

My name is Mark Chasse. I am from Portland, and I am testifying in favor of LC 79, with a couple of amendments. I believe that having independence in police oversight is key to police accountability, and it has been resisted by the police—and allowed by lawmakers—for way too long. You could almost say we've gotten to where we are because our lawmakers have ceded so much oversight power to the police. I will detail for you how corrupt the system is that allows police to investigate themselves and draw attention to a few amendments that will help this to be an effective law.

I'd like to start by reciting a very important passage:

“(A)All men, when they form a social compact are equal in right: that all power is inherent in the people, and all free governments are founded on their authority, and instituted for their peace, safety, and happiness; and they have at all times a right to alter, reform, or abolish the government in such manner as they may think proper.—”

This passage is likely familiar to you, as this is Article I, Section 1 of the Oregon Constitution. Reflecting on the meaning of this passage should be the constant reference point when considering changes to police oversight. This bears repeating at this moment in our history: the police's power comes from the people, not the other way around. The question is, what do we expect of our police, not what the police are willing to propose to the citizens as “reform.”

If my name seems at all familiar, it is probably because my brother, James Chasse, Jr. was beaten to death by the Portland Police on September 17, 2006. What happened to Jim was a high profile “in-custody” death, and his name continues to be mentioned in the media to this day. What I want to address here relates to our family's horror at the corrupt and self-dealing manner of local law enforcement in investigating his death.

As some additional background, I am a lawyer. Some of my legal work has been on the side of law enforcement. I was an intern at the City of New York's Corporation Counsel Office (their City Attorney) in law school, working, in part, on tort defense of the police. I also prosecuted cases for the Multnomah County District Attorney's Office and clerked at the United States Attorney's Office. I say this because, not only do I have relevant knowledge beyond what happened to my brother, but most of my experience prior to what happened to my brother was pro-law enforcement. Because I am human, I can also tell you that I hate having to keep mining memories about my brother's death repeatedly, even so many years after it happened. It is painful in so many ways, one of which is to be reminded of how horribly corrupt our police oversight system is. I look forward to a day when police oversight might be sufficient that I no longer feel like I need to keep doing this—and that other police victims' families, likewise, won't feel they need to do the same. This is a continuing injustice that lack of police oversight inflicts on victims' families.

The conflict of interest and corruption of the local police started immediately after the officers beat Jim. At the scene in Northwest Portland, within minutes, there were approximately a dozen other police officers securing the perimeter and talking to witnesses. While Jim was still unconscious, one of the officers who beat him picked up a sandwich bag with bread crumbs and announced loudly for the entire crowd of citizens that he'd just found crack cocaine. That officer had had special training in identifying narcotics; you'd think he could tell crack from bread crumbs. Interestingly, that bag of bread crumbs could not later be found in the Portland Police Evidence Room. Another officer who appeared on scene told witnesses to the beating that my brother had had 14 crack cocaine convictions. Not only did none

of these officers even know who my brother was, but this was a complete lie. My brother had a clean record. The senior officer involved in the beating indicated to the paramedics that Jim had gone unconscious because of drugs, and he said nothing about what had actually happened—that they'd tackled, beaten, and tased him. As a result of these self-serving lies, Jim did not get the emergency medical care he badly needed and died while being transported by police car. **The takeaway here that should frighten and guide you here is how quickly and seamlessly several police officers fell into extemporaneous roles that could only have been intended to corrupt witnesses and undermine the investigation of police misconduct. A culture that can produce this does not deserve the overwhelming benefit of the doubt they receive by investigating themselves. Furthermore, the entire encounter started because one of the officers thought my brother looked "strange." Who isn't a potential victim of the police, and who couldn't similarly be denied justice in the police's self-serving system of policing themselves?**

While the officers were attempting to book my brother at the jail for, essentially, trying to breathe while they were beating him, they were caught on videotape bragging about how hard they had tackled him. One of them demonstrated the move, with a big smile, and replicated the sound of my brother hitting the pavement under them. Soon after they tried booking Jim, the staff nurse required them to transport him to a hospital. They stopped their car and talked to another officer on their way out and left with no sirens or with a speed that indicated any sense of urgency. He died during their leisurely drive to a hospital.

We learned from our own attorneys that, at the location where my brother was actually declared deceased (next to a freeway offramp), 50 local law enforcement personnel surrounded the scene. At his autopsy the next morning, we learned, there were 15 members of local law enforcement—and they still hadn't even bothered to notify us that they'd killed him. Thus, local law enforcement had immediately assigned overwhelming manpower, several times, to investigate themselves before anyone outside of the police force even knew anything about what had happened. (Frankly, the person performing autopsies in police-caused deaths should also be independent of the police, but that is not the bill at issue here—see, e.g., "Want Police Reform? We Need Independent Medical Examiners and Coroners," Justin Feldman, *Washington Post*, June 2, 2020). Considering the perennial complaints about lack of police funding, why was it so important to continue to assign so many officers for this police-caused death? Obviously, my dead brother was not a threat to the public, so what justified taking so many away from things that should be more important to the *public*? Why was it so important for them to maintain exclusive access to the investigation and to start framing their narrative?

This brings me to the first part of what I think you should amend and clarify. What does it mean when the bill states that the Attorney General's Office must be contacted "immediately?" As you should be able to see from what I've just described above, a substantial amount of "investigating" can happen before the police even bother to notify **the family** that they've killed their loved one. I would propose that you define "immediately" as something closer to being contemporaneous with the time that anyone in the local jurisdiction's office is notified that there has been a potentially police-caused death (or other injury you might define, see below). There is no reason why this early contact point is not possible and, even by that point, it is still possible for local officials to start steering the investigation. The Attorney General's Office, also, needs to respond faster than the bill seems to indicate, if the goal is to maintain the integrity of the investigation.

As a further matter, there should be a penalty for failing to comply with this law immediately, as it is defined. Otherwise, it would seem that—considering the extremely high value local law enforcement clearly places on maintaining the investigation inside the bureau—it will be easy for some to weigh the cost of not complying with this law in good faith as a risk that is worth taking.

An investigation can become substantially more corrupted if it is allowed to proceed for even a day after the death. Let me give you a few examples of things I recall readily that happened within a couple of days of my brother's death.

-The next day (the day of my brother's autopsy), one of the civilian witnesses saw one of the officers on the scene of the beating with a man dressed in a suit, whom the witness took to be a lawyer. While that officer and his police cohort had bragged on videotape the day before about how hard they had tackled my brother to the pavement, he seemed to have learned prior to the grand jury and other investigations that this violation of policy was not something to admit. He later claimed he inexplicably fell "next to" my brother, instead of landing on him. It is not hard to surmise what was happening the day after my brother died.

-Investigators for the Police Bureau asked focused, leading questions of civilian witnesses that were clearly designed to elicit exculpatory testimony for the officers' conduct. I could point to numerous examples, if that would help someone at some point. I know how to ask questions, and this was clearly what they were doing. This tactic, in fact, did not go unnoticed by the civilian witnesses themselves.

-Simultaneous with notifying us that they'd killed Jim, the City and the Police Bureau were already misdirecting the public and engaging in a campaign to marginalize my brother—through the media--about the events prior to my brother's death and what the causes were. For example, the notion he was "violent" during their beating. He weighed 145 lbs. The three officers, together, weighed somewhere around 800 lbs. The many civilian witnesses, we later learned, were shocked at the amount of force and were shocked about how nonchalant the officers were about the fact Jim had lost consciousness. The injuries he sustained from their beating, we later learned, were equivalent to those one would suffer when someone by falling from a skyscraper onto their chest.

The grand jury was a completely different level of degradation. As someone who's prosecuted cases, it is a well-known idiom that any prosecutor could "indict a ham sandwich" *if they tried*. In a grand jury, the prosecutor alone presents the case; there is no other side to counter the indictment. *However*, it's also a well-known fact among prosecutors that police are your star witnesses; they are playing a different role on your same team. The idea is that having a police officer on the witness stand is like turning on a tape recorder: a prosecutor can often just turn the officers' "switch" to "talk," and the officer makes the case for the prosecutor. This is why, although it might seem like a large improvement to release grand jury transcripts (which happened in Portland only after my brother's case), but it's really not. What the transcripts don't tell you is what the prosecutor did not try to present. If the case consists mainly of lawyer-coached officers reciting narratives that will exculpate them, the prosecution team would have a very good idea that there will be "no true bill" of an indictment issued by the grand jury.

I can give some examples from my brother's case. The level of the officers' criminality increased as they attempted to misdirect and cover-up their actions. This was not just about whether use of force was justified. This is a different type of criminal homicide, indicating a different level of intent. However, from all of the grand jury witnesses we heard from, the only inquiry apparently being pursued had to do

with the original use of any force—like it was a shooting death inquiry. And even at that, we know the officers lied about the force they used. Civilian grand jury witnesses were “gobsmacked” at how poorly the inquiry was handled; it seemed clear that the mission of the prosecutor was to defend the police, not to seek an indictment. And the prosecution succeeded in not getting an indictment.

What might be even more revealing involved the jailhouse tape, where the officers were caught bragging on video about tackling my brother and taking him hard to the pavement. This evidence came out soon after the original grand jury findings were released. This should have been a material fact related to their sworn grand jury testimony. Not only did this use of force—which violated the Bureau’s policy—arguably cause Jim’s death, but lying about this material to the inquiry could constitute perjury. Unbelievably, the local DA’s Office refused our request to reopen the investigation.

In short, there is an inherent conflict of interest in allowing local law enforcement investigate themselves, including their prosecution arm at the District Attorney’s Office. They are essentially co-workers. Also, the DA can steer grand juries in ways that are not necessarily apparent to the public and not necessarily advancing the public’s real interest in the police investigation.

This brings me to another amendment I think you should consider. The bill states that the Attorney General shall have the power to: “Prosecute any violation of law related to the use of physical force, in which the circuit court has jurisdiction; and(b) Have all the powers of a district attorney when acting under this subsection.” Read in whole, it is possible to conclude that the special investigator can prosecute only matters related directly to the use of force; it’s not clear how “jurisdiction” would allow the special investigator to prosecute such things as officers lying to investigators. By its absence, one could argue that the right to prosecute other items related to the investigation—regardless of whatever “jurisdiction” in this bill gives the investigator—would return to the local prosecutor. As you can tell from my brother’s case, I would say that this mistake could undermine the credibility and integrity of the fact-finding of the investigation. The prosecutorial power needs to be clearly stated that is broader than just “related to use of force.”

My final proposed change is that you should consider establishing some “bright line” about what police-caused injury needs to be sent to the Attorney General. I can see some officials resisting this proposal, as it is drafted, because they would claim that potentially unlimited police encounters could be subject to this rule. It seems to me that the biggest concern is when the victims themselves will clearly not be able to testify as to the facts related to the police encounter. This would seem to be most at issue when they lose consciousness as a result of police activity. **If this becomes a sticking point for this bill, please do not let it fail because of it. It absolutely should relate to all police death cases.**

I can add one other personal point about how important the police see maintaining their ability to police themselves. While my family was unable to get Portland or its police to agree to any reforms we sought in our civil case, we felt that the most important thing to improve the police was to get someone with power outside of the Bureau to have real oversight of them. We raised this point a number of times and in many ways. Inexplicably, the City of Portland reached an agreement with the U.S. Department of Justice to “reform” the Portland Police, while using my brother’s case as part of their reasoning, with absolutely no independent oversight. This was a “reform” plan presented as acceptable by the police. Why is it so important to continue to ensure that there is never any real independent oversight? Why do they get to tell us how they are overseen? Why do the police always get to tell us what “reform” means?

Under the current system, the only police “accountability” comes in the form of damages in a civil lawsuit, and you leave it to the victims’ families to do this work. This causes the family to relive the horrors of what happened to their loved one—over and over and over again—for years. My family tried for years to get the police to adopt several proposed changes. We were stonewalled repeatedly. The fact that there is no justice from this process compounds the cruelty this system places on the victims’ families. You have left the victims’ families to do the work that should be the government’s work: it is your sworn duty to help provide for the citizens’ safety. It is an injustice and an abrogation of duty to the extreme to allow a system where so many law-abiding citizens fear the police more than anyone the police are supposed to be providing safety from.

By definition under our Constitution, if an office of government refuses to account to the will of the people, it loses its legitimacy. We are at that point with the police. Police have the awesome monopoly power of using deadly force against its citizens; giving them this power with no real oversight is outrageous. For far too long, police have been accountable only to themselves, which is a significant reason why we are at this point. This bill is a step in the direction of restoring legitimacy and integrity to the police and ensuring that victims’ families may have some real justice in police matters.