

AMA Ad-hoc Committee

for

Police and Civil Redress

Report to Community

September 6, 2003

Our Investigation does not attempt to arrive at any overall conclusions, but simply seeks to state obvious facts that stand on their own assertions. These discoveries and information are provided for the community as a whole as well as various groups with legal standing who will be in a position to demand the proper sanctions, redress, and recourse corrective measures.

Our goal was not to become necessarily versed on the 600 odd pages and other materials we studied, or to defend our qualifications or any other distractive ticket. We are prepared to defend what we a ledge in kontras to what was officially alleged. To the Portland Police Department's credit we understand that in the letter of discipline they come closer to acknowledging many of the things we are alleging. However again we are prepared to defend what we a ledge in kontras to what was officially alleged.

While we are not professionals or experts in any of the disciplines which are essential in dealing with criminal or civil actions; we are quite versed in common sense. It is in that sense with the information gathered and provided us by the District Attorney and Portland Police Department that we make our conclusions. The difference is and will be, what they did or did not do with the information and opportunities they had, verses what we have and will do today.

## **Members of Investigation Sub-committee**

*Marta Guembes*

*Pastor Robin R Wisner*

*Pastor W G Hardy*

*Bishop A A Wells - Chair*

## **Albina Ministerial Alliance General Ad Hoc**

*Dr. Roy Tate – President*

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# **ALBINA MINISTERIAL ALLIANCE REPORT REGARDING THE KENDRA JAMES SHOOTING**

## ***EXECUTIVE SUMMARY***

### **SUB-COMMITTEE MANDATES**

Both the Investigation and Training and Policy Subcommittee of the AMA Ad-Hoc committee were commissioned May 9, 2003. Their charges were to:

1. Review the investigative material presented by the Portland Police Department, and the Multnomah County District Attorney's Office to analyze the circumstances surrounding the shooting of Kendra James and determine whether the information supports the conclusions drawn by the PPD.
2. Review Policy and Training Issues that may have affected this case and/or has the potential to influence other cases involving the use of deadly force
3. Report their findings in an open forum to the Portland Community and based upon their findings, make recommendations for improvements to the PPB and the City of Portland

### **METHODS**

Committee Members were involved in the review of materials generated by the investigation into the Kendra James shooting. They also reviewed existing manuals, policies and reports and carried out interviews with public officials. The dialogue and deliberation within the committee was for the purpose of analysis and clarification that provides support for conclusions drawn and foundation for the recommendations that are part of the report.

### **MAJOR FINDINGS AND CONCLUSIONS**

- Officer Scott McCollister lied. There are significant discrepancies in the testimony of the officers on the scene, what happened when Kendra James was shot, May 5, 2003. Changes in testimony from before and after the officers dined together at Applebees' restaurant, the flaws in the re-enactment video; the report from the State Forensic Lab; Eyewitness accounts and the tradition of non-indictment of Portland Police Officers; leads us to conclude that members of the PPB, colluded in a cover-up of the true facts.

- Officer McCollister was in GROSS VIOLATION OF THE USE OF DEADLY FORCE POLICY when he shot Kendra James. The same discrepancies in testimony and failure of the PPB to use pertinent evidence, combined with attempt at a cover-up leads us to this conclusion.
- The District Attorney partners with the PPB to cover-up police criminal behaviors. There are important question regarding the District Attorney Office's special treatment of PPB members involved in a fatality resulting from the use of Deadly Force. Officers are granted privilege not extended to ordinary citizens. We have concluded that this practice, intentionally or not, supports any effort by an officer to be less than honest or to hide the real facts of a case.
- The finds of State Forensic Lab did not support the findings of the Portland Police Bureau's investigation. While giving considerable weight to the altered testimony of officers at the shooting scene, the PPB ignored the findings of the State Forensic Lab. In addition, there was a profound difference in the level of inquiry when interviewing the police as compared with interviews of the independent witnesses. We conclude that the difference in the levels of inquiry were done to support the cover-up of the true facts of the case. We conclude that in addition to the officers at the shooting scene, other members of the PPB are culpable in the cover-up effort either by being dishonest about what happened or ignoring policy and best practices when investigating the case.

## **AMA RECOMMENDATIONS:**

There were 10 recommendations made to the City of Portland/ Portland Police Bureau & three that went to the community. Those recommendations range from insuring adherence to existing policy to major changes related to policy implementation and training. It is expected that the City of Portland and the Portland Police Bureau will speak to the cost of implementing the recommendations. In the long run, the cost of human life combined with the costs of resolving lawsuits far exceeds the cost of training the PPB and monitoring the behavior of Portland Police Officers.

The City of Portland and the PPB must insure that systems are in place to effectively monitor the overall progress and achievement of Bureau goals and objectives, identify areas that need corrective action if these recommendations are to be successfully implemented.

## **PREFACE**

### ***Operating Philosophy***

Two wrongs don't make a right.

For some people and in certain presentations by the media there has been a focus on Kendra James' conduct, apparently to help justify any thing that happened to her including her death at the hands of the Portland Police. This begs the question; of whether two wrongs make a right? Further it raises the issue of whether the degree of her misconduct warranted her death.

If it is so that Kendra's conduct was wrong, did it justify her being shot? A closer look at the facts surrounding her death raises questions about both the shooting and the warrant process used by Officer Bean. The manner in which the warrant process was handled is disturbing, as it appears to severely compromise individual rights to due process.

Philosophically, in the Use of Physical and Deadly Force Law, the degree of force used should be consistent proportionate and appropriate to the level of the threat. Beginning with the type of arrest warrant under which Kendra was being arrested, justice becomes immediately skewed. This can be seen with the particular law Officer Bean used to first write Kendra the ticket and then single-handed be able to generate a subsequent warrant without a Judge. All that was needed was for Officer Bean to approach a Junior Prosecutor, using the ticket issued as the basis for the warrant request. Officer Bean wrote that ticket, and then was able to issue a warrant. In such cases the person need not have been

indicted by a Grand Jury. The officers are then able to create the equivalent of a convicted felon status completely outside the courts. In the case with Officer Bean one of the Prosecutors would not sign the arrest warrant. The junior prosecutor declined to prosecute, the escape in the third degree charge, because under Oregon law Kendra James was never in custody so as to be charges with escaping from it. The charge Kendra faced was a misdemeanor and not a felony charge, a fact that requires consideration in the use of Deadly Force.



## **COMMITTEE MANDATE**

As a result of the many questions raised by the shooting of Kendra James by an officer of the Portland Police Bureau, and out of concern for the negative impact upon the residents of Portland, the Albina Ministerial Alliance convened an Investigation Committee on May 9, 2003. The committee was assigned the task of reviewing the Investigative materials developed by the Portland Police Department (PPD) and those materials presented by the Multnomah County District Attorney (DA) to the Grand Jury for Criminal consideration.

Our goal was to evaluate the Portland Police Department and the District Attorney's fact finding and deliberation process in the Kendra James shooting. We decided not to attempt interviews with witnesses involved in the case and felt it appropriate to use the materials generated by the PPD.

In preparation for our discussions, deliberations and analysis of the issues, the following documents were reviewed by the committee:

### ***RESEARCH AND REVIEW***

1. All PPD Documentation of witness' reports and events.
2. Documentation of PPD Officer Reports.

### 3. Information from meetings

With the DA.

### 4. Information from Media accounts.

### 5. Information from Experts in understanding the Legal and Medical dimensions of this case.

We were given six hundred pages of individuals' testimony and various reports from the examiners and investigative officers. The information we most needed, but was never given, was the summarized version, which formed the basis for the conclusions drawn by the people responsible for the investigation. This means that the committee could not evaluate the merits of their rationale or the lack thereof. While this practice may at times be necessary in warfare against an enemy it borders on corruption when practiced in law enforcement and domestic affairs.

After reviewing the information, the committee proceeded to conduct deliberation meetings, and working with the Ad-hoc leadership developed and compiled a Report that was presented to the General Ad-hoc Committee for adoption and presentation to the Portland community.

## ***FOCUS OF REVIEW AND ANALYSIS OF INFORMATION***

The committee examined the particulars regarding the physical and/or geographical location and position of vehicles and people, including witnesses. The committee also examined the documentation describing the specific actions of individuals as well as that of the content, timing and consistency of verbal reports. Some of the issues attended were:

- The frequency with which the Subject Car was approached by whom; their location and direction of approach; the timeframe in which each action took place; what was done or said; the content of the direct interactions with Ms. James by whom and in what timeframe
- The chronicles of each officer's account of himself. Contrasting what he said of himself with what other witnesses or officers said about his actions.
- The PPD Press Conference Reports and/or Videos, with the transcribed document, were compared with the witnesses written testimonies provided by the DA.
- Reviewed the PPD video re-enactment of the shooting scene as described by Officer McCollister and others.
- The committee also examined the following evidentiary information to insure that evidence and information were properly handled and found the processes in order:

- Taser.
- Pepper Spray Canister.
- Shooting Reenactment report
- Any Video Tapes of scene

Review of the information allowed the Committee to make charts (including timelines and names of individuals), which illustrate the reported activities around the subject car. Those charts were used in the discussions, which in turn helped to produce the findings in this Report.

### ***INSURING CREDIBILITY & OBJECTIVITY***

The Committee understood the necessity of being as fair and objective as possible in the review and evaluation of the information and processes used by the PPD and the DA in this case. In an effort both to insure fairness and maintain credibility, the Committee developed questions to be used in the evaluation process. These questions allow for the evaluation of degrees of exoneration and/or culpability of those involved. The questions used were:

1. Do the facts exonerate Officers, Departments and Oversight Agencies from charges of:
  - Neglect
  - Cover up
  - Indifference to the community being served

- Obfuscation of fact, policy or process
- Violation of Policy, process or procedure
- Indifference to the manner of implementation of the PPD Deadly Force Policy

2. Does the information show poor judgment but not gross neglect but show instead, judgment and actions that might be reasonably accepted under the circumstance and given human limitations?
3. Does the information show something less than good judgment and gross neglect for the value of human life as may be seen in cases of manslaughter and negligent homicide?
4. Does the information show that one or more police officers demonstrated a personal or behavioral proclivity toward violence and criminal abuse in their actions as may be seen in cases of manslaughter and murder?
5. Does the information show behavior, believed to be cavalier, arrogant and reflective of a police culture with high disregard and disrespect for the people it serves?

## **MEETINGS AND DELIBERATIONS**

The Investigation Sub-Committee of the AMA Ad-hoc Committee held the first meeting May 21, 2003. There were twenty-five meetings of this Committee between May 9, and September 2, 2003. In addition, the members attended another forty meetings including meetings with AMA General Ad-hoc Committee, Vera Katz the Mayor of Portland; the Chief of Police, Mark Kroeker and the District Attorney, Michael Schrunk.

In our meetings with the Mayor and the DA we sought to open the police review process to the light of day. In that spirit, we requested a Public Coroner's Inquest. We were unsuccessful in this appeal. The Mayor did commit to attending a public Forum, which was held July 1, 2003, which she and representatives of the PPD attended.

***The Shooting, A brief description:* May 5, 2003 at 2:49 the last Officer arrives on the scene at 02:52 the fatal shot has been fired.**

There are 10-13 ft between the two anchor reference points, where the wig and the cartridge both fall to the ground. These events help to define the 5 seconds of Deadly Force Encounter which ends with Officer McCollister firing one round from his gun into the body James, killing her. The Deadly Force encounter begins when

McCollister leaves the passenger side of the car where he has been banging on the rear window with his night stick, which is when James comes from the rear seat into the drivers' seat. He arrives at the open drivers' door and instantly goes deep into the car, with his pepper spray in his left hand. He comes out of the car attempting with his right hand to pull Ms. James out by her hair. Her wig comes off and he throws it on the ground. He then pulls his gun as she pulls the car into drive. As the car starts to move Officer Reynolds shoots Kendra James with the taser. The car lunges and accelerates forward as McCollister follows outside of the doorway. From at least 30 inches outside the car with a round from his gun he fires at her. As it hits her in the side, the cartridge then falls to the ground. This is the order of the actions in this shooting event, the description and the reference points. The event took place between the wig and the place where the cartridge fell to the ground a distance of ten to thirteen feet. The final stage of the encounter is reported to have taken place in five seconds. At the end of the 5 seconds of Deadly Force Encounter Kendra James is needlessly killed.

### ***Meeting with District Attorney Michael Schrunk and staff***

Our first initial meetings with the District Attorney (Prosecutor) were on May 9<sup>th</sup> and 19<sup>th</sup>, 2003. We took the time to convey our concerns and to ask several questions. We made it clear that our Community needs to know that the present laws are not being skirted, neglected, postured or manipulated. We need to know that the DA as

the protector of the public against Criminal Acts is equally protecting each of us even when it involves police Officers. We see that protection as including, when appropriate, the possible indictment of police officers who commit criminal acts. We pointed out that there is no need for new laws if the present ones are not being upheld with fairness and equality. If the problems rest in enforcing fairness and equality, then there may be other changes that are needed instead of new laws.

***Questions asked of the DA during the first initial meetings:***

1. What were the time lines, which you presented to the Grand Jury regarding the shooting of Kendra James? We need to know what you believe happened; and what you presented?
2. Your office participated in the investigation of Ms. James' death. Do you agree with the conclusion of the PPD on the specifics of events and time lines? If not will you furnish us your own?
3. In the narrow sense of the present Oregon State Law and Statute, and the use and incidents of "Deadly Force"; give us an example of what constitutes "Criminal Behavior" on the part of a Police Officer?
4. The definition of "True Bill" and its relationship to the requirement that a police officer appear before a Grand Jury.
5. We asked that the Grand Jury be opened up or hold a public Corner's Inquest.



### ***Responses to questions:***

- 1 We were given the 600 pages of testimonies, medical examiner's reports, shooting diagrams and radio logs but not the official time lines.
2. There was a promise to respond later, which did not occur.
3. In response to the request; "What constitutes Criminal Behavior on the part of a Portland Police Officer?". The DA responded explaining that there is a "narrow window" within which to charge and convict an officer of a crime. He said that is very difficult to determine that a police officer has demonstrated criminal behavior because of the nature of his work. The "narrow window" definition was without objective description. The concept as described is vague, and lacking in behavioral description by which to hold police officers accountable.
4. A True Bill is an indictment issued or endorsed by a Grand Jury. It reflects the opinion of the jury that the District Attorney has provided the jury with enough evidence to justify pursuing prosecution of the case related to person/persons reviewed by that body. To our knowledge there have been no indictments or "True Bills "issued against a Portland Police Officer exercising deadly force while on duty.
5. The DA said that He would get back to us concerning a Coroner's Inquest, but we later found out that he was totally resistant to the idea.

## ***FOLLOW UP MEETING WITH DISTRICT ATTORNEY***

The follow up meeting with the DA and his staff occurred on May 29, 2003. We were told that in their formal presentation to the grand jury, the DA's office took no position relative to the particulars of the circumstances surrounding the shooting of Kendra James, nor did they present any particular aspect of the law that should have applied. (This is contrary to the modus operandus applied to other citizens). They informed us that the DA's office has discretion as to whether a civilian's case goes to the grand jury and their decision is dependent upon whether enough evidence has been gathered to give their office confidence that a TRUE BILL will be issued. Cases of all police officers using deadly force that results in death go to a grand jury **(the DA's office implied that this is the reason they do not form an opinion as to whether a TRUE BILL should or will result.)**

**\*This raises the question as to whether or not this practice of the DA, in enforcing the Deadly force law, is required by the statute or does the statute require the DA to treat cases with Officers involved the same as ordinary citizens.**

## ***OTHER CONCERNS WITH THE DA'S ROLE IN THE PROCESS/INVESTIGATION***

The State Forensic Examiner reports that the shot that killed Kendra James was fired at least 30" outside the car. A conclusion based in part, on a lack of gunpowder

in the car. The testimonies of Terrol White (Jackson) and others are consistent with the Forensic Examiner's report. The DA says that nothing about the Forensic Exam or these testimonies is significant in this case. This raises the question of how the PPD and the DA does or does not use scientific information. Disregarding the forensic report and testimony which supports it, ignores critical premises upon which the effectiveness of the criminal justice system is based. How does a DA ignore both human witnesses and a forensic report, which supports their testimony and retain an image of treating all fairly before the law.

Questioned concerning the trajectory of the bullet, the DA responded that "In incidents such as this, where there is a tussle where positions of individuals are constantly changing it is difficult to place significance on the trajectory of the wound."

Officers were unable to reenact the shooting scene in a manner which contradicted testimony of the independent witnesses. There seems to be no mechanism or policy which requires the DA to provide concrete reasons why the Independent witnesses' testimony was not considered viable such as Terrel, Carruthers, Officer Bean and Officer Reynolds in his May 5<sup>th</sup> testimony. The Prosecutor must not be allowed to simply discount Witnesses testimonies without compelling reasons.

## ***OBSERVATIONS DRAWN FROM DISCUSSIONS WITH THE DA'S OFFICE***

The ambiguity of the “narrow window” concept, as practiced and interpreted, results in police officers behaviors not being consistently, effectively and fairly judged regarding possible criminal conduct unless the behavior is public and verified by eye witnesses that are deemed credible by the DA and the public. Absent behavioral criteria, the primary defense in a contested use of deadly force case is for the officer to say he/she thought his/her life was in danger. The evaluation of whether an officer acted reasonably rests upon the officer’s articulation of his/her internal state of emotion and belief. This is what is used to justify the use of deadly force, whether or not others may deem the decision reasonable. The use of reports of internal states to justify the use of deadly force suggests that a less than honest and/or frightened officer may use this defense to explain and justify an external event that may result in death or injury to another person. This is a privilege not extended to ordinary citizens.

Further, if an officer’s fear of being killed is based in his or her personal or social biases, work must be done with the officer to illuminate and/or address those biases.

There does not seem to be a method in use to evaluate the reasonableness of a Portland Police Officer’s thought that her/his life is in danger as Oregon State Statute requires. While an officer may “believe” a situation to be life threatening there is pertinence to the question of whether that belief is “reasonable.” ORS

161.239 is written as: “Use of deadly physical force in making an arrest or in preventing an escape. (1) Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly physical force only when the peace officer reasonably believes that etc. When the idea of reasonableness is omitted, actions are determined valid as a consequence of what is in an officer’s mind with no external standard by which to judge them.

Other citizens accused of using deadly force are heavily interrogated, in what are frequently adversarial circumstances, in order to determine the reasonableness of their behavior. This is a process not applied to police officers. In the case of Kendra James the shooting officer was allowed to meet with other involved officers and speak with his lawyers and union representative before being questioned by supportive members of the PPD. In fairness, treatment of both police officers and ordinary citizens ought to be consistent with Article 20, of the Oregon Constitution regarding “Equal Privilege”, Article 1 section 20.

The Grand Jury process is greatly influenced by what is or is not presented by the District Attorney. The person holding that office determines what witnesses, evidence, timeline information and conflicts in testimonies are placed before a Grand Jury. Developing and making the case for issuance of a “True Bill” is not independent of the DA and his/her decisions on what to submit. Just as in all cases of other citizens a Grand Jury examines the weight of the evidence received. The difference is in the case of other citizens, the prosecutor takes a position regarding

the evidence, i.e. an indictment is being sought, in the case of a police officer it seems the DA takes a stance of neutrality. There is definitely a loss to citizens of the “Equal Privilege” protection of the Law in the Oregon Constitution. In the case of Kendra James we believe that the DA did not exercise diligence relative to his presentation of evidence to the Grand Jury.

## **FINDINGS**

### ***Challenges to Officer and Detective Testimonies and Processes***

The following examples of contradictions in officers’ testimony appear to be efforts on the part of Portland police officers to exonerate or avoid giving information that may incriminate Officer McCollister. That is, it appears to be an attempt at a cover-up.

### **Where is McCollister?**

1. In Officer Reynolds May 5, 2003 testimony: he says that Officer McCollister’ s back was to him and McCollister was away from the car, when he heard the shot. “I hear a pop and officer McCollister is away from the car”, reports Reynolds.
2. In Officer Reynolds May 8, 2003 testimony (this was after Officers McCollister and Reynolds met at Applebees’ Restaurant) Reynolds says that “the last thing I

remember seeing is Scott (McCollister) still in the car trying to pull, um, pull her out of the car. And, um, the, car's continuing away. Um, it appeared Scott was, was deep in the car. Um, you know, he had his head and his shoulders inside. Uh, at that point, hear a, a single shot fired."

3. Officer Bean who did not go to Applebees' Restaurant reported that McCollister was about two to three feet away from James and outside the car when the shot was fired.
4. Carruthers testifies that McCollister steps back out of the car draws his gun and fires. Fact
5. Officer Reynolds testifies on May 8, 2003 that Officer McCollister's, head and shoulders were deep inside the car when he heard the shot fired. This is contrary to his May 5, 2003 testimony in which he said that Office McCollister is away from the car and he hears the pop. This is also contrary to McCollister's own testimony in the re-enactment, in which his head and shoulders are not demonstrated as being deep inside the car.

The contradictory information in this testimony is only part of the rationale for raising the question of an attempt to cover-up what really happened at the shooting site. Another support of the rationale for the question is the report from

the State Forensic Lab which says the shot that killed Kendra James happened at least 20 to 30 inches outside of the car.

## **Was There A Plan?**

### **BEAN, BROOKS, FERRARIS**

1. Officer Bean testified on May 5, 2003 “So I then offered a plan, um, of what we should do. I, uh, suggested that we take the driver into custody first for failure to carry a driver’s license because we were unable to identify who he was and then that we would take custody of Kendra James because of her flight risk and then we could deal with the front passenger, trying to figure out who he is. Everyone seemed to be in agreement with the plan.”
2. Officer Bean reports that all three Officers, Bean, McCollister and Reynolds agreed to and were part of the plan that called for taking all three subjects into custody. **This can be found in Officer Bean’s May 5, 2003 testimony page 4, line 31 through 36.**
3. On May 8<sup>th</sup>, 2003 Officer Bean responds to Detective Brooks’ question as to whether or not he devised a plan with officers McCOLLISTER and REYNOLDS on how to get Kendra James out of the car, “Not, no. Not a plan to how to get her out. I, I had hoped that she’ d just come out on her own when I asked her to. And then when she didn’t, I just basically acted independently and the cover just



kinda played off my cues of what I was doing, I think. But, there was no set out plan, this is how we' re gonna get KENDRA out of the car, no."

4. Commander Ferraris in his May 19, 2003 Press report states that; "When Officer McCollister arrived he was briefed by Officer Bean about the warrant situation." Ferraris reported that the officers had developed a plan for how to approach the driver and take the driver into custody for not having a Drivers License."

Commander Ferraris' report appears to reference Officer Bean's, May 5<sup>th</sup> testimony in which he says there is a plan for approaching the car, to take the driver into custody for not having a drivers license. Which is not the same plan described by Officer Bean in His May 5<sup>th</sup> testimony and also which he recanted in his May 8<sup>th</sup> testimony. This is also ignored by Commander Ferraris and Detective Brooks if not covered up.

Further, Officer Reynolds reported that when he drives up, Bean and McCollister are already taking Terrol White (Jackson) into custody. If Officer Reynolds sees them taking Mr. White (Jackson) into custody he could not have been in on the planning. The reasons for this are unclear except perhaps to create for the public a sense that the officers were all in agreement in their effort.

## Was Their Investigation Thorough?

### Detectives Brooks and Weatheroy

1. Neither Detective Brooks nor Weatheroy appear to have questioned either Officer Reynolds or McCollister about the "plan" Officer Bean said he developed with them.
2. In Detective Brooks' timelines and official sequence of events, he states "BW says shot looked like it was in the car." However, in truth Williams' geographical position is on the sidewalk south of the car. The car is between McCollister and Williams. It is not clear whether Williams is looking through the window to see the flame of the gun which he references and as such may appear to him to be as he testifies "from inside the car ". However, the State Forensic lab is clear that the shot did not take place in the car. **Note that the investigators quote Williams testimony three times, Where as Carruther has more in-depth testimony and is quoted only once in a non relevant fashion.** In the timeline no testimony from witnesses showing McCollister being outside the car is provided. Although all witness show McCollister outside the car at what time the shot is fired. Yet the sequence of events skews this fact and rather couches testimony in such a way to show McCollister inside the car. In doing so testimony without credibility are used.

3. Officer Reynolds testifies that he did not see McCollister draw or fire his gun but said “he (McCollister) was deep in the car when Reynolds heard the shot.” In this case again, clarifying follow up questions were not asked
4. McCollister does not say he shot from inside the car; he says he shot from an “unknown range”. (An attempt to avoid perjuring himself?)
5. After the wig has come off and Officer McCollister has come out of the car, Brooks again references him being inside the car when it does not seem to be the case

The question of whether there was a plan and who participated in the development and implementation of that plan is raised by that contradictory testimony and press report. An incident that went so terribly wrong could in part be because there was no viable plan for removing people from the stopped vehicle. Those investigating this incident did not pursue the issue even though reports on it were contradictory. Why all of the officers weren't present at the site asked about it?

Was introducing the testimony from Williams a technique to steer investigating officers away from definitive follow up questions or questions that might result in perjury or potentially incriminating answers. A review of the State Forensic Lab concluded that the shot was fired from at least 30 inches outside the car.

Those investigating the circumstances surrounding the shooting of Kendra James appear to have:

- Failed to ask appropriate distinguishing and definitive follow up questions of officers even in the face of obviously inconsistent statements or statements that contradicts other testimony.
- In the face of inconsistent statements, employed follow up questions which lead the Officers away from critical points on the subject, to discussion of matters of little significance in the investigation.
- Asked leading questions which appear to provide the officer with language that will protect him from being charged with a crime.
- Reenacted the incident in a way that flies in the face of all the physical and forensic evidence.
  - A. The Investigation reenactment does not demonstrate the actual shooting.
  - B. The reenactment show McCollister's body 90% out side the car at a point when he testified that he was 80% inside the car. This raises the question of what was told the Grand Jury.
- Hard questions that would test the varsity of the witnessing Officer were not asked, as is required for there to be "Reasonable Belief" consistent with the Deadly Force Statute. The Statute requires demonstration of reasonable belief.
- Chooses to quote from Williams testimony but choose to not stick with sound and true Scientific Professional practices and to discount testimony that supported by hard scientific and physical evidence?

Examples of not asking critical follow up questions on points of the subject and the appearance of using the language which legally protects the subject officer from perjury or criminal charges.

- McCollister's testimony May 9<sup>th</sup> page 14 , line 8 – 26 page 15, lines 1-14.
- In line 8-10 on page 14, one can only conclude that Detective Brooks is leading the witness to say things that characterize the incident as he feared for his life. Phrases like “ loosing your balance due to the vehicle beginning to move, thereby you becoming close to falling out of the vehicle, a moving vehicle”. All that was needed then was for the witness to answer “ I would that”. And then rephrase Detective Brook's question.
- In answer to Brook's question page 15 lines 1 – 14 “how many times did you shoot? He answered “one time” follow up question, “why did you shoot one time as opposed to more than one time?” In his answer, three times in his single response he stated, I don't know but concluded, I would say until the threat is over. The follow up question then directs his attention to his training, by asking, do you in your training shoot twice, do they teach you shooting twice if youre gonna shoot your gun? His answer to this was, No, in my training you shoot til the treat is over, that's it. This raises serious questions about what is being sought and deduced from the witness. Information criminally sanitized or a search for veracity in witness and the truth. The questions that should have been asked of the witness deals with points he

says he does not remember in contrast with what he says he does remember.

## **If He Can Not Admit The Obvious Can He Make The Change?**

### **CHIEF KROEKER:**

The Chief is unable to verbally acknowledge the obvious violations of policy as set forth in the existing manual. This does not engender trust from the communities he is sworn to “Protect and Serve”

It is not clear that the officers that were involved in/at the shooting scene were instructed not to talk or meet with one another as per PPD policy.

There was an ongoing lack of *disclosure* and *transparency* in the official interpretation of the case.

There was an unwillingness to act in a forthright and timely fashion, in sending copies to community leadership of an official summary and version of the case as the Police Department believed it happened

## **UNDUE UNION INFLUENCE**

The Police Union's has undue influence over the investigation process. The Union's approach to labor bargaining and police policies shows little respect for citizens their dignity or lives.

### **Conclusion:**

The testimony and evidence reviewed by the committee discount any credible notion of Officer McCollister spending any prolonged time deep inside the car, or struggling to keep from falling, or about to be drug by the car. While there are aspects of this brief encounter that could have allowed for such a notion, there are too many other facts that would have to be deleted form the incident, for the notion to have creditability:

## **FACTS:**

- Fact #1 Forensic says the shot is from 20 to 30 inches outside the car
- Fact #2 Officer Bean, testifies that Officer McCollister is about two to three feet from James standing not stumbling outside the car.
- Fact #3 Officer Reynolds on May 5, 2003 in his testimony before he goes to Applebees' says "he is away from the car I hear the shot."
- Fact #4 Carruthers' testimony is that he steps back out of the car draws his gun and fires.
- Fact #5 Terrol White (Jackson) who is directly behind the subject vehicle says James gives the car a little gas as McCollister is running about 2 mi. per hr with the car, and didn't see him stumble or fall. Terrol White (Jackson) heard the gunshot. This testimony discredits McCollister's claim of being inside the car struggling to get out, or about to be run over or drug by the car This is the results of him trying to pull James out of the car by her hair and her wig coming of in his hand. He is outside the car so he throws the wig down on the ground.

## **He Is Not In the Car and Not In Danger**

The evidence indicates that Officer McCollister was out side of the automobile and in no danger of being struck or run over by the car. The particulars which supports the committee's belief that he was outside of the car and in no danger.



1. According to McCollister's own testimony: when released, James pops straight back up away from him into the car and remained in the seated position. James was unarmed
2. He must be outside the car in order to clearly see James put the car into drive.
3. He is outside the car because James is now able to put the car in drive and does.
4. Reynolds is now able to shoot the Taser which he could not do until McCollister moved out the way, ie. out of the car.
5. McCollister who comes out of the car when the wig comes off and does not return for the following reasons:
  - He acknowledges he is out of the car by stating that James pops straight back up into the car in the seated position
  - He is out of the car by acknowledging that he went back in the car after the wig comes off, He and Reynolds uses similar language on this point.
  - He could not get back into the car because according to Reynolds and Terrel when the car starts as the taser is shot the car immediately accelerates. At this point the gun is already drawn. It is not reasonable to expect that he is trying to pull Kendra out of the car with his gun drawn, nor is he deep inside the car over the female with his gun drawn, but rather he is outside the car, in the doorway, according to Bean, Terrel, Carruthers and Reynolds (according to his May 5<sup>th</sup>

testimony) following it the distance of about 10 to 15 feet before he fires the fatal shot.

6. Carruthers reports seeing him step back out of the car and fire his weapon.
7. Witness Terrol sees McCollister try to keep up with the car by running alongside it, out side if the doorway.
8. In his May 5<sup>th</sup> report Officer Reynolds testifies that he saw McCollister outside of the car.

(This kind of testimony did not seem important to the DA or the Detectives.)

The evidence leads The AMA Ad Hoc Committee to conclude that Officer McCollister lied about being in jeopardy from the moving automobile and should be.

## **Animation reenactment**

**According to the following testimonies McCollister was facing west with his back toward the other officers when Kendra James was shot.**

**Bean:** “As I rounded that corner and got behind Scott and Ken -----”

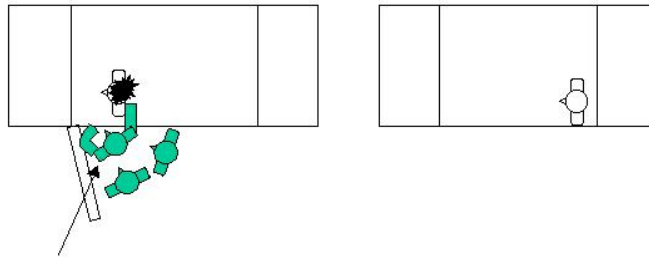
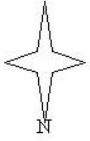
**Curruthers:** “Then when he, when the first police that shot, when he backed out.....”

“...the other two cops, when they were, I don't, they like moved kinda toward the back of the car.”

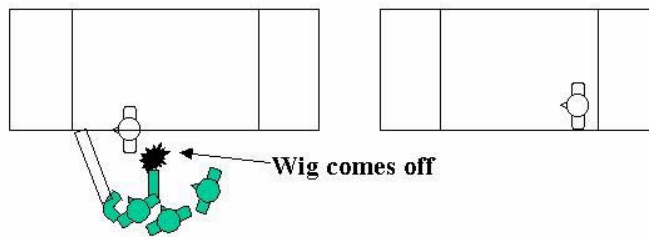
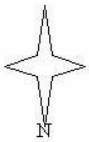
“Cause when he shot, and I seen their positions, they weren’t in the doorway anymore.”

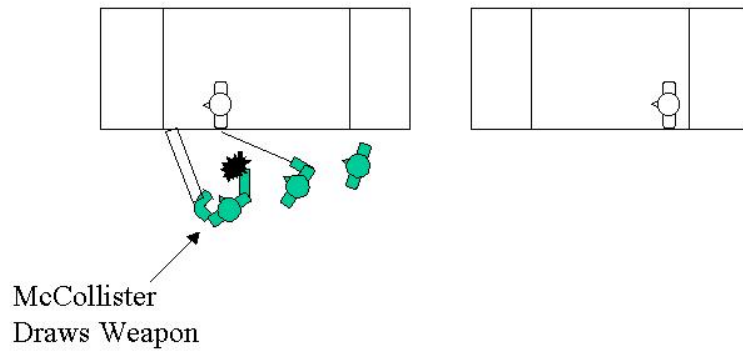
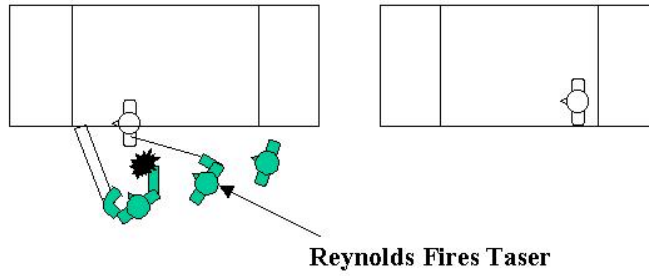
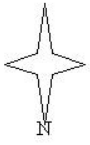
**Terrell White:** “All three officers was you know running like Two miles a hour you know with her...”

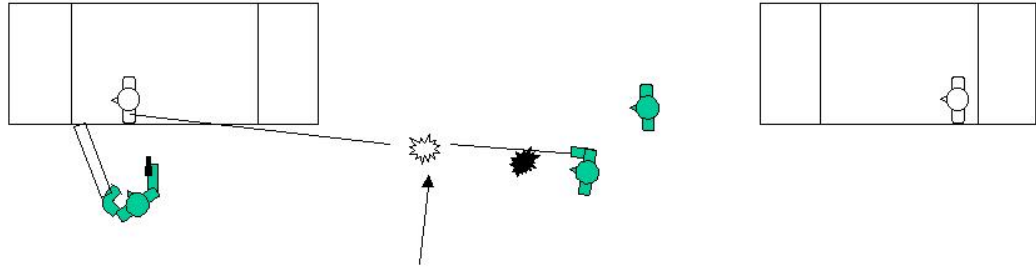
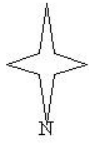
**Reynolds:** “McCollister’s he’s ahead of me, but I, I can’t see, you know his back’s still to me....”



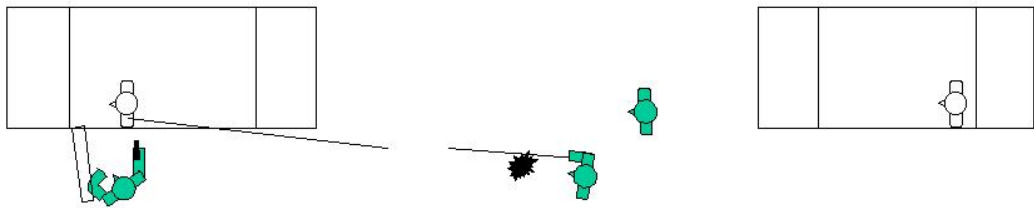
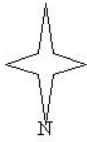
McCollister attempts to pull Kendra James from the car  
**(His back to other officers)**

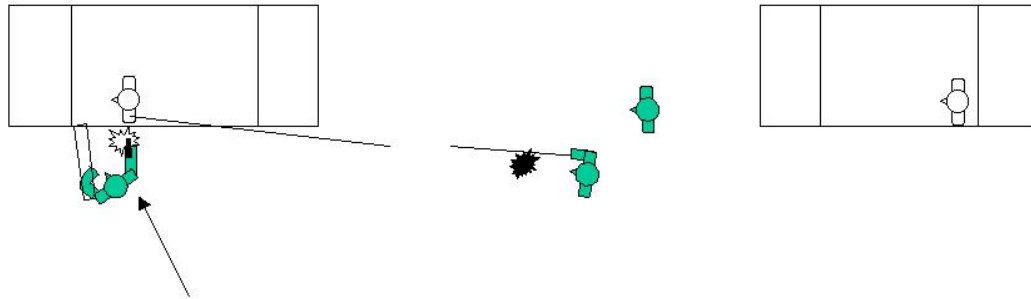
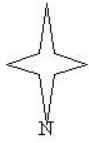




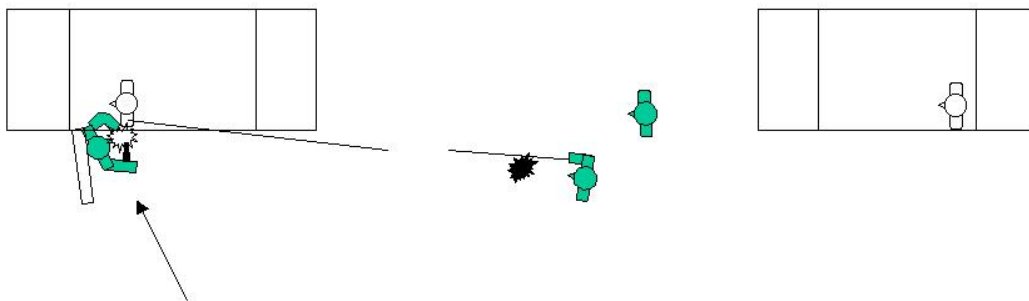
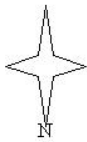


**Taser wire breaks**





**Officer McCollister shoots Kendra James  
(His back to other officers)**



**Note that officer McCollister has positioned himself  
facing the opposite direction in his & the depart. reenactment.  
This is 180 degrees contrary to the witnesses account  
that saw his back and not his face.**

## **Our Recommendations**

### **1. Clarity is needed on what is Criminal on the part of an Officer?**

Where does the Law point out conduct, which is criminal on the part of police officers in the use of deadly force? What is it that says the officers have not been given licenses to kill? If the person the officer desires to kill is made the subject of an arrest, all that is needed is to charge the driver of a car with a traffic infraction. Then shot them and say my life was being threatened and the case will be closed. When and where do the officer's acts cross over the criminal behavior line? Citizens need to know that these safeguards exist. When it is common knowledge that police officers can banish their guns around, intimidate, threaten and harass. To have officers involved in fatal shootings only to always be exonerated says in Oregon, there are little or no laws governing the conduct of an officer as long as they are in uniform.

### **2. There should be a Professional prerequisite before transitioning from the use of Physical Force to Deadly Force.**

With the broad latitude given to Police Officers presently in the "Use of Deadly Force Law, there should be a Professional prerequisite which prescribes what is required to be employed by Officers before transitioning from the use of Physical Force to Deadly Force. Human lives are involved. Police policies must not be relied upon as sufficient safeguards. The taking of human life must be surrounded with clearly defined Criminal parameters that define every ill or



cavalier act that may be involved in the taking of a human life. At no point must these lines be blurred or easily manipulated as they presently are.

**3. Rights of citizens that are the subjects of an arrest need to be defined.**

Officers are permitted to kill or use deadly force against any person who is the subject of an arrest. While there is verbiage in the law relative to the subject of an arrest needing to be a felon, this is trumpeted by the officer needing to only claim his life were in danger. If he is able to claim his life was in danger, which in most cases he does, he is then able to kill the person without Judge or Jury and walk free with the full support of the law. In these cases the rights of citizens, the subject of an arrest, is almost non-existing.

**4. Establish an objective definition of the flawed definition “Reasonably Believes.”**

In ORS 161.245 no qualification or standard is given by which “reasonably” will be judged. The present (Status of unlawful arrest. (1) For the purposes of ORS 161.235 and 161.239, (The peace officer must have), a reasonable belief that a person has committed an offense means a reasonable belief in facts or circumstances, which if true, would in law constitute an offense. The following language defining “Reasonably Believes” in 161.245 appears intentionally vague in favor of the police officer. The present definition in the law is as follows: If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief would still be supported by the law and

render justifiable the use of deadly force to make an arrest or to prevent an escape from custody. In the “Law” it appears to be a matter of what the “Officer Believes” rather than giving him a standard by which, what he believes will be judged. That standard of Reasonable in the English Language and according to Webster’s Dictionary is defines as “not excessive or extreme; fair: within the bonds of common sense governed by or in accordance with reason or sound thinking.

**5. Adopt the following change of language in the law.**

Recommendations for new pending proposed changes. In the proposed changes the issue is not remedied. Section (a) states” When the officer has reasonable basis to believe that such force is necessary to prevent a person from inflicting death or serious physical injury on the peace officer or another person;” The corrections will require that line (a) read ” When the officer has reasonable basis to affirm they believe and the summary of their actions show that such force is necessary to prevent a person from inflicting death or serious physical injury on the peace officer or another person;” Thus when the officer testifies that he voluntary inserted 80% of his body into the car face to face with the suspect before he drew his gun; it is not reasonable to believe that he thought this 115lb lady had a knife, a gun or any other weapon in her possession. The fact that he himself made the conscious decision to do so this tells us something about his frame of mind. He is not claiming “Insanity” he is not claiming someone pushed him into the car, From this point on the controlling factor is not what he says he

believes in this respect, it is rather his actions that followed and that not he, but others must judge whether it was reasonable. We can judge what he believed in part by what else he did up to that point. Now that which followed, was it or is it according to the “Law” reasonable.

**6. The Police Department must immediately, internally address harassment by police during stops, intervention and patrol.**

The testimony given during the Forum continues to affirm that there is unbearable stress placed upon our community by *abusive disrespectful officers including that against some of our most law abiding citizens*. This we believe must be addressed off the top. *Chief Kroeker and the Mayor believe either that it is not so or worse yet they do not care*. At such a time as this; whichever is the case we must know and demand immediate change? This coincides with officers’ ability to pull the trigger so easy.

**7. The District Attorney for Multnomah County needs to explain to the residents of Portland the legal basis which allows a presentation to the Grand Jury, in cases against Officers, to differ from cases brought against other citizens.**

It is clear that a Grand Jury must hear all cases involving the use of deadly force by Portland Police Officers when they end in fatalities. A lack of interest in the development of evidence in the case of an Officer using deadly force,

(as he indicated to us he did not do), is difficult to see as any thing but blatant favoritism, which supports continued abuse of their position by those few officers who exhibit poor judgment. (The DA's office claims that citizens are given the same latitude in cases where the state of mind has bearing on criminal guilt. History does not support this assertion.)

8. **The Mayor and City Council should pass an Ordinance that if someone dies at the hands of the police and serious questions surround the case, there will be a Coroner's Inquest .**

This allows the citizens to not be held hostage by the Districts Attorney's

Association unwillingness and legislations inability to open the Grand Jury proceedings for community review.

9. **Implement the recommendations suggestions in the independent study done by the Police Assessment Resource Center**

Those involved in putting together and doing the PARC independent study should be consulted to develop an implementation strategy and it should be followed through until all the recommendations have been implemented.

Other possible resources and authorities should be explored on the development of implementation strategies, such as Mr. Lee Brown, Mayor of

Houston. In addition to his service as Mayor, he served in the Clinton Administration as Director of the Office of National Drug Control Policy from 1993 to 1996. He also served as the former Commissioner of Police for the cities of New York City, Houston, and Atlanta. He has been titled “The father of community policing”. He has also served as a sheriff in Multnomah county and is somewhat familiar with our culture.

**10. There should be a three person Grand Jury established to hear misdemeanor cases before warrants can be issued.**

All Officer Bean needed was to swear out an affidavit complaining that Kendra James violated the misdemeanor law by attempting to possess a controlled substance and escape from his custody in the third degree. Fortunately the junior prosecutor declined to prosecute the escape in the third degree charge because under Oregon law Kendra James was never in custody so as to be charges escaping from it.

**11. Call the Community to action.**

The community must not abdicate its responsibility to hold our elected and Sworn Officials accountable to provide the services paid for by our tax dollars. We must continue to organize and rally behind those who are organizing for further actions. We must stay the course until all the recommendations have be addressed. We must with one voice make a statement to those in power,

including the Police Union, that we desire and can have a world class police force.

**12. The Community should support and provide input to those legislators who are willing to address the Use of Deadly Force law.**

Knowing that the legislators are representative of the people, it is imperative that the voters provide constructive input and support to those legislators willing to do what is right regardless to peer opposition, the Police Union, and the District Attorney's Association.

**13. Develop a means for Community recognitions of those Officers who are doing the right thing.**

We are fortunate that the Portland Police Bureau has many officers who perform their duties diligently, conscientiously, and professionally and bring credit to the department. Unfortunately, the ones who receive a majority of the attention and require the most follow up are those do not perform their duties to standard. There should be a means of citizen recognition and celebration of those officers who daily put their lives on the line, perform their sworn duties to protect and serve, without violating or overstepping the line of authority abuse. (Just the opposite of what we experienced when Chief Krocher recognized the two officers who killed Mr. Jose Santos Victor Mejia Poot, 29, a mentally ill Mexican man)

# **APPENDIX**

Process Statements

Commentary

AMA Video & Print Media

Testimony and Analysis

Materials Studied & Relevant Deadly Force ORS

## **PROCESS STATEMENTS**

We did not keep notes of our work beyond the draft of the accepted account after each reading and all had agreed to its reading. The time did not allow us to evaluate all the issues involved in this case that our criteria called for us to evaluate. Each assertion we made, however to the best of our ability, was means tested by the criteria standard of the evaluation. It remains to be seen if the forum indeed opens up the City Officials to the citizens as they deserve, and for City Officials to no longer operate in secrecy as some seem determined to do.

### **The Challenges We Faced.**

1. Time constraints, which were overcome by the dedication and commitment of the committee members. Their willingness to study all the materials as individual members, as well as to meet significant numbers of hours to accomplish the task, is to be commended
2. Petitioning the Department's for summary material, which served as their basis for their conclusions,
3. Determining the significant and relevant information needed to either exonerate, show misconduct, or cover-up while staying within the limits and scope of the assignment.
4. staying within the limits and scope of our assignment. This we accomplished by re-doing draft after draft of every aspect of the case we focused upon. At times, discontinuing various notions we had started but ending with a work product that was definitive and relative to the heart of what was at issue and useful in making decisions necessary to go forward.

### **MEETING SCHEDULE AND ACTIVITIES WERE AS FOLLOWS:**

1. There were Thirteen IC Meetings Between May 21, and July 22, 2003
2. There were Six General Ad-hoc Meetings Between May 9, and July 22, 2003.
3. There were Six Meetings with Officials during this same Period of Time.
4. There were Four Meetings of Forum, at the Legislature, Prayer Visual and the March from Alberta Park to the Kendra James Memorial Site.
5. There were three Reports given by the IC during this period of time



# **COMMENTARY**

This section contains thoughts, comments, questions and observations made by the members of the AMA committees. The comments/observations are prompted both by our life experiences and by the experience of going through this process of investigation, review, analysis and generation of recommendations.

## HOW EASY IS IT TO KILL A CIVILLIAN?

### HOW EASY IS IT FOR A POLICE OFFICER TO KILL A CIVILLIAN?

Why are some people behind bars and others not for the same level of gross bad judgment and despicable conduct? It appears to more to do with who we are bent on putting behind bars than how bad the judgment or despicable the conduct. It has more to do with who we chose to police for what, and where, and how that determines who ends up in the back of the patrol car. It has more to do with which laws we chose to vigorously prosecute while others remain on the books but un-enforced.. It has more to do with what despicable conduct or bad judgment we chose to criminalize. It has more to do with our society, certain human elements of which it chooses to decry and disdain whether or not their behavior has been deemed criminal.

Lynching, slavery, Jim Crow laws requiring different systems for public education, health care. economic opportunity and justice, one for white and an inferior one for black, are part of our history. Because we are a society who's roots rest in the soil of racial discrimination and bias, that bias extends itself into the present and into our everyday lives including our interactions with major institutions like police departments. Our systems continue to exhibit biases reflective of their roots and on a nationwide basis, police departments and police officers are seen as participating in that injustice. .

Are there more blacks in prison because we exhibit more despicable behavior or bad judgment at a higher frequency than others?, By no means! Statistics show that the use of drugs is the same in the white and black community. Drug trafficking is the same. Auto Traffic Violations are the same. Why then this inequality in frequency of punishment? Our Legislature, Law Enforcement Officers, Prosecutors and all other aspects of the Justice System are part of a culture that selectively enforces laws and selectively chooses to decry and disdain the behavior of some but look the other way for others.

The State Constitution provides that criminal law be written by the Legislature. However when laws passed focus the definition of criminal conduct, on behaviors that tend to be unique to one particular group, those laws become unjust. Criminal conduct should be evaluated on the basis of social norms and expectations applied equally to all residents. Instead, law- makers chose to make some people bad in their conduct and ignore others, the implication being that those ignored are without blemish. Those who abuse alcohol, drugs; Powder Cocaine, Crack Cocaine are only a few such examples of legal disparity and bias built into the system .

The jails are full today with people who made bad judgment calls. One exception that is allowed to go free is the police officer who shows bad judgment in needlessly taking a life. The officer gets to go home and is allowed to keep his/her pay check.

We need to enforce discipline equally upon those who guilty of criminal behavior; either they all go home or they all go to jail.

**“BAD LAWS CAN HAVE THE NET AFFECT OF OVERTHROWING A PEOPLE’S FAITH IN THE JUSTICE OF A SOCIETY”. THERE MUST BE AN END OF THE ERROR OF COMING UP ON THE SHORT END OF THE LAW AND SYSTEM”**

In the absence of clear, objective and consistent application of the Law, Police Officers are perceived by the community to serve as Judge, Jury and Executioners when the questionable use of deadly force is present.. If the Oregon State Legislature intends that this should not be the case and that we are indeed a Nation as well as a State of Laws, with no one being above the Law; then the explicit conduct of Police Officers should be spelled out.

The criminal evaluation bar must be used to evaluate every aspect of tan officer’s actions or inaction in search of any cavalier or ill intent in conduct or behavior. Because we have placed in their hands, lethal weapons to be used on citizens, this screen and bar must be there every moment of the day.

In the recent incident of the Kendra James case the flawed effect of the term “reasonable believe” is clearly demonstrated where the Officer after admittedly thrusting 80% of his body into the car finds justification for using deadly force. When an Officer is allowed to define what is “reasonable” by saying he thought his life was in danger, the “standard” of “reason” ceases to have any meaning Every time it is used by a different person it has a different meaning. Officers must be given a standard by which the beliefs will be judged.. The law is a predetermined standard by which to judge rights, privileges or conduct. This concept of what is reasonable ought to come out of clear cut criminal law which holds the human life valuable and sacred.

Webster’s Dictionary defines reasonable as “not excessive or extreme; fair: within the bonds of common sense governed by or in accordance with reason or sound thinking.” Thus when an officer testifies that he voluntary inserted 80% of his body into a car face to face with the suspect before he drew his gun; it is not reasonable to believe that he thought this 115lb lady had a knife, a gun or any other weapon in her possession. The fact that he made the conscious decision to do this tells us something about his frame of mind. He is not claming “Insanity” he is not claming someone pushed him into the car. . We can judge what he believed in part by what else he did up to that point. After he demonstrates his frame of mind by his actions the controlling factor is not what he says he believes, but rather in the judgment of others, whether the actions that followed were reasonable Was that which followed reasonable. We believe the answer is “No”.

**HOW SHOULD OVERSIGHT OFFICIALS BE VIEWED IN THIS MATTER; SUCH AS THE MAYOR, CITY COUNCILPERSONS, THE CHIEF OF POLICE AND THE DISTRICT ATTORNEY?**

Unless they intend that our Community and city become a “National Spectacle of Tumor” without leadership these officials have no choice but to effect change in the systems that police the citizens of Portland. It seems that until now they have been unwilling to blow the whistle regardless of the gravity of the foul play involved. The days are over when you could sweep the egregious and violent conduct of perpetrators, investigators and regulators under the rug. That day is indeed over and the time of change has come. It is the time described by the Late Dr King as the “American Check returned to African Americans , marked insufficient funds”. It is now time for this check to be cashed.

The check for payment of due process and justice cannot be cashed if we chose to look the other way. It cannot be cashed if we chose to focus on the fact that Kendra used drugs. We do not kill people because they use drugs. When an Officer is standing on his feet and a person is attempting to drive away from him by leaning away from the gun pointed at her head, her attempt to escape the danger and death should draw some sympathy from us.

The badge that the officer wears is not a license to kill. It is not possible that Oversight Officials do not know what has happened here. They are derelict in their duties. In spite of their behaviors, in spite of arrogant officers or myths, we will no longer be herded like sheep into suppression. Nor as citizens will we be further subjected to the tyranny of being deprived of freedom, reduced to a status of subservience. The community in its’ present state is being intimidated and bullied by police officers while the DA looks the other way.

## **KENRA JAMES DEADLY FORCE SCENARIO AND ANALYSIS**

Subjects of criminal investigations are usually exonerated when their description of the incident or proven absence from it, the physical evidence and the testimonies of others shows that it is not possible for the person to have committed the crime. Conversely, when an individual's case is improperly investigated and prosecuted and if the exonerating description and account of the suspect's crime is flawed, and the account is not supported by the physical evidence and other witnesses,, the individual is usually convicted of the crime, as the law requires.

Flawed accounts may come from the subject lying, or it may be that the order of facts as stated is contrary to the order in which they actually happen. For example if a stableman suspected of being negligent by letting horses get out of the barn, says the horses were in the barn. I locked the gate and left, it would appear that he had been responsible and not negligent. If the investigators do not bother to ask the suspect "were the horses in the barn "when" you locked the gate?" The negligent horse keeper would escape penalty. He made it sound like all the horses were in the barn by the way in which he told the story. This horse keeper could escape charges if the right follow up question was not asked. We believe this investigative flaw to be the case in the Kendra James shooting

With the help of skilled legal counsel and the use of verbiage like i.e. "I fired from an unknown range"; the shooting Officer's does not take a chance on committing perjury. He does not claim to have shot from inside the car, he simply implies that he did the investigators and the DA do the rest by not going deeper into the exploration of the facts, especially where contradictions appear in testimonies This, in addition to the help he may get from fellow officers who change their testimony to protect the shooting officer

Officer Reynolds originally says that he heard the shot while Officer McCollister was deep inside the car. The investigators make the point to tell in their official sequence the testimony of Mr. Williams's who said that it sounded like the shot came from inside the car. The State Forensic Lab report says there was no gunpowder residue inside the automobile. Why would the investigators include this reference, except confuse the issue and then hide behind the notion of not being sure of what happened, and thus able to avoid prosecuting or seriously sanctioning the officer. Efforts to exonerate the Officer by investigational omission is in addition to allowing the facts to be told out of order and not questioning the witnessing officers testimony for proper sequence The Investigators never asked the shooting Officer, "when you stepped back out of the car with the wig, dropped it on the ground and you drew your pistol did you ever get back into the car after this point or did you stay outside the car. Did you get back into the car after the female put the car in drive and the car shuttled? ".

The shooting Officer reported being on top of the female in the car after he told investigators about the wig falling on the ground. Giving the information in this order

gives the impression that he was in the car after he had dropped the wig. If he is already out of the car with his weapon drawn, and the car is in gear as he said, why would he get back into the car? If he does not get back into the car he is outside the car which calls into question his reason for shooting.

Officer Reynolds having waited for the shooting Officer to move out of the driver's door so that he could shoot the taser, has now shot the taser. As soon as Officer Reynolds shot the taser, the car moves, the shooting Officer then fires his weapon, not falling out of the car, but is already out, and we would expect him to be at least thirty inches outside the car as per the State Forensic Lab report. Officer Bean says he hears the taser and then the gun fire and was surprised not knowing that either Officer had weapons drawn. When asked how long this "Deadly Force Encounter" took, Officer Bean estimated it took about five seconds. This is from the time that Kendra came over the seat until the shot was fired.

The shooting Officer had one opportunity to be 80% inside the vehicle over the female as he describes it. That was when he came from the passenger's side to the driver's side and the car door was already open. He comes out of the car trying to pull Kendra out by her hair, pulls off her wig, he then sees her pop straight back up in the driver's seat away from him and put the car in drive. The taser is fired and the car "lunges as it moves" he draws his gun, puts it to her head "as he runs along side the car" telling her to turn it off. She leans over toward the passenger side away from his pistol as the car moves away from him. He fires his pistol hitting her at an angle from the hip bone upwards as she leans away attempting to drive away. It is not a confusing story. There is only one way for the facts to fit, there is not enough time for a lot of these versions. Constraints of time and physical evidence along with collaborating witnesses don't allow the facts to be viewed in any other way.

## **PPD POLICY, JOB PERFORMANCE EVALUATION AND THE USE OF DEADLY FORCE**

As Members of the African American Community we believe it is desirable to criminally prosecute some of the officers involved in killings. The fact that black people continue to die at an alarming rate at the hands of police officers makes it necessary. We see a need to separate the prosecution process from the job performance process for police officers. We believe a different approach is needed than that of the past. Thus the first order of business should be job performance. If this is done a reasonable threshold can be established in defining the officer's conduct and performance.

The PPB has claimed the need to delay meeting with officers involved in a shooting in order to preserve their right to prosecute if needed. Perhaps one approach is to grant them immunity from prosecution in the information they but not from employment sanctions. Under present statutes and policies which are written to

protect the officer's constitutional rights, allow in great measure for the officer to avoid effective prosecution and/or employment sanctions. As sworn officers they must be required to immediately tell the truth with respect to employment responsibilities without the aid of an attorney, just as all other citizens are required to do in their employment. If the prosecutor can secure an indictment and conviction without this information so be it. But coupling the job performance together with criminal investigation only clouds and insulates the officer from either. The community is now content to settle for having a clear focus on the process of job performance. The need is to insure that offending officers will not remain on the force to again engage in such killings.

Removing this Double Jeopardy for officers, so that the information which the officer is compelled to provide, is not used in any criminal investigation; should help the City Council and Police Department raise the bar of job performance and provide clearer and more definitive definitions of deadly force. Presently officers are allowed with impunity, to act as Judge, Jury and Executioner. Let the prosecutor and his grand jury take their best shot at getting convictions where desired and possible. If it is said that the employment performance investigation interfered with their ability to do so then that results will be little different from what is presently being experienced.

**Community Forum Presentation:** Pastor W. G Hardy Jr.

**July 1, 2003**

- Acknowledgements of what the investigation committee has brought to the City, DA, Police, Detectives and Community and what cooperation we have received.
- Disappointment / Frustration in the Process, response and Performance of the City, DA, Police, Detectives and Community.
- Expectations of the Forum, and future meetings: Yet hoping to overcome the challenges we believe we face in this forum, Yet hoping for the best, and that there will be another round.
- Define the Albina Ministerial Alliance AD Hoc representation from:

AMA Pastors, Clergy and Ministers

NAACP

Latino Community

Homeless community

- Define the investigative committee's make up and summary of the guiding criteria

AMA  
African American Community  
Latino Community  
NAACP

- Acknowledgements of what the investigation committee has brought to the City, DA, Police, Detectives and Community and what cooperation we have received.

The Mayor has met with and is willing to meet with the pastors, community leaders and the community at large to discuss the issues.

The District Attorney has met with and provided documentation to the Albina Ministerial Alliance ad hoc committee and Latino community leaders to answer questions as it pertains to the Grand Jury Proceedings.

The Police and Detectives have met with the Albina Ministerial Alliance ad hoc committee to discuss what they believe happened in the Kendra James case and assist in coordinating this forum.

The Community has come together as never before to make a statement to the City that the conduct of the police and justification for the use of deadly force must be addressed

- Disappointment / Frustration in Process and Performance

However, my concerns, frustration, and irritation is with the double talk, smoke, and mirrors; the perception that we are in agreement with the performance, process, and proceedings that have us here tonight.

As for the City /Mayor

It was the recommendation and expectations of the ad hoc committee to have a Latino facilitator as a part of this forum, In our role as peace makers we have agreed with the city and accepted less than what we were expecting.

Please understand my frustration...

The DA

Yes they provided us with documentation, over 600 plus pages, unorganized, some documents illegible, and other critical documents and video tape, we received only after numerous requests, both verbal and in writing.

Please understand my irritation with double talk smoke and mirrors

The DA has told us, that the power is simply with the Jury to indict, but we know when presenting facts and evidence to a Jury, an indictment heavily depends upon the DA's willingness and ability to aggressively pursue an indictment.



The DA tells us, that they look at many public cases and decide which cases they will aggressively pursue, meaning they reasonably believe that the person will be indicted.

However when it comes to law enforcement they merely present the facts, without a thought as to whether the officer should truly be indicted. This was definitely the case with Kendra James.

### **Tonight we need clarification**

How can the DA determine that a public citizen should be indicted and not a law office, disguised as a peace officer?

### **Please keep in mind**

If it is determined that the shooting was justifiable, we can expect a reoccurrence of this same event and to again return to this cross road.

### How many more lives must be lost?

How many tax dollars must be spent in law suits to settle or defend the actions of our Police department.

### **Regarding our Police standards**

Statistics show that a senior officer would not have shot this girl; a black officer would not have shot this girl. This would indicate to me that the actions of this junior officer are not justifiable.

We NEED SOME CLARITY. Should not the performance of a senior officer, not junior officer, be the standard? Human life is too great an expense for junior police to gain experience.

### **Community**

We the community cannot allow our self to be fragmented, divided and at odds with each other. We must be clear in our objective. Not side tracked, compromised, nor ignored.

We are not here to justify Kendra's actions as some would have us to believe, we are here find ways to prevent a incident of this nature from reoccurring; regardless of race, economic status, or area of Portland a person may be living.

This is not a black against white issue; it's a matter of human rights, quality of life, and pursuit of justice. They say that justice is blind. WE NEED to know that our elected and sworn officials are not taking advantage of her nor us, just because she can't see.

- Expectations:
- Yet hoping to overcome the challenges I believe we face in this forum,
- Yet hoping for the best,
- Yet hoping that we will seize this opportunity to stand together as Community, City, County, and State to acknowledge that the system must change.
- Lastly I am hoping that we recognize that regardless of what is presented here tonight, it is only one of many rounds to come.

# AMA VIDEO & PRINT MEDIA

## AMA VIDEO REENACTMENT OF THE “DEADLY FORCE ENCOUNTER”

The video is the Investigation Committee of the AMA Ad-Hoc Committee for Police and Civil Redress attempt to better illustrate the facts of the shooting and the investigation that followed.

- I. The First view is an illustration of Kendra James coming over the driver’s seat from the back seat and the Officers rushing from the passengers’ side to the drivers’ front door to encounter Kendra and where the door is already open.
- II. The Second sequence shows Officer McCollister deep into the car over Kendra James with 80% of his body in the car as he has testified in various ways and at different points. This enactment is also supported by other testimonies and by the estimated time frame given by Officer Bean. This video reflects the State Forensic Lab’s finding that the shots took place at least 30 inches outside the car. McCollister’s body being deep inside the car would have to have taken place when the Officers first arrived at the door, the car was not yet in drive and the wig had not been pulled off and thrown on the grown. His being deep into the car at this point is consistent with these things immediately following the pulling off of the wig in an attempt to pull James from the car.
  1. The immediate shooting of the Taser by Reynolds, and
  2. The car being placed into drive by James, and
  3. McCollister drawing his gun,

All this is consistent with the time frame, logistics, logic and witnesses’ testimony. Thus McCollister’s testimony that he was deep inside the car or 80% is consistent with every thing else; it is just that it happened at the beginning when he first arrived at the driver’s door and James has just jumped into the front seat and not at some later point which would confuse what actually happened. Therefore the Second view shows Officer McCollister deep inside the car with 80% of his body and on top of the female. These three different terms were all used at different times to describe the exact same body position, condition situation and circumstance of his being in the car. It is all the same and it happen at the beginning and fits with a clear picture of every thing else.

- III. The Third view shows James head leaning out the door area as the wig comes off.
- IV. The Fourth view has three frames
  1. James pops back straight away from McCollister into the car and pulls the car into drive.
  2. Reynolds shoots the Taser.
  3. McCollister pulls his gun.
- V. The Fifth view the car starts to move and lunges forward.
- VI. The Sixth view is of McCollister again pursuing the car as it moves away from him with his gun drawn pointed at James head saying turnoff the car as she leans her upper body away from the gun pointed at her head.
- VII. The Seventh view is McCollister pulling the trigger about 30 inches outside the car and doorway and ten feet from where the wig had fallen on the ground. McCollister is standing on both feet when he fires and not falling. He had no reason fall. He is simply caught up in the moment and fires.

### GRAND JURY CLEARS OFFICER: THE OREGONIAN 05/20/03 MAXINE BERNSTEIN

A Multnomah County grand jury announced Monday it found no criminal wrongdoing in the May 5 police shooting that killed 21-year-old Kendra Sarie James as she tried to drive off after a traffic stop in North Portland.

The seven jurors came to a unanimous ruling after hearing 29 people testify over five days. Testimony came from three North Precinct officers at the scene of the shooting, two men who were riding with James that night, two witnesses who were walking by, and other law enforcement, forensic and medical experts.

Multnomah County District Attorney Michael Schrunk and Senior Deputy District Attorney Stacy Heyworth stressed that the grand jury review was limited to whether Officer Scott McCollister acted within state law when he shot James. The jury heard seven conflicting accounts of the shooting, making it extremely difficult for a jury to return a criminal indictment, Heyworth said.

The jurors relied on McCollister's testimony that he shot James because he feared for his life as she started to drive off, prosecutors said.

State law and Police Bureau policy state that officers can use deadly force "to protect themselves or others from what they reasonably believe to be an immediate

threat of death or serious physical injury.”

In interviews with detectives, McCollister said about 80 percent of his body was inside the car. His left foot was inside the car on the driver side floorboard and his right foot was on the ground when James put the car into gear and it moved forward. As the car moved, he said he felt he was falling backward.

“I knew that I was about to be run over, dragged down the street by the vehicle,” McCollister told investigators. “While I fell back toward the door jamb and out of the vehicle, I fired my service pistol . . . I fired my gun ‘cause I thought I was gonna die.”

The grand jury ruling disappointed James’ family and leaders of Portland’s African-American community who met with prosecutors and the police chief Monday afternoon. The Rev. Roy Tate, president of the Albina Ministerial Alliance, called it “another sad day in North and Northeast Portland,” and he pledged to push for changes in the state law that governs police shootings.

Mayor Vera Katz promised the city would hold a community review of the shooting, and Police Chief Mark Kroecker said his assistant chiefs would conduct a full-scale organizational review of the shooting to determine whether police policies, training or officer recruitment should be altered.

“The grand jury’s task is done, but our work is far from over,” Katz said. “I believe a community review is necessary given that an officer used deadly force against an unarmed person.”

FBI will get reports All investigative reports will be forwarded to the FBI, which has opened a civil rights investigation at the police chief’s request.

The shooting stemmed from a traffic stop at about 2:40 a.m. on North Skidmore Street. Officer Rick Bean, 23, had pulled over the car James was riding in shortly after it left the Budget Motel on North Interstate Avenue.

The two-week investigation revealed problems with police procedure and training. McCollister, 27, a two-year member of the bureau, had attempted to spray James in the face with pepper mace, but he failed to operate it properly. He never pressed the dispenser button. A bureau test of the can later found it worked properly, but there was no trace of pepper mace in the car or on James’ clothes.

McCollister also said he did not recall any police training about going into a car after a suspect. He said the bureau teaches officers to grab a suspect’s arm or leg that is closest to the door and drag the person from the car. But McCollister said he was unable to do that because James’ arms were swinging. He said the bureau has not

The bullet entered above James’ left hip and came to rest under her right breast, Heyworth said. Toxicology reports showed James had cocaine in her blood,

suggesting she ingested it within six hours before her death. Police also found a crack pipe in her waistband and crack cocaine beneath the driver's seat.

Sgt. Robert King, president of the Portland Police Association, defended the grand jury system, saying it worked.

Janet Hoffman, McCollister's lawyer, said her client is troubled that someone died and that James' loved ones are in pain.

"He thinks about that all the time," she said. "What he did happened because of the threat presented by the situation, but that doesn't make it any less painful when someone dies."

As night fell, about 125 people gathered at Christ Memorial Church of God in Christ for an emotional and sometimes angry rally in James' memory.

"This does not end with the grand jury finding," said the Rev. LeRoy Haynes Jr. of the Albina Ministerial Alliance. "We will continue to fight for justice.

" Maxine Bernstein: 503-221-8212; [maxinebernstein@news.oregonian.com](mailto:maxinebernstein@news.oregonian.com)

# **TESTIMONY & FURTHER ANALYSIS**

## **MCCOLLISTER'S ACCOUNT AND COMMITTEE ANALYSIS**

This is Officers McCollister's testimony word for word covering the period identified in Officer Bean's testimony as the "Deadly Force Encounter" and estimated by Officer Bean to last about five seconds. It begins with Kendra climbing into the front seat and ends with the shot being fired. Thus this is the description by officer McCollister of this same period of time in his May 9, 2003 testimony. We have inserted numbers in his testimony for the purpose of tracking and discussing it. Other than the inserted numbers it is his testimony word for word. Our comments follow..

(1) I was able to pull uh the female to the uh so that her head was toward the opening while she remained in uh while she remained in the seated position.(2) Uh while she was tilted with her head towards the open end of the door, I grabbed the top of her hair, to pull her out of the vehicle by her hair uh but her wig or her weave came off in my hand. The female, uh, managed to pop straight back up, uh, in a direction away from me into the vehicle. (3) I dropped the hair or the wig on the ground and uh, uh, the female pulled the, uh, car into drive. (4) I felt the car shuttle and when she did so, (5) I, uh, drew my pistol and put it near her head. (6) I was placed in the vehicle so, such that my left foot was up against the floorboard with my right, or with my left knee, uh bracing against the seat and my body over top of the, of the female.(7) My right foot was kind of a pivot point, just basically being used for balance.(8) I began to say turn off the fucking car turn off the fucking car. When uh uh I when the car started to, to move, um, (9) I started to fall back. And (10) as the car started to move, (11) I started hearing the clicking from a deployment of the Taser, uh, from Officer Reynolds who was directly off my right shoulder. (12) As I started to fall back out of the vehicle, (I knew that I was about to be ran over, drugged down the street by the vehicle. (13) Uh, while I uh, while I fell back toward, uh, towards the door jam and out of the vehicle, uh, I fired my, my service pistol, I, I fired from an unknown range, uh, but as I fall, uh, uh, (14)I fired my gun, 'cause (I thought I was gonna to die. I was scared. I thought I was gonna to be dragged down the street). **END OF TESTIMONY**

In McCollister testimony comments 1-5 he describes his attempts to pull James out of the car. This attempt ends with three significant things happening. They involve actions by Officer McCollister, actions by James and actions by Officer Reynolds; these are reactions by each to each other. McCollister steps back out of the car pulling on James hair (TO PULL HER OUT THE CAR) but her wig comes of in his hand in his attempt to pull her out of the car and he then pulls his pistol. James pops straight back away from McCollister into the vehicle and pulls it into drive. McCollister is out of the car and out of Officers Reynolds way, who can now fire the



Taser and does so without hitting McCollister. As the taser hits James the car moves. As it lunges forward or accelerates Officer McCollister follows the car outside the car door. The Taser wires are stretching according to Reynolds as the car moves away. Officer Bean hears the gun shot immediately after he hears the Taser shot.

Next in comments 6-14, (and in 1-5) McCollister covers the reference call by the investigators in Beans interview as the “Deadly Force Encounter” The order in which McCollister tells 1-5 and 6-14, about details of the “Deadly Force Encounter, is incredible in that it also takes about 5 seconds, the part about being deep in the car he tells after he tells the part about dropping the wig. This order of events is impossible in that; 1. A good portion of the approximately 5 seconds have past with McCollister attempting to pull James out the vehicle with the wig coming off. Thus before the car gets 10 feet from the wig McCollister must get out of the car be at least 30 inches from the car and fire the shot and the cartridge be deposited on the ground within the amount of time and distance from the wig that is left in the five seconds. 2. If he is in the car after the wig is dropped on the ground how can he see James pull the car into drive? 3. If he is in the car after the wig is dropped how is Reynolds assured that when he shoots the Taser. McCollister will not be hit as Reynolds has testified? 4. Finally it means that he would have his gun drawn, with 80% of his body deep inside the car and with his pistol in his hands be over the top of the female James who is flailing her hands and arms while he braces himself and the car is moving, this again is not at all credible and does not fit the pattern of the other evidence.

The duty of the detectives and the Prosecutor is to deduce **credible** testimony from **those who may be guilty** of criminal violations. **If credible** testimony is not deduced from citizens then citizens are usually charged with crimes. If McCollister is to be covered by the “reasonable belief” clause, then it would seem his testimony must be **credible** before it can be considered reasonable. Otherwise it is no more than a cover up and a sham.

Even though skilled key follow up questions were not asked of McCollister, (as they were asked of the witness, Currithers) the evidence is simple and clear when using McCollister’s own words. Carefully examination shows that being deep inside the car did not happen as McCollister says but rather James was shot by him as he was clearly positioned outside the vehicle free of any obvious danger.

(5) The Ten Feet anchor description between where the Wig and the Cartridge are deposited on the ground during the “Deadly Force Encounter”. The ten feet description is the distance between the wig being dropped on the ground and where the cartridge from McCollister’ gun fell when it was fired. These two items mark two places and times in this investigation and shooting that serves as anchor reference points in the evaluation of testimonies and other evidence as to what actually happened when and how. McCollister is clearly outside the car when the wig is dropped.

.....

Reasons to believe McCollister is outside of the car when he fires:

1. He is outside the car because James According to his own May testimony pops straight back up away from him into the car and remained in the seated position.
2. He is outside the car because he is able to clearly see James put the car into drive.
3. He is outside the car because James is now able to put the car in drive.
4. He is outside the car because Reynolds is now able to shoot the Taser which he had been waiting to do once McCollister moved out the way.
5. He is outside the car because Currithers sees him at this point step back out of the car and fire his weapon.
6. He is out of the car because Terrell sees him try to keep up with the car outside the doorway.
7. He is outside the car because that is where Officer Reynolds reports seeing him in his May 5, testimony before the visit to Apple Bee Restaurant after which Reynolds changed his testimony. (This kind of testimony did not seem important to the DA or the Detectives.)

.....  
The goal of this synopsis is to show that McCollister was indeed 80% inside the car at the earlier point but not at the end. The transition came with the drooping of the stepping back out of the car at this point, drawing his gun and pointing it James' head but from the outside the car. If McCollister is saying that his being 80% in the car came after the wig is dropped on the ground then the question is what is he, at this point, trying to do with his gun drawn and deep inside the car. We know what he was attempting to do while he was in the car before the wig was dropped; he says he was trying to pull her out the car. This is credible and fits the overall pattern of evidence. While he does not say he was in the car when he was trying to pull her out; it make sense that he was, and we believe that he was indeed deep in the car at the point, prior to the wig coming off. However he seems to want to save being deep inside the car, till after the wig came off, even though it is quite obvious that he came out the car at the same time the wig came off.

For Officer McCollister to change the order in which he relates events so that he gives a false impression is perjury and for this to be overlooked by investigators and District Attorney is doubly criminal.

“Where was McCollister Geographically throughout the Deadly Force Encounter?”  
Just as the Investigators tracked Currithers but fail to track Officer McCollister during his Testimony; the following is an attempt to track McCollister’s Geographical location during his testimony; this was a serious omission by the Investigators. He describes his location at the time of the shooting as: “ I shot from an unknown range” it may insulate him from perjury on this point, but does not provide the credibility he needs for immunity coverage under “reasonable belief” nor does it exonerate him in his actions.

McCollister testifies that while Kendra James remains in the seated position he was able to pull her so that her head was toward the opening while she was tilted with

her head toward the open end of the door. If he is pulling her and her head is in the opening of the door while she remains in seated position in the driver's seat, where is he? He must be beyond the point to which he has pulled her head. Unless he was further into the car trying to push her out. She pops straight back up into the car away from him. This is Officer McCollister' own language which puts him out of the car and the car goes in gear and takes off. He grabbed the top of her hair to pull her out of the vehicle, her wig or weave comes off in his hand. He dropped it on the ground. Kendra popped straight back up in a direction away from McCollister into the vehicle. Kendra pulls the car into drive. The car shuttles. He draws his pistol. At this point the question is; where is McCollister standing? And even though he is not asked this question by the investigators in the interview we believe his own words shows us that he is out of the car at this point.

At this point he says he is trying to pull her by her hair out of the vehicle with her in the seat and her head tilted toward the door. (At this point where is he? We believe he has just stepped back out of the vehicle). The wig comes off in his hand and he drops it on the ground. (At this point where is he? We believe he has just straightened up outside the vehicle). She pulls the car into drive. McCollister draws his Pistol. (At this point where is he? We believe he is on his feet and reacts to seeing the car being pulled into drive. He has the clear view to see the car being pulled into drive as well as the clear retrievable access to pull his gun and does so just as she has the freedom to pull the car into drive. Officer Reynolds can now also deploy the Taser and does so now that McCollister is out of the car. The car moves with a lunge or acceleration forward.

At this point Terrell White says "she Kendra James got it a little gas"\* . Reynolds says the car accelerated. At this point McCollister has no more opportunity to get back into the car and does not. If he had it would have had to be during the 10 foot space from the wig on the ground to cartridge on the ground, and that as the car lunged forward and then slowed. It is in this narrow window that he fired into Kendra from 30 inches outside the car. In these 10 feet, which is also a part of the Deadly Force Encounter that Officer Bean said was altogether about 5 seconds and marks the 10 feet in distance, the car must travel as a short part of that time frame before the shot is fired.

Officer McCollister would have to get back into the car as it lunges the 10 feet get on top of James, with 80% of his body deep inside the car then get back out 30 inches outside the car so that the cartridge hits the ground 10 feet from the wig. All of this must happen as the car is moving and lunging forward in a 10 feet space and what's left of the 5 second time frame? This leads us to conclude that McCollister deep in the car with 80% of his body on top of the female happened before the wig was dropped.

## **CURRUTHERS TESTIMONY**

Pg 5-comment#1- And as he sat on the curb; because when she drove off and they were, well the car was driving and they were in the car with her, .....

Pg 5-comment#7-And as they got into her car, then we stopped again.

Pg 6-comment#6-And as we're turning around and looking, the car was still kind of going in, I think the car well, yeah, when they first got in the car and he saying Taser, Taser, and they all three were jumping on her and the police backed out the car and shot.

Pg 12-comment#2&3 and question#2...that was already open. She didn't shut when she got to the front seat. She just jumped in the front seat. Question: Okay, so this driver's door is still open. Comment#3; right.

Pg 13-comment#9-Uh, one cop said Taser, Taser. And I seen one, the two and three, the other two cops went to their sides like they, as they were in the car. And then the other cop closest between the door and the car, he went, reached for whatever he was reaching for, I guess his gun, cause then when he leaned back out the car and stepped back, that when he shot.

Pg 14-comment#10- The car, when they said Taser, it was, I think that's probably when it was getting' shift into gear because....

Pg 16-comment#2-...they jumped in her car.

Pg 16-comment#4-...So they're like goin' with the car. The cops are following along in her door.

Pg 16-comment#5-walkin' along with the car...Question (Det. Herron) All three of 'em?

Pg 16-comment#6-till it get to right, yeah, All three of them, uh one cop backs out to about..

Pg 16-comment#7-....The first one in the car...the one that was talking to her the whole time.

Pg 17-comment#1-...when the car started to go out, he stepped back. The first person I seen step like out of the doorway of the car was him. He stepped back with his arm, you know, pointing so...

Pg 17-comment#2- Yeah, then, one, he moves out and they're move, they moved over to the side so when he moved out the car to shoot...

Pg 17-comment#9-.....After the police got out and he shot, the door closed.

Pg 18-comment#2-Then when he, when the first police that shot, when he backed out, the other two cops, when they were, I don't, they like moved kinda toward the back of the car. 'Cause when he shot, and I seen their positions, they weren't in the doorway anymore.

Pg 18-comment#3- They were like toward the back of the, like by the trunk.

Pg 18-comment#4- And turned around and ran to their car.

Pg 18-comment#7- One step like so if the car is, it stopped when they got out for a minute like when they got out it was goin' down like almost to stop, so they all backed out the car when he backed out.

Pg 18-comment#8- Like she was gonna drive away. ...And I'm thinking it was gonna go on a car chase...

Pg 18-comment#9...how it looked like. 'Cause when they backed out they went to their cars. When he backed out, he shot. He was the first one, number one police was the first one that got out the doorway and walked backwards like he didn't turn around. He just stepped backwards from the car and he shot. And he still had his arm up while they ran back to their car.

Pg 20-comment#8-...when the shot was fired, he was by the car, probably five feet I think at the most from the door.

Pg 21-Question#5...When they're, when they run around the car and somebody says taser, all three police officers are standing in...

Pg 21-comment#5-In her door

Pg 21-Question#8-...Now when the shot, when you hear the shot fired, the car is moving...

Pg 21-comment#8 Yeah, they're tussling from here to here.

Pg 22-comment#4-It was just, it was all so quick. So it wasn't like...

Pg 22-comment#5- ...they just stood there, they just like, when he leaned back and shot, they were getting out, turned around, and ran to their car.

Pg 22-comment#8-They were jogging back to their car.

Pg 22-Question#2-In this first box, which I'm gonna label as A, in this A box, does, and this box represents, uh, uh, just a moment in time.

Pg 25-comment#1 She jumped in the front

Pg 25-Question#1 She jumped in the front

Pg 25-comment#2 And they ran around the back

Pg 25-Question#2 And they ran around and somebody says...

Pg 25-comment#3 Taser taser.

Pg 25-Question#3 Okay. That's in that in that moment of time.

Pg 25-comment#4 Yeah

Pg 25-Question#4 Now in this moment of time, which we'll call B, the car is moving..

Pg 25-comment#5 Uh-huh

Pg 40-Question#5 And these the, uh, these moments in time that we wrote here, uh, A is when a police officer is, saying taser and...

Pg 40-comment#6 Yeah, after they...

Pg 40-Question#6 ...and the lady is climbing over the seat.

Pg 40-comment#7 Right

Pg 40-Question#7 Okay.

Pg 40-comment#8 But she climbs over the seat then they do taser

Pg 40-Question#8 Okay alright. Good. And then B is when the shot is fired

Pg 40-comment#9 Right

Pg 40-Question#9 Okay. And C is after the car stops.

Pg 40-comment#10 Uh-huh

Pg 40-Question#10 Okay? And then D that's when officer

Pg 40-comment#11 They come together.

Pg 40-Question#11 ...one, two and three meet.

Pg 41-comment#1 Right.

.....

Pg 40-Question#5 And these the, uh, these moments in time that we wrote here, uh, A is when a police officer is, saying taser and...

Pg 40-comment#8 But she climbs over the seat then they do taser

Pg 25-Question#4 Now in this moment of time, which we'll call B, the car is moving..

Pg 40-Question#9 Okay. And C is after the car stops.

Pg 40-Question#10 Okay? And then D that's when officer

Pg 40-comment#11 They come together.

Pg 40-Question#11 ...one, two and three meet.

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## TERROL JACKSON (White) TESTIMONY

**Terrol White is Darnell White nephew; he turns off the car turn off the lights. He can hear officers say get out.**

Door open and two officer's hands on door.

At this time she got a little gas.

All three officers was you know running like

Two miles a hour you know with her

I hear a command Taser

I guess that they didn't hit her

Next thing I know I hear a shot

I did not see any of the officers fall down

They are running with the vehicle.

## OFFICER BEAN TESTIMONY

Page 7 line 41

Bean: As I rounded that corner and got behind Scott and Ken -----

Page 8 line 4&5

Bean: So I holstered my gun and was standing behind Scott and Ken and I could hear yelling

Page 8 line 8-17

Bean: But I wasn't sure who was yelling and what was being said. ----- Then quickly what took place was the car started to move, quickly, kinda like a jerk or a lunge. The, car just kinda went forward all the sudden and as it did that, I could see Officer McCollister who was the one closest in to that open door, it went Scott and then Ken. Scott was standing there in that doorway and as the car lunged forward, I could see him kind of stumbles along with the car. kinda like he got tangled in with the car. I couldn't see his feet so I, I'm not real sure if he tripped or if he got his foot caught up in the car or what took place, but I, his upper part of his body, I could see it just kinda fall with the car as it lunged and went forward.—

Page 8 line 18

Bean: it started out kinda quick about five to ten miles an hour and then it started out kinda quick about, five to ten miles an hour and then it started to slow down. Right as the lunge takes place and it starts to go, I see two Taser wires, um, shoot out and then I hear a boom and I was Kendra surprised by this because I didn't know that either KEN or SCOTT had the Taser out or that there was a gun out or any other type of weapons drawn.

Page 8—line 26

Bean: it happened so quickly and I was still at that point, standing off from the car. I was back a little further toward the rear of the car

Page 10 line 18 to 22

Bean: I would say within one to two seconds of me being behind that door and a total of three to four seconds in my mind

When you said Officer MCCOLLISTER Kendra of stumbled, staggered, did either Officer MCCOLLISTER or Officer REYNOLDS fall down at all, or fall to their knees?

Bean: No, no, at all times, they stayed pretty much on an even plane with what I was seeing so if they would have fallen, I, I think they would have gone out of my view, the way my view was, so, I'm fairly confident that, no they both stayed on their feet for the most part and didn't go down to their knees, so.

Page 12 line 22 to 25 Weatheroy-How close was McCollister to the suspect. Bean- "He was right outside of the car so I would estimate probably two to three feet or so from Ms James           page 13 line 26 to 41

Brooks: Do you remember when you drew your gun and what caused you to draw your gun?

Bean: That's one thing totally blanks for me. I don't recall when I took it out. Um, actually the only time, well the only reason I know that I had it out is because when I was behind them and I thought to myself I don't have a clear shot, so I holstered it. I don't know when I drew my weapon. Um, and, I don't know why. I mean like I said, when I was going around the front of the car instinctually, it was Kendra like an oh-shit type thing to where I wanted to get out in front of that car. Uh, but I don't know if I, if I had my gun out before I went around, during my trip around or after I got there, but I do know that when I got behind them, I'm standing there and instantly I thought to myself, I don't have a shot and holstered.

Weatheroy: And, and throughout your career, when you have drawn your weapon, is it usually for concerns of your safety or the safety of others?

Bean: Absolutely, I would not pull my gun and point it at a person unless I felt authorized to do so, to protect myself or protect others.

Reynold's May 5 Testimonies.

Page 4&5 Line 42- 45

Reynolds: McCollister's he's ahead of me, but I, I can't see, you know his back's still to me and they're cars, uh, going away and it looks like the door's closing on it. And, um, at that point, uh, I hear a pop and officer McCollister is away from the car.

Reynolds's May 8 Testimonies.

Page 2 & 3 line 1 to 7

Reynolds: Um, I deployed a taser, excuse me. Um, the Taser's deployed. I can hear it cycling. Um, at this point and, and I'm watching the darts that there's that, one of the darts hit up on, that appeared high on her right shoulder.

Weatheroy: Is the, uh, vehicle stationary or is it moving at this particular-time?

Reynolds: At, as, at this point, it starts to move, it starts to accelerate rapidly, um, away from me. I know this, I know this because I'm standing there and it's, uh, it's going away from me. I mean the, the taser wires are, um, all of a sudden they snap on the gun. They're, um.....

Page 3 line 12 to 19

**Weatheroy: Okay, continue.**

Reynolds: Um, so that that I noticed that the, the distance has now grown between e and officer McCollister. Um, the taser wires that snapped, I'm, I'm, I'm looking at, at the taser. Um, when I hear, I could see, uh, the last thing I remember seeing is SCOTT still in the car trying to pull, um, pull her out of the car. And, um, the, car's continuing away. Um, it appeared SCOTT was, was deep in the car. Um, you know, he had his head and his shoulders

Report on Officers-Involved Shootings and In-Custody Deaths

By Police Assessment Resource Center (PARC report material reviewed but not included)

TRANSCRIBED POLICE PRESS CONFERENCEBY COMMANDER FERRARIS

MAY 19, 2003

As we began this investigation we had one and only one priority that being the search for the truth. The investigation was pains taking work. I would like to recognized Portland Police Homicide Detectives and Supervisory Staff, Detectives from the Gresham Police Dept. and the Mult. Co. Sheriff Office, who represent the East County Major Crimes Team who assisted us on this investigation. Crime nest from Portland Police Identification Division, Frenzies Scientist from the Oregon State Police Crime Lab. The Oregon State Medical Examiners Office and Prosecutors from the Multnomah Co. Dist Attorney's Office. I think you can see by the people involved in this, the breath of this Investigation and how many people who were involved. From the beginning to the conclusion and I would like to thank them for the countless hours they invested in this case. We interviewed every Police Officer who



were involved in this particular incident all of the Emergency Medical and Fire Bureau and Paramedics who were responding to the scene. We interviewed the two male occupants of the car that were stopped, the early morning of May 5<sup>th</sup>. We interviewed two witnesses' two civilians who happen to be walking down Skidmore as this incident occurred. We found out about those people thru the News Media and then we sought them out. They had not come forward. We went to them and found them and then interviewed them. We conducted neighborhood canvasses. We knocked on the doors in the neighborhood to see if there were any witnesses, which we could locate and interview regarding this matter. The investigation revealed the following: What I'll do is walk you thru an aggregate of all the information. The information I am about to present to you is an aggregate of all the interviews that we conducted in this investigation. It isn't specific to any one individual.

During the early morning hours of May 5<sup>th</sup> it was about just before 2:40am in the morning. North Precinct Officer Rick Bean observed a new model Chevrolet Compact car containing three people() leave the parking lot of Budget Saver Motel on Interstate Ave. Officer Bean knew this Motel to be a place frequented by persons who were involved in the trafficking and use of drugs. He saw the driver of that car commit a traffic violation. Not signaling when making a lane change on Interstate Ave. A little bit later he saw that same car not stop completely for a stop sign at North Maryland and North Skidmore. Based on those traffic violations Officer Bean initiated a traffic stop on that car, in the area of Skidmore and Maryland. The car was traveling East bound on Skidmore from Maryland when Officer Bean turned his Emergency Lights on. The car didn't pull over immediately; it continued East bound for a bit. And then came to a stop on the overpass on Skidmore over I-5 Officer Bean called out his location and the vehicle stopped for our procedures and approached the car on the driver's side. He made contact with the driver who is later identified as Terrell White. That driver gave the name of Terrell Jackson. Officer Bean learned that the right front passenger identified himself as Anthony White. His real identity was Darnell White. Officer Bean recognized the female in the back seat as Kendra James. He knew her from prior contacts. Officer Bean walked back to his Patrol Car he ran records check on the people in the car and he discovered a warrant for attempted possession of a controlled substance for Kendra James. He discovered that Darnell White's Alias, that name that he gave him in the car, had a warrant associated with it, for attempted possession of a controlled substance and he knew that the driver did not have a driver's License. Officer Bean requested that the Cover Officers come to the scene to assist him. Officer Reynolds was dispatched but Officer Scott McCollister volunteered because he was a little bit closer. So while Officer McCollister was in route to the call Officer Reynolds continued. When Officer McCollister arrived he was briefed about the warrant situation by Officer Bean. They put together a plan about how to approach the driver and take the driver into custody for not having a Driver's License.() Failure to display a Driver's License is a crime in the state of Oregon. They walked up to the car and they took that driver into custody hand cuffed him and they walked him back to the patrol car to place him in the car. As Terrell White was being placed into the Police car Officer Reynolds arrived. Officer Reynolds is certified in the use of a Taser Stun Gun, a fairly new less lethal weapon that the Portland Police has employed in the Precincts. Officer Reynolds

was briefed on the wanted subjects that were in the car and specifically that Officer Bean had had contacts in the past with Kendra James and that she was wanted and she had run from the Police before and that she had fought with the Police before to evade arrest. Officer Bean approaches the car on the rear passenger's side and asks Kendra James to get out of the Vehicle. She asks why? Officer Bean told her, that she had a warrant out for her arrest. She became very excited she became agitated, she said she did not have a warrant for her arrest; and started moving about in the back seat. (There is a lout the officers don't remember but they remember her words perfectly). When Officer Bean tried to open the door Kendra James reached up and locked it. James continued to move about in the back of the car. Officer Bean then walked around the car to the driver's rear door. Officer McCollister stayed on the passenger's side near the rear door. When Officer Bean tried to open the other door on the driver's side of the car, James reached over and locked that door. Officer Bean reached through the drivers opening and unlocked and opened the driver's side rear door. He told Mrs. James to get out, He told her if she didn't get out that she would be mace and what he meant by that was using pepper spray or that she would be tased. (are we back filling should a correct report state simply what he said he meant or what they are taught certainly not the investigator filling in words as to what he meant). And what he meant by that was, the Taser gun I told you about would be used on her. Officer Reynolds during that time stayed at the rear driver's door. Officer Bean moved to the front passenger's door to deal with Darnell White because he wanted to get that person that right front person out of the car to minimize the number of people in the car at that time. Ms James was still in the back of the car. Officer Bean got Darnell White out of the right front passenger seat of the car and sat him on the curb near by. Then Officer Bean reached into the car on the passenger's side through the front door and unlocked the rear door, that rear passenger door. Kendra James became agitated and she vaulted over the seat from the back into the front driver's seat of that car. (Here they are saying that Kendra is in the Drivers' seat which is not consistent with what will be said later. Later McCollister is supposed to be in the Drivers' seat, reaching for James hair, with 80% of his torso and his left foot inside the car and his right foot on the Street/Pavement).

At that point Officer McCollister moved to the driver's side. () He pulled out his canister of Pepper Spray. Officer Bean ran around to the front of the car and yelled Taser, Taser. Officer McCollister stepped into the driver side front door area of the car with his left foot, into the driver's compartment.

(Herein lays the pivotal crux of the matter. Among many things, 1. Was the door already open 2. Bean is supposed to be about to be ran over at this point 3. If they are both on the passenger side when this happens, how do they accomplish a.) Part of his tarsal is in the car as was his left leg. He grabs Ms James. He tried to take her out of the car. She began to fight him her arms were flinging she was resisting his efforts. He continued to grab her and was unable to. He tried to deploy his Pepper Mace. She put her hands up in front of her face when she saw the canister. He tried to spray it. (Why the investigators would inject what happen or did not happen). The investigators believe that his thumb was on the top of the canister.

And not on the button and that the canister did not deploy. We are unable to find evidence of the Pepper Spray being deployed in the car. Ms James continued to struggle with Officer McCollister to avoid being taken out of the car. Officer McCollister tried to pull her out by her hair. She was wearing a wig unbeknownst to him and the wig came off. He dropped out on the street and turned back to her as she had popped back into the car. And she had moved further through the driver's side toward the passenger's side into the front side of the car. Officer McCollister goes further into the car to try to get her out. Officer McCollister right leg is on the outside of the Vehicle on the pavement placed on the street for balance. At that point Ms James reached down with her hand and put the car into gear, into drive, using the shift level in the center consol. The car began to move forward. Officer McCollister drew his service weapon and pointed it at Ms James. He told her something to the effect of shut of the car or get out of the car. Officer McCollister said Ms James did not follow his commands. The Taser was deployed by Officer Reynolds who was shoulder to shoulder with Officer McCollister on McCollister's right. (Shoulder to shoulder would mean that McCollister is outside the car in just as white says because the two of them cannot be in the car at the same time).

So you have Officer McCollister in the "V" of the open door and you have Officer Reynolds to his right. The Taser was deployed but apparently had no effect, on Ms James. The car began moving forward while Officer McCollister was in that passenger compartment on the drivers' side. Officer McCollister said that he began losing his balance and started falling backwards toward the open door. Officer McCollister said that he was falling to the degree, that he believed that he would fall out and be run over by the car, or fall partially out and dragged down the street by the car. Because Officer McCollister said that he felt he was about to be seriously injured or killed, Officer McCollister fired one shot from his 9mm block service weapon at James. Officer McCollister was able then to extract himself from the car. About that time he felt some pressure on his foot. The car continued moving forward. Officer McCollister stayed by the car as it continued to pull away from him. Next to him is Officer Reynolds, and behind him about six feet or so is Officer Bean. Both Officer McCollister and Officer Reynolds ran to their cars as that subject car keep moving down Skidmore. Officer Reynolds got in his Patrol car and followed that car down Skidmore. And he uses what we called a Pit TechNet using his car to bump into the left rear quarter panel of the subject car to help bring it to a stop. He was joined by Officer McCollister who boxed the car in from the front on the right front side so it couldn't go forward or backwards. The car was stopped at that time. Officer McCollister approached the drivers' side and extracted Ms James from the car. She was handcuffed on the ground per our Post Shooting Procedures. An announcement of shots fired was made by the Police Officers on the scene over the Police Radio. Officer McCollister requested Emergency Medical Aid for Kendra James. After Emergency Medical Personnel arrived on the scene and attended to Kendra James she transferred to Emanuel Hospital where she was pronounced dead in the Emergency Room. Supervisors were notified and per our

Protocol the Detectives Division were notified and we responded and assumed the control of the scene for the investigation.

#### QUESTIONS ASKED OF DETECTIVE FERRARIS

Was the car engine going the entire time, was it ever turned off? Was it stop and go?

There are varying reports from people both in the car, Civilians in the car and Police Officers on the scene. There are people who told us. These are some of the irregularities in the statements that we received during this investigation from both Civilians and Police view points. Some have said that the car was on and remained on. Some have said the car had started. And I don't know that we'll ever know what occurred other than that the car was put into gear. We do know that it was in park and went into gear.

#### Question Can you explain the efforts to use the Mace and Pepper Spray?

Answer: The canister of Pepper Spray has a flip top safety and the button that activates is inside. So one would have to put their thumb inside or finger inside to spray. In the heat of the moment it's conceivable that one could go like this, and press and nothing occur. It's also conceivable that it's possible that the button was pressed and that it didn't deploy. We took Officer McCollister's canister and tested it and found that it deployed. It actually sprayed, Pepper Spray. So we don't believe that it was defective or not working at that time.

#### QUESTION

Pastor Tate: You indicated that she was moving to the passenger's side. What were the other Officers doing at that time? Looks like Officer McCollister was the main person doing all the... What were the other Officers doing?

Answer: Thanks Reverend for your question. This is all in a very compressed period of time. Just a matter of seconds, in a very confined space. This is a little Chevy Cavalier that a guy my size would have a whole lot of trouble getting into because it's a very small driver's compartment. Officer McCollister who is about my size is engaged at that driver's door with his left leg inside and part of his tarsal inside and Ms James. Let me tell you where the other Officers were. Officer Reynolds with that Taser is right next to him on his right shoulder, over here, trying to get a clear shot with his Taser. He is trying to find, he is trying to acquire his target. So he is waiting to have a good target so he can deploy that Taser. Officer Bean is behind those two officers about six feet or so. Ms James is moving to her right not very far but leaning to her right and over to her side and there is a center console between those two seats. So that's what I meant when she was moving away from that driver's door that driver's opening she was leaning to her right and scooting her rear over toward that center console. *(If Officer Bean is behind the Officers how can he be in front of the car about to be ran over. And hears the gun fire while he is in front of the car).*

#### QUESTION

So was any one pushing the accelerator, is it any way to tell how fast the car was moving when McCollister started falling out?

Answer: During the interviews we received varying reports that it was from a as fast as a run, always down to a slow walk. What we believe is that when the car was put into gear it moved quickly forward. And then the shot was fired somewhere shortly

thereafter, and after Officer McCollister abstracted himself the car continued at a slow pace East on Skidmore, about seventy yards, where it came to rest.

QUESTION

Doesn't Darnell White say that the car wasn't moving when the shot was fired?

Answer: I am not sure of the specifics of his statements about that particular issue I would have to go back and read it in the book.

QUESTION

How did the Officer decide the threat was neutralized what was the thought process of the Officer in firing only one shot?

Answer: I can tell you that after he shot, he told us that he shot to neutralize the threat and after he shot and after he shot he was able to abstract himself. There are a number of conclusions that can be drawn from that but I am not in a position to draw those.

QUESTION

How far away was Officer McCollister when the shot was fired? How far away was the shot? Was it a couple of inches or a half of a foot?

Answer: We believe it was some where in the door frame. The part of his body was in the car in the door frame. And then as he is falling back he is falling out of the door frame. So we believe the shot to be somewhere at the door frame and out somewhere twenty to thirty inch range.

QUESTION

So while all of this is going down while the Officer has the Taser gun to his right he with half of his body in the car he has his weapon already out of holster?

Answer: No, when the car was put in gear Officer McCollister felt the car move then he drew his weapon and ordered Ms James to either stop the car or something to that effect.

QUESTION

So it wasn't moving forward real fast. So was it slightly breaking forward? Moving inching forward? I am assuming that he had enough time to make that decision to not only grab his gun but to give her the command to stop the car? Or.

Answer: We know the car started to move forward when it was put into gear he drew his weapon he pointed it at her and then the car continued to move forward at a faster pace that when he started to fall out of the car and he fired the shot.

QUESTION

**Is he right handed or is he left handed?**

**Answer: I believe he is right handed.**

QUESTION Did the test of Kendra James blood show presence of any narcotics?

Answer: There were some toxicology tests that were done and they did reveal that cocaine was in her system and Physicians estimate that it was within four hours prior to the death.

QUESTION

What training are there for officers are they train to step inside a car when trying to make a stop and take someone into custody?

Answer By Chief Kroeker: When it comes to the issues now which surround the action of the Officer; I think that this will answer your question to Jim. This is where

we are going to wait for that review, the administrative review to examine questions like that. In other words what is our training? What are the procedures? What is conduct of the Police Officer is as weighed against that? And then make the findings that are appropriate.

**MATERIALS STUDIED**  
**&**  
**RELEVANT DEADLY FORCE**  
**ORS**

## Materials Studied

The six hundred some odd pages reviewed included but were not limited to the following:

- Dispatch Time line
- Portland Police Bureau Detective Division Taped Statement Transcript of Radio Dispatch 5/5/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Bean 5/5/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Bean 5/8/03
- Portland Police Bureau Special Report of Officer Bean 5/5/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Mc Collister 5/9/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Mc Collister 5/12/03
- Portland Police Bureau Special Report of Officer of Officer Mc Collister 5/5/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Reynolds 5/5/03
- Portland Police Bureau Detective Division Taped Statement Transcript of Officer Reynolds 5/8/03
- Portland Police Bureau Special Report of Officer of Officer Reynolds 5/15/03
- Portland Police Bureau Detective Division Taped Statement Transcript of witness Darnell White 5/5/03
- Portland Police Bureau Investigation Report of witness Darnell White 5/7/03
- Portland Police Bureau Detective Division Taped Statement Transcript of witness Bician Williams 5/7/03
- Portland Police Bureau Detective Division Taped Statement Transcript of witness Meilani Carruthers 5/7/03
- Portland Police Press Conference by Commander James Ferraris 5/19/03
- Officer Involved Shooting Diagram Legend 5/5/03
- Portland Police Bureau Investigation Report 5/5/03
- Multnomah County Sheriff's Office Information Report of interview between Inmate White, Darnell and Channel 8 reporter and Cameraperson.
- Medical Examiner's Toxicology Lab Report 5/5/03
- Department of Oregon State Police Forensic Laboratory Report 5/15/03



## **OREGON REVISED STATUTES**

161.239 Use of deadly physical force in making an arrest or in preventing an escape.

(1) Notwithstanding the provisions of ORS 161.235, a peace officer may use deadly physical force only when the peace officer reasonably believes that:

(a) The crime committed by the person was a felony or an attempt to commit a felony involving the use or threatened imminent use of physical force against a person;

or

(b) The crime committed by the person was kidnapping, arson, escape in the first degree, burglary in the first degree or any attempt to commit such a crime; or

© Regardless of the particular offense which is the subject of the arrest or attempted escape, the use of deadly physical force is necessary to defend the peace officer or another person from the use or threatened imminent use of deadly physical force;

or

(d) The crime committed by the person was a felony or an attempt to commit a felony and under the totality of the circumstances existing at the time and place, the use of such force is necessary; or

(e) The officer's life or personal safety is endangered in the particular circumstances involved.

(2) Nothing in subsection (1) of this section constitutes justification for reckless or criminally negligent conduct by a peace officer amounting to an offense against or with respect to innocent persons whom the peace officer is not seeking to arrest or retain in custody. [1971 c.743 §28]

I a. 161.245 "Reasonable belief" described; status of unlawful arrest. (1) For the purposes of ORS 161.235 and 161.239, a reasonable belief that a person has committed an offense means a reasonable belief in facts or II a. circumstances which if true would in law constitute an offense. If the believed facts or circumstances would not in law constitute an offense, an erroneous though not unreasonable belief that the law is otherwise does not render justifiable the use of force to make an arrest or to prevent an escape from custody.

(2) A peace officer who is making an arrest is justified in using the physical force prescribed in ORS 161.235 and 161.239 unless the arrest is unlawful and is known by the officer to be unlawful. [1971 c.743 §29]