



CITY OF  
**PORTLAND, OREGON**  
OFFICE OF THE CITY AUDITOR

**Independent Police Review Division**  
**Mary-Beth Baptista, Director**  
1221 SW 4<sup>th</sup> Ave, Room 320  
Portland, Oregon 97204  
Phone: (503) 823-0146  
Fax: (503) 823-3530

October 2, 2008

Assistant Chief Brian Martinek  
Central Precinct  
1111 SW 2<sup>nd</sup> Room 1526  
Portland Or 97204

Re: Force Review Board (in-custody death of James Chasse)

Dear Assistant Chief Martinek:

IPR respects its role as an outside observer in the Force Review Board's evaluation of the Chasse case.

We are, however, outside observers with unique perspective, having worked closely with the Bureau, the Police Assessment Research Center, the Force Task Force, and the Citizen Review Committee on the management of lethal and non-lethal force over a number of years. We recently reported that the Bureau has made significant progress in both areas.

In addition to our policy-level involvement with force issues in closed cases, we have reviewed the criminal and internal investigations in this case, as well as the training analysis and commander's recommended findings. We received unrestricted access to the internal investigation as it developed and made a number of suggestions about issues that should be covered and questions that should be asked. We are pleased with the fairness and objectivity with which the investigation was conducted.

It is with this background that IPR offers several observations, which we hope will assist the Board in its deliberations.

From IPR's perspective and we suspect from yours as well, there are two fundamental questions. Your answers and the way you explain them will have far-reaching significance both inside and outside the Bureau. Your task is complicated because this incident occurred before the Bureau adopted the new use of force policy. It is further complicated by the implication in Commander Henderson's Findings Memo that the officers may have used tactics that were encouraged or tolerated by the unit's supervisors and commanders.

The two fundamental questions:

1. Should Officer Humphreys have pursued James Chasse? If the Board decides that Officer Humphreys had the legal authority to detain Mr. Chasse for urinating in public, was the pursuit justified by the Bureau's directive and training on foot pursuits?

According to one line of reasoning, exemplified by Commander Henderson's memo, the pursuit was justified because it was legal, it was not unreasonable for the officer to believe

that Mr. Chasse was intoxicated or under the influence of drugs as opposed to being mentally ill, and drug dealing was a significant problem in the area.

Under another line of reasoning, exemplified by Lt. Famous's training analysis, the pursuit and knock-down were not justified even if they were legal. According to the analysis, the officers were trained to consider additional factors before pursuing and, in this case, the other factors dictated against a pursuit.

The Board might want to analyze the underlying issues in this order:

- Did the officer have a reasonable suspicion that Mr. Chasse had committed a crime? What crime?
  - If the officer reasonably suspected a crime and therefore had the legal authority to stop Mr. Chasse, is that enough to justify a foot pursuit or does the Bureau require officers to consider additional factors?
  - If the Bureau requires officers to consider other factors before initiating a foot pursuit, how does the Board evaluate those factors in this case? For example, did Mr. Chasse present such a risk to himself or to others that it would justify a foot pursuit? Was it reasonable for the officers not to at least consider the possibility that Mr. Chasse was mentally ill? Did a foot pursuit at that time and place create an unacceptable risk to the public, the subject, and the officers in relation to the severity of the suspected offense?
  - If the Board decides that the surrounding circumstances made the foot pursuit unwise, did the pursuit in this case deviate so far from policy and training that the Board should sustain a finding against the officer? Whatever the Board decides, and however it explains its decision, will have important and long-lasting consequences.
2. If the pursuit was not justified, could force be used to terminate it? The Board could decide that the Bureau strictly limits foot pursuits because they are likely to result in force and may result in injury as this case demonstrated. Under this line of reasoning, the pursuit and the force used to terminate it are inextricably linked: if the pursuit was improper, so was the force. Using this approach, it would not matter whether the force was analyzed under the old or the new force policy because no amount of force was justified. The Board's decision would stand for the Bureau's long-held principle that an unjustifiable tactical decision cannot justify a need to use force.

Some may argue that the Board should analyze the force separately from the pursuit. This approach will work easily enough if the Board first decides that the pursuit was justified. But if the pursuit was not justified, the Board loses its starting point for analyzing force. Even under the old policy, force could be used only for lawful purposes. In order to do a separate analysis, therefore, you will need to selectively assume that the stop would have been legal and selectively ignore that the then-existing directive and training prohibited the stop if it required a pursuit. Even if picking and choosing among the facts does not create an appearance of bias, it certainly affects the clarity of your findings.

As we noted above, Commander Henderson's Findings Memo at least implies that the officers used tactics that were encouraged or tolerated by the unit's supervisors and commanders as a means of addressing public complaints about drug dealing and other nuisance activities. While the Board may wish to consider this question more broadly in its recommendations, it should not

deter the Board from answering the two most fundamental questions on the basis of the training and directives that governed the officers' actions at the time. The Board might also wish to consider the implications of Commander Henderson's memo if and when it makes disciplinary recommendations to the Chief.

Thank you for considering our thoughts on this difficult and tragic case.

Sincerely,



Mary-Beth Baptista  
Director



Pete Sandrock  
Assistant Director

CC: Assistant Chief Lynnae Berg  
Assistant Chief Bret Smith  
Captain John Tellis  
Commander Donna Henderson  
Portland Police Association President Robert King