

IN THE UNITED STATES DISTRICT COURT IN
FOR THE DISTRICT OF OREGON

JAMES P. CHASSE, JR.; JAMES P.)
CHASSE; LINDA GERBER; and MARK)
CHASSE, individually and in his)
capacity as Personal Representative)
of the ESTATE OF JAMES P. CHASSE,)
JR.,)

Plaintiffs,)

v.)

CHRISTOPHER HUMPHREYS; KYLE NICE;)
CITY OF PORTLAND; CITY OF PORTLAND)
JOHN DOE FIREFIGHTERS/PARAMEDICS;)
PORTLAND POLICE BUREAU and OTHER)
PORTLAND JOHN and JANE DOE)
OFFICIALS; BRET BURTON; MULTNOMAH)
COUNTY; MULTNOMAH COUNTY JOHN and)
JANE DOE DEPUTY SHERIFFS and MEDICAL)
PERSONNEL; MULTNOMAH COUNTY JOHN and)
JANE DOE SHERIFF'S OFFICE and OTHER)
OFFICIALS; TRI-COUNTY METROPOLITAN)

TRANSPORTATION DISTRICT OF OREGON;)
and AMERICAN MEDICAL RESPONSE)

NORTHWEST, INC.,)

Defendants.)

ORIGINAL

No. CV-07-0189-HU

DEPOSITION OF

DERRICK FOXWORTH

Taken in behalf of Plaintiffs

* * *

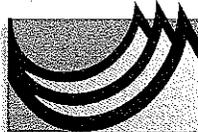
July 8, 2008

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Portland, Oregon

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APPEARANCES:

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Also Present: Melissa Healy

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No. 271	7-1-02 through 6-30-06 labor agreement, CHASSE 106000-057	21
No. 272	7-1-05 intergovernmental agreement, 000641-648	37
No. 273	Policy and procedure manual section 1030.00, pgs 472-474	54
No. 274	1-30-07 memo, Sizer to all members, and attachments, 4 pgs	84
No. 275	Policy and procedure manual section 630.50, pgs 164-165 630.50, pgs 164-165 Schmidt & Lehmann, Inc. (360) 695-5554 ** (503) 223-4040	85

1 PORTLAND, OREGON; TUESDAY, JULY 8, 2008

2 8:59 AM

3 * * *

4 DERRICK FOXWORTH

5 called as a witness in behalf of the Plaintiffs,

6 having first been sworn by the Reporter,

7 testifies as follows:

8 EXAMINATION

9 BY MR. STEENSON:

10 Q. State your full name, for the record,
11 please.

12 A. My name is Derrick Foxworth, Derrick is
13 spelled D-E-R-R-I-C-K, Foxworth is spelled
14 F-O-X-W-O-R-T-H.

15 Q. What is your current position with the
16 Portland Police Bureau?

17 A. Currently serve as the southeast precinct
18 commander.

19 Q. Commander, my name is Tom Steenson. We met
20 briefly before going on the record. As I assume you
21 understand, this is the time we've set to take your
22 deposition in a lawsuit in which I represent the
23 Chasse family against the City of Portland and a
24 number of other defendants.

25 Have you given deposition testimony before?

1 A. Yes, I have.

2 Q. Related to your employment with the Portland
3 Police Bureau?

4 A. Yes, I have.

5 Q. Were you ever a named defendant when you
6 gave testimony?

7 A. I believe I have been, yes.

8 Q. Was it related to some claim by a citizen or
9 was it an employment matter, do you recall?

10 A. I would speculate probably both.

11 Q. Okay. Have you ever testified in court
12 related to your duties with the Portland Police
13 Bureau?

14 A. Yes, I have.

15 Q. Let me go through a couple of rules so that
16 you and I understand each other. When I ask you a
17 question and you answer it we will all assume that you
18 understood it, so it's important for you to ask me to
19 clarify anything you do not understand before you
20 answer. Do you understand that?

21 A. Yes. And could you speak up for me?

22 Q. I will try to do that.

23 A. Okay.

24 Q. My voice has a tendency to drop.

25 Secondly, your testimony today is under

1 oath. It's as important as if you were in a court of
2 law. If you give an answer at the time of a trial or
3 a hearing in this case that's different than you give
4 later that can be pointed out to the judge and the
5 jury. Do you understand that?

6 A. I do.

7 Q. Anything about your physical or emotional
8 condition, lack of sleep, taking prescription
9 medicine, anything at all that might interfere today
10 with your ability to give truthful and complete
11 answers to my questions?

12 A. No. The only thing just I have allergies
13 and that's why I asked you to speak up, because I
14 can't hear you that well.

15 Q. Well, one of my rules, so to speak, is that
16 we will all assume that you understood the question.
17 So either because of my voice tailing off or because
18 of your allergies, if you don't hear a question
19 completely or don't understand the question, make sure
20 that you ask me to restate it. Fair enough?

21 A. Yes.

22 Q. Otherwise we will assume that you fully
23 understood the question and answered to the best of
24 your ability. All right?

25 A. That's fine.

1 Q. When did you first start with the Portland
2 Police Bureau?

3 A. I was hired September 9th of 1981.

4 Q. First position?

5 A. Police officer.

6 Q. And how long were you in that position,
7 approximately?

8 A. I was a police officer from 1981 and
9 promoted to the rank of sergeant --

10 Q. Approximately is fine.

11 A. -- I believe it was 1990, March of 1990.

12 Q. What was your next promotion?

13 A. To lieutenant.

14 Q. About when?

15 A. That was in 1994, I believe, around March of
16 1994.

17 Q. And your next promotion?

18 A. I was promoted to captain.

19 Q. About when?

20 A. I believe that was in 1996.

21 Q. And your next promotion?

22 A. I was promoted to precinct commander, and
23 that was in September of 1997.

24 Q. What precinct?

25 A. Northeast precinct.

1 Q. Next promotion?

2 A. I was promoted to assistant chief, and that
3 was in May of 2002, I believe. May of 2002.

4 Q. And your next promotion?

5 A. Promoted to -- actually I was appointed as
6 chief --

7 Q. Okay.

8 A. -- the latter part of August/beginning of
9 September of 2003.

10 Q. And when were you moved back to a commander?

11 A. In July of 2006.

12 Q. Mayor Tom Potter was the chief of police for
13 a period of time. I don't recall the exact years. Do
14 you recall generally when that was?

15 A. I believe it was from 1990 through 1993 or
16 1994.

17 Q. Was he involved, in any way, with your
18 promotion to sergeant or lieutenant?

19 A. I don't believe to the rank of sergeant. I
20 don't recall if he was chief at that time, when I was
21 promoted to the rank of sergeant. I'm not -- I don't
22 recall. To the rank of lieutenant, I don't recall if
23 that took place after he left or not.

24 Q. You've never been assigned to the training
25 division; is that correct?

1 A. No, I have not.

2 Q. Have you ever been assigned to the internal
3 affairs division?

4 A. No.

5 Q. Okay. Did Mayor Potter have anything to do
6 with your move from chief to commander in about July
7 of 2006?

8 A. Yes. The mayor has the responsibility of
9 appointing the chief.

10 Q. And he can unappoint or she can unappoint
11 the chief as well; correct?

12 A. That's correct.

13 Q. And the mayor did that?

14 A. Yes.

15 Q. I don't need details.

16 Did you make any kind of a legal claim
17 surrounding the move from chief to commander?

18 A. I did, and it was related to that, yes.

19 Q. Did it get beyond a tort claim notice or
20 some type of a letter notifying the city of a claim?

21 A. No.

22 Q. Does the city have a policymaker or perhaps
23 policymakers when it comes to policies for the
24 Portland Police Bureau?

25 A. There's a process that's in place for -- for

1 creating policies.

2 Q. Was a -- is there a particular person with
3 authority to make policy for the Portland Police
4 Bureau?

5 A. I would say the chief of police along with
6 the mayor.

7 Q. Okay. Can the mayor override a policy
8 decision by the chief of police?

9 A. Yes.

10 Q. While you were chief, did you ever delegate
11 policy-making authority to anyone?

12 A. Not the ultimate authority to make a policy.

13 Q. Okay. So tell me how the process might work
14 where you wouldn't delegate the ultimate authority but
15 somebody might be involved in that process.

16 A. Normally when we're looking at a policy,
17 whether to change a policy or to create a policy, it
18 would be assigned to a -- to either an assistant chief
19 who would then maybe assign it to a particular
20 division. And let's say it had something to do with
21 training, it would be assigned to the training
22 division. The training division would have the
23 responsibility of doing the research, drafting some
24 language, bringing back the draft.

25 The draft would then be reviewed by members

1 of the chief's office including myself. And then the
2 policy, the draft policy, would be sent out to the
3 different as what we refer to as RU managers in the
4 organization. They would have an opportunity to look
5 at it, to review it, to provide feedback. If it was a
6 policy that dealt with something outside the
7 organization and let's say it dealt with another
8 agency or it may have dealt with a community group,
9 that policy normally would also be sent to those
10 agencies or to that group giving them an opportunity
11 to weigh in on it and to make suggestions.

12 It would then be sent back and then after a
13 second staffing with those changes it would be looked
14 at again. And then ultimately probably after the
15 third staffing looking at it and kind of fine tuning
16 it it would be adopted as policy and it would be
17 signed off by the chief.

18 Q. When you say adopted and signed off on, do
19 you mean directives or are there other forms in which
20 those policies take?

21 Let me rephrase. There's a policy and
22 procedure manual that the Portland Police Bureau has;
23 correct?

24 A. Correct.

25 Q. And it has a series of directives from zero

1 through I think 1200 or whatever the numbers are these
2 days; correct?

3 A. Correct.

4 Q. Are those policies?

5 A. Yes.

6 Q. Okay. Any other written policies that the
7 Portland Police Bureau has?

8 A. You may find that a lot of divisions have
9 what's referred to as standard operating procedures,
10 SOPs --

11 Q. M-hm.

12 A. -- that govern how a division or how a
13 precinct operates as well.

14 Q. And does the chief sign off on those as
15 well?

16 A. Not on SOPs. Those are usually signed off
17 on by the division manager.

18 Q. Okay. So as the division manager -- strike
19 that.

20 While you were the chief, was the division
21 manager of a particular division delegated authority
22 to make policy through SOPs for that division?

23 A. Their division's going to have their own
24 SOPs. However the SOPs could not conflict with the
25 policy.

1 Q. As long as it didn't conflict, though, those
2 division commanders had authority to implement SOPs;
3 correct?

4 A. Correct.

5 Q. And if I understand the structure of the
6 Portland Police Bureau, all members of the bureau are
7 supposed to follow the directives. Correct?

8 A. Correct.

9 Q. And all members of the bureau are supposed
10 to follow SOPs that apply to them; correct?

11 A. That's correct.

12 Q. Have you reviewed any documents before
13 coming here today to in preparation for your
14 testimony?

15 A. No, I haven't.

16 Q. Other than your attorney, Mr. Rice, or
17 someone from the city attorney's office, have you
18 talked to anyone about your deposition?

19 A. No, I haven't.

20 Q. Have you talked to anyone about the
21 discovery that's been conducted in this case including
22 close to 50 depositions that have been taken? In
23 other words, have you talked to anyone who's been
24 deposed or talked to anyone about the subject matters
25 of the case, again putting aside any lawyers?

1 A. I haven't talked to anyone about any of the
2 details of this case. I haven't knowingly talked to
3 anyone that's been deposed in this case.

4 Q. At any point, did you talk to anybody about
5 anything related to the death of James P. Chasse, Jr.
6 or the investigation into his death?

7 A. Could you say that again, sir?

8 Q. At any point, again, excluding lawyers, have
9 you talked to anyone about the death of James P.
10 Chasse, Jr. or the investigation into his death?

11 A. Not into the investigation and nothing other
12 than what's been reported in the news media.

13 Q. So, for example, have you ever talked to
14 Chief Sizer about the death of James P. Chasse, Jr.?

15 A. No, I haven't.

16 Q. Have you attended any briefings or staffings
17 regarding the death of James P. Chasse, Jr.?

18 A. No, I haven't.

19 Q. Have you been made aware of any changes to
20 directives or standard operating procedures as a
21 result of the death of James P. Chasse, Jr.?

22 A. Would you repeat that?

23 Q. Have you been made aware of any changes in
24 directives or new directives related to the death of
25 James P. Chasse, Jr.?

1 A. Not in the directives.

2 Q. Have you been made aware of any changes in
3 policy or how the bureau conducts its affairs related
4 to the death of James P. Chasse, Jr.?

5 A. Yes.

6 Q. What?

7 A. After this incident there was mandatory
8 crisis intervention team training that was
9 implemented.

10 Q. Okay. Anything else?

11 A. No.

12 Q. And by mandatory, you mean 40 hours of that
13 training?

14 A. That's correct.

15 Q. Do you agree that, prior to that decision
16 that was made following the death of James P. Chasse,
17 Jr., that there had been a two-hour requirement for
18 that training?

19 A. Do I agree with that?

20 Q. Yeah.

21 A. Yes.

22 Q. Were you involved in discussions leading up
23 to the change from the two-hour requirement to the
24 40-hour requirement?

25 A. Was I involved in the change from the

1 two-hour to the 40-hour?

2 Q. Discussions, reviewing plans, reviewing
3 proposals, anything at all.

4 A. No.

5 Q. Are you aware of any bodies or agencies,
6 organizations, even nationally or perhaps locally,
7 that certify law enforcement agencies for competency?

8 A. I believe what you might be referring to is
9 a group called -- or referred to as CALEA.

10 Q. Is that an acronym or is that the full name?

11 A. It's an acronym.

12 Q. Do you know what it stands for, and how to
13 spell it? I guess start with the acronym.

14 A. It's C-A-L-E-A.

15 Q. Okay. Do you know what it stands for?

16 A. I can't recall off the top of my head right
17 now, but it is an organization that will come in and
18 review a police agency for accreditation and I wish --
19 I can't recall what it stands for right now.

20 Q. All right. Is that a national organization?

21 A. Yes, it is.

22 Q. Do you know whether any consideration has
23 been given by anyone connected with the Portland
24 Police Bureau about getting that accreditation?

25 A. I know that at one point there was

1 discussion about it, but I also know that the police
2 bureau also works closely with the -- another
3 organization referred to as PERF, P-E-R-F, the Police
4 Executive Research Forum.

5 Q. So when was this discussion about CALEA and
6 possible accreditation?

7 A. I recall having discussion about it when I
8 served as chief.

9 Q. Who did you discuss it with?

10 A. I discussed it with members of the
11 organization, members in the chief's office, and with
12 the mayor.

13 Q. How did the idea even come up for
14 discussion?

15 A. As I recall, it was something that when
16 Chief Moose was here he had a lieutenant assigned, I
17 believe it was Cliff Jensen, to do some research and
18 to look into whether it's something that the police
19 bureau should pursue. After Chief Moose left I
20 thought about it. I attended a opening ceremony for
21 CALEA. They had some type of workshop here. And I
22 think from attending that opening ceremony started
23 talking about the possibility of pursuing
24 accreditation for the organization.

25 Q. Chief Kroker was between Chief Moose and

1 yourself; is that right?

2 A. Yes.

3 Q. When you attended this opening ceremony and
4 first had these discussions, was that during Chief
5 Kroker's tenure or was that after you became chief?

6 A. I believe it was when I was chief.

7 Q. When you say you discussed it with the
8 mayor, do you mean Mayor Katz or Mayor Potter?

9 A. Mayor Potter.

10 Q. Okay. Because he appointed you; correct?

11 A. No. Mayor Katz did.

12 Q. Katz appointed you, but this discussion
13 about CALEA was with Mayor Potter?

14 A. Yes.

15 Q. What was Mayor Potter's position about the
16 accreditation through CALEA?

17 A. He was supportive.

18 Q. What was your position?

19 A. My position?

20 Q. Yes.

21 A. I was supportive of it. I thought it was a
22 good idea.

23 Q. And were steps taken then to get
24 accreditation or seek accreditation through CALEA?

25 A. We started taking some steps towards looking

1 into what would be required to do so. It's a very
2 laborious process and requires probably a couple of
3 years to go through the process.

4 Q. So when did this first begin, when you
5 started looking into you -- you attended this opening
6 ceremony or whatever it was you mentioned. When was
7 that in terms of your tenure as chief?

8 A. I would say in 2005.

9 Q. Okay. And then did that sort of drop off at
10 some point, in other words, you stopped taking steps
11 to get accredited, while you were chief?

12 A. I -- I don't think we ever stopped. It was
13 something that we were always pursuing and looking
14 into.

15 Q. Well, was there a formal plan or, you know,
16 registration or how -- how do you actually get
17 formally hooked up with CALEA to go through this
18 process?

19 A. There is a process. You do have to
20 register. I believe there was a fee that you also had
21 to -- to pay. And I believe we did do that.

22 Q. Okay. Do you know whether that has
23 continued since you were moved back to commander?

24 A. I don't know.

25 Q. You haven't had any assignments or been

1 involved with that at all?

2 A. No, I haven't.

3 Q. What does PERF do?

4 A. The Police Executive Research Forum, it's a
5 organization that is made up of different law
6 enforcement agencies that discusses public safety
7 policing issues and does research and tries to share
8 best practices, lessons learned in the field of
9 policing.

10 Q. Okay. Do you -- do you consider them to be
11 a reliable and authoritative source for good and best
12 practices for police agencies?

13 A. Yes, I do.

14 Q. Do you also agree that to be true with CALEA
15 in terms of what they want you to do, or is it
16 something different?

17 A. I know a lot more about PERF than I do
18 CALEA.

19 Q. Okay. One of the things that CALEA would
20 do, without being specific, was that they'd look at
21 something the bureau was doing or not doing and say
22 you need to do this in order to get accredited in this
23 particular area of practice; correct?

24 A. Yes.

25 Q. When you say the mayor thought it was a good

1 idea to seek the accreditation, did he say why?

2 A. I'm sure he did. I just don't recall
3 exactly what he said.

4 Q. Why did you think it was a good idea?

5 A. I thought it was good because it would give
6 us something to measure our policies and training and
7 other organizational attributes compared to a national
8 standard --

9 Q. Okay.

10 A. -- and would also instill confidence I
11 believed in the organization. I think citizens would
12 appreciate having an agency that was accredited.

13 Q. M-hm.

14 Do you know if there are any law enforcement
15 bodies or agencies in the state that are accredited by
16 CALEA?

17 A. I believe there are. And there's different
18 levels of accreditation for agencies depending upon
19 the size.

20 Q. Okay. But you don't specifically know
21 whether, say, the City of Beaverton or the City of
22 Hillsboro may be accredited, as two examples?

23 A. I don't recall if they are or not.

24 Q. Are there any more local in-state
25 organizations that accredit, in some way, law

1 enforcement agencies or bodies?

2 A. I don't know.

3 (DEPOSITION EXHIBIT NO. 271 was marked for
4 identification.)

5 Q. (By Mr. Steenson) I've handed you what's
6 been marked as Exhibit 271 which is titled "Labor
7 Agreement Between the Portland Police Association and
8 the City of Portland" for the period July 1 of 2002
9 through June 30 of 2006. This is not a signed copy,
10 if you look at page 39, but I'll represent this was
11 given to us during discovery. If you look at the
12 bottom it says Chasse and there's some numbers.
13 That's a Bates stamp system that's used in the
14 discovery process.

15 I'm assuming you signed this document on
16 behalf of the City of Portland as the chief. Do you
17 recall that?

18 A. I see a signature block there and I would
19 assume that I did.

20 Q. Okay. Do you have any reason to doubt that
21 this is the labor agreement that applied for this
22 period of time through a great deal of your tenure as
23 chief?

24 A. Without looking at it, I would accept the
25 fact that you represent it as being one, I would agree

1 with it.

2 Q. Okay. The labor agreement provides certain
3 procedures that need to be followed by you as the
4 chief or the bureau in terms of managing members who
5 belong to the union and work at the bureau; is that
6 correct?

7 A. Yes.

8 Q. And -- and, for example, in the area of
9 discipline there are procedures that have to be
10 followed with regard to when and how the city can
11 discipline a member of the bureau; correct?

12 A. Yes.

13 Q. As chief, did you have the authority to
14 discipline or was that something that the mayor had to
15 approve?

16 A. The mayor has to approve anything above a
17 letter of reprimand, so if it results in a suspension
18 or time off or termination, that has to be approved by
19 the commissioner in charge which at that time was the
20 mayor.

21 Q. I think at some point you and I may have
22 suggested that the mayor was always in charge of the
23 bureau. It isn't necessarily that way; correct? It
24 could be some other member of the commission?

25 A. Yes, it could be another commissioner.

1 Q. Did you ever I'll say recommend and then get
2 mayoral approval for the termination of an officer?

3 A. Oh, yes.

4 Q. Did you ever recommend termination where you
5 did not get approval to terminate?

6 A. I don't recall.

7 Q. Did you ever recommend and get approval for
8 terminating an officer for use of excessive force?

9 A. Termination?

10 Q. Yes.

11 You need some water. Or you have some.

12 A. No, I'm just thinking.

13 I don't recall.

14 Q. Do you recall any -- any specific level of
15 discipline that you ever sought approval for or
16 approval was given for in terms of excessive force
17 beyond a reprimand, so some kind of suspension or
18 something like that?

19 A. Have I ever made that recommendation?

20 Q. Yeah. Again, involving excessive force.

21 A. Yes.

22 Q. And did you get approval for that?

23 A. Yes.

24 Q. And if it happened in the area of
25 termination, you just can't recall?

1 A. If it happened in termination, I just don't
2 recall.

3 (Discussion off the record.)

4 Q. (By Mr. Steenson) And I didn't mention, it's
5 not a formal rule, but you can take a break at any
6 time you want as long as there isn't a question
7 pending.

8 A. Okay.

9 Q. So if for whatever reason you need a break,
10 just let me know.

11 Marked as Exhibit 150 is a memorandum dated
12 June 7 of 2004 to all bureau employees. On the second
13 page, is that your signature?

14 A. Yes, it is.

15 Q. Do you recall sending this memorandum out?

16 A. Yes, I do.

17 Q. What was the purpose of sending the
18 memorandum out?

19 A. It's often referred to as a clean-slate memo
20 to communicate your expectations of the organization
21 as chief. When a new chief comes in normally they
22 will want to share their expectations with members of
23 the organization and so they draft what -- a memo
24 similar to this and it's often referred to as a clean-
25 slate memo. It also lets them know that, excuse me,

1 that decisions related to discipline in the past, that
2 you may do them somewhat differently as chief than the
3 prior chief.

4 Q. Okay. So, for example, if the prior chief
5 had either not disciplined at all or had disciplined
6 at the written reprimand letter for some type of
7 excessive force, this is to tell members you might
8 consider more discipline than that to be appropriate?

9 (Mr. Landrum left the room.)

10 THE WITNESS: Yes.

11 Q. (By Mr. Steenson) Okay. You were appointed
12 in late summer or early fall of 2003 and so this came
13 out about nine months later. Do you recall why it
14 came out at that time, why you sent it out at that
15 time and not when you were first appointed?

16 A. I know that when I was first appointed there
17 were a lot of other pressing matters that were taking
18 place, and I suspect that probably it was due to those
19 other pressing matters as well as I wanted to make
20 sure that I also staffed it with some other people
21 prior to sending it out.

22 Q. Did you talk to the mayor or people from his
23 office about sending this out?

24 A. Let's see. The mayor was Mayor Katz at that
25 time.

1 Q. Right.

2 A. I don't know if I did or not.

3 Q. Okay. Did you ever talk to Mayor Potter
4 about anything related to the clean-slate memo or the
5 concept of the clean slate?

6 A. No, I don't believe I did.

7 (Mr. Landrum entered the room.)

8 Q. (By Mr. Steenson) I'm not sure if both of
9 the shootings happened in the same summer, I think
10 they happened relatively close together, involving the
11 deaths of Mr. Perez and Miss James. Do you recall
12 when that was, approximately?

13 A. I believe Kendra James' incident occurred in
14 May of 2003 --

15 Q. Okay.

16 A. -- and I believe James Perez took place in
17 March of 2004.

18 Q. Do you recall whether the bureau had tried
19 to discipline officers related to either of those two
20 shooting deaths had difficulties and that's why the
21 clean-slate memo was sent out?

22 A. It's kind of a two-part question.

23 Q. Sure.

24 A. I know that the police bureau attempted --
25 or did discipline an officer in connection with the

1 Kendra James officer-involved shooting. And I don't
2 recall the clean-slate memo, Exhibit 150, necessarily
3 being related to that.

4 Q. Okay. What dis -- strike that.

5 Was the discipline for -- was it Officer
6 McCollister?

7 A. Yes.

8 Q. Were you the chief at the time that
9 discipline was at least initially imposed or attempted
10 in terms of imposition?

11 A. I was an assistant chief.

12 Q. Okay. Were you involved in the decision to
13 try and impose that discipline?

14 A. I was part of a review body that made a
15 recommendation to Chief Kroker.

16 Q. Was it for termination?

17 A. The decision that the review body forwarded
18 to Chief Kroker?

19 Q. Yes.

20 A. The review body forwarded a different
21 recommendation. It was a suspension.

22 Q. Okay. For how long, do you recall?

23 A. I believe it was 900 hours.

24 Q. And then did Chief Kroker and the mayor
25 adopt that recommendation, go along with it?

1 A. Yes, that's my recollection, they did.

2 Q. Okay. And then the officer, through the
3 union, grieved it. And did it eventually go to
4 arbitration?

5 A. Yes.

6 Q. And by then you were the chief?

7 A. I don't recall the exact dates of
8 arbitration, but I would imagine that if the incident
9 occurred in May of 2003, that most likely, yeah, I was
10 chief, because an arbitration wouldn't take place that
11 quick, so --

12 Q. Did you testify in the arbitration?

13 A. I believe I did.

14 Q. I assume you testified in favor of the
15 suspension at whatever level it was that was imposed
16 or there was an attempt to impose?

17 A. Yes, I did.

18 Q. And did the arbitrator disagree with the
19 city?

20 A. I believe the arbitrator disagreed with some
21 facts that the city put forth.

22 Q. Did that reduce the amount of the
23 suspension?

24 A. Yes.

25 Q. Did it cancel the entire suspension, do you

1 recall?

2 A. I don't recall.

3 Q. And you don't recall this relating, in any
4 way, to the clean-slate memo, this process with
5 Officer McCollister where at least at some level,
6 whatever it was, the arbitrator disagreed with the
7 city?

8 A. I don't recall them being connected. I
9 mean, I'm sure that in the process of drafting this
10 that I was thinking about use of force issues. And,
11 you know, whether I thought about a particular
12 incident when drafting this, I don't recall if I was
13 thinking about a particular incident, but I just
14 wanted to communicate to the organization my
15 expectations about force and about discipline and
16 about conduct.

17 Q. Okay. Do you recall a community forum in
18 the I think it was the summer of '04, North/Northeast
19 Portland, at which Mayor Potter attended, and I think
20 I was there, as a matter of fact, and I don't recall
21 whether you were there, where the deaths of Kendra
22 James and Mr. Perez were the subject matter in terms
23 of just overall issues involving the police bureau?
24 Were you there for that?

25 A. I -- I think you might be referring to the

1 forum that was held at Mount Olive Baptist Church in
2 North Portland off the North Chautauqua.

3 Q. This one was not at a church, it was a
4 community center of some sort.

5 MR. LANDRUM: Tom, I don't want to make your
6 record for you. Wasn't that at that Boys and Girls
7 Club right there at Killingsworth and around there?

8 MR. STEENSON: I don't recall.

9 MR. LANDRUM: I think I was at the one you
10 were talking about. I'm just trying to remind him.

11 THE WITNESS: I don't recall, not without a
12 little bit more specifics.

13 Q. (By Mr. Steenson) Okay. I -- I don't recall
14 them.

15 Okay. Have you ever had a conversation with
16 the mayor about the importance of being able to
17 effectively discipline officers for using excessive
18 force in order to send a message to members of the
19 bureau that they can't be using excessive force?

20 A. I had a number of conversations with the
21 mayor about a lot of different topics, and I'm sure
22 that during those conversations we talked about
23 discipline, we talked about use of force, and we
24 talked about a lot of issues.

25 Q. But any specific recollection of talking to

1 him about the importance of being able to effectively
2 discipline officers using too much force in order to
3 send a message to other members of the bureau?

4 A. I don't recall having a specific meeting
5 just to talk about that, but we talked about a lot of
6 things.

7 Q. Well, do you recall a discussion where the
8 mayor expressed concern that, because of the history
9 of the city not effectively disciplining officers for
10 excessive force, that officers would be able to get
11 away with it, words to that effect?

12 A. I don't recall that.

13 (Discussion off the record.)

14 Q. (By Mr. Steenson) Would you look back at
15 Exhibit 147, please.

16 Exhibit 147 is an excerpt from the policy
17 and procedure manual, I believe it was the one in
18 effect in the year 2005 and 2006, at least the early
19 part of 2006. I'm not so worried about whether this
20 was the effective policy manual at that time, but do
21 you agree that there is a series of sections in the
22 policy and procedure manual that govern members of the
23 bureau that they're bound to comply with, and if they
24 violate these provisions they can be subject to
25 discipline?

1 A. Yes.

2 Q. Okay. Are there any other standards or
3 criteria outside of the policy and procedure manual
4 which members of the bureau can be disciplined for?

5 A. Yes.

6 Q. What are those?

7 A. Violation of a state law, federal law.

8 Q. Okay.

9 A. City ordinances.

10 Q. Okay. Anything else?

11 A. No, not that I can think of.

12 Q. What if a member of the bureau receives
13 training regarding some type of police procedure and
14 doesn't follow the training, can the member be
15 disciplined for that?

16 A. Yes.

17 Q. Okay. Were you involved, in any way, in the
18 matters leading up to or including the decision to
19 discipline Lieutenant Kaer for the shooting death he
20 was involved with?

21 A. Yes.

22 Q. What was your involvement?

23 A. I was the RU manager, the commander that
24 wrote a recommended finding that was then forwarded to
25 the review level committee that they considered along

1 with a lot of other information.

2 Q. Okay. Correct me if I'm wrong here. If I
3 recall from questioning Commander Henderson, she --
4 what she told me was that if there was an internal
5 affairs division investigation into a member's conduct
6 where the member was ultimately within her division,
7 that when it came out of IAD it would go to her as the
8 commander to review and then propose findings and make
9 a recommendation for discipline or not. Is that what
10 you're telling me you did with Lieutenant Kaer?

11 A. Yes.

12 Q. So that was in Southeast Portland, and you
13 were the commander of Southeast Portland, so is that
14 why you were involved?

15 A. The incident took place when I was chief
16 and --

17 Q. I'm sorry.

18 A. -- then when it -- the investigations were
19 completed, it was then forwarded to me, and I was the
20 southeast precinct commander because it did -- he was
21 a member of southeast precinct --

22 Q. Okay.

23 A. -- I ended up doing the review on it.

24 Q. And did you recommend termination?

25 A. No, I did not.

1 Q. What -- what level of discipline did you
2 recommend?

3 A. My recommendation was that it was within
4 policy. I did not make a recommendation in regards to
5 discipline.

6 Q. Okay.

7 A. I noted that there were concerns in his
8 performance; however, I didn't believe it rose to the
9 level where it required discipline.

10 Q. Okay. In other words, you thought -- you
11 had concerns, you didn't think there were policy
12 violations, and, therefore, you didn't recommend any
13 discipline. Correct?

14 A. Yes.

15 Q. If I understand, the chief then, at some
16 point, disagreed with you and thought 30 days of
17 suspension was appropriate. Is that your
18 understanding?

19 A. I don't know what they recommended in terms
20 of the discipline.

21 Q. Okay. And were you involved, beyond your
22 recommendation of no discipline, with anything the
23 chief then did or the mayor then did to ultimately
24 terminate Lieutenant Kaer?

25 A. No.

1 Q. Other than the -- strike that.

2 Have you been involved in -- I'm not sure
3 exactly what's going on but I think I understand that
4 Lieutenant Kaer is contesting the termination and
5 that's still pending. Have you been involved with
6 that at all?

7 A. Yes.

8 Q. What's your involvement?

9 A. I testified at his arbitration hearing.

10 Q. I assume you testified consistent with what
11 you've told me today, that you didn't find any policy
12 violations?

13 A. Yes.

14 Q. So you were called by Lieutenant Kaer as a
15 witness I assume?

16 A. I'm sorry, what?

17 Q. You were called by Lieutenant Kaer as a
18 witness for him; correct?

19 A. I believe that's correct.

20 Q. Has there been a decision in that case yet,
21 to your knowledge?

22 A. Not that I'm aware of.

23 Q. Other than the I'll call it a termination
24 for the time being of Lieutenant Kaer, whether it
25 stands or not, other than that termination, are you

1 aware of any other termination by the Portland Police
2 Bureau of any officer for the use of excessive force?
3 It doesn't have to be deadly force necessarily, just
4 any use of excessive force.

5 A. For termination?

6 Q. Termination.

7 A. I know that there have been officers that
8 have been disciplined in connection with the use of
9 force, but I don't recall any that have been
10 terminated.

11 Q. Okay. I don't recall the name of the
12 officer, but I'm aware of a situation where some guy
13 was wanted on a probation violation, I assume it was a
14 warrant. He attempts to elude the police. They catch
15 up. They've got him in handcuffs. Another officer
16 catches up and he kicks him in the head when he's
17 laying on the pavement in handcuffs. Do you know
18 anything about that?

19 A. I believe you might be referring to is that
20 Officer Larkin?

21 Q. Yeah, I think it was.

22 A. Okay. I recall hearing something about
23 that, yes. Steve Larkin.

24 Q. Were you involved with it at all?

25 A. You know, I don't recall when the incident

1 took place.

2 Q. Okay.

3 A. So I can't say if I was involved or not. I
4 don't know if it was when I was an assistant chief or
5 if I was still at northeast precinct as a commander,
6 but I do recall hearing about that incident.

7 Q. Okay. I think it occurred in southeast, so
8 it wouldn't have been probably under your command
9 directly. It was a precinct commander. But you don't
10 recall any direct involvement in either investigating
11 or considering discipline regarding him?

12 A. I don't -- I think it occurred like the area
13 of N.E. 57th and Fremont or N.E. 57th and Sandy.

14 Q. I can't recall exactly.

15 But he wasn't terminated?

16 A. No.

17 (DEPOSITION EXHIBIT NO. 272 was marked for
18 identification.)

19 Q. (By Mr. Steenson) I've marked as Exhibit 272
20 a document titled "Intergovernmental Agreement," and
21 I'm looking at the second page. I don't see your
22 signature. Is that correct?

23 A. I'm -- I don't see it either anywhere in the
24 exhibit.

25 Q. Have you seen this type of agreement

1 involving Tri-Met, Multnomah County, and the City of
2 Portland regarding the Tri-Met transit police division
3 which is operated/administered by the Portland Police
4 Bureau?

5 A. I'm sure I've seen it sometime.

6 Q. Okay. Have you ever had any
7 responsibilities connected with the operation of the
8 Tri-Met transit police division?

9 A. Other than just when I served as chief of
10 police.

11 Q. Okay.

12 A. But I've never been the commander. And I
13 don't recall if, as the assistant chief, I oversaw
14 Tri-Met or not, 'cause I was assistant chief over the
15 operation support branch and then over the operations
16 branch, and I don't recall if Tri-Met fell within that
17 chain of command or not. It's possible.

18 Q. But I take it you've never had
19 responsibility for determining which members of the
20 Portland Police Bureau would serve in the transit
21 police division? And --

22 A. I had responsibility in terms of who the
23 commander or the captain would be as chief.

24 Q. Okay.

25 A. But I didn't become involved in decisions

1 about lieutenants or the sergeants or the officers
2 necessarily.

3 Q. Did you have anything to do with the hiring
4 in any way of Christopher Humphreys?

5 A. Not that I know of, unless I was chief when
6 he got hired. I don't know how long Christopher has
7 been on.

8 Q. But other than that capacity, you weren't
9 involved in interviewing him, looking at references,
10 doing any kind of --

11 A. No.

12 Q. -- check on him, that sort of thing?

13 A. No.

14 Q. Did you ever directly supervise Officer
15 Humphreys?

16 A. No.

17 Q. Did you have anything to do with Officer
18 Humphreys getting assigned to the transit police
19 division?

20 A. No.

21 Q. Did you ever have anything to do with him
22 being removed from the transit police division for a
23 period of time after the death of James P. Chasse,
24 Jr.?

25 A. No.

1 Q. Did you have anything to do with his return
2 to the transit police division after that removal?

3 A. No.

4 Q. Do you recall that by about August of 2004
5 the Portland Police Bureau had implemented a
6 requirement that, for at least at that time, all uses
7 of force, even including handcuffing, had to be
8 reported on a form titled use of force?

9 A. Yes, we did implement that.

10 Q. Okay. And although I think the form has
11 changed, that's a continuing requirement within the
12 bureau, that if you or some other member uses force,
13 to report it on that type of a form?

14 A. Yes.

15 Q. Between August of 2004 and July of 2006, was
16 there any system in place for monitoring information
17 that was available through those use of force reports
18 that were being completed?

19 A. I know that we were trying to get it entered
20 into the Portland Police data system so that you could
21 retrieve the information and then start looking at
22 trends.

23 Q. Okay. I'm not aware, though, that, as of
24 the time you last were chief, that there was any
25 system in place, actually in place and up and running,

1 to monitor that information. Is that correct?

2 A. I want to say that we were taking
3 significant steps towards getting there, if not almost
4 there, but I don't recall where we were with it. But
5 I know that we were trying to develop a better
6 management information system so that we could track
7 all types of trends in the organization that included
8 use of force.

9 Q. Yeah, I've seen some documents related to
10 PARC and other documents about trying to do that. But
11 my question is: Was it up and running where you could
12 actually access information on an officer related to
13 his use of force history that was developed --

14 A. By July of 2006?

15 Q. Right.

16 A. I'm not exactly sure if it was.

17 Q. Okay. There's -- there's evidence that in
18 October of 2006, roughly a month following the death
19 of James P. Chasse, Jr., that the bureau publicly made
20 available a data base compiled of information taken
21 from the use of force report forms. Were you involved
22 with the development specifically of that data base?

23 A. No.

24 Q. Were you involved with the release of the
25 data base to the public?

1 A. No.

2 Q. Do you know why it was released to the
3 public at that time?

4 A. I would imagine there was a public records
5 request that came from the news media.

6 Q. Okay. But -- but other than assuming that,
7 were you are involved in any way?

8 A. No.

9 Q. Have you had any responsibility, since you
10 went back to being a commander, for monitoring the
11 information available through those use of force
12 report forms for particular officers?

13 A. Since I've been a commander we now have the
14 early intervention system that is up and running, and
15 as part of the -- our inspections, which are now twice
16 a year, we are now looking at use of force trends and
17 having discussions with officers about the use of
18 force if it exceeds a certain threshold.

19 Q. So when, to your knowledge, was this early
20 intervention system up and running?

21 A. You know, sir, I'm not exactly sure when it
22 was up and running.

23 Q. Okay. Did you say inspections twice a year?

24 A. Yeah. We do inspections to ensure that
25 officers have the proper equipment, that it's being

1 maintain, make sure that their identify cards,
2 driver's licenses are current, and as part of the
3 inspection we also look at sick time use and a number
4 of other things, but we also have added a review of
5 the use of force that has just recently just got
6 started the latter part of 2007 -- 2007.

7 Q. So these twice-yearly inspections on these
8 other matters, like proper equipment and so forth,
9 that had been ongoing in the bureau prior to the death
10 of Mr. Chasse?

11 A. Yes.

12 Q. The bureau doesn't have a written
13 performance evaluation system in place for its
14 officers, does it?

15 A. Not for tenured officers. For officers and
16 members who are in a probationary status there is an
17 evaluation system.

18 Q. Right.

19 But once you get through the probation,
20 there's no routine system of written performance
21 evaluations for officers?

22 A. That's correct.

23 Q. Do you know whether the accreditation body,
24 CALEA, requires a written performance evaluation for
25 officers for accreditation purposes?

1 A. I don't know.

2 Q. Were you involved in creating this threshold
3 for reviewing an officer's history of use of force?

4 A. No.

5 Q. What is the threshold, if you know?

6 A. I believe it was 30 percent or 33 percent.
7 If they were found to use force in 30 or 33 percent of
8 the arrests, then that would trigger us looking closer
9 into exactly what was taking place.

10 Q. Okay. So it wasn't triggered by a
11 comparison with other officers' uses of force?

12 A. I don't know how they actually came up with
13 the 30/33 percent. I believe that was something that
14 they decided in the chief's office along with
15 discussions with the person who ran the early
16 intervention system.

17 Q. But you're not aware that the threshold
18 consists of a comparison between officer A and officer
19 B working the same kind of shift?

20 A. I don't know for sure, sir.

21 Q. And if I understand your testimony, it
22 doesn't take into account the type of force used to
23 see whether an officer is using deadly force more
24 often than other officers?

25 A. That's correct.

1 Q. And if I understand, the union is disputing
2 or contesting this threshold and the use of the
3 threshold? Or do you know anything about that?

4 A. I know that they do have concerns about the
5 use of force and the threshold and the discussions
6 that take place with members.

7 Q. Do you know whether there is a formal
8 grievance or something formal like that being pursued
9 by the union where they're disputing the authority of
10 the bureau to manage its officers using a threshold?

11 A. I don't know if there's a formal grievance
12 that's been filed.

13 Q. Okay. Let's take a break.

14 (Recess: 9:58 to 10:03 AM.)

15 Q. (By Mr. Steenson) When you became the chief,
16 did you, either individually or through assignment,
17 engage in any kind of systematic review of the
18 existing directives in the policy and procedure
19 manual, see whether you thought that they ought to
20 remain in effect or be changed in some way?

21 A. There is a process that's in place, and I
22 believe it's every -- either every year or every two
23 years planning and support take the lead on reviewing
24 all of the directives.

25 Q. Okay. Other than that process that's in

1 place, when you took over as chief, though, did you do
2 something, you know, where you sat down and went
3 through the policy and procedure manual or did you
4 give it to somebody as an assignment to, on your own,
5 independent process, determine whether you wanted
6 those directives in place during your tenure?

7 A. There were some directives that we actually
8 took a harder look at and it was outside of the normal
9 two-year cycle.

10 Q. And so did that occur, as I'm suggesting,
11 that when you first became chief you sat down and
12 looked at it, or was it something that just came up on
13 a case-by-case basis? Was there something that
14 happened to trigger the change?

15 A. It wasn't something that I sat down and
16 immediately got done.

17 Q. All right.

18 A. It was something that occurred as -- it's
19 just part of the becoming familiar with the position
20 of chief of police and becoming familiar with the
21 issues and concerns that citizens had and the
22 organization had.

23 Q. Okay. So as a situation or incident or an
24 issue would arise it might trigger an individual look
25 at a directive and consideration of a change?

1 A. Yes.

2 Q. Okay. The City of Portland contracted with
3 an organization called the Police Assessment Resource
4 Center called PARC. I think the contract was signed
5 either in 2002 or early 2003. Were you involved in
6 that process at all?

7 A. Yes.

8 Q. What was your involvement? The contracting
9 process first.

10 A. Oh, the contract? Not with the contract,
11 no.

12 Q. So were you involved with discussions or
13 anything that led up to the decision to contract with
14 somebody to come in and look at officer-involved
15 shootings and in-custody deaths during that 2002 or
16 2003 time frame?

17 A. No.

18 Q. Okay. Do you know anything about who may
19 have submitted proposals for the contract other than
20 PARC?

21 A. I don't know.

22 Q. If you'll look at Exhibit 141.

23 There should be a tab for it, 141.

24 A. I don't see a tab. It goes 140 to 147.

25 (Discussion off the record.)

1 Q. (By Mr. Steenson) All right. Exhibit 141 is
2 the PARC August 2003 report was their first report.
3 And I understand that you were just either at or about
4 that time or shortly after this time were appointed as
5 the chief. Were you involved, either as assistant
6 chief or as chief, in actually reviewing this report
7 for a response? And the reason I ask you that, if you
8 turn to Exhibit 142, which actually is labeled
9 "Response," you'll see that there was a response from
10 the police bureau in response to the PARC
11 recommendations.

12 A. Give me just a moment to look over this.

13 Q. Yeah.

14 A. No.

15 Q. Okay. Did you review the August 2003 PARC
16 report at any point?

17 A. At any point?

18 Q. Yes.

19 A. During my tenure as chief?

20 Q. Yes, we'll start with that.

21 A. Yes.

22 Q. Okay. When did you first review it that you
23 can recall?

24 A. I suspect that I may have reviewed it and
25 read it at about the time that it was released.

1 Q. Okay. Do you recall reviewing it in terms
2 of something you were assigned to do or something you
3 took on to do?

4 A. No.

5 Q. At some point, did you review the August
6 2003 report in relation to your responsibilities as
7 chief or did you assign someone responsibility for
8 looking at this report related to your
9 responsibilities as chief?

10 A. Yes.

11 Q. When was that?

12 A. I believe it was shortly after I was
13 appointed chief.

14 Q. Okay. So what did you do either
15 individually or by assignment to someone?

16 A. Individually as well as meeting with my
17 staff, the assistant chiefs and others, to review this
18 and to discuss it.

19 Q. Okay. Do you recall whether you disagreed
20 with any of the responses that Chief Kroker had issued
21 in response to the report, the August 2003 report?

22 A. Was that the only response that he had was
23 the letter that we referred to?

24 Q. And then the -- I think the -- what follows,
25 the attachments which is Exhibit 142, for the record.

1 A. I believe recommendation 3.5.

2 Q. Okay.

3 A. It states that, "In addition, the PPB should
4 require officers to report in writing each instance in
5 which they draw and point a firearm at another." And
6 the response there, "Given the limitless variables in
7 police encounters, the recommendation to establish
8 policy in regards to when an officer may draw or point
9 their firearm is not practical. However, we will
10 evaluate establishing a policy that requires
11 articulation in a report." Didn't necessarily
12 disagree with it, but we did follow up and create that
13 use of force report.

14 Q. So on recommendation 3.5, what you're
15 telling me is is that for all uses of force, not just
16 drawing and pointing firearms, you created a use of
17 force report?

18 A. Yes.

19 Q. That included drawing and pointing a
20 firearm?

21 A. Yes.

22 Q. All right. Anything else that you either
23 disagreed with or something differently happened after
24 you took the job than what Chief Kroker was saying was
25 going to happen?

1 A. Recommendation 6.8.

2 Q. All right.

3 A. Where it says that "A civilian from outside
4 the bureau should be made a voting member of the
5 review level committee. The outside committee member
6 should be chosen in a manner decided by the city's
7 elected officials." And the response, "We disagree
8 with recommendation as to form." We would eventually
9 actually change that and we do have civilians who are
10 on review level that are voting members.

11 Q. But not as to discipline?

12 A. Yes. They make recommendations as well in
13 review level if they're voting member. The citizen
14 and the peer member are voting members that make
15 recommendations.

16 Q. And what's the name of the committee?

17 A. There is a performance review board that
18 looks at conduct issues and then there's a use of
19 force board that looks at force issues.

20 Q. But that's not part of the process that
21 comes out of IAD that goes to the commander for
22 determination as to findings and a recommendation for
23 discipline or not?

24 A. That comes after the commander makes a
25 recommendation and then all the information and

1 reports are sent to review level. And I -- when I say
2 review level, I use that term interchanging it with
3 performance review board and use of force board.

4 Q. Okay.

5 A. It's just for years we referred to it as
6 review level.

7 Q. All right. Let me stop you right there,
8 though. On recommendation 6.8, going back to that, in
9 the PPB response the last sentence says, "However,
10 CPOR is currently studying the Phoenix model which
11 includes civilian members on their discipline review
12 board."

13 A. Yes.

14 Q. So are you saying that's what happened or --

15 A. Yes.

16 Q. -- the equivalent of that happened?

17 A. That did happen.

18 Q. All right.

19 A. I'm smiling at recommendation 7.21 just
20 regarding the helicopter unit if you were wondering.
21 Just a sensitive issue with a lot of members of the
22 community.

23 Q. CPOR stands for the Community Police
24 Organizational Review Team; correct?

25 A. Yes, sir.

1 Q. Is that still in existence?

2 A. No, sir.

3 Q. If you look at Exhibit 140.

4 MR. RICE: I'll hand you this back here.

5 THE WITNESS: Close this up for now?

6 MR. STEENSON: Yes.

7 MR. RICE: Okay. We'll put that over here
8 for now.

9 Q. (By Mr. Steenson) It's titled "CPORT Summary
10 Report" August to December 2003. As assistant chief,
11 were you involved in setting up CPORT?

12 A. I was -- I recall being part of the
13 discussions and attending the meetings, but I don't --
14 I didn't have the lead on CPORT.

15 Q. Was that set up following the death of
16 Kendra James?

17 A. Yes, sir.

18 Q. At least in part, her death attributed to
19 the formation of CPORT?

20 A. Yes.

21 Q. And if you look at Exhibit 139, the previous
22 exhibit, it's a March 17, 2004, memorandum from you to
23 the members of CPORT. That's your signature; correct?

24 A. Yes.

25 Q. Was this the -- the end of what CPORT did in

1 terms of producing this report or was there further
2 work by them?

3 A. No, this was the end.

4 Q. So somewhat different than PARC that was
5 looking at officer-involved shootings and in-custody
6 deaths, CPORT was looking at issues beyond just that;
7 correct?

8 A. Yes.

9 Q. Actually, we need to look back at Exhibit
10 142.

11 And if you'll look at the response, page 3
12 at the bottom, recommendation 3.2.

13 A. I'm sorry, sir?

14 Q. It should be Exhibit 142.

15 A. M-hm.

16 Q. And looking at the bottom of the report, the
17 response, on page 3 numbered at the bottom, should
18 be --

19 A. Yes.

20 Q. -- a recommendation on that page 3.2.

21 A. I see it.

22 Q. Yeah, okay.

23 (DEPOSITION EXHIBIT NO. 273 was marked for
24 identification.)

25 Q. (By Mr. Steenson) I've marked as Exhibit 273

1 an excerpt from the policy and procedure manual
2 1030.00, and there's a number of different sections
3 with different word titles, but, generally speaking,
4 it deals with the use of the baton or other
5 instruments as a striking or jabbing device, IE
6 flashlights, pack sets, etcetera. Are you generally
7 aware of this policy and procedure provision?

8 A. Yes, sir.

9 Q. Okay. And then looking back at Exhibit 142,
10 recommendation 3.2, Chief Kroker's response to that
11 recommendation about expanding the written deadly
12 force policy to provide certain uses of force, such as
13 strikes to the head or other vital areas with impact
14 weapons, may not be used unless the officer is
15 justified in using deadly force, response by Chief
16 Kroker, in part, was this is covered by directive
17 1030.00.

18 Here's my question. The way I read 1030.00
19 it just deals with batons and other instruments like
20 flashlights and things as opposed to hands and knees
21 and elbows. Do you agree with that?

22 A. It does list that, but there's also a
23 reference to two directives in the 1030, the use of
24 baton. It also refers to directive 1010.10 use of
25 deadly physical force, and directive 1010.20 use of

1 physical force.

2 Q. And do you agree at this time when Chief
3 Kroker was responding, around the time you took over
4 as chief, that none of those provisions said that the
5 head couldn't be struck?

6 A. Do I agree with that?

7 Q. Yeah.

8 A. Sir, I would have to look at the policy at
9 1010.10 and 1010.20 because 1030 refers to that.

10 Q. Okay. Well, do you recall that PARC
11 continued to take issue with the Portland Police
12 Bureau for refusing to change its policy to
13 specifically prohibit strikes to the head and other
14 vital areas unless there was justification for deadly
15 force?

16 A. Do I recall PARC having issues with that?

17 Q. Yeah.

18 A. They may have. We had lots of meetings with
19 representatives from PARC and there were things that
20 we agreed on and a lot of things we didn't agree on.
21 They expressed a lot of concerns on issues. And I --
22 I would agree that they probably did have a concern
23 about that.

24 Q. Okay. At some point in your career I'm
25 assuming you've been through training on the use of

1 force and defensive tactics, that sort of thing?

2 A. (Nods head.)

3 Q. Is that a yes?

4 A. Yes.

5 Q. When was the last time you went through any
6 training like that.

7 A. For defensive tactics?

8 Q. Or use of force.

9 A. Or use of force?

10 May have been in 2006 actual hands on.

11 Q. Is that --

12 A. Might have been 2006.

13 Q. Was that in-service in the sense that the
14 bureau provided the training?

15 A. Yes, sir.

16 Q. How much training was there in terms of
17 hours, real class time?

18 A. Just for that specific topic?

19 Q. Yeah. The use of hands and other strikes
20 like that?

21 A. I don't recall.

22 Q. Were you told that you couldn't strike
23 someone in the head or vital areas such as the sternum
24 or the groin unless you had justification for the use
25 of deadly force?

1 A. I believe that is true.

2 Q. You were told that?

3 A. I believe that is what is -- that is what is
4 shared in training and is told by the training
5 officers to officers going to the training.

6 Q. So who was your training officer who told
7 you that?

8 A. I don't recall.

9 Q. Have you ever seen anything in writing that
10 said that, whether it was in a policy provision, a
11 directive, or in a training material, that said you
12 are not to strike someone in the head or other vital
13 areas such as the sternum or the groin unless you have
14 justification to use deadly force?

15 A. Have I ever seen that in writing? I would
16 have to look at 1010 and 1020, sir.

17 Q. Okay. Other than there, or those
18 provisions, do you know anyplace else where it might
19 be in writing?

20 A. It's possible it could be in the training
21 divisions's lesson plans.

22 Q. But you don't, sitting here today, ever
23 recall seeing that?

24 A. I don't.

25 Q. Okay. Let's look at Exhibit 143, which

1 would be here.

2 MR. RICE: I'll take this here and swap.

3 Is 143 in here?

4 MR. STEENSON: It should be.

5 MR. RICE: Okay. There you go.

6 Q. (By Mr. Steenson) Turn to the first tab, I
7 think it'll be 143.

8 A. I have it.

9 Q. Okay. This is PARC's first follow-up report
10 dated August 2005. This came in on your watch as
11 chief of police for the Portland Police Bureau;
12 correct?

13 A. Yes.

14 Q. And in your tenure as chief leading up to
15 this, did you personally have conversations with PARC
16 about the work they were doing in preparing this
17 report?

18 A. Yes.

19 Q. And then members of the bureau did as well?

20 A. Yes.

21 Q. If you look at page 14 of the report, on
22 this page it talks about the modification to 1010.10
23 regarding deadly force insofar as a reference to the
24 value of human life was added. Do you see that?

25 A. Yes.

1 Q. Okay. And you've now scanned the page. As
2 you move down the page, PARC is following up their
3 original recommendation of 3.1 and stating that "The
4 preamble would better reflect the bureau's values and
5 would be more useful to PPB members, particularly in
6 training, if it explicitly stated that deadly force
7 should be used only when no alternatives are
8 reasonably available." Do you recall PARC telling you
9 this as the chief in --

10 A. Yes.

11 Q. -- August of 2005?

12 And then they rely upon policies and
13 statements from other police departments that they
14 think more appropriately set forth the fact that
15 deadly force should be used only when no alternatives
16 are reasonably available. Do you agree with that?

17 A. Yes.

18 Q. Then if you look at page 21 of the report --
19 Excuse me, let me back up. Look at page 16.
20 Actually, let me strike that. Let's do move
21 to page 21.

22 And if you look at recommendation 3.2, they
23 restate the recommendation and they say "To date, the
24 PPB has not made the recommended addition to its
25 policy on deadly force." With regard to impact

1 strikes and what we talked about earlier about you
2 should have deadly force justification before you
3 strike somebody in the head or any vital areas, do you
4 agree that PPB had not made the recommended addition
5 by this time?

6 A. Just one second, let me look at this.

7 I would -- I would disagree to some extent.

8 Q. Well, you could look at the appendix, if you
9 want, which contains section 1010.10, but I'm looking
10 for a statement anywhere that says contrary to what
11 PARC is saying, in writing, that strikes to the head
12 or other vital areas with impact weapons may not be
13 used unless an officer is justified in using deadly
14 force. I'm looking for language that says what they
15 recommend. If you could find it, point it out to me,
16 please.

17 A. Do we have 1010 here?

18 Q. I believe it's included in the appendix.

19 If you look at appendix page 11.

20 A. I'm looking at appendix page 12, and at the
21 very top of the page it says "The use of statutorily
22 defined deadly weapons, barricades and vehicle
23 ramming, constitutes deadly physical force. Also,
24 depending upon how they are used, flashlights, batons,
25 body parts, and other statutorily defined dangerous

1 weapons may constitute deadly physical force." And I
2 believe what PARC wanted was more specifics in their
3 recommendation, and that's what they said is that they
4 would want the Portland Police Bureau to be more
5 specific in the guidance when strikes with impact
6 weapons amount to deadly force. So to some degree I
7 believe we met that requirement, but just didn't go as
8 far as PARC recommended.

9 Q. Okay. But there were no specific changes
10 made in response to this recommendation; is that
11 correct?

12 A. I don't believe so.

13 Q. Look at page 22.

14 At the top it says "No department in 2005
15 can claim to be appropriately managing risk without an
16 operational early warning system," and because of that
17 "we urge the bureau to ensure that development of the
18 system does not lag." And this is referring back to
19 the next page to the use of force reporting and the
20 use of that information to monitor officers. Do you
21 agree with the statement about no department in 2005
22 can claim to be appropriately managing risk without an
23 operational early warning system of the type that they
24 wanted in place?

25 A. I would agree.

1 Q. Moving to recommendation 7.11, again, this
2 is a carryover from the first PARC report in August of
3 2003 about foot pursuits. And it reflects that as of
4 this time there was effort underway to put together a
5 policy and provide some additional training on foot
6 pursuits. My question is: Other than what PARC was
7 recommending about sound foot pursuit tactics being
8 put in place, was there anything else you were aware
9 of that was contributing to any changes in the
10 bureau's policy or training regarding foot pursuits?
11 In other words, were there incidents, whether
12 involving death or not, but incidents that had arisen
13 that was causing concern for the bureau, besides what
14 PARC was giving?

15 A. I know there were -- there was an incident
16 that did cause concern that was related to a foot
17 pursuit.

18 Q. Was that the death of some officer who
19 chased somebody down an alley?

20 A. It was related to the death of Officer
21 Jeffries.

22 Q. Okay. Anything else besides that? Because
23 that was several years previous.

24 A. Not that I'm aware of.

25 Q. That was several years previous, like late

1 '90s or early 2000, 2001?

2 A. I believe it was early 2000.

3 Q. So you don't recall anything in this time
4 frame of 2004/2005 in terms of an incident that was
5 leading the bureau to change its foot pursuit policy
6 and change its training?

7 A. I specifically don't recall, no, sir.

8 Q. Have you ever had any responsibility related
9 to either the original implementation of crisis
10 intervention training in the bureau or any changes
11 over the years in terms of the type of training or the
12 amount of training?

13 A. Have I personally been involved?

14 Q. Yeah.

15 A. Yes.

16 Q. What's been your involvement?

17 A. Not in the original creation of it, but in
18 providing and requiring the two hours of CIT training
19 and in-service.

20 Q. Okay. Was that while you were assistant
21 chief?

22 A. That was while I was chief.

23 Q. Okay. Well, correct me if I'm wrong. The
24 crisis intervention training that was being provided
25 was -- was first started before you were chief; is

1 that correct?

2 A. It was started by Chief Moose, yes.

3 Q. Okay. Were you involved in how to set that
4 up, whether it was two hour, four hour, whether every
5 officer was going to get it, whether it was voluntary,
6 mandatory? Were you involved in any of that kind of
7 decision making?

8 A. No.

9 Q. So up until the time you became chief, were
10 you involved with decisions related to how much or the
11 nature of the CIT training?

12 A. No.

13 Q. What happened after you became chief that
14 you were involved with?

15 A. What happened is that we started to looking
16 at the training that was provided to officers and what
17 type of training we felt, as well as the community
18 felt, was important to provide officers. And citizens
19 felt it was important, I felt it was important that
20 officers receive crisis intervention team training. I
21 had discussions with people about making it mandatory
22 versus making it voluntary. I had discussions about
23 whether we could mandate it and send everyone through
24 a 40-hour training and the fiscal impact of doing so.
25 I also asked questions about can you distill the

1 training down to less time but still deliver adequate
2 training to officers so that they have a basic skill
3 level with CIT training.

4 Q. Okay. What was the status of that training
5 when you took over as chief, first of all, as to
6 voluntary versus mandatory?

7 A. It was a voluntary program with 40 hours of
8 training.

9 Q. There wasn't a two-hour alternative when you
10 took over?

11 A. No.

12 Q. And did you then make a decision as to what
13 to do about that training, based upon what you've told
14 me you were looking at and thinking about?

15 A. I mandated two hours of CIT training during
16 the 40 hours of in-service.

17 Q. And how did you come up with that figure?

18 A. Based upon the recommendations that were
19 provided to me by the training division and our CIT
20 coordinator.

21 Q. When you made that decision, did you take
22 into account the information that PARC had provided in
23 its two reports -- strike that. Let me back up.

24 When did you make the decision to make the
25 two hour mandatory?

1 A. It may have been in 2004 or 2005.

2 Q. Okay. Was it before the report we're
3 talk -- we've been talking about here, August of 2005?

4 A. Was it before the report?

5 Q. Yes. This is the second report by PARC.

6 A. I don't know.

7 Q. Okay. In looking at this, I assume you were
8 aware of what's been I think generally referred to as
9 the Memphis model where the Memphis Police Department
10 implemented CIT training and significantly reduced the
11 number of citizen deaths --

12 A. Yes.

13 Q. -- do you recall that?

14 Okay. And so was anyone advocating for more
15 than two-hour training when you decided to make that
16 the mandatory amount?

17 A. I believe there was. I believe even I
18 supported 40 hours, but I -- you just couldn't deliver
19 40 hours of in-service training and take everyone off
20 line without incurring a lot of overtime and running
21 over our overtime budget.

22 Q. Okay. So was the fiscal issue you just told
23 me about the reason that the -- that it didn't become
24 a 40-hour mandatory requirement?

25 A. That was one reason, yes.

1 Q. Any other reason?

2 A. Other than the recommendation that came back
3 that they could distill it down to two hours and do a
4 very basic CIT training and deliver it to every
5 officer.

6 Q. Well, did someone tell you that they thought
7 that would be enough training, the two-hour, to get
8 the message across to officers how to deal with people
9 that might be in crisis of the sort that the training
10 was dealing with?

11 A. I believe they said it was adequate. That's
12 how we came up with two hours. But obviously not as
13 good as 40 hours because the 40 hours involved I
14 believe it was actual on-site visits to mental health
15 facilities.

16 Q. I may have asked you this before, but do you
17 know anything about why the decision was made,
18 following the death of James P. Chasse, Jr. to make
19 the training mandatory at the 40-hour level?

20 A. I was not involved in that.

21 Q. Okay. Do you know anything about how,
22 whatever fiscal impact there may be with the 40-hour
23 mandatory training, that's being handled by the
24 bureau?

25 A. Do I know what, sir?

1 Q. Do you know how the fiscal impact is being
2 handled by the bureau now that it's mandatory for 40
3 hours?

4 A. I don't know for sure. I believe that there
5 was some money that was provided to the police bureau
6 to pay for the training.

7 Q. On page 55 of Exhibit 142 -- 143, excuse me,
8 at the bottom of the page it says "Approximately 140
9 of the PPB's current officers have received CIT
10 certification, which is a decrease from approximately
11 200 when the program started." Do you see that?

12 A. Yes, I do.

13 Q. Did you disagree with the accuracy of that
14 statement?

15 A. I have no reason to disagree with it.

16 Q. On the next page, 56 -- are you on the next
17 page?

18 A. Yes, sir.

19 Q. All right. In the top paragraph in the
20 middle it says "While the two-hour awareness training"
21 I think you've been telling me about that you made
22 mandatory, "cannot substitute for the 40-hour
23 certification training, the training of CIT officers
24 and the mandatory CIT training are both excellent
25 steps to help the bureau." Do you -- do you agree

1 that the two-hour awareness training was not a
2 substitute for the 40-hour training?

3 A. I agree.

4 Q. If I understand the operation of the transit
5 police division or the Tri-Met transit police
6 division, that the way it's worked out is that a
7 Portland Police Bureau commander has been placed in
8 charge of that division over the years?

9 A. Yes.

10 Q. Okay. Were you aware, during your time as
11 chief, that there were law enforcement personnel from
12 other agencies that were being placed in that transit
13 police division who had no CIT training, no awareness
14 training of the type even that was being provided by
15 the bureau at the two-hour level?

16 A. No.

17 Q. While you were chief, there was -- actually
18 I think probably throughout your tenure as -- as a
19 member of the bureau there's been foot pursuit
20 training of one sort or another. Correct?

21 A. I don't know if foot pursuit training --

22 Q. Okay.

23 A. -- that was delivered by the training
24 division.

25 Q. Let me rephrase. When do you first recall,

1 if you can, any foot pursuit training being provided
2 by the -- by the bureau?

3 A. I -- I would say that it would first be a
4 topic that would come up for review or discussion with
5 your field training officer during your probationary
6 period. However, in terms of formal training
7 delivered by the training division, I don't recall.

8 Q. Okay. Were you aware that there were
9 members of other law enforcement agencies that were
10 being assigned to the transit police division that had
11 no foot pursuit training whatsoever?

12 A. No.

13 Q. In that same binder if you'll look at
14 Exhibit 144, please. It should be under the response
15 tab. And if you'll turn to the sixth page, it's
16 unnumbered.

17 Is that your signature?

18 A. Yes, it is.

19 Q. So this is your August 22, 2005, letter to
20 Leslie Stevens, executive director of the IPR,
21 regarding PARC's it says July 2005 report; correct?

22 A. Yes, it is.

23 Q. And then following your signature on that
24 page continuing pages 1 through 24 was an additional
25 attachment or summary of what the bureau had done or

1 planned to do regarding the recommendations; is that
2 correct?

3 A. Yes.

4 Q. I assume, as the chief, through the letter
5 and with the attachment you were taking responsibility
6 for the bureau's response to the recommendations that
7 are reflected in what you had to say?

8 A. Yes.

9 Q. And if you look at the attachment or what
10 I'm referring to the attachment or the summary, the
11 first page --

12 A. Page 1?

13 Q. Yes.

14 On that page, recommendation 3.1 is restated
15 and then in the details column there's responsive
16 information. And, again, this has to do with PARC's
17 recommendation that the use of deadly force should be
18 restricted to where no other alternatives are
19 reasonably available. And then the way I read your
20 response is on behalf of the bureau it was determined
21 that, quote -- excuse me, a, quote, last resort,
22 quote, standard is inappropriate and that wouldn't be
23 implemented. In other words, you wouldn't follow that
24 recommendation; is that correct?

25 A. Well, in the details section it provides a

1 lot of information and I think it's important to
2 include everything in that response in regards to the
3 recommendation.

4 Q. Okay. But the bottom line is, you weren't
5 going to implement the recommendation that PARC was
6 asking for?

7 A. Again, we talked about this, and I believe
8 that we had implemented the recommendation to a
9 certain point but not as far as PARC recommended it.

10 Q. Well, does it say anywhere in the deadly
11 force policy that the bureau had at this time that
12 deadly force is to be used only when no other
13 alternatives are reasonably available? Does it say
14 that?

15 And you can look back at the appendix if you
16 want.

17 A. I don't see 1010 in this binder, 1010.10.

18 Q. I think if you look at the appendix, is it
19 there? It should be there.

20 It may not be labeled as a separate
21 appendix.

22 A. Oh.

23 Q. There. If you look -- we were looking at it
24 before. It starts on page 11.

25 A. Page 11.

1 Q. There's an executive order from you and then
2 the policy 1010 is included. I'm looking for that
3 specific language. If you can find it --

4 A. About last resort?

5 Q. Yeah. Or no reasonable alternative exists
6 other than deadly force, either of those two phrases.

7 A. You are correct, there's nothing in here
8 about a last resort.

9 Q. Okay. If you move further on -- excuse me,
10 go back to Exhibit 144 and your response. If you look
11 at the second page of the actual letter -- move up to
12 the letter, I'm sorry.

13 Following up on its earlier recommendations
14 PARC says, in recommendation 2005.1, that "The PPB
15 should set a firm deadline for making its early
16 intervention system operational and should prioritize
17 its resorts so as to ensure meeting that deadline."
18 Was that done?

19 First of all, was there a deadline set?

20 A. Yeah, the response does include a target
21 date to begin full use of the system in early spring
22 of next year, so that would have been spring of 2006.

23 Q. All right. And even though that was a
24 target date, in fact you don't recall that it was up
25 and running by then?

1 A. I don't know.

2 Q. Okay. And was there a fiscal problem with
3 getting it up and running even by spring of 2006?

4 A. I don't know.

5 Q. Let's take a break. We're getting close to
6 being done.

7 (Recess: 11:03 to 11:11 AM.)

8 Q. (By Mr. Steenson) Do you know anything about
9 the internal affairs division investigation into the
10 death of James P. Chasse, Jr. in terms of the status
11 of the investigation?

12 A. No, I do not.

13 Q. Do you know anything about anything they've
14 done or they plan on doing?

15 A. No.

16 Q. Do you know anything about the bureau's
17 training division's analysis or the report they issued
18 on the death of James P. Chasse, Jr.?

19 A. No.

20 Q. Would you look at Exhibit 46, 48, and 49?

21 MR. RICE: Here's 46.

22 THE WITNESS: 46, 48, and 49?

23 Q. (By Mr. Steenson) Yes. If you want a sticky
24 to tab those.

25 A. Thank you.

1 Q. Exhibit 46 is an excerpt from the policy and
2 procedure manual as of 2005/2006 630.40. Exhibit 48
3 also from the manual for that time period. The part
4 I'm looking at is post use of force medical attention
5 1010.10. And then Exhibit 49 another portion of the
6 manual post use of force medical attention 1010.20.
7 They all deal with members of the bureau and how they
8 deal with medical both emergencies and nonemergency
9 situations. Do you know of any other written
10 statements of policy or directives or anything else
11 that existed besides these during the time you were
12 chief regarding medical emergencies and
13 nonemergencies?

14 A. No.

15 Q. Okay. Looking at Exhibit 48, please, post
16 use of force medical attention 1010.10. Why don't you
17 just read this section to yourself first.

18 A. Okay.

19 Q. Just read it to yourself and then --

20 A. "The post use of force medical attention --"

21 Q. No, you don't need to read it out loud.

22 A. No, but that's the section?

23 Q. Yeah. And then I'll ask you a question
24 about it.

25 A. Okay.

1 Q. Would you, as chief, have expected someone
2 who had someone in the back seat of their patrol
3 vehicle in handcuffs who appeared to lose
4 consciousness or not breath immediately call emergency
5 medical services?

6 A. I think it depends upon the situation. And
7 what I mean is if they are fairly close to a hospital.
8 For example, if they're a few blocks away from Emanuel
9 Hospital and they can get to Emanuel Hospital sooner
10 than an ambulance could arrive, I would think that's
11 reasonable to go ahead and take them to the hospital
12 if it's fairly close.

13 Q. So your interpretation, as chief, is that
14 even though 1010.10 says "If any significant changes
15 in any of these areas are observed, such as breathing
16 or levels of consciousness, the member shall notify
17 EMS immediately" doesn't really mean that?

18 A. We're talking about Exhibit 48?

19 Q. Yes.

20 A. I think it does mean it.

21 Q. So following up on what you just told me, do
22 you think that somebody could -- a member of the
23 bureau could just drive this person to some hospital
24 as opposed to calling EMS immediately and still comply
25 with the directive?

1 A. I do. And I guess what I'm looking at, sir,
2 is where it says if tactically feasible or
3 appropriate. I would expect that if you've got
4 Emanuel Hospital two blocks away and you're two blocks
5 away from Emanuel Hospital and you can get that person
6 there in 30 seconds versus waiting for EMS to arrive
7 in five to ten minutes, that that would be reasonable.
8 I think that's what would be expected.

9 Q. No, this doesn't say anything about stopping
10 your car or waiting someplace. It just says notifying
11 EMS. You can do that by radio or by phone from your
12 patrol vehicle; correct?

13 A. You can request EMS, yes.

14 Q. Okay. And is there anything that would
15 prohibit one of two officers, you've got a patrol
16 vehicle that's staffed by two officers, you've got a
17 single person in the back in handcuffs who looks like
18 he's not breathing or unconscious, is there anything
19 that you can imagine that would prevent one of those
20 people from immediately notifying EMS or taking steps
21 to notify EMS regardless of where they were driving or
22 what else they were doing?

23 A. I'm trying to understand the question. So
24 in the scenario that I -- that I've explained, what
25 I'm thinking of is if you do have two officers, you're

1 two blocks away from Emanuel Hospital, yes, you could
2 get on the radio and tell dispatch notify Emanuel we
3 have one, we're coming in.

4 Q. Let's assume you're 30-some blocks or 20
5 blocks away from the hospital, you still don't call
6 EMS. That's okay?

7 A. I think it depends upon the circumstances,
8 sir.

9 Q. Okay. So shall doesn't mean shall, that's
10 what I understand you to say. Where it says shall
11 notify, doesn't really mean that?

12 A. It says "Shall continually monitor the
13 subject if tactically feasible or appropriate, period.
14 EMS will be requested to respond if injury requires
15 medical attention. The member shall monitor the
16 subject for changes in their skin and/or lip color,
17 breathing, and levels of consciousness. If any
18 significant changes in any of these areas are observed
19 the member shall notify EMS immediately and then see
20 directive 630.50 for further requirements."

21 Q. So do I understand your testimony to be that
22 you interpret shall notify not to require
23 notification?

24 A. Well, can I look at directive 630.50 as
25 well? Is that in here? Because it does make a

1 reference to directive 630.50 as well.

2 Q. I'll have to take a break and go back to my
3 office and bring 630.50 if you think that's necessary
4 for your response.

5 MR. LANDRUM: Well, we can get one from
6 across the street.

7 MR. STEENSON: Okay. One way or another I
8 have to get one.

9 MR. RICE: Let's take a real quick break and
10 I'll call and ask someone to bring it over from the
11 2005 policy procedures. That's what we're looking
12 for?

13 MR. STEENSON: Sure.

14 MR. RICE: Okay.

15 MR. STEENSON: We can keep going unless you
16 need to --

17 MR. RICE: Just give me one minute here.

18 MR. STEENSON: Okay.

19 (Discussion off the record.)

20 Q. (By Mr. Steenson) Take as much time as you
21 want, but looking at these three provisions, I don't
22 find anything that directs a member of the bureau to
23 tell EMS, who's responding to the scene, what force
24 was used by the officer, if there was force used.
25 Now, if I'm missing something I'd like you to point

1 that out to me. Exhibits 46, 48, and 49, and we'll
2 look at 630.50 as well.

3 A. Sir, the only thing that is listed would be
4 on page 459 of Exhibit 49, section B where it just
5 refers to continuing to -- continue to keep EMS
6 updated on the subject's condition if it appears to
7 worsen. It doesn't necessarily specifically say tell
8 EMS what force was used.

9 Q. Okay.

10 A. But the term referring to updated on the
11 subject's condition.

12 Q. But that doesn't refer to force at all?

13 A. No, it doesn't.

14 Q. All right. So do you recall any training
15 that the bureau ever gave, that you're aware of, that
16 told a member that they should tell EMS what kind of
17 force they used?

18 A. I don't believe there's any training that
19 has been provided, but I know, from my own experience,
20 when they do arrive they always ask you questions
21 about what happened to the individual.

22 Q. That's been your experience?

23 A. Yes, sir.

24 Q. And have you always been honest and accurate
25 and complete in telling them what kind of force has

1 been used if there had been force used?

2 A. Yes.

3 Q. And would you, as chief, have expected
4 members of the bureau, if they had used force or in
5 combination with other people used force consisting of
6 up to 46 strikes or blows, to have told EMS that?

7 A. That would be my expectation, yes.

8 Q. And would it have been your expectation, as
9 chief, that if someone had taken someone down in a
10 foot pursuit and fallen on them, that that type of
11 force would have been disclosed to EMS?

12 A. I think that information is important.

13 Q. And it was your expectation that would be
14 disclosed while you were chief?

15 A. Yes.

16 Q. And although -- let me back up. Again,
17 looking at these three exhibits, is there anything
18 that specifically says that a member of the bureau is
19 to tell EMS the nature of the problem the individual's
20 having in terms of is it a lack of consciousness, is
21 it bleeding, is it not breathing? Is there anything
22 that directs a member of the bureau to disclose those
23 kinds of medical problems or symptoms to EMS?

24 A. There's nothing in writing, but I can tell
25 you what my experience has been is that when you do

1 request EMS, the dispatcher at the bureau of the
2 emergency communication do ask those questions.

3 Q. Okay. Let me back up. Even if EMS didn't
4 ask what type of force had been used, would you expect
5 a member of the bureau to tell EMS if they've used
6 kicks and strikes or crashed someone to the pavement?

7 A. I think that information should be shared
8 with them so that they know how to treat the person.

9 Q. Okay. And would you expect, in response to
10 a question by EMS, that an officer would say that I
11 observed the person to be unconscious or not breathing
12 for 30 seconds to a minute?

13 A. I'm sorry, would you repeat that again?

14 Q. Would you expect a member of the bureau, in
15 response to a question by EMS, to tell EMS that the
16 person had been unconscious or not breathing for 30
17 seconds to a minute, if that's what had been observed?

18 A. If EMS were -- asked that question, yes,
19 they should provide it.

20 Q. And if EMS didn't ask any questions about
21 problems or symptoms, would you expect a member of the
22 bureau to disclose that he had observed someone either
23 not breathing or unconscious for 30 seconds to a
24 minute?

25 A. Yes.

1 (DEPOSITION EXHIBIT NO. 274 was marked for
2 identification.)

3 Q. (By Mr. Steenson) Before we get to Exhibit
4 274 -- well, strike that.

5 Exhibit 274 is a memorandum dated January 30
6 of 2007 to all members of the bureau from Chief Sizer.

7 (Discussion off the record.)

8 Q. (By Mr. Steenson) Let's stop and actually
9 let's deal with this issue first of all.

10 MR. RICE: Okay.

11 Q. (By Mr. Steenson) Let's get a copy during
12 the break so we can make it part of the record.

13 Going back to Exhibit 274, the January 30,
14 2007, memorandum from Chief Sizer with the attachments
15 including the new directive 630.45, did you receive
16 this on or about that date?

17 A. Yes, I'm sure I did.

18 Q. Okay. With respect to the new directive,
19 630.45, regarding emergency medical custody
20 transports, were you involved in discussions or
21 anything that led up to this new directive?

22 A. No.

23 Q. Do you know what a spit sock is?

24 A. It's something that goes over a person's
25 head to prevent them from spitting on you.

1 Q. Have you ever used one or seen one used by a
2 member of the bureau?

3 A. No.

4 Q. I'm not aware of any directives or policy
5 statements or anything in writing regarding the use of
6 a spit sock by members of the bureau. Do you know of
7 anything?

8 A. No, I do not.

9 Q. Do you know of any training of any sort
10 related to the use of a spit sock by members of the
11 bureau?

12 A. I don't believe so.

13 MR. STEENSON: Let's take a break and get
14 some copies of just that.

15 MR. RICE: Sure. Could we ask Jean to do
16 that for us here.

17 (Recess: 11:30 to 11:34 AM.)

18 (DEPOSITION EXHIBIT NO. 275 was marked for
19 identification.)

20 Q. (By Mr. Steenson) I've marked as Exhibit 275
21 another policy and procedure manual directive. This
22 one's the 630.50 that was referenced in Exhibit 48.
23 Would you look at that, please. Just read it to
24 yourself.

25 A. Okay.

1 Q. I don't read this to require a member of the
2 bureau, this particular section, to tell EMS the type
3 of force that was used. Do you agree?

4 A. No, it doesn't.

5 Q. And this particular section doesn't require
6 a member of the bureau to tell EMS what kinds of
7 medical problems or symptoms had been observed by the
8 member; correct?

9 A. No, it doesn't.

10 Q. Okay. Would you look at Exhibit 50, please.
11 It ought to be in that binder.

12 This is similar to what was marked
13 previously as 274.

14 A. M-hm.

15 Q. I'm thinking 274 may not be complete for
16 some reason or another. In any event, Exhibit 50 is
17 an executive order dated January 30 of 2007 to all
18 members. It's also like Exhibit 274 addressing
19 emergency medical custody transports 630.45, but it
20 has more text, that's why I'm thinking maybe a page
21 got left out of Exhibit 274. With that in mind --

22 A. M-hm.

23 Q. -- I assume you're familiar with this
24 directive that's now in place, 630.45?

25 A. Yes, I've reviewed it.

1 Q. Okay. The bottom of the second page of
2 Exhibit 50, the last paragraph says -- can you move
3 way down to the bottom? There's a particular
4 paragraph. It says "Members will not sign a medical
5 refusal form on behalf of a subject." Do you see
6 that?

7 A. Yes, I do.

8 Q. And "Any such request will be immediately
9 reported to a supervisor and documented in the
10 appropriate report." Before this directive, were
11 members of the bureau authorized to sign medical
12 refusal forms on behalf of someone in their custody?

13 A. I don't know.

14 Q. Have you ever done that?

15 A. I have not.

16 Q. Have you ever known a member of the bureau
17 to sign a medical refusal form instead of the actual
18 person in custody?

19 A. I'm not personally aware of any.

20 Q. Well, indirectly, have you ever even heard
21 of it happening before in any situation?

22 A. No.

23 Q. If you look at Exhibit 36, please.

24 In this exhibit titled "Information Form"
25 I'll represent there's evidence that where it says

1 patient regarding the signature in the middle of the
2 page, that that's Christopher Humphreys' signature.

3 A. Exhibit -- I'm sorry, what exhibit?

4 Q. 36.

5 A. Okay.

6 Q. Middle of the page, it says "I have received
7 a copy of this information sheet, patient or guardian
8 signature." Do you see that?

9 A. Yes, I do.

10 Q. And I'll represent that's Christopher
11 Humphreys' signatures and he I believe dated it as
12 well. Do you know of anything, either by policy, in a
13 directive, or through training, that authorized
14 Christopher Humphreys to sign a medical refusal on
15 behalf of James P. Chasse, Jr.?

16 A. No.

17 Q. Have you ever had any involvement with the
18 bureau's compliance with the American Disabilities
19 Act? And I'm referring to the federal one
20 specifically, but I don't mean to exclude the state
21 act or the local ordinance or the local charter
22 provision that provides for nondiscrimination against
23 people with disabilities. Have you had any
24 involvement as a member of the bureau with compliance
25 in that regard?

1 A. Not personally other than when I served as
2 chief I was responsible for everything.

3 Q. Okay. When you say not personally, have you
4 ever had any involvement with analyzing, reviewing,
5 ensuring compliance with the ADA by the bureau?

6 A. No.

7 Q. Are you aware of any evaluation or other
8 steps to ensure compliance with the ADA that the
9 bureau has taken at any time?

10 A. No.

11 Q. Has the issue of compliance with the ADA
12 ever come up in relation to the bureau that you're
13 aware of?

14 A. No.

15 Q. Okay. That's all I have. Thank you.

16 (The deposition concluded at 11:41 AM.)

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C E R T I F I C A T E

STATE OF WASHINGTON)
) ss.
COUNTY OF CLARK)

I, Shannon K. Krska, a Certified Shorthand Reporter for Oregon, do hereby certify that, pursuant to stipulation of counsel for the respective parties hereinbefore set forth, DERRICK FOXWORTH personally appeared before me at the time and place set forth in the caption hereof; that at said time and place I reported in Stenotype all testimony adduced and other oral proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting under my direction; and that the foregoing transcript, pages 3 to 89, both inclusive, constitutes a full, true and accurate record of all such testimony adduced and oral proceedings had, and of the whole thereof.

Witness my hand and CSR stamp at Vancouver, Washington, this 26th day of December, 2008.

Shannon K. Krska



Shannon K. Krska
Certified Shorthand Reporter
Oregon CSR No. 90-0216