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SUBMISSION TO CIVILIAN OVERSIGHT SUBCOMMITTEE

I.

Having been involved in Eugene police misconduct cases as an attorney and an observer for many years, it is my opinion that the civilian oversight system we have is not just flawed, it is an undeniable failure, in need of a total overhaul with tangible results. If the veteran mentioned by CRB member Lindsey Foltz who was killed in his home by an officer in Bearcat-armored military vehicle-results in no discipline, then the system is a failure. If the woman and her son who were beaten by an officer who admittedly and repeatedly escalated a calm situation into a violent one was not disciplined, then the system is a failure. This woman and her son were also mentioned by Lindsey and were clients of mine.

When considering changes, consider whether the changes would lead to discipline in either of these two instances.

Here is a story of my own experience. Shortly after our current police auditor took office there was a naked-bicycle protest. A few of those arrested came to our office for representation. One of them was knocked off her bicycle by police while riding and beaten a bit while they attempted to arrest her. She got away. She wanted to file a complaint about the beating. I went to the new police auditor with a colleague to see about filing a complaint, specifically about if her name and address could be kept confidential. The police auditor assured us that would be done. After we came back with the complainant, the next day she was arrested at her home. After some conversations with the prosecutor, all charges were dropped due to the unlawful actions of the police auditor. If nothing else, this tells you for whom he actually works.

This system is a complete and utter failure.

II.

In terms of changing the way we have citizen oversight over police misconduct, these changes are what I propose:

- The Civilian Review Board (CRB) needs to be made up of citizens only, with the majority coming from civic organizations, including human rights groups, groups representing marginalized communities and communities of color, and a representative of the clergy community. The initial membership will be nominated by these groups, and all future seats will be filled by the CRB members.
- The CRB needs to receive and review all complaints from the police auditor, with full investigative authority, including subpoena power for all police records and personnel. Their investigation will yield disciplinary action or not. A decision to discipline will not be overridden by the police, only by city council.
- In order to best evaluate a use of force instance, the officer(s) must have a drug test done by an independent lab immediately following the close of the incident. This is necessary for a true investigation.
- In order to best evaluate a use of force instance all recordings need to be available to the CRB. In the event the recording device does not produce a recording for the CRB, for what ever reason, then the principle of spoliation will apply. This principle holds that when a party destroys its own evidence, by whatever means-reckless, intentional, negligent-that party forfeits its right to provide that evidence:

In *State v. Lance*, 48 Or.App. 141, 616 P.2d 546 (1980), Defendant was charged with two counts of manslaughter stemming from a traffic accident. State's expert tested the brakes, determining they were functioning properly. Prior to Defendant's expert being able to re-test brake cylinder, the parts had been negligently left outside in the elements where they corroded beyond the point they could be retested by defendant's expert. The court held under these circumstances the State was required to stipulate the brakes had malfunctioned at the time of the accident.

- At all investigations by the CRB, the complainants and their witnesses need be given the opportunity to appear before the CRB.

This of course is not intended to be an exhaustive list. There are other many good proposals

Thank you for your attention and courtesy.

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