

Testimony on Qualified Immunity and other issues from PNWFC for 9/3/2020 session

Pacific Northwest Family Circle (PNWFC) is group of Families whose Loved Ones were killed by police and who work together to educate the public and change laws and policies. PNWFC is a politically diverse multi-racial group of Families that struggle for justice together by consensus. Three things that Families agree should be priorities for the Oregon Legislature:

1. Discipline Police for Misconduct
2. Extend the Statute of Limitations for Bringing Lawsuits Against Police
3. Change Internal Police Procedures

While not all of these legislative priorities are up for discussion now, we wish to make these priorities a matter of public record, so that they may be worked on in the future. The legislative concepts that have gone through committee (LC-17, 18, 19, and 20) are all transparency bills that will not reduce the likelihood that police will kill Loved Ones. PNWFC Family Members feel that the proposed legislative concepts should not be the first priority of the legislature. Instead, finding a way to discipline police officers -- *without being found unconstitutional because of federal laws on qualified immunity* -- should be the very first priority of the Oregon legislature. Without this, Loved Ones will continue to be killed by police, simply because they have the discretion to do so.

DISCIPLINE POLICE FOR MISCONDUCT

1. There must be consequences for police when they kill a Loved One. Over 380 Loved Ones have been killed by police in Oregon. Not one officer has been disciplined or if they have, the discipline hasn't "stuck" (i.e. they were paid back for time off without pay). Many officers are given medals for their bravery after killing a Loved One, as was awarded to officers who shot 22 year-old Loved One Bodhi Phelps as he ran away. Right now, there aren't even consequences when police violate their department's policies. Although we're a statewide organization, we offer two examples from the City of Portland, because they hire consultants to review excessive use of force cases and make those reports public on their website.

On Feb 9, 2017, officers who'd cornered 17 year-old Quanice Hayes were found to violate PPB policies, which led to his death. Their supervisor, Officer Andrew Hearst, was acting in the capacity of an unsupervised police officer. This led to four officers yelling conflicting commands at Quanice, making his ability to comply impossible.

Three months later, almost to the day, Officer Ajir responded to a disturbance at a Trimet MAX station in SE Portland. He ran after 24 year-old Terrell Johnson. With no way to look

through the sight of his gun as he was falling down, Officer Ajir pulled the trigger. The OIR Group found that Officer Ajir violated the PPB foot chase policy.

Officers were never disciplined for killing these Loved Ones. And, when the OIR Group published their findings — two years later — officers weren't disciplined for violating Police Bureau policy, either. This is a trend that weaves through many of the PNWFC Family Members' experiences with police.

PNWFC Family Members would really like to abolish the qualified immunity that stems from the federal decision of *Tennessee v. Garner*. We know that states have no authority to regulate the federal government and [the Supreme Court recently refused to re-examine this](#). We also know that some states, like Colorado are attempting to do this anyway. We believe these attempts will be struck down as unconstitutional. Hung up in long court battles, police will continue to kill Loved Ones with their so-called "qualified" immunity for years to come.

Nonetheless, Oregon should join states like Colorado and Washington DC in their intent by regulating state departments that can standardize discipline measures. **The legislature should pass a law that compels the Department of Public Safety Standards & Training (DPSST) to develop a statewide discipline matrix — created with a broad group of empowered people most harmed by policing— that all police departments across the state will be required to use and follow. The disciplinary action should be permanently connected to their records and public, following them from one police department to another as long as they hold a Peace Officer's License.** (Currently, records are expunged every 2 years by policing bureaus.)

The statewide discipline matrix would include disciplinary measures, to be agreed upon by empowered stakeholders — up to and including firing and revoking the Peace Officer's License, which the DPSST issues. We seek to reduce senseless violence, trauma, and death caused by police in Oregon. A minimum standard for discipline is one way to improve the statewide law enforcement culture. Officers must know that split-second decisions have effects that will last lifetimes. A statewide discipline matrix is one piece of making sure they know the community's minimum expectations for them.

Here are some examples of what Family Members might be interested in. Many PNWFC Family Members support unpaid leave while officers wait to be investigated. The [National Feet to Fire Campaign](#) — created by P.O.S.T. Protect Our Stolen Treasures out of Detroit MI, of which PNWFC is the Oregon chapter— calls for revoking the Peace Officer's License for:

- Repeated offenses of excessive force.
- Repeated use of deadly force as a first defense.
- Questionable behaviors, mental or physical, resulting in disciplinary action.
- Forced retirement or resignation under questionable circumstance involving drugs, sex, or use of a weapon, which includes gun, taser, baton, pepper spray, etc.

"Weapon" in this case is broadly defined since there are cases of people being killed by police as a result of all these policing approaches.

- Proven racial discrimination against others resulting in an abuse under The Color of Authority. Christopher Kalonji was racially profiled and beaten by Portland police, leading to a mental health crisis that led Clackamas sheriffs to kill him months later.

Officer Andrew Polas shot and killed PNWFC Loved One Keaton Otis on May 12, 2010. Six years later he shot and killed PNWFC John Elifritz. We will never know if PNWFC Loved One John Elifritz, killed by Officer Andrew Polas on Apr 7, 2018, would still be with us today if this officer had received discipline when he shot and killed PNWFC Loved One Keaton Otis on May 12, 2010. As a result of no discipline occurring, Officer Andrew Polase continued this trend of unchecked violence and stole two PNWFC Loved Ones, only 8 years apart.

EXTEND THE STATUTE OF LIMITATIONS FOR BRINGING LAWSUITS AGAINST POLICE

2. Extend the statute of limitations for bringing civil and criminal suits against police departments to at least 30 years. Currently, the statute of limitations for bringing civil and criminal cases is from 2-3 years. Three years is barely enough time to recover from police killing a Loved One for many reasons.

Families who struggle for justice for their Loved Ones suffer regular harassment from officers. PNWFC Family Members are regularly tailed by police and come home to find officers in marked cars outside their homes. One Family Member was literally stalked by the officers who killed her son, 21 year-old Brad Lee Morgan. They came to the McDonald's where she worked regularly for 7 years, addressing her by her first name and taunting her, forcing her to serve them. When another PNWFC Family Member went to address this with the police chief, they processed the paperwork. They even issued paperwork to those officers and the Family Member that these officers couldn't go to that McDonald's anymore. But they never stopped going there. And, they were never disciplined. This PNWFC Family Member was forced to quit her job, injecting another layer of chaos into her mourning process.

On the day when their 19 year-old son Christopher Kalonji was killed by police in his underwear during a mental health crisis in his bedroom, the Kalonjis thought it couldn't get any worse. But it did. As a result of the tear gas that the SWAT team released in the apartment where they lived, Irene and her husband were evicted and became houseless. They were lucky that a friend took them in for the next two years.

In the midst of this chaos, Irene called dozens of lawyers. None would take her case. By the time they got settled in a home of their own, the statute of limitations for bringing a criminal case had run out. Irene continued to contact dozens more lawyers. Still, none would take her case, because the Family owned a gun, even though Christopher was in his underwear when police arrived to prove that he didn't have the gun on him. Regardless of

how anyone may feel about the 2nd amendment, the law says that owning a gun is a 2nd Amendment right, not a crime. The third year passed and they were never able to get justice for their son and his death certificate, distressingly still says "Suicide" even though the District Attorney ruled his death a "justified" homicide.

You may think 30 years is a long time, but with police suppressing evidence and cities that won't hire independent review consultants as Portland does, it can take decades to learn the whole story. A new Family Member recently joined PNWFC. Her Brother, Brian Guy Dixon was 16 years old in 1984 when he was killed by Salem police officer Clement Spenner for stealing a golf cart. He was killed 36 years ago, and she is still discovering new details about the day he was killed.

In short, the mental anguish and ongoing harm from policing that Family Members experience is almost beyond belief. They need more time to access the justice system to bring justice against the police who killed their Loved Ones.

CHANGE INTERNAL POLICE PROCEDURES

The following suggestions are reasonable things that we believe should happen in every police department in Oregon:

1. Require drug testing after police officers use excessive force harming or killing a Loved One and in screening officers for hire and on a regular basis. Officers who take illegal drugs at work are not keeping the public safe. If they are found to be under the influence of any drugs they are not, by policy, allowed to take, then they should be accordingly punished. The outcome of all drug tests for officers should be publicly accessible on a website and in print for free if requested.
2. Place on desk duty for 6 months any officer that is involved with the death of a Loved One. Taking a life has a serious mental and emotional impact and officers, whether they want to admit it or not, need time to heal. In addition, the officer(s) who killed the Loved One should be required to attend a minimum of 18 hours of counseling over a 3 month period (equivalent to 1.5 hours of weekly counseling for at least 3 months).
3. Attend Statewide Impact Statements from Families of Loved Ones killed by police, people who witness a police killing, or supporters chosen by Families of Loved Ones. These are common practice already to reduce drunk driving. Someone who has killed a community member while driving under the influence (DUI) must listen to families impacted by DUI. We believe police officers hearing about the impact from Families can change police culture and reduce the number of people police kill in Oregon every year.

4. For every Family whose Loved One is killed by police, Families should be notified immediately by either community members that experienced this loss themselves, or a therapist with a high degree of training in crisis counseling.
5. For every Family whose Loved One is killed by police, resources for grief counseling, housing stabilization (houselessness is common right after Loved Ones are killed by police in Oregon), lawyers, and support groups should be made available to the Families.
6. For every Family whose Loved One is killed by police, assign a liaison to help them navigate the justice system and interact with policing systems.

PNWFC Families have had a wide array of experiences with law enforcement policies from around the state. Laws must do everything possible to ensure that Oregon law enforcement officers stop killing Loved Ones. Many countries' police go years without killing community members. In the tragic and almost universally avoidable scenario that a Family's Loved One is taken from them, these practices would go a long way towards making sure the state meaningfully recognizes the significance of the tragedy, puts Families in a position to begin healing, and navigate their painful journey forward.

In closing, the power of PNWFC is that one or two people telling these stories can be easily discounted. But these experiences are consistent across many places in Oregon. PNWFC Family Members have critical lived experience that should be shared with the legislature.

We believe passing these three laws is a good start.

This testimony is offered In Loving Memory of PNWFC Loved Ones:

19 year-old Christopher Kalonji
22 year-old Bodhi Phelps
25 year-old Chance Thompson
17 year-old Quanice Hayes
24 year-old Terrell Johnson
27 year-old Chase Hammer
21 year-old Brad Lee Morgan
27 year-old Daniel Isaac Covarrubias
29 year-old Alex Dold
49 year-old Captain Brian A. Babb
(alive) Andre Thompson
(alive) Bryson Chaplin
44 year-old Deano Case
54 year-old Remi Sabbe
48 year-old John Elifritz
43 year-old Jesse Powell
27 year-old Patrick Kimmons

35 year-old Matthew Burroughs
36 year-old Andre Gladen
20 year-old Giovann Joseph-McDade
29 year-old Joel Nelson
31 year-old Titi Gulley
16 year-old Brian Guy Dixon
Wesley Allen Barbee
40 year-old Elibrio "Eli" Rodrigues
24 year-old Keaton Otis
(alive) Melvin Lewis Dillon

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