRC should proceed in a manner consistently and objectively independent.’ If the CRC is unable to consider the circumstances that predicated a protested encounter – the stop itself – how can CRC evaluate compliance with directives on racially based policing. It just seems out of the reach of appellants. If IPR can choose unilaterally not to investigate a certain matter. is[background noise] then it’s just totally not [background noise] to appellants, and that was concerning to her, especially on an issue that she feels is the most egregious aspect of this case, which is the fact that she was stopped for a Hispanic male who – it was actually [the Appellant’s] friend, Nancy Henderson at the Bureau of Emergency Communications who provided her a transcript of one of the initial calls about the mailbox suspect, said that there was actually a slender Hispanic male slouched over, walking slowly through a neighborhood, and she feels that – it would probably help is she was here, and then you could see her physical person – and that’s what she feels is

the most egregious part of this case. So she really urges the CRC to reconsider not choosing to investigate those issues that are not taken by IPR.

“Another issue that she had was regarding the search and whether she was being detained or not. There’s different testimony about whether she was told if she was being detained or not, and she feels this is very pertinent to the reasonableness of the search. She states that she asked the officers, ‘Are you detaining me?’, and they didn’t give her an answer, and so when she went to grab her bag, that was the reason in the CRC summary that the officers then restrained her; but we feel as though, if she wasn’t being detained, and she was never told she was being detained – and the IA findings do not comment on this, if she was actually told that she was being detained – that it would bear on the fact that she went to grab her bag. If she was told that she wasn’t being detained, we don’t think it would be unreasonable for her to grab her bag, and that shouldn’t serve as a predicate for them to restrain her. So that was one of the issues that she felt should have had a conclusion, either by IPR or IA, in their findings.

“There were also some discrepancies between the reasons why she was searched. The officers stated in the summary that she was searched incident to arrest, but in the IA findings it stated that she was searched because of officer safety – it appeared that she was grabbing – when she went to go reach down for her bag to leave – she was reaching for a weapon; and I think that what also should be taken into account was the fact that, if it was on her cell phone, reportedly, and she had a coffee mug in her hand, because the coffee spilled everywhere when they went to grab her, I think that, thinking about the reasonableness of whether she was going to grab a weapon in the bag is something that CRC should consider.

“The final thing that she was going to talk about in her testimony was that, subsequent to the search – when after they had searched her bag, they didn’t find any mail – they started going through her wallet to find her ID. When the show-up occurred and the witnesses were presented, we [garbled] was she forcefully shown to them – she states that she was grabbed by her shoulder and pushed over to them while she was in handcuffs – she states that the officers also showed the witnesses her ID from her wallet, and she thinks that that exceeded your policies because it had her personal information on it, and if the witnesses had saw her from afar in the first place, there is no reason why they would need to see her ID as well.

“The final issue that she had was with courtesy, and she thinks that this is violated in a number of ways – obviously the profanity – in her testimony she was going to recollect the fact that, when the encounter was first beginning to happen, and the officer said , ‘You have no f-ing rights,’ that actually a person in the Wells Fargo – a banker in the Wells Fargo – was walking in – one of the customers – and he’s like, ‘Yeah, you don’t have no f-ing rights.’ So that really affected her emotionally because she never thought that an officer, with his actions and comments toward her, would influence someone in the [garbled] community to make those statements to her.

“In addition, after they looked into her wallet, she states that they made comments about how much money she had in her wallet – I believe she states – were commenting

on how she had eleven or fourteen dollars in her wallet at that time, and she feels that that was really discourteous and hurtful.

“And also the photos – I didn’t know where to put that underneath retaliatory or courtesy – she felt that the issue of the photos on the cell phone was a really dehumanizing experience. It was humiliating, and it made her feel like a criminal. And I think that courtesy is really important because a number of other directives fall under it – the mission and goals of the Portland Police Bureau: integrity, respect, compassion, excellence -- human goals and other directives – ‘that the Bureau must always be guided by the principle that the individual has infinite dignity and worth, and we must show respect for the citizens we serve’, etc.”

Chair Troy stated that there was no respondent officer or representative present.

Lieutenant Bell summarized the IA investigation.

Chair Troy asked Lieutenant Bell if the Appellant asked for anyone else to be interviewed besides her and the officers or had suggestions for other persons to be interviewed. Lieutenant Bell replied that neither the officers nor the Appellant gave the investigator any information on any additional witnesses to be interviewed. Because of where it occurred there were many witnesses, but they were just passersby, and neither the officers nor the Appellant were able to identify them.

Dr. Silver asked Lieutenant Bell if there was a reason that the Appellant’s son was not interviewed, as he was on the phone with the Appellant during her interaction with the officers and was thus an “ear witness.” Lieutenant Bell replied that he had the same question and was not sure why he was not interviewed.

Lieutenant Elmore explained the command staff findings.

Mr. Bigham asked Lieutenant Elmore to comment on what crime the Appellant was under arrest for since the officers stated that the search of the Appellant’s backpack was incident to arrest.

Lieutenant Elmore replied that stealing mail is a crime.

Mr. Bigham: “So she was under arrest for the mail theft?”

Lieutenant Elmore: “Well, at that point of time, I feel that the officers have reasonable suspicion to talk to her; she was uncooperative; when she reached for the backpack, they took her into custody, but yet they were investigating that crime. Officers think it was an important point at that point of time – and it was searched incident to arrest. That is correct.”

Mr. Bigham: “Okay, and the crime was...?”

Lieutenant Elmore: "Well, the crime of Disorderly Conduct at that point of time, as they saw it, because she was uncooperative, screaming, loud..."

Mr. Bigham: "Okay, I also believe I remember seeing in the report that they arrested her for Interfering with a Police Officer. Is that correct?"

Lieutenant Elmore: "Yes, and that's Interfering with a Police Officer when you're trying to investigate a crime or in an investigative environment if someone keeps you from doing your job to comport with that, it is Interfering with a Police Officer."

Chair Troy asked Mr. Severe if he had any comments on the case.

Mr. Severe said that after reviewing the case at IPR, he felt that a full investigation by IA was required. Mr. Severe said after reviewing Lieutenant Elmore's findings, he signed off on them because, as stated in the record, the Appellant admitted to IPR that she actually had a physical confrontation with the officers. Mr. Severe said that he thought that the officers had given sufficient justification in their reports that the search of the Appellant was incident to arrest and acted in accord with the Police Bureau's directives. Mr. Severe said that he thought that the Appellant's allegation that she was stopped based on a suspect description that she did not match should have been investigated.

Mr. Severe stated: "Given the context of where we are right now, I believe that particular allegation should be investigated fully just to paint a better picture of what actually occurred, because I think the process is not really fully served when we get these cases where parts of an allegation are investigated and other parts aren't investigated, and people have questions about them. So just from an IPR perspective, I would fight pretty vigorously on disparate treatment allegation being investigated, looking forward, but coming back to what we were talking about, there is a distinction between an officer's justification for his actions and possible constitutionality... Those are different things. Within the context of Officer A and B's interviews with IA investigators, I found those to be credible. I found the Appellant to be credible in her interview. And so I weighed all of their testimony equally. No one got more benefit of the doubt than anybody else."

Chair Troy asked Mr. Severe if he had any comments on the rudeness allegation.

Mr. Severe: "I think, on the rudeness allegation..., if I was writing the findings from scratch, I think I would have looked at it maybe a little bit differently..., but at the end of the day, just based on what's in the record, I felt comfortable with it being exonerated. Based on what is written down and based on what the officers stated and what the Appellant stated to the interviewers, I thought that was a fair summation of what all the information brought forward."

Mr. Denecke asked Mr. Constantin the following: "There was originally a claim considered of racial profiling or disparate treatment, but it's not here now, correct?"

Mr. Severe: "Yeah. So we got the complaint – IPR, when it opened up its initial investigation. We took the complainants' concerns about that particular portion of it.

We forwarded it to Internal Affairs for investigation. I want to say we referred all [seven] of the allegations over to Internal Affairs for investigation at Internal Affairs, and the lieutenant at the time decided that, based on – well, I won't speak for Internal Affairs, but the justification for why he decided not to open up the disparate treatment claim was within IA's authority. Under the City Code, Internal Affairs has the authority to either accept an IPR referral ... or decline it."

Mr. Denecke: "It was declined by IA? It was not IPR that did that?"

Mr. Severe: "No. That was the stop allegation, that she was stopped because she was African American."

Chair Troy, referring to the IPR intake summary, stated that allegations 6 and 7 had been declined by IA and neither of those appeared to be disparate treatment.

Mr. Severe: "Allegations 6 and 7 on the intake sheet, that's what I've been calling disparate treatment. Allegation formation is not an exact science, so you can describe particular kinds of conduct in different ways, and in this particular case, is the fact that the officers unnecessarily stopped and detained the complainant, based on what the complainant is telling us. She was stating to us that she felt that she was stopped because she was African American, and based on what the City employee that referred the case to us, that was one of her concerns as well. So in [garbled] of those two particular allegations, the way it was listed was as an Unsatisfactory Performance, 315.50. When you look at the lieutenant's rationale for not going forward with those particular allegations... it was a reasonable rationale."

[Appellant arrived.]

Appellant's Statement:

Good evening to all. I will just take this time to share my story with you, but before I do that, I just want to give a little background on myself. I have lived in Portland for the past four years, and since I have moved here, I have been heavily involved in the community in which occurs racially and biased based police profiling. I never thought that I would experience it firsthand, but in the end, I did, because I think this experience forever be burned in my mind and used to inform the community and hopefully help progress police practices that silently occur throughout our community on a daily basis.

"As I speak to you all today, put yourself as if this was your mother, your daughter, your sister, your wife. On February 17th, 2012, I was on the bus 72 headed southbound to 82nd and Foster. I was headed to volunteer that day around 10 something in the morning, and it was raining that day, and it was on Friday. I had just got off the 72 bus on Foster and 82nd. I walked across the street to catch another bus that would take me to Free Geek. I checked the bus stop number to see how long the bus would be there. It said eight minutes.

“Then I began to walk in the parking lot – across the parking lot at the Wells Fargo Bank at the ATM machine to stand out of the rain. I had a tall cup of coffee in my hand. I had my earplugs in my ear and my phone. I was listening to music. So I was just standing there under the shelter out of the rain, and I noticed there was a police car that made a U-turn in the middle of the street on the corner of 82nd and Foster and pulled right into the parking lot of the Wells Fargo Bank that morning. And they got out the car and approached me kind of quickly, and like I said, my bus was due in eight minutes.

“So by the time they came to me – was approaching me – the Officers [A and B] walked up to me. One was an older gentleman, and one looked like a young rookie cop. Officer A approached me, asked me where was I coming from and asked me my name. So [garbled] when I seen them approaching me, before they had asked me that, in my mind I just thought something might have occurred and they maybe thought I saw something in that area – you know, that something happened, or they were just coming up to get money out of the ATM machine or something like that. I wasn’t alarmed as they were walking, I just thought it was strange, what they did, you know. I tried to engage them, you know.

“Officer A, the older gentleman, like I said, he asked me where I was coming from. He asked me my name, and I didn’t feel comfortable telling my name because he didn’t tell me why he was there, and I felt like he was up to something. I just said, ‘Well, I’m just standing here, waiting on my bus to go to Free Geek. My bus is coming any minute, then I have to go. I have to volunteer.’ And it was important that I go volunteer that day, because I was dealing with some other issues, and I had to go do that, and they were stopping me from going to do that, when they [garbled] up to me.

“And so when I refused to give them information, the officer got upset, and at this point, I’m getting nervous. I was wondering, you know, why he was getting upset with me. You know, I refused to tell him, and he said, ‘Well, I’m going to get it anyway.’ So I had a backpack on. This is what I had on, exact the way I was dressed that day, with the same crocheted hat – this one right here. It was cold that day. Just like this. This is what I had on that day.

“So the officer – Officer A – said that he was going to get it out of my backpack anyway. This is the backpack that I had. I had my wallet in there that day and my lunch and my house keys. That’s all I had in there. It’s black and white. It’s not all black. It’s black and white. So the backpack was standing behind me on the ground because I was checking what time the bus was coming. So, like I said, the officer said that he was going to get my ID whether I wanted him to or not, and I said, ‘Well, you’re violating my rights – my constitutional rights. I don’t give you permission to go into my backpack, and if you do, you’re violating my constitutional rights. What did I do wrong?’ I said, ‘You just came up to me, you just asking me questions, where I’m coming from, what’s my name, and why are you here?’ He wouldn’t tell me why he was here.

‘So I was exercising my rights by telling Officer A – both of them – basically, that I did not consent to illegal search and seizure. If you go in my backpack, you must have a warrant. I’m not going to give you any information because I feel threatened by you.’

By then I said, 'Well, I'm gonna call my son.' And so when I was calling my son – I got my son on the phone – and I said, 'Son, the police are here. I feel threatened. They're threatening to go in my backpack, and they didn't say if I was under arrest or they were detaining me.' So and he said, 'Well, if they're not detaining you and you're not under arrest, then they should give you permission to walk away. I'm coming down there.' He said he was going to call 911, and he did do that. He called 911, and he heard all the commotion in the background.

"As I stated, I told the officers that they didn't have a right to go into my backpack, and they did anyway. I told them, 'If I'm not being detained and I'm not under arrest, I'm leaving.' So I grabbed my backpack and started walking away. So they – basically, they walked up to me, and they walled me off, like a wall, and I had nowhere to go but around them. When I did that, that's when they both grabbed me and knocked my coffee out of my hand, my phone and everything just went everywhere.

"My coffee spilled all on them, and it was hot, and they were mad about that. I tried to walk away, and they grabbed me, and they both took my arms and took me down on the ground. And I spoke with them because they were hurting me. If it was you – your mom – you would feel threatened, you would feel scared. All kinds of things was running through my mind. I didn't know what they were going to do to me. They were driving a Dodge Charger at the time. They surrounded me. They put me in handcuffs and threw me in the cop car without reading my rights or telling me that I'm being detained or under arrest. They did not tell me that.

"When I was explaining to Officer A and B that I was exercising my rights, he stated to me, 'Shut the f up. You have no f-ing rights, you f-ing b. And a passerby walking out of the bank to his vehicle in the parking lot walked so close to them, you know, he said it to me, he said, 'Yeah, shut the f up like he said.' That's what somebody said. And me thinking like that, you know, what he just said – thinking about what he said – it just made me feel humiliated, vulnerable, scared. My son was at home. I had nobody there to defend me, [garbled]. [Crying]

"I'm a mother of four. [Breaking up – unintelligible] I'm an activist. I work in the community. I volunteer. Never in my wildest dreams did I ever think that this would happen to me. [Continues crying.] [Garbled] telling my story over and over again. Think about your mom. Think about your family member. [Crying.]

"I have come here. I came to your town, flourishing your town with my skills, my service, my time, my volunteer work. I work with a lot of these organizations, non-profit organizations, give them my time, my devoted time. For something like this to happen to me is unacceptable. I feel like I was pushed to this process. I wasn't given a fair process through this. I feel that there's a lot of corrupt things going on in this system here in the City of Portland. I don't look at Portland the same as I did when I first moved here. I don't look at it the same now. The citizens of Portland know what's going on. They know how people get pushed through this system so much.

“I just urge you all today just to listen to my story and make the right decision today. Before I continue, I ask if my son testify to the point when I called him, because I did put that in my appeal.”

Chair Troy advised the Appellant that she is entitled to call material witnesses at this appeal if she would like to.

The Appellant said she would like to call her son to speak about her phone call to him on the morning of this incident.

The Appellant’s son made the following statement:

“This is my Mother. I’m here to testify what I witnessed and heard over the phone. I got a phone call around ten o’clock on February 17th. My Mom said the police had stopped her, and she doesn’t know why they stopped her, and she said she was afraid and she don’t know what to do. I said, ‘Mom, did they read you the rights? Have they said that they detained you? Have they told you anything?’ She said, ‘No, all they want to know is where I’m coming from and see my ID.’ ‘If they haven’t detained you,’ I said, ‘Mom, get your backpack and walk away, because it’s illegal for them to stop you for no reason.’

“She did that. Next thing I know, she like, ‘Uh!’ and she’s screaming – the terror, I couldn’t even [garbled] how much anger I had in my blood. These officers are putting their hands on my Mother. She’s four foot ten. They had no reason to come at her like that. They did a U-turn. That’s my story, that I witnessed – that I heard. They knocked her [garbled] out of her hand, her phone gets knocked out of her hand. They said, ‘Stop struggling. Stop fighting us, you black bitch. Stop resisting. You have no fucking rights.’ Next thing I know, I hear somebody say, ‘Yeah, you have no fucking rights. Shut the fuck up.’ Some passerby. Next thing I know, they said, ‘Stop struggling. Stop struggling.’ Next thing I know, I hear some anonymous people come up and say they got witnesses, and they couldn’t identify her. They couldn’t say anything other than, ‘She kinda looks like him,’ but they couldn’t – they didn’t tell them the age, the race, the height – they didn’t say anything. They just, ‘No, she kinda looks like her.’ And these anonymous people, I don’t know who they were. And from that point, that’s when she got – the phone hung up, and I had to call 911.”

At this point CRC members asked the witness some questions.

Chair Troy asked the witness how long he estimates that he listened. He replied that it was about three to five minutes. He said he heard scuffling. He said he heard, “Shut the fuck up. You have no rights. Stop resisting. You broke my glasses. You bent my glasses.” He said that he heard Officer A or B say that she had broken or bent his glasses, and he was “pissed off” about it. He said he heard his Mother say, ‘You’re hurting me. Stop. What did I do?’ and he heard screaming. He repeated that he heard, ‘You have no rights. Stop resisting, you black bitch. You have no rights.’ He said he was listening to this on the phone for three to five minutes.

Chair Troy asked the witness if he heard when the phone fell out of his Mother's hand and fell onto the sidewalk or the ground. He replied, 'Yeah, it was still open.' He said he could hear his Mother screaming. He said that he did not hear his Mother being put in the police car. He said he did not hear anything after she was handcuffed. He said that he heard people coming up to try to identify his Mother. Chair Troy asked how the phone call ended. He said it ended up when with the officers saying, "Stop resisting. You have no rights. We have somebody on their way that can identify you," and he heard someone say, "That kind of looks like her, but it's not." He said that was all he heard. He said that the phone call then got disconnected."

Dr. Silver asked the witness to discuss his call to 911. He said that after the phone got disconnected, he called 911 and the operator asked him what was going on. He told her that his Mother was attacked at 82nd and Foster, that she didn't do anything, and that she needed to send some more officers to make sure she was all right. He told the operator that he is the son and that his Mother had just left home. He said the dispatch person told him that if his Mother hasn't done anything, she just needs to cooperate, and then she hung up.

Chair Troy asked the witness if he had talked with his Mother about what he overheard on the phone. He replied that he had not. He said that this was the first time he has told anybody with the exception of what he told the dispatch operator. He said he has not read the police report, and this is the first time he has addressed this issue.

Mr. Denecke again asked the witness when he told his Mother what he had heard on the phone. He said that as soon as she got home he told her, "Mom, I heard the whole conversation." He told her that the phone didn't hang up and he heard what they said.

Mr. Denecke asked the Appellant if she told IA what her son had heard on the phone. She said she told Captain Famous.

Chair Troy asked the Appellant if she remembered who she was working with at Internal Affairs for this investigation. She recalled that her initial contact was with Judy Taylor and Captain Famous. Chair Troy asked her if she remembered working with somebody named Lynn Courtney. She asked who Lynn Courtney was, and Chair Troy informed her that he works under Captain Famous in Internal Affairs and did a lot of the investigation on this case. She said that it was possible that she spoke with Mr. Courtney, but she just remembered speaking with Captain Famous mostly.

Dr. Silver asked the Appellant if the officers ever told her that she was being arrested for rifling through mailboxes. She replied, "No, they didn't bring that up until after I was put into handcuffs and put in the police car." She said they never told her she was under arrest. Dr. Silver asked her how they told her about the mailbox matter. She said that they told her when she got out the police car that they had gotten a call with a description of somebody rifling through mailboxes. She said she asked the officers about the gender, ethnicity, and height of the person.

Dr. Silver asked the Appellant again: "So when they handcuffed you, they never said you were under arrest?" She replied: "No. After they handcuffed me, they never said I was under arrest or I'm being detained. They never told me that" nor did they ever read her her rights.

Chair Troy asked the Appellant if she had anything else that she wanted to say, and the Appellant answered that she did. Chair Troy thanked and excused the witness.

The appellant added the following:

"After I was handcuffed – after they took me to the ground and handcuffed me – and then they both began to pat me down and search me while I'm in handcuffs. [Garbled] they were all in my pockets – in my front pockets. My coat was zipped up. I have pockets in the front. They went in my front pockets. I have pockets on the side. Went into them. They searched me underneath my coat. They searched me between my legs. They searched me in all of my pockets. They did all that to me. I felt violated, humiliated, frightened, scared, wishing my son was there, wishing there was the witnesses – they were all around – just watch, you know, observe. I was asking all those things, put into handcuffs. I did say to other people who were going in and out of the bank to observe, to call 911, to take pictures, to record what was being done to me. There was people driving by in cars, [garbled], but no one stood there and stayed there to observe and to watch – make sure that I was okay. I did ask people to watch and observe. I said, 'You don't have to get involved in this. Just please watch and observe to make sure that I'm okay.' I did say that.

"After I was taken down by the officers and patted all down, humiliating me, they put me into the cop car and I was probably in there maybe five to ten minutes. [Garbled] My phone and stuff was still, like, on the ground. I could see my coffee cup sitting on the ground. It looked like they were going through my backpack in the trunk. When they finally let me out of the car, Officer B – the young officer, Hispanic officer – I could tell he was Hispanic – he asked me what kind of coffee cream was that in my coffee, 'cause it smells good, and it got wasted on all of us, and I said, 'Well, I didn't do that. You guys snatched me up and had handcuffs put on me. I didn't do anything wrong.' And he asked me where I buy my coffee creamer and what stores do I shop at, you know, like that. And I said, 'Well, I shop all over. I don't only shop at one store.'

"So when Officer B grabbed me out of the car, then that's when Officer A was telling me that they stopped me because there was an anonymous call of someone like me on 77th and somewhere – I guess Steele – over there. And I said, 'Well, I just came from [garbled] northbound. There's no way that I could be there. I didn't do anything like that.' And I was just scared, appalled, nervous, afraid. I knew I hadn't done anything wrong. The officer said that there were witnesses coming that saw me doing it. [Garbled] 'What did they say that the so-called witness looked like?', and I said, 'How can I be in that direction when you all saw me coming another direction?' They even told me, you know, through all this, between them putting me between them, putting me in handcuffs and in the cop car, and after that, that's when they were telling me that it was an anonymous call and that there was two witness that saw me. And I'm just trying

to figure out at that time – well, they couldn't tell me if it was a male or female. Officers did not tell me that it was a male or female. They just said someone said me, and they still wouldn't tell me if it was male or female. They just said it fit my description. I said, 'Well, what is my description fit like? That could be anybody?' I mean, 'Who did it?' They never did state that, and I questioned them, and they still couldn't give me a direct answer.

"So the witnesses came, and I'm just nervous, I'm scared, because I'm supposed to be heading to Free Geek, volunteering, and I'm like, 'What just happened to me? What just happened?', you know. 'At ten o'clock in the morning someone was rifling through mail? Does the mail even run at ten o'clock in the morning? What did the person look like?' 'Well, they looked like you.' That's what the officers said.

"So the two witnesses came, and they were both real tall Caucasian men, and one of them did look familiar to me. I just believed that they were cops. That's my personal feeling. I feel that they were undercover cops, you know. And one of them looked familiar. And why I say that is because I had dealings with police brutality in the past that I'm still dealing with right now, and that's why. I would like to see those witnesses. I'd like to know who their names are. I would like to know who they are, and still remember what they look like.

"And so when they came, I heard Officer A say, 'One is coming now, and the other one will be coming here soon.' So one pulls up in a truck. The other one hides his vehicle on the other side of the building. And they just stood there, and both officers – my hood was still on my head – so basically what they did was they grabbed me like this in front of the two witnesses like I'm a criminal. Where am I going? I'm in handcuffs. They just had me by the collar like this in front of them. And it was humiliating to me, after they just searched me and violated me and groped me, and then I had to stand up in front of two witnesses of who I've never seen before in my life. So I'm charged with something that I know I didn't do, and it was just a nightmare to me. They even showed the witnesses – he already had my wallet, and then also he says that 'she only has money in her wallet – she has ten dollars.' They even stated the amount of how much I had in my wallet. They showed the officers [sic] my ID. Why would they show someone – a stranger – my ID? If I was the person who did this, why would they show them my ID? I've never figured that one out. I still haven't figured that one out.

"So they couldn't identify me. So I told the officers – they left and they talked together, so that's why I said that they know both these witnesses whoever they are. That's why I say I think it's cops, because they was talking to them and kind of like engaging them, you know, like they knew each other, and now I just feel this in my mind to this day, to this very minute – I felt like, when they showed them my ID.

"They eventually left, because they couldn't identify me, and there was no mail in my backpack. So I asked the officers – he said he was letting me go – I asked the officers for their names. He said, 'Well, our names is on our badge.' I said, 'Well, I would like the business – I would like the cards, and I would like the police report and a number on this, because I'm going to be pursuing a complaint about you guys,' how you handled

me and how you violated me and violated my rights and humiliated me and terrified me.’ And the officer said that I was pissing him off... He was getting really pissed, and he said, ‘If you pursue this,’ – he threatened me. He said, ‘If you pursue this, I’m gonna haul your ass – black ass – down to jail,’ you know, like [garbled]... ‘pissed me off. You bent my glasses. You got coffee all over us.’ I said, ‘You guys were the ones that knocked all of that stuff out of my hands. I didn’t do anything wrong. You violated me. I didn’t give you permission to go in my backpack. You did this to me, you did that to me,’ you know; and they were just being very verbal to me, telling me I’d ‘better not piss me off. You better not pursue this.’

“And I was really scared, because they had me halfway in handcuffs, after they said they were going to let me go. So I said, ‘Well, you say you were gonna let me go. I didn’t do anything wrong. Nothing proves that I did anything, and I want you to let me go.’ He said, ‘Well, until you say you aren’t going to pursue this, we’re going to take you down there, and you better not pursue this.’

“So what I’m asking you CRC board members is to take into consideration all the factors in my case. Everyone knows what happened in my case. You heard my story here today about how I explained what happened to me. There’s a lot of citizens of Portland in the community that have – there’s several organizations in the community that I have [garbled] with since I moved here. I’ve been in [garbled] vigils for all the victims here at the hands of police officers.

“There’s a lot of things here in Portland, in your city, to help the community grow and to find a solution, to change policies, and to hopefully change, not only the policies, but police officers’ way of thinking before they approach citizens. They need to be fired – the two officers that did this to me. Yes, they need to be fired. I want something done so this won’t happen to anyone else.

“Just being here today was very hard for me to tell my story, but I’m not just the Appellant. I’m a mother or daughter, I’m a community member, activist, volunteer. As I said, I went to a lot of the organizations here in Portland and volunteer with a lot of churches. I’m doing a lot of community things here in Portland, and been a nurse for twenty years. I’m retired now. I also have sustained medical injuries from what the officers done to me, and you should have copies of that. I’m still. My primary physician is still running tests on me, because there are still more things wrong with me. I was so – at my first hearing review – I didn’t even know if there was a Hispanic male that was rifling through mailboxes until my review. I didn’t get copies of this, copies of that. I didn’t know a lot of things, you know. So I just feel like I wasn’t getting my rights as an Appellant, that I wasn’t getting the necessary paperwork and the process of – my whole hearing process – I was only given a week before my hearing review. I was rushed into my hearing review – to have this hearing review that I had back in March. I just feel that the Officers A and B got exonerated and got debriefed on all of this. I do want to move forward with this. I do – I am seeking that you all do the right thing today and that this doesn’t happen to anyone else. It is so crucial that we look at new policies or changing new policies and getting the community involved, because these officers are out here doing this to people like myself and other citizens in the community, and we have to

start somewhere, and why not today? So I just want to thank you for hearing my story. It means a lot to me.”

Chair Troy repeated the allegations and findings and the options available to CRC.

Mr. Bissonnette asked the Appellant if the search by the police officers took place before or after she was put in handcuffs.

Appellant: “The search happened before I was put in handcuffs. Are you speaking of my backpack or my person?”

Mr. Bissonnette: “Your person.”

Appellant: “Oh, my person? That was after.”

Mr. Bissonnette asked Lieutenant Elmore how a person who is approached by a police officer is to know the difference between detention and mere conversation.

Lieutenant Elmore replied that during this contact it was apparent that the officers made the appellant aware that she could not leave because the officers were in an investigative mode.

Mr. Bissonnette asked Lieutenant to comment on whether the search of the Appellant’s person as she described it was a frisk or a search. Lieutenant Elmore replied that he would consider it a patdown or a frisk because the officers’ concern at that point of time was officer safety rather than searching for evidence. Mr. Bissonnette asked if the officers violated Police Bureau policy by not asking the female officer on scene to search the Appellant. Lieutenant Elmore said that the directive “recommends” this, but this decision depends on the totality of the circumstances. Lieutenant Bell clarified that the female officer was not present on scene at the time the initial search was done but showed up shortly thereafter with the witnesses.

Dr. Silver followed up on Mr. Bissonnette’s question by asking Lieutenant Elmore how a citizen is to know, when a police officer approaches them, when it is not mere conversation. Lieutenant replied that when they officers initially approached the Appellant, they were attempting to get information, but were not getting the information they needed, so as their investigation continued, it was past mere conversation at the time when the officer asked the appellant for her identification.

Based on the fact that CRC had received additional information from the Appellant’s son with regard to the rudeness allegation that was not previously available, Chair Troy asked if IA or IPR would want to take the opportunity to investigate this further.

Captain Famous stated that he understood CRC’s concerns about the need for additional information, and he would certainly consider that if requested by CRC. However, he denied the earlier implication that a disparate treatment allegation had been declined by IA in this case.

Ms. Rees cited City Code 3.21.160B, which states the following: “When the Committee’s review process develops new information, the Committee may consider the new information when determining if additional investigation is warranted, but the Committee may not incorporate the new information in the evidentiary record the Committee considers when determining if a finding is supported by the evidence.”

Chair Troy: “I’m really clear that it would be beyond our scope to consider [the witness’s] testimony. What I’m not clear on is whether or not – I’m curious about the response. [The witness] has alleged not only ‘no f-ing way’ but then calls her a ‘black b____,’ which, if that is true, would likely be a manifestation of disparate treatment, and whether or not the powers that be on this side of the equation want to do a thorough investigation into that or would like us to proceed forward. So that’s why I was trying to offer an opportunity, and I don’t need an answer right now... but it seems new information that is relevant to at least one allegation that’s before us – rudeness – and could go beyond that.”

Mr. Yarosh asked Lieutenant Elmore to further explain his statement that the Appellant received medical treatment only for a common cold. Lieutenant Elmore stated that the investigator mailed to the Appellant the medical release documents and those documents were not received. Lieutenant Elmore stated that the information that the Appellant was treated only for a cold came from the IA investigator’s interview of the Appellant. Chair Troy asked the Appellant if she provided medical records. She said that she faxed her MRI information to IPR last Wednesday (June 5).

At the conclusion of CRC’s questions, Chair Troy made the following statement: “Before we get to a vote situation, I would like to offer an opportunity – and I’m not seeking to rush Internal Affairs and IPR to contemplate my query – but whether or not, with this new information, you are electing to do additional investigation.”

At this point there was further discussion by CRC members.

Public Comment

Several community members provided public comment.

After a short break, Captain Famous made the following statement: “As the Captain of Internal Affairs, I take these allegations and some of this information that has come out as very concerning, and so what I would like to offer is that Internal Affairs will conduct additional investigation. Some of the issues that I see, and perhaps you could provide the IPR Director in writing, and they can then give it to me in a formal way.”

Captain Famous suggested that Internal Affairs examine the Appellant’s son’s testimony; interview the female officer; and review medical records presented to IPR prior to the appeal hearing. He said that he was open to having CRC or IPR recraft allegations 6 and 7 for his review. He advised that a supplemental finding by East Precinct and Lieutenant Elmore will be required. He promised to process the additional investigation as expeditiously as possible, but he asked CRC to ensure that the

information that he receives includes all their concerns and all new information that they are requesting that Internal Affairs examine.

Mr. Severe apologized to the Appellant and her son for information that was inadvertently left in the case file regarding prior incidents. He thanked the CRC members for the considerable amount of work they have done on this appeal.

At this point, Chair Troy made a formal motion to send the case back for additional investigation. Dr. Silver seconded the motion. Following additional public comment, the motion carried unanimously.

Chair Troy summarized the following issues that Captain Famous stated would be additionally done: to review the Appellant's son's testimony at tonight's hearing; to interview of the female officer; to review the medical records provided by the Appellant to IPR and to obtain any additional medical records that might exist; to consider whether or not disparate treatment is an allegation that should be looked into. Dr. Silver added that, based on the Appellant's son's testimony, Officers A and B should also be reinterviewed.

Mr. Denecke was assigned to draft CRC's written recommendations for further investigation. Mr. Denecke listed the specific items requested for further interview as follows: "the female officer, the son, the medical records, and recrafting allegations 6 and 7. Mr. Severe committed to recrafting the allegations and forwarding them to CRC before sending them on for additional investigation.

Wrap-up Comments

Dr. Silver suggested that a message be sent to the new CRC members asking them to read this case, listen to the case file review, and listen to tonight's hearing to allow their participation in the subsequent hearing.

Adjournment

Chair Troy adjourned the meeting at 9:25 p.m.