

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR THE COUNTY OF MULTNOMAH

NEIL RUFFIN,

Plaintiff,

vs.

Case No. 1004-05183

KYLE NICE and CITY OF PORTLAND, a municipal
corporation,

Defendants.

VIDEOTAPED DEPOSITION OF ROSANNE SIZER

Taken on behalf of the Plaintiff

February 9, 2011

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1 BE IT REMEMBERED THAT, the videotaped
 2 deposition of ROSANNE SIZER was reported by Marcel
 3 N. Johnson, Certified Shorthand Reporter and
 4 Registered Professional Reporter, on February 9,
 5 2011, commencing at the hour of 10:47 a.m., the
 6 proceedings being reported in the law offices of
 7 Hoffman Hart & Wagner, 1000 Southwest Broadway,
 8 Suite 2000, Portland, Oregon.
 9 * * *

10 APPEARANCES

11

12 KAFOURY & McDOUGAL
 13 By Gregory Kafoury
 14 320 Southwest Stark, Suite 202
 15 Portland, Oregon 97204
 16 503-224-2647
 17 Counsel for Plaintiff

18

19 HOFFMAN HART & WAGNER, LLP
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 21 1000 Southwest Broadway, Suite 2000
 22 Portland, Oregon 97205
 23 503-222-4499
 24 Counsel for City of Portland
 25

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1 PRANGE LAW GROUP, LLC
 2 By David E. Prange
 3 111 Southwest Fifth Avenue, Suite 2120
 4 Portland, Oregon 97204
 5 503-595-8199
 6 Counsel for Sergeant Kyle Nice

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8 Also Present:
 9 Mick Irwin, Videographer
 10 John W. Buehler
 11 * * *

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 4
 5 * * *
 6 EXHIBIT INDEX
 7 Number Item Page
 8 (No exhibits were marked.)
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1 THE VIDEOGRAPHER: The time is 9:47 (sic).
 2 We are now on the record.
 3 ROSANNE SIZER,
 4 having been first duly sworn, was examined and
 5 testified as follows:
 6 EXAMINATION
 7 BY MR. KAFOURY:
 8 Q. What's your full name?
 9 A. Rosanne Sizer.
 10 Q. You are retired?
 11 A. Yes, I am.
 12 Q. And give me the 30-second version of your -- of
 13 your police career.
 14 A. I was hired in 1985 and over the course of 25
 15 years in the Police Bureau, eventually ascended
 16 to the rank of chief of police and retired in
 17 that position in July of last year.
 18 Q. How many years were you chief?
 19 A. Four.
 20 Q. What was your role in disciplinary decisions
 21 when you were chief?
 22 A. Well, the city charter gives the police chief
 23 authority to mete out discipline of written
 24 reprimand. Ultimately, by charter, the
 25 commissioner in charge is the disciplinarian

1 **finding. And a finding basically is whether or**
2 **not the officer -- the case proved by a**
3 **preponderance of the evidence that the officer**
4 **violated a policy or a procedure.**

5 Q. Okay. And then that commander's recommendation
6 goes where?

7 **A. It goes back to the chief's office and back to**
8 **the Internal Affairs Division. An assistant**
9 **chief or the commander of the Internal Affairs**
10 **Division has the ability to controvert the**
11 **finding of the commander's.**

12 **If there's a sustained finding, it goes to**
13 **the review committee. Or controversies by an**
14 **assistant chief or the IAD commander can**
15 **also -- will also go to the review committee.**

16 **And then that committee looks at the**
17 **facts, reviews the investigations, come**
18 **together and make a decision actually about**
19 **whether or not they think the allegations**
20 **should have been sustained and if so, their**
21 **recommendation about the level of discipline.**

22 **That information then comes to the chief**
23 **of police, and I explained the rest of the**
24 **process.**

25 Q. Okay. If -- if, for instance, a civil lawsuit

1 Q. You can answer.

2 MR. KUHN: You can answer.

3 **A. I don't even think I understand the question**
4 **because it's so hypothetical that --**

5 BY MR. KAFOURY:

6 Q. I understand. What -- what -- what you said
7 was that one could violate police procedures --

8 **A. Right.**

9 Q. -- without having been found -- without being
10 liable for battery or unlawful use of force by
11 a jury. But I -- I want to flip that and ask
12 the other way around.

13 Can one -- can one be liable or make the
14 city liable because of their conduct for
15 battery or unlawful use of force without the
16 same findings for the same conduct violating
17 police procedures?

18 **A. Police policy is more restrictive than state**
19 **law.**

20 Q. Okay. In your time with the police department,
21 did you ever come to believe that the unlawful
22 use of force by Portland police officers
23 against civilians was a problem?

24 **A. I think their -- use of force is a huge issue**
25 **in police work everywhere. And I felt that to**

1 is filed and a jury should find that an officer
2 used unlawful force, would that finding by the
3 jury have any necessary impact on discipline?

4 **A. It doesn't. And in most case, it can't,**
5 **because usually the civil court process is**
6 **slower even than our discipline process. So --**

7 Q. What do you mean lower?

8 **A. Slower.**

9 Q. Slower. I'm sorry.

10 **A. It's slower. And so, many cases take a long**
11 **time to make their way through the civil**
12 **process, and so we proceed with an internal**
13 **process.**

14 **The proofs in criminal -- or civil court**
15 **and in these administrative procedures are**
16 **different. The law is different. And so you**
17 **can violate our policies without violating**
18 **state law. They're just different systems.**

19 Q. Can an officer violate the civil law on
20 battery, for instance, or unlawful use of
21 force, without violating the departmental
22 regulations?

23 MR. PRANGE: Object to the form of the
24 question. Lacks foundation.

25 BY MR. KAFOURY:

1 **the degree that we could, we needed to train**
2 **and supervise and think of using the least**
3 **amount of force necessarily -- necessary to**
4 **reasonably effect a positive outcome.**

5 **And -- and so I believe that that requires**
6 **strong oversight and a lot of thought and**
7 **continuous management and supervision, because**
8 **of the authority that society gives to police**
9 **officers, the tools that it gives to police**
10 **officers, and how important it is that we use**
11 **those tools and that authority responsibly in**
12 **very quickly evolving, often chaotic**
13 **circumstances. It's just an issue that I think**
14 **police managers need to attend to all of the**
15 **time.**

16 Q. Are you aware of any occasions during your time
17 as chief where a Portland police officer lost
18 their job because of the excessive use of force
19 against a civilian?

20 **A. I don't recall terminating for excessive force**
21 **during my tenure.**

22 Q. And how many years did you serve on the
23 Portland police force in one capacity or
24 another?

25 **A. 25.**

1 Q. Are you aware during those 25 years of any
 2 occasions in which a Portland police officer
 3 lost their job because of their unlawful use of
 4 force against a civilian?
 5 **A. I am aware of a couple occasions where there**
 6 **was a termination for use of force, but I think**
 7 **they were all overturned through the labor**
 8 **process, resulting in an arbitration and an**
 9 **arbiter's finding that the termination was not**
 10 **supported by the evidence in the case.**
 11 Q. In the last 60 years, are you aware of any
 12 occasion in which a Portland police officer
 13 lost their job because of their excessive use
 14 of force against a civilian?
 15 **A. I am not aware of 60 years of Portland police**
 16 **history. But certainly in my tenure in the**
 17 **Police Bureau, I don't think any of them ever**
 18 **survived -- if they were decisions that they**
 19 **were made, they didn't survive the labor**
 20 **process.**
 21 Q. And the arbitration process, which in at least
 22 those two instances resulted in the
 23 reinstatement of the officer, that is something
 24 which is in the city code as a result of
 25 negotiations between the police union and the

1 **A. I think it was two weeks.**
 2 Q. Okay. Any other occasions that you recall?
 3 **A. I'm sure there were, but not right offhand.**
 4 Q. In your time as police chief, are you aware of
 5 any times when a Portland police officer was
 6 criminally prosecuted for the unlawful use of
 7 force against a civilian?
 8 **A. No. I -- I am not aware that there was one.**
 9 **There wasn't one.**
 10 Q. In your 25 years on the force, are you aware of
 11 any instances where a Portland police officer
 12 was criminally prosecuted for the unlawful use
 13 of force against a civilian?
 14 **A. I am not aware that there was one.**
 15 Q. If -- if an officer has an allegation of
 16 unlawful force and it's a -- it's not
 17 sustained -- well, let me ask you this.
 18 During your time of -- as police chief, on
 19 how many occasions was an unlawful use of force
 20 allegation ultimately sustained against a
 21 police officer?
 22 **A. I can't think, specifically. But I think if**
 23 **you were to talk to the people in the**
 24 **Independent Police Review Division, they could**
 25 **give you more precise numbers than I can do off**

1 city; is that correct?
 2 **A. Well, it's a combination of the contract, but**
 3 **also labor law in the state of Oregon.**
 4 Q. During your time as chief, were there any
 5 Portland police officers who were suspended for
 6 the unlawful use of force against a civilian?
 7 **A. Yes.**
 8 Q. Tell me about those instances.
 9 **A. I don't know that I can recall all of them.**
 10 **But the most public of those involved a**
 11 **shooting case involving Lieutenant Jeff Kaer**
 12 **and ultimately, it resulted in he was**
 13 **terminated, and then he was reinstated with a**
 14 **30-day suspension.**
 15 Q. Okay. Can you recall any other such instances
 16 where a -- where the suspension was actually
 17 carried out?
 18 **A. Yeah. And I'm -- the one that comes most**
 19 **immediately in mind involved an officer who was**
 20 **working Southeast Precinct at the time and he**
 21 **chased down a robber, handcuffed him, and then**
 22 **dropped down and drove his elbow into the -- as**
 23 **I recall -- the gut of the suspect. And he**
 24 **received a suspension as well.**
 25 Q. Do you know how long it was?

1 **the top of my head.**
 2 Q. I understand. Can you think of any?
 3 **A. That there was a sustained finding?**
 4 Q. Yeah.
 5 **A. Yeah. Well, I talked about two preceding this.**
 6 Q. Okay. Any others?
 7 **A. I think there was one involving an East**
 8 **Precinct officer following pursuit, and there**
 9 **was a scuffle to take the suspect into custody,**
 10 **and one of the officers punched the suspect in**
 11 **the face --**
 12 Q. How many --
 13 **A. -- during the course of taking him into**
 14 **custody.**
 15 Q. Was that officer suspended?
 16 **A. I believe he was.**
 17 Q. And how many Portland police officers are
 18 there?
 19 **A. There are roughly 900 now, I think.**
 20 Q. How many of them are routinely interacting with
 21 civilians as opposed to those who have desk
 22 jobs?
 23 **A. You mean patrol officers?**
 24 Q. Patrol officers.
 25 **A. So uniformed patrol officers?**