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CITY OF KEIZER MISSION STATEMENT
**KEEP CITY GOVERNMENT COSTS AND SERVICES TO A MINIMUM BY
PROVIDING CITY SERVICES TO THE COMMUNITY IN A
COORDINATED, EFFICIENT AND LEAST COST FASHION**

AGENDA

KEIZER CITY COUNCIL
SPECIAL SESSION

**Monday, June 30, 1997
1:00 p.m.**

**Robert L. Simon Council Chambers
Keizer, Oregon 97303**

1. CALL TO ORDER

2. ROLL CALL

3. ADMINISTRATIVE ACTION

- a. Recommendation of Interim Co-City Managers on Employment Status of Charles R. Stull, Chief of Police

4. EXECUTIVE SESSION

- a. Pursuant to ORS 192.660(1)(h) - Potential Litigation

5. OTHER BUSINESS

This time is provided to allow the City Council or Staff an opportunity to bring matters before the Council which are not on the agenda.

6. ADJOURN

Public Hearing: Any person wishing to present comments or testimony to the City Council or Staff must do so at least five (5) working days (48 hours) in advance of the meeting. The public hearing will be held at the City Council Chambers, 1000 N. Main Street, Keizer, Oregon 97303. The public hearing will be held at 1:00 p.m. on Monday, June 30, 1997. The public hearing will be held at the City Council Chambers, 1000 N. Main Street, Keizer, Oregon 97303. The public hearing will be held at 1:00 p.m. on Monday, June 30, 1997.

CITY COUNCIL MEETING: June 30, 1997

AGENDA ITEM NUMBER:

TO: MAYOR AND CITY COUNCIL

FROM: WALLY MULL, CO-CITY MANGER
JOHN N. MORGAN, CO-CITY MANAGER

SUBJECT: APPROVAL OF TERMINATION RECOMMENDATION

SUMMARY:

This report details the Co-City Manager Pro Tems' decision to terminate Charles Stull as Chief of Police. It finds that it is appropriate to terminate the employment contract due to significant differences in management philosophy and practice. It presents evidence that the termination may be for cause due to violations of the City's various policies and standards.

The report is to provide this background information to the City Council, with the recommendation that the Council affirm the interim Co-Managers' decision as required by the City Charter.

The report contains several sections as follows:

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* BACKGROUND:

The Co-City Managers have been aware since early this year that there are allegations of mismanagement and other problems within the Keizer Police Department. These problems were highlighted in a letter from the Keizer Police Association's attorney on April 14, 1997. That letter alleged that Police Chief Charles Stull engaged in harassment, intimidation, unfair labor practices, policy and procedure violations, and other wrong doings. After interviewing members of the police department, including represented and non-represented employees, it was determined that an investigation into the allegations needed to be made. It was further determined that the investigation could only effectively take place if Mr. Stull was absent from the work place. Therefore, he was assigned to limited duty at home. On April 28th, Robert Parks was hired to carry out the investigation.

Mr. Parks interviewed all employees of the Police Department, as well as others with connections to the organization. These included both former employees and individuals with current dealings with the Department. The report was delivered to City Hall on June 10th. The report presented a summary of the interviews and findings, as well as a large body of supporting documentation. The City Managers and City Attorneys reviewed the document in detail. A copy was given to Mr. Stull on June 13th with direction to prepare a response to the findings to be delivered on Friday, June 27th. Mr. Stull complied and presented a verbal rebuttal at that time.

The Co-Managers and Legal Staff considered the facts presented in the report and Mr. Stull's response and have come to the conclusion that it is appropriate to terminate Mr. Stull's employment with the City for cause.

CONTEXT FOR DISCUSSION:

Mr. Stull entered into an employment agreement with the City on December 6, 1994. Section 2b of that agreement states in part:

Nothing in this Agreement shall...prevent, limit, or otherwise interfere with the right of the City to terminate the services of the Chief of Police at any time, with or without cause...

According to the agreement, he:

"may be terminated immediately in the sole discretion of the City upon the occurrence of...willfully refusing or repeatedly failing to comply to the policy, standards, and regulations of the City...being guilty of fraud, dishonest, misappropriation of funds, and other acts of misconduct...failing or refusing to perform faithfully or diligently any of the duties provided for in this Agreement."

The policies, standards, and regulations of the City are codified in two documents, the City's Personnel Policies adopted April 1, 1993, and the Keizer Police Policy and Procedure Manual adopted in June 1992. Relevant sections are listed below:

The Personnel Policies state in Section 1.6.1:

The City will work to eliminate and prevent harassment and to alleviate any effects harassment may have on the working conditions of an employee. ...The City considers job related harassment as a serious transgression and reason for discipline or discharge.

Section 1.6.2 states:

The policy of the City is that every employee has a right to be free of harassment.

The Department Management Philosophy, Section 3.03.05 of the Keizer Police Policy and Procedure Manual, reads in part:

The Administration intends to provide a work atmosphere free from any form of harassment, or intimidation, where personal development and productivity can be maximized, and where the dignity and value of the individual member is recognized.

The Manual states in Section 3.04.03:

Standards specify an unacceptable level of conduct for all peace officers, regardless of their rank or the nature of their assignment. Any peace officer who violates any agency rule that applies to these canons and standards commits unprofessional conduct, and is subject to disciplinary action. Violation of disciplinary rules requires appropriate adjudication and disciplinary action ranging from oral reprimand to termination and/or criminal prosecution or other administrative action sanctioned by law, as dictated by the individual case.

3.04.03 lists the primary canons of conduct. Under that section, Standard 3.5 reads:

"Peace officers, with due regard for compassion, shall maintain an objective and impartial attitude in official contacts."

Standard 4.10 states:

Peace officers shall not be disrespectful, insolent, mutinous, or insubordinate in attitude or conduct.

Standard 4.11 states:

Peace officers shall be courteous and respectful in their official dealings with the public, fellow officers, superiors and subordinates.

Section 3.04.03 includes Canon Six of the Code of Conduct. Standard 6.2 states:

Peace officers shall perform their duties in such a manner as to discourage double standards.

Standard 6.3 states:

Peace officers shall conduct themselves so as to set exemplary standards of performance for all law enforcement personnel.

Standard 6.7 speaks directly to the Chief's responsibility:

Chief Executive peace officers shall accept the responsibility of utilizing all available resources and the authority of their office to maintain the integrity of their agency and competency of their officers. These Canon and Ethical Standards shall be applied to all legally defined peace officers regardless of rank.

Section 3.05.04 gives the Department's Code of Honor. The first point reads:

I agree to treat other employees, regardless of rank or position, with dignity, courtesy and respect.

Section 5.26.00 of the Police Department Manual states:

The Department seeks to eliminate and prevent harassment as well as alleviate any effects such harassment may have on the working conditions of a member.

Section 5.26.01 states:

The policy of the Department is that every member has a fundamental right to be free of harassment.

FINDINGS:

There were many instances reported we feel fall within these particular policy provisions. These are detailed in the full report. We believe these examples are illustrative:

Harassment in the Work Place

Officers in the Department frequently had to put up with comments like: "you look like shit; your uniform looks like shit; your pants look like shit; your shirt looks like shit; your shoes look like shit; your wife's homecooked meals smell like shit; why do I have fat sergeants and fat motor officers?; where did you get that haircut? It looks like you got it cut in prison; where in the hell did you get that tie and shirt? It looks like a pajama top with a table cloth for a tie?" Ms. Sherwood stated that Chief Stull used profanity so much that it became common around the department. She stated that though it clearly was inappropriate language, it had "become such a way of life that she started to question her own values."

In Mr. Stull's interview with Mr. Parks, he was asked if he had ever publicly told a subordinate that he or she looked like shit, Mr. Stull replied, "Not that I can recall." When Mr. Stull was asked if he had ever publicly told subordinates that they were fat and needed to go on a diet, Mr. Stull states that he had done so to some of the older department members in an effort to motivate them to loose weight.

One incident was found to be particularly offensive to the officer involved, a witness, and to the officer's family. On October 16, 1996, at approximately 9:30 AM, Detective Kuhns encountered Chief Stull in the break room of the department. After a brief discussion about Detective Kuhns supporting an election issue, Chief Stull is reported to have stated, "I'm glad you're getting your balls cut off today Kuhns because you won't be able to breed any more stupidity." This comment was in reference to a vasectomy operation the officer was having that day which was common knowledge within the department.

During Park's interview with Chief Stull, he was asked if he had ever made a comment as described above. Chief Stull stated, "No, I absolutely positively never said anything like that."

The response by Chief Stull is not consistent with the facts developed during the inquiry. The statement made to Detective Kuhns was witnessed by another department member who independently brought the incident to the attention of the inquiry.

Conclusion

Based on a review of these allegations and Mr. Stull's response we have concluded that incidents of these types were common and prevalent throughout the department. Mr. Stull commonly used profanity and other harassing language. We find this to be extremely disrespectful and unprofessional conduct on the part of Mr. Stull and very embarrassing for the officers involved. We find that this is a clear pattern of conduct over time that violates City and Department Policy.

Sexual Harassment

Several female employees reported incidents and behavior they considered to be sexual harassment. For example, several of the female employees mentioned being asked to turn around to have "their uniforms inspected." Several of the female staff stated that they "found this conduct to be uncomfortable and inappropriate behavior" on the part of Chief Stull.

Female officers described this conduct as "beyond a simple uniform inspection." They stated that they have never observed Chief Stull requiring male employees to turn around as he does the females.

As an example, Mr. Park's report relates the following incident:

Officer Tucker stated that "I have only one complaint regarding sexual harassment and that involves no one else but Chief Stull himself. I disclosed to Mr. Parks that in September 1996, I had returned back to work after being suspended for five days without pay for a motor vehicle accident. One morning, Chief Stull came into the patrol room and said "who dressed you this morning, you look like shit." He then requested I stand up and turn around in a full 360-degree turn in front of him. I felt very uncomfortable with this request as no one else was in the patrol room and Chief Stull never stated his reasons for the request. I felt that Chief Stull was looking at my body inappropriately and did not feel that a supervisor should request a female employee to turn around in front of him."

"The gesture upset me so much that I went to the bathroom and cried. As soon as I was able to regain my composure, I approached Sgt. McCowan and started crying again. I told him the Chief was giving me a bad time."

"Later, Sgt. McCowan approached me after talking with the Chief and told me the Chief felt I was an insubordinate employee and had a concern that I had a bad attitude towards the Chief. This upset me greatly because I have always valued my job and gave 100% to my job and co-workers. I felt these statements from the Chief were his way of turning the situation around and intimidating me."

"I took the Chief's comments and conduct as intimidating. I did not feel I could file a complaint against Chief Stull because of his intimidating management style. I had just returned from a suspension and my job had already been threatened."

When asked about this incident, Mr. Stull said that he was concerned about the appearance of members of the department and he has a right to inspect their uniforms. He said he stopped both male and female officers to inspect their uniforms.

We conclude that Mr. Stull's action unjustifiably treated male and female officers differently and exposed the City to potential claims of sexual harassment. We conclude Mr. Stull violated City policy.

Racial Harassment

Several employees reported incidents and behavior they considered being racial harassment. There are the racial issues involving Officer Raymond Byrd, who is black, which were mentioned by several department members. For example, Mr. Byrd stated that Chief Stull "frequently states: 'Ray, you have no rhythm.'" Mr. Byrd stated that he finds these comments "offensive and racial in nature." He stated that the comment is "unprofessional, uncalled for, and completely out of line for a Chief Of Police to address an officer in this manner."

When asked about this behavior, Mr. Stull recalls comments of this nature, but claims they were intended to be humorous and he has been joking with Byrd in this manner for five years.

We conclude that Mr. Stull's behavior exposed the City to potential claims of racial harassment. We further conclude these are a violation of City policy.

Harassment and Intimidation

There are numerous examples in the report of actions and behaviors that show a pattern of using harassment and intimidation to control employees. Two examples from Mr. Park's report highlight the degree of control Mr. Stull used over employees.

Employee Rita Powers purchased a lamp with her own money and brought it to her office to improve the lighting. She stated that the overhead lights were inadequate, and that the new light would help her vision. Chief Stull stated that he didn't like the lamp, ordered an inquiry as to who paid for it, and ordered it removed.

Mr. Stull's response to this incident was that she didn't go through the procedures. He indicated that he is responsible for providing employee's equipment. He said the Department has procedures for obtaining equipment because of liability questions. It is a liability issue to have unauthorized property within the building. He also stated: "First it's a lamp. Then it's a potted plant. Then it's a naked statue."

On July 10, 1996, Sergeant Barker wrote a memorandum to Chief Stull entitled Office Fan. In the memorandum, Sergeant Barker writes, "I am requesting your permission to put a white, 12-inch, table fan in my office for circulation. As the weather gets warmer, my office becomes unbearably hot in the afternoons. Although the air-conditioning system is on, my office does not cool down like the rest of the building."

"I have already purchased the fan and have it in a box in my office for you to view prior to me setting it up. Please let me know if this meets your approval."

Chief Stull's response to what appears to be a rather reasonable request was that "Real Detective Sgts. don't need a fan! Next your detectives will want one! Then they will only want to work when it's cool! Then they will want to take their ties off! This will all lead to chaos and insurrection!" Sergeant Barker was denied his fan.

Mr. Stull's response was that the memo to Sergeant Barker was a joke, yet Sergeant Barker was denied his fan. These incidents point out the extent of control and intimidation used by Mr. Stull to have total control over all activity and action within the Police Department. Employees were not allowed to use common sense or personal responsibility to deal with everyday issues. This shows a lack of "dignity, courtesy, and respect" in violation of Department Policy.

We note that Mr. Stull's office is full of personal property, including a putting green with an electric automatic ball return mechanism. See the discussion of double standards below.

Double Standards

As demonstrated above, there are numerous practices that demonstrate a double standard within the Department, where strict standards are set for officers, but not followed by Mr. Stull in comparable situations. Three additional examples, taken from Mr. Park's report, involving police field activity and standards are cited below.

Police Department Policy Section 13.12.03 (A) that states that "every authorized officer shall qualify annually with their duty firearms." Firearm officers produced records that reflect that Chief Stull has not qualified with his firearm since 1995. They further cited the liability issues associated with the failure to qualify should a shooting incident occur.

Police Department Policy Section 13.09.00 requires that officers shall ensure that their firearms are "maintained in good working order." This issue was particularly

frustrating in that Chief Stull has directed the sergeants to inspect weapons to ensure compliance with this policy.

Several range officers stated that the weapon carried by Chief Stull was "so dirty they were surprised that it worked" and had to clean his weapon for him. The officers produced several documents in support of their statements reflecting inspections of Chief Stull's weapon.

Officers stated that a dirty weapon is a safety issue and would surely be cause for disciplinary action if committed by a subordinate officer. Lt. Bowe was asked about this and confirmed that disciplinary action would in fact be administered for this type of violation.

Officers cited the fact that Chief Stull does not wear a protective vest as prescribed by Police Department Policy Section 6.06.15. The policy states that a "protective vest shall be worn by the sworn member while on duty and in uniform. Plain clothes officers shall wear the vest at times when involved in investigations with possible risk of potential injury."

Chief Stull was asked about this issue during his interview. He stated that there are exceptions to the policy such as social events, meetings, and graduation ceremonies. He stated that the exceptions to the policy were not in the policy manual or in written form.

Chief Stull was asked if he adhered to the policy. He stated that he did with the noted aforementioned exceptions. He further stated that he generally does not wear a vest because he does not place himself in situations that would require its use.

This statement is factually incorrect on at least two documented occasions. Officers documented an armed hostage situation, where Chief Stull arrived in plain clothes and took command of the operation. This was described as an extremely dangerous situation that clearly required a protective vest. Chief Stull remained at the scene of this operation without the benefit of a vest.

The second situation is the motor vehicle pursuit and subsequent arrest of a drunk driver. In this situation, Chief Stull was engaged in an arrest situation of an unknown individual while operating an unmarked police vehicle. Traffic enforcement is statistically one of the most dangerous phases of law enforcement.

These issues were brought to the attention of Lt. Bowe, who stated that either of these violations would be cause for disciplinary action. It does not appear that either of these incidents would fall under the policy exceptions.

In regard to the aforementioned traffic arrest, on February 14, 1997, at approximately 9:25 P.M., Chief Stull became engaged in a vehicle pursuit for a traffic violation while operating an unmarked police car. Chief Stull filed an incident report in which he stated "I continued to pursue the suspect vehicle and during this time I was flashing my high beam headlights off and on in an attempt to stop the suspect vehicle."

Officers point out that this entire incident is in direct violation of Police Department Policy Section 11.06.04, Pursuit by Unmarked Vehicles. The policy states that "members operating unmarked vehicles may engage in pursuit only if the vehicle is equipped with a removable flashing emergency light and siren, and only if the vehicle being pursued is being operated by a serious offender of the law and there is an immediate and direct threat of life as a result of a crime involving serious violence. Pursuits in unmarked vehicles for traffic violations are not permitted."

During the interview of Chief Stull he was questioned about this incident. Chief Stull stated that he acted properly under the circumstances, and certainly would not have disciplined a subordinate for acting in the same manner.

Lt. Bowe and other department members were questioned about this incident. Lt. Bowe and other department members all stated that there were so many violations of Departmental Policy that an Internal Affairs Investigation would certainly have been ordered and disciplinary action taken. Department members cited the response by Chief Stull as another example of his "lack of integrity."

In Mr. Stull's response, he said that the policies and procedures are guidelines and they have to be applied with common sense. With regard to the annual firearm qualification, he said did not know it was a requirement. He stated that he never put himself in a situation where he needed a protective vest.

His point was countered by on-scene officers who cited him as being in dangerous situations without benefit of a vest. In the one example described above, officers on the scene of a hostage taking describe him as being in an extremely dangerous situation which clearly required a protective vest. They were very aware that he was not wearing a vest.

Conclusion

We reach several conclusions from these incidents:

We have determined that officers at the scene of the hostage taking were in an extremely dangerous situation which clearly required all police officers, including the chief, to wear a vest. Mr. Stull purposefully went to the site of the incident knowing the dangerous nature of the incident without wearing a vest when all other officers were required to do so.

Mr. Stull injected himself into a dangerous situation without wearing a protective vest in violation of Section 6.06.15 of the Department policy and procedures manual.

We find that Mr. Stull did appropriately use common sense in trying to stop the weaving driver, even though that involved violation of the City policy. However, to avoid the appearance of a double standard, it may be been advisable for the City Manager or an outside agency investigation of the incident to determine the appropriateness of Mr. Stull's action.

We accept Mr. Stull's argument that common sense needs to come into play in the application of the policies and procedures.

We find that Mr. Stull's requirement for approval for bringing personal property into the Department does not demonstrate common sense and is used only to maintain a high degree of control over employees.

We do not find that the common sense exemption applies in the instances of firearm qualification, firearm cleaning and the wearing of a protective vest because he has intentionally placed himself in situations which may have required him to use his firearm in the line of duty and exposed himself to danger.

We believe Mr. Stull, by following a double standard, does not hold himself to an exemplary standard as required by his employment agreement and sets a very visible bad example for his Department employees. As pointed out by one of the members of the Department: "Chief Stull does not lead by example. He does what he likes and operates with impunity."

We find that Mr. Stull has violated City and Department policy.

Alcohol and Public Presence Violations

Mr. Stull is alleged to have violated City and Department policy by operating a city vehicle after consuming alcoholic beverages and by showing conduct reflecting poorly upon the City while under the influence of alcohol. This potentially violates Department Policies 10.01.00 (b), and 3.04.03 Standard 4.1. and Section 1.7.6 of the City Personnel Policies.

These incidents are described by Mr. Parks:

There is the issue of Chief Stull consuming alcohol and then operating a police vehicle in violation of Police Department Policy Section 10.01.00 (B) This policy states "do not report for work or operate equipment while medication, drugs or alcohol are present in the body without a doctor's written approval."

Incidents of Chief Stull operating a police vehicle after consuming alcohol in violation of this policy, were described by several individuals concerning several different incidents. Chief Stull was described as having consumed beer with other department members at a establishment by the name of Porters located on North River Road. It is alleged by multiple witnesses to have occurred on more than one occasion and each time he was operating his assigned police vehicle.

On May 18, 1996, Chief Stull was observed drinking beer in the Keizer-Fest Tent at the annual Keizer Iris Festival. "Chief Stull and others were visibly intoxicated." Chief Stull was observed "walking to his (Police) vehicle parked near the Keizer-Fest tent behind some cones." Chief Stull then directed the officer to "move the cones for him as he drove his vehicle past." The officer stated that "I complied with the request not wanting to be written up for insubordination. The Chief then got into his vehicle and drove away from the Keizer-Fest area onto River Road."

Chief Stull was asked about these incidents and if they had occurred as described in the interviews. Chief Stull stated "Not that I can recall."

In his rebuttal to the Parks report, he stated he was not driving a city vehicle.

Another example follows:

The July 19, 1996, Dare Golf Tournament was mentioned by several employees. "Chief Stull ... drank it up, and hooped it." "If anyone dared to complain, Chief Stull would threaten them by stating 'there's always opportunities in motel/hotel management'" The employee stated that "these type of comments were inappropriate and meant to be threatening."

Another member stated that the tournament committee wanted "to cater the lunch, but the Chief insisted we cook our own food." One officer claimed that "even though it is my day off, the Chief ordered me to help cook hamburgers."

Officers stated that "during the raffle drawings, the Chief (was) getting obnoxious from drinking too much.

Numerous employees were deeply offended by these actions on the part of Chief Stull ... The officers are ordered to "volunteer" their time on their days off. The conduct of Chief Stull was described as "unprofessional and an embarrassment to the department."

In his rebuttal, Mr. Stull did not deny he had been drinking, but said that "Everyone was drinking."

Conclusions

We find that Mr. Stull did violate City policy by consuming alcohol and then driving a city vehicle. We also find that Mr. Stull has acted in a manner reflecting poorly on the City. We find it to be particularly significant at the DARE golf tournament in that his action occurred at a Police Department sponsored activity. We find that his action at this event brought discredit upon the Department and the City.

Improper Accumulation of Vacation Leave

Section 6.2.5 of the personnel rules state: "employees may accrue vacation leave to a maximum of the amount earned over the preceding twenty-four month period. It shall be the employee's responsibility to arrange vacation in order to reduce the total to the maximum accrual."

It was revealed in Mr. Park's report that there were questions about Mr. Stull's accumulation of vacation time.

The matter of Chief Stull's vacation time accruals was presented by several individuals as another example of questionable conduct. Each time the accrual time sheet is distributed for review, Chief Stull's accounting is blacked out. Officers stated that they suspect that Chief Stull is not following the same policy requirements as others are expected to follow.

A review of this file was conducted and it was determined that Chief Stull has accumulated over 650 hours of vacation time. This number of hours almost doubles the amount allowable by his city contract.

During the interview of Chief Stull this issue was raised. Chief Stull was asked if he was aware of how many vacation hours he had accumulated and if he knew what his allowable limits were by city contract. Chief Stull stated that he did not know the exact number of hours he had on the books, but that he was allowed unlimited accruals.

Chief Stull was asked if he had a document in writing authorizing his unlimited vacation accruals. He stated that he did not. He stated that the authorization had been verbal agreement approved by former City Manager Dotty Tryk. Chief Stull stated that Ms. Tryk would confirm this authorization if contacted.

The statements by Chief Stull were found to be factually incorrect. Ms. Tryk was contacted and interviewed in regard to this issue. Ms. Tryk stated that she was surprised at the number of hours Chief Stull had accumulated. She stated that he

took regular vacations and hunting trips so she had no reason to question his hours. She stated that had she been aware of the excessive hours he had accumulated, she would have insisted on a reduction.

Ms. Tryk stated that the issue of unlimited accruals was never discussed with Chief Stull. Ms. Tryk stated that had the issue been mentioned, she would clearly have denied any such request.

This issue also points out another incident of double standards being applied by Chief Stull. In the interview with Officer Babcock, he cited an incident where circumstances caused his vacation accruals to exceed the allowable limitations. Chief Stull removed this excessive time requiring Officer Babcock to file a grievance to obtain their return.

On April 17th, Mr. Stull wrote in a letter to Wally Mull that he was due 650 hours of vacation.

Mr. Mull subsequently reviewed the vacation accrual and discovered Mr. Stull was showing more on the books that he was due. Mr. Stull was informed in a letter that his vacation accrual was being adjusted to reflect the proper amount.

In his rebuttal to Mr. Park's report on Friday, June 27th, Mr. Stull indicated that Ms. Tryk must have forgotten about their agreement and that he was in negotiations with her to amend his contract to allow unlimited vacation accrual.

He indicated it was not his responsibility to manage his vacation accrual and the Finance Department failed to make the correction. He also says he did not benefit.

Conclusions

Our concern deals with dishonesty. His explanation of his conversations with Ms. Tryk were countered by her testimony. He said she approved the leave, but contradicted himself later by indicated he was trying to get her to approve it. His "blacking-out" of his records when the leave report was circulated through the office shows he was trying to hide something. His actions toward Officer Babcock clearly showed he knew the limitation on vacation leave. He argues he received no benefit, but it was not for lack of trying.

The City expects the highest degree of integrity in its employees, and even holds Department Heads to a higher standard. This is reflected in Mr. Stull's employment contract, as well as the Department's Code of Conduct.

We find that Mr. Stull violated his employment contract by being untruthful and dishonest.

Preferential Treatment

Allegations were raised about giving preferential treatment in the application of Police resources. Department policy 3.04.03 includes Standard 3.5 which reads: "Peace officers, with due regard for compassion, shall maintain an objective and impartial attitude in official contacts." The issue also speaks to integrity, honesty, and double standards.

One incident involves Councilor Al Miller. Mr. Parks reports:

On February 7, 1994, Councilman Miller filed a Criminal Mischief II report regarding vandalism at his residence. The criminal activity involved four juveniles throwing paint balls at houses and vehicles.

This incident is rather unremarkable except for the fact that Chief Stull ordered 10 hours of overtime to investigate a minor misdemeanor crime, involving the home of a City Councilman.

There are two issues involved in this situation. The first issue is the fact that this type of investigative treatment was never previously given any other Keizer Citizen and has not been done so since. This action violates the basic concept of "fair and equal" treatment for all residents of the community.

The second issue is that on numerous occasions Chief Stull has denied officers' overtime claims associated with other much more significant crimes. He has also denied overtime to attend training classes, and for officers to recover a fugitive in a major investigation. To grant 10 hours of overtime for this investigation, was described as at best a questionable management decision.

Mr. Stull rebutted by indicating the overtime was appropriate as "we were hot on the trail of a suspect."

We concur with the Officer's conclusion that this was a "questionable management decision." Ten hours of overtime to investigate a minor misdemeanor crime was excessive. While we cannot prove preferential treatment, it appears that this was out of the ordinary.

In another incident, Councilor Carl Beach was involved. The Parks report relates the incident:

In the fall of 1996, reports started coming into the department concerning Derek Beach. As a result of these reports, Chief Stull directed that officers start keeping "a close eye" on him.

On December 10, 1996, Beach is cited for shoplifting from the Safeway store by Officer Nashif. As a result of this citation, Chief Stull directed that a file be kept on the activities of Beach. Chief Stull then directed officers to "cite or arrest Derek if he ever crosses the line again."

On January 8, 1997, Sergeant Barker encountered Beach and had him cited for a Truancy Violation. Later that same afternoon, Carl Beach and Derek came to the office and met with Sergeant Barker and Lieutenant Bowe. Sergeant Barker explained the circumstances surrounding the citation and Derek acknowledged having been cited for the same issue before.

On January 9, 1997, Chief Stull called Sergeant Barker into his office and asked Barker if he thought it would be better to just issue Beach a warning. Sergeant Barker stated that it would not and that Beach had already been cited for the same violation in the past.

Chief Stull then asked Sergeant Barker if it wouldn't be better to just issue a letter of warning to Beach's mother, warning her that this sort of incident should not happen again in the future. At this point Sergeant Barker reminded Chief Stull that the officers were only following his direct orders to cite or arrest Beach the next time he crossed the line.

Chief Stull then made the comment "what would you do if you were in my shoes." He then directed Sergeant Barker to void the citation and write Beach's mother a warning letter.

Sergeant Barker was directed to tell Beach's mother that if this sort of behavior ever happen again, she would also be cited. Chief Stull reviewed the letter and approved its contents.

On January 10, 1997, the letter was delivered to Mrs. Beach as directed, and the original citation given Derek was voided. A copy of the voided citation has been attached to Sergeant Barker's Report Of Interview for documentation.

On January 11, 1997, Councilman Beach came to the office and met with Chief Stull and Sergeant Barker. It is reported that the Councilman was upset with the way the letter was written. Chief Stull was reported to have been "extremely polite" to Councilman Beach. Chief Stull explained that the police department was "there to help the boy and that the mother needed to take more responsibility for her son."

Chief Stull then told the Councilman that Sergeant Barker would follow-up on this situation and attempt to find other resources to help the family. Sergeant Barker

stated that "by the end of the conversation, I felt like I was the bad guy, and because of what I did, I was going to have to make it up to him."

Sergeant Barker stated that "the Chief came out looking good with Councilman Beach, even though it was the Chief who had directed... officers to 'cite or arrest Derek the next time he crossed the line.'"

There are two issues that need to be addressed in this incident. The first issue is that preferential treatment was given to an individual because of his grandfather's position in the community. That action violates the trust of other community members who expect "fair and equal" treatment from the police department.

The second issue, is Chief Stull's failure to stand up and support his officers. Sergeant Barker was following Chief Stull's orders, but was left to take the heat from a City Councilman. This incident was cited as "typical" of Chief Stull and is said to reflect his "lack of integrity."

Mr. Stull's response was that, technically, Beach wasn't enrolled in any school at the time.

Sgt. Barker believes Councilman Beach received preferential treatment. The Chief came out looking good with Councilman Beach, even though it was the Chief who had directed... officers to "cite or arrest Derek the next time he crossed the line."

We accept Mr. Stull's explanation of the situation, however, because he did not advise Sgt. Barker of his reason for ordering the citation voided, Sgt. Barker and perhaps others, were left with the impression that Derek Beach has received preferential treatment because of his grandfather's position.

Media Relations

The issue of media relations was raised in the investigation. The Police Department Policy and Procedures Manual, Chapter 18, Section 18.01.00 states that "It is the policy of the Department to actively seek and establish a cooperative climate in which the news media may obtain information on matters of public interest in a manner which do not hamper police operations."

Section 18.03.00 Courtesy To The Media states that "Department members will treat bona fide representative of the press and broadcast media in courteous, professional manner."

Section 18.06.01 (C) states that "Relationships between the media and members of the Department shall be maintained in a courteous, professional manner."

Mr. Park's discusses these policies in his report:

It was reported that a conflict between the department and the Keizertimes has been on going for quit some time. One employee reported that she "was continually placed in a position where the newspaper would ask for information, but that Chief Stull ordered her not to cooperate."

It is was reported and later confirmed that the Keizertimes was forced to write a letter of complaint against this employee to obtain information. Unknown to the Keizertimes, was that Chief Stull had ordered her not to cooperate.

The employee stated that she asked Chief Stull "what she was to tell the local media in response to inquiries. In an incident that was witnessed by several individuals, Chief Stull stated "tell the newspaper to Fuck Off."

Mr. Stull indicated in his rebuttal that all media requests were to go through the Public Information Officer, Lt. Bowe. He also indicated the relationship was strained as the newspaper continually tried to go around his PIO. He stated that his comment to tell the newspaper to "fuck off" was not directed to the media so it was not a policy violation.

Conclusion

Despite Mr. Stull's rebuttal, we find that there has been a consistent pattern of failure to "seek and establish a cooperative climate in which the news media may obtain information on matters of public interest in a manner which does not hamper police operations." There has also been a failure to treat bona fide representative of the press and broadcast media in courteous, professional manner.

The comments from Mr. Park's report, we find, are indicative of a failure by Mr. Stull to establish a positive working relationship with the media.

Unfair Labor Practices

Several allegations dealt with potential unfair labor practices. Mr. Park's report summarizes the background information:

The first incident has been referred to as the "Tucker Accident Grievance." In this instance, Officer Mindy Tucker was involved in an accident and was given a five day disciplinary suspension. Though the severity of the discipline is debatable, the union determined that it did not follow the prescribed progressive discipline policy. The union therefore filed a grievance on Tucker's behalf asking for mitigation of her discipline.

It is important to note at this point that the real issue in this instance is not the discipline given Officer Tucker, but the actions taken by Chief Stull in response to the grievance.

Within a day, Chief Stull responded to the grievance in what has been described as "an irrefutable act of retaliation," by ordering the entire detective section to begin wearing uniforms. This sequence of events is clearly documented by the grievance memorandum dated July 30, 1996 and the memorandum Sgt. Barker was ordered to write placing the detectives into uniform dated July 31, 1996.

As anyone familiar with the workings of a police department will immediately observe, placing detectives in uniform does little for the morale, efficiency, and functional well being of the department. During this time, Chief Stull is reported to have taunted the detectives with comments about their uniforms and not wanting to discriminate against anyone, which was in reference to language in the grievance.

In an effort to return the detective section back to an effective working force, restore morale, and in the best interest of the department, the union notified their attorney that they had decided to withdraw the grievance. Within hours of receiving this information, Chief Stull authored a memorandum dated August 5, 1996, stating that he had "persuaded Sgt. Barker to reconsider his position" and to allow the detective section to return to plain clothes.

Each of the Union E Board Members stated that this had clearly been an act of retaliation against the union on the part of Chief Stull. They stated that the actions of Chief Stull were against contractual agreements and constituted Unfair Labor Practices. Chief Stull is reported to have stated on numerous occasions that he is "not going to have the union tell him how to run his police department."

Mr. Stull's rebuttal was that it was within his authority to put them in uniforms. He remembers calling Akin Blitz to make sure he had the authority to do that, but he can't remember why he was doing it.

We conclude that, since he had them put in uniform, and then returned them to plain clothes as soon as the grievance was dropped, it clearly indicates an act of retaliation against the union which may constitute unfair labor practices.

When pressed on why the Union did not file an Unfair Labor Practice, it was reported in Mr. Park's report that Mr. Makler (the Association's attorney) stated that the grievance in this case was "withdrawn against his expressed legal advice and that an Unfair Labor Practices suit was not filed out of union fear of further retaliation from Chief Stull."

The second incident was known as the "glove" incident. The incident was considered a harmless joke between the two parties involved, yet it was amplified by Mr. Stull into a major investigation involving a great deal of department resources as well as those of the State Crime Lab. While we don't disagree with the need for an investigation, we strongly question the zeal with which it was pursued. However, the more important question at hand is the handling of the subsequent grievance.

Mr. Park reports:

On February 22, 1996, a letter of grievance was received from the Keizer Police Association Attorney regarding the actions taken against Detective Troncoso. Sergeant Barker "advised the Chief of the grievance and gave him the letter." "Chief Stull became very upset and told me he wanted Troncoso put back on patrol." This was perceived as clearly a threatened "act of retaliation for the grievance filed on behalf of Detective Troncoso."

Sergeant Barker stated that "I told him that I might be able to resolve the issue if he would just give me a chance to follow the grievance procedures. He said he would think about it."

On February 23, 1996, Labor Attorney Akin Blitz was at the Keizer Police Department and discussed the Detective Troncoso matter with Sergeant Barker. Sergeant Barker "told him that I didn't conduct an Internal Affairs Investigation and at no time was Troncoso told I was doing an Internal Affairs Investigation." Mr. Blitz told Sergeant Barker that "Chief Stull wanted to put Troncoso back on patrol unless the grievance was dropped." "Akin and I both agreed that the discipline was too harsh and the procedure was done incorrectly."

"Later that day, Akin and I were with the Chief in the Chief's office. Akin told the Chief that an Oral Reprimand should be sufficient for Detective Troncoso." The "Chief got very mad, turned red, and raised his voice. He said he wasn't going to let the Fucking Association tell him how to run his God Damn department." Chief Stull then said "Troncoso is going back to patrol and that was that."

At this point Mr. Blitz informed Chief Stull that "he couldn't do that because it was retaliation and was an unfair labor practice." Chief Stull stated that "I don't give a fuck, let 'um sue me, no one's going to tell me what to do!"

Chief Stull then directed Sergeant Teague to draft a schedule showing Detective Troncoso was being put back into patrol. He directed Teague to hold the schedule for the time being, stating that "the grievance may be dropped." It is noted that Sergeant Teague has confirmed this information during his interview and has supplied additional details. See the Report Of Interview with Sergeant Teague.

On February 26, 1996, Chief Stull asked Sergeant Barker if the grievance had been dropped, and Barker told him he had not heard. Chief Stull then directed Sergeant Barker to "give him a rotation plan showing Troncoso and Kuhns rotated out of detectives." Chief Stull stated that "they both had been in detectives for their allotted amount of time and it was time to put new people in detectives." It is noted that Detective Kuhns is an executive member of the union. Once again, these actions were clearly viewed as acts of retaliation for the union grievance filed on behalf of Detective Troncoso.

On February 27, 1996, the "Glove Incident" was resolved between Attorney Blitz and Chief Stull. The grievance was withdrawn and the letter of suspension for Detective Troncoso would not be placed in his personnel file. The letter would be kept in the custody of Mr. Blitz for one year and then removed. Detectives Troncoso and Kuhns would remain in the detective section.

Mr. Stull's response in his rebuttal interview was that the whole thing was a training exercise for Sgt. Barker. In his June 27th interview, he admitted he was angry at the officer for filing the grievance and was prepared to put him back on patrol rather than to "reward him" by allowing him to remain in detectives. Mr. Stull threatened to reassign Troncoso to patrol and he had a schedule prepared showing he and Kuhns rotated out of detectives.

We must conclude that Mr. Stull's actions were taken to demonstrate what would happen if the grievance was not withdrawn. It was a threat of what Mr. Stull was going to do. While Mr. Stull was within his management rights to reassign, it was not done in the best interest of Department operations.

We conclude that Mr. Stull took action in the form of threatened retaliation if the union exercised rights guaranteed to it by its contract with the City and under State law.

In a final example, the Parks report relates an incident from this past April:

Detective Kuhns stated that on April 10, 1997 "Association President Jeffrey Johnson approached me as an Executive Board Member and told me the Chief was aware of the Association meeting that was scheduled for later that evening. He told me Chief Stull 'demanded' he ask the entire Association to write him a letter stating we 'support' him. Johnson said the Chief told him after he obtained the letter he was to give it to the Keizer City Council, and to the press and/or media. Johnson told me he told the Chief that he would present his demand to the Association members to see what they thought. I was present for the vote on this issue," and "the Chief's demand was rejected almost unanimously."

Detective Kuhns stated that on April 11, 1997, "the Friday morning after the association meeting...I proceeded to a meeting with Detective Johnson to... tell the Chief the Association had decided not to provide him with a letter of support."

The Chief "immediately asked where his letter of support was, and/or when he was going to get it. Johnson explained he was not going to get a letter of support from the Association because we had taken a vote and it was decided this was not something the Association was going to do for him."

"The Chief did not stop his questioning about the letter of support at that time. He became upset and turned red in the face. He then demanded to know why the Association was not going to give him his letter of support. He used a lot of profanity."

"Chief Stull then began telling us he was 'on an island by myself now.' He told us he was not going to support any future issues 'the Association believed in if the Association did not support him.' He said, 'if they don't support me, why should I support them?' He stated that if the Association was not going to write him a letter of support, he was not going to do anything for the 27 members of the Association."

Detective Johnson stated that there was now "a line clearly drawn in the sand." The Chief had now made the relationship between the union and management openly adversarial.

Detective Kuhns stated that "Chief Stull continued asking questions trying to ascertain how the vote went. I felt like I was not going to make it out of his office until I told him some answers even though I felt his questioning violated laws, the collective bargaining agreement, and my rights as a union representative. I told the Chief he was not going to be happy, but there were a lot of non-supporters. I said this because I wanted him to get the point that the vote was not even close."

"It was at this time the Chief began telling Johnson and I things such as, 'once I'm gone they're going to come after you guys' referring to the City Council. He continued telling us that he thought the City Council was trying to manage the police department, and that they were out to fire him. He specifically told us Councilor McGee wants to fire him, and that once this was done he was going to fire Johnson, fire Barber, and then fire me. He was very specific that the Council would find fault in the work we perform and would fire us as a result of it. When the Chief specifically told me the Council was going to fire me I felt threatened, intimidated and as if he was coercing me into trying to go back to the Association for a letter of support."

"After telling us this, he went on to tell Johnson and I, 'Don't go to anymore City Council meetings.'" He did not tell us he didn't think we should go to anymore Council meetings, he flat out told us not to attend anymore. He knew we had attended the Council meeting on Monday night April 7, 1997. When I asked him why he was telling me not to attend any more of these meetings, he told me I would be setting myself up to be their next target."

"The Chief then continued telling Johnson and I that he was not going to fight for any of the projects we were working on if the Association didn't support him. He told me I could no longer be involved in the Special Olympics Torch Run. When I asked why, the Chief said, 'because the City Council would not approve of it.' He told me he will not fight for the Torch Run program. He even told me the City Council would disapprove of the Torch Run meeting I held at the police department the previous day. He told me he supported the Torch Run, but this was not an event that the Council supports, nor would the Keizer Times."

"Chief Stull began telling us who he thought was going to be the next Chief of the Keizer Police Department. He said, 'You know who they'll hire don't ya?' He said Lt. Callier from the Salem Police Department would be hired, and told us we would not like his style. He then said, 'or worse yet, McGee could run the P.D.' I felt as though the Chief was threatening that things would get worse, not better, if he were to be relieved of his duties..."

"The Chief told us this whole thing is 'not close to being over.' He went on to tell both of us he has retained his own attorney, and that he was going to sue the City, and would think about suing the Association if we were not careful about what we said about him. He then continued asking us to tell him how many 'non-supporters' there were in the Association. We refused to answer this question."

"The Chief then told us he knew why the city had agreed to settle our contract. He laughed and smiled at us, but when I asked why the contract was tentatively settled on April 7th, he said 'Ah, I better not tell you why.' He then went on to point his finger at Dotty Tryk. He said, You should listen to the tapes from the Executive Sessions. It was the City Council and Dotty who held up the contract. I don't negotiate the contract. I wanted you guys to have everything."

Detective Kuhns stated that Chief Stull then went on to say that "the City Council is after all of us who won't conform." Chief Stull stated that "he thought the City Council was trying to fire everyone so that they could micro-manage the entire city and police department."

Detective Kuhns stated, "I would like to note, during this conversation the Chief used profanity, specifically the words Fuck, Damn, and Shit were used quite frequently as he spoke to us. He was upset, red in the face, and spoke in a loud voice."

Detective Kuhns stated, "He also told us he knew some of the City Councilors were on a committee to reform our current policy and procedures manual. He told me and Johnson we could no longer take our lunches outside the city limits of Keizer. He told me it was not him who was doing this to us, it was the City Council, and this was another example of how the City Council was against us. He just kept pointing at the City Council as being the bad guys who were trying to make all these changes that would affect all of us."

Kuhns stated, "I also remember telling the Chief during this meeting, of the Association's concerns about the Mar-Po deposit system that is currently taking place. He told me not to say anything or do anything about it because the City Council would do away with the entire program if we complained about the time it was taking for our money to make it to our accounts. He said Councilors like Jerry McGee would scrap the program if he knew the City could save money."

On April 11, 1997, Detective Kuhns stated that as he was leaving the department and "as I turned to get into my car the Chief told me to 'come over here.' The Chief began questioning me about union activities by saying, 'let me get this right, you said there are a lot of non supporters?' I told him I really did not want to discuss this issue any further, and that I felt uncomfortable speaking to him about it. I also told him a lot of the questions he had asked could only be answered with my opinion, and this was not fair to him, and the other Association members."

"The Chief continued questioning me even though I tried to tell him I did not want to be subjected to any further questioning about the Association meetings and activities. I did not feel it was right for him to question me, and knew it was not legal for him to be seeking this information from me."

Kuhns states, "The Chief then threatened to sue both the City Of Keizer if they fired him, and the Keizer Police Association if they took a vote of no confidence against him. He told me if the Association took a vote of no confidence in him he would sue us. I said, 'really?' The Chief said, 'You're damn right. I'm gonna sue the City, the Association, the Keizertimes, and anyone else who tries to take me down.' I said, 'what for?' The Chief then said 'for slander, libel, and defamation of character!' I attempted to downplay the Chief's threat to sue the Association because I really didn't know how to respond. I told him I thought there were members of the Association who do not realize how this whole thing might unfold. The Chief said, 'You're damn right they don't! You better be careful.'"

"The Chief then continued telling me if the Association took a vote of no confidence on him he was going to call 'every member of the Association' into his lawsuit trial/hearing. He then specifically named Officer Wampler as an example of an Association member he would call. He said, 'And I'm gonna call Wampler.' He then told me when Officer Wampler was on the stand testifying how he has no confidence in him he would use his 'Personnel File' against him during his opportunity to cross-examine Wampler. He said, 'And then I'm gonna open his file and ask him about this fuck up, this fuck up, this fuck up, and that fuck up.'

The Chief said 'And then I'm gonna ask Officer Wampler if he said he didn't have confidence in me because I've had to discipline him.' How do you think that will hold up?"

"As the Chief was yelling this at me he motioned as though he had laid Officer Wampler's file across the hood of Lt. Bowe's vehicle. He ran his hand half way across the hood of the car to simulate he had a large file on Officer Wampler. As he spoke about his (Officer Wampler) 'fuck ups' he drove his finger into the hood of the car as if he was pointing to file, after file, after file."

"Chief Stull told me he would ask Officer Wampler if he had no confidence in him because of the disciplinary actions he has had to take against him in the past. He said the jury would find that this is why many of the officers would have returned a vote of no confidence against him."

"Chief Stull then told me to call the Association Attorney Mark Makler. He said, 'Call Makler and ask him how many votes of no confidence have been taken in Oregon in the last five years, and how many of them led to the successful termination of the Chief Of Police.' The Chief then said, 'There's not one vote of no confidence in Oregon in the last five years that a Chief has lost his job over, and it won't happen here.' I sensed the Chief was threatening if a vote of no confidence were taken, he would not lose his job."

"The Chief again told me he was not 'going to fight the Council anymore' for things the Association wanted or believed in. He repeated that he sees no reason in standing up for anything the Association wants if they won't write him a letter of support."

"The Chief continued talking about the fact the Association had voted not to write him a letter of support, as he told me he feared an Association member would 'leak' this information to the Keizertimes. He told me he knew the Keizertimes would find out this information, and would print it. He then said, 'I'll sue because it's unsubstantiated' You just can't say these things without ramifications. People think

it's just as simple as taking a vote of no confidence. They're wrong! I'll fight even after they fire me!"

Detective Kuhns stated that "At this time the Chief appeared to be really irate. He then told me, 'If they fire me, they had better kill me! They had better just kill me! He continued talking about the fact he would not get fired without a fight, and insinuated that unless he were dead or killed, he would fight with everyone who wanted to see him leave. He spoke very matter of fact about having to kill him or else there was going to be a big fight."

"The Chief then put me on the spot and asked me what I thought should happen. I told him I thought there needed to be a probe of the police department. He told me there was not going to be any probe, and that Wally Mull and John Morgan were going to be putting a letter out later that afternoon stating this. He also told me, 'Nobody can fire me right now, they don't have the authority. They don't have the votes."

"I told the Chief my honest opinion was I didn't know of any way he could continue to successfully manage the police department in light of what has happened. I told him I did not see any way he could possibly regain the trust and faith of those who work for him, and with the persons in the community. He asked me for examples of why I had lost my confidence in him. I told him my opinion was based on a number of things, one of them was the way he and those acting under his direction, have conducted Internal Affairs Investigations. The Chief laughed and said, 'The only bad one was Troncoso's.' I also told him I was concerned about the way he treated his employees though out the years."

The above summarizes some of the more recent dealings with Chief Stull and his approach to the labor relations within the department. Additional information is documented in the Reports of Interview for Detective Johnson and Detective Kuhns.

This incident raises multiple concerns about policy and legal violations. First, we find that it may be an unfair labor practice as Mr. Stull was using his position to coerce the union into doing a favor for him. Second, he fabricated stories about the City Council, individual Councilors, and City management staff and what they were going to do to the union members. None of these stories were true, yet he lied to the officers in an attempt to intimidate them into taking actions to support him. This dishonesty violates City policy, Department Policy, and the terms of Employment Agreement.

Unnecessarily Placing Officer and City at Risk

There was an incident in 1996 where an officer was placed on motorcycle duty when not prepared nor certified and was ultimately involved in an injury accident. Mr. Park's report gives the background information:

Officer Trump was assigned to the traffic team and was sent to a motorcycle basic training program in May of 1996. Officer Trump failed the program, but was still allowed to operate a motorcycle. Officer Trump subsequently wrecked the motorcycle, injured himself and was disciplined for his actions.

One of the principal instructors at the course was contacted and questioned about this situation. Lieutenant Jerry Palmer of the Oregon State Police Motorcycle Unit provided a good deal of information and supporting documentation.

Lt. Palmer stated in a memorandum, that "I was one of the Assistant Instructors at the Northwestern University Traffic Institute, National Academy, Police Motorcycle School. This class was put on in May of 1996 at the Trojan Power Plant facility. Northwestern and Harley Davidson co-sponsor the school, and the Oregon State Police hosted it."

"Officer Trump attended the two week, 80 hour basic course with three other officers from his department. They were Officers Babcock, LeDay, and Inman."

Over the course of the first week all of the instructors noted that Officer Trump did not appear to be very enthusiastic about being at the course and was not doing well with the required skills. Several of the instructors, including me, had several discussions with Officer Trump about his progress and attitude toward the training."

"It was learned in these discussions, that Officer Trump had been ordered on to the motor unit, even though he did not want to ride. He advised he really liked working traffic and wanted to be on the traffic team but had no interest in riding a motor on patrol. I felt that this presented a safety issue for Office Trump and recommended that he withdraw from the class. He advised that like it or not the Chief would make him ride the motor on patrol and that he could not withdraw from the class due to possible repercussions at work."

"He continued with the class and did not make much progress until the last two days. He tried hard to certify on the motor because he realized it was in his interest to try to have the survival skill on the motor he was going to be required to ride."

"As I recall, he failed miserably in the pre-test. I was told by the lead instructor for NWTI, Gary Cravillion, that Officer Trump's score that day was the lowest he had

ever had. On the final day Officer Trump showed marked improvement in his final test score, but still failed to qualify."

"He was informed of his score and advised that he should not be riding on patrol until his skill level could meet the minimum requirements. He was told that he could contact me or any of the NWTI instructors and retest for certification when he felt he was ready."

"This information was discussed with him and the other officers there and they advised they would pass it on to their supervisors."

"Also after the class I had discussions with Sgt. Mark Miranda of Keizer PD and told him of my concerns about having Officer Trump ride motors on patrol. Sgt. Miranda also advised that this information was given to Chief Stull."

"I have enclosed a copy of the Oregon State Police Motor Unit Policies and Procedures. We do not allow any officer to patrol on a motorcycle without first certifying at an 80 hour class. We require on-going training each month and a yearly re-certification. At any time a rider's skill falls below minimum standards he is not allowed to patrol on the motor until he can pass the minimum skill level tests."

"It is my opinion as a Certified Police Motorcycle Instructor, that Officer Trump should not have been operating a police motorcycle on patrol until he was able to meet the minimum 80 hour basic course standards."

In specific regard to the accident, Officer Trump stated that "when the Chief responded to the accident, he stood above me, staring at me and said, 'Look what you did to my pants!' I did not perceive this to be a 'joke', but believed the statement to be condescending and insensitive."

There are a number of other issues raised by this situation, that will be only briefly touched upon. The first issue is why Officer Trump was ever allowed to ride the motorcycle after failing the aforementioned basic training course.

In a letter dated May 19, 1997, by Mr. Henry J. Kaplan, Attorney for Chief Stull written to Attorney Akin Blitz, he states that "there is no state administrative requirement that he (Trump) complete such training before operating a police motorcycle. Mr. Kaplan is quite correct in this statement, there is not a state requirement.

The question raised by a number of department members is what enlightened manager would place an individual on the motorcycle, with or without a state mandated requirement, after he failed his basic training course. There is clearly an

officer safety issue and a serious department liability issue involved in Chief Stull's decision.

Additionally, Chief Stull was well advised of Officer Trump's class failure and lack of skills. Sergeant Miranda stated that he personally recommended to Chief Stull, that Trump not be placed on regular patrol.

There is the issue of Officer Trump's accident and disciplinary action as a result. The question raised by many, is how can an individual be punished for wrecking a police patrol vehicle he is not even police certified to ride.

Mr. Stull's response was that he was willing to give Officer Trump an opportunity to learn on the job and was willing to accept the liability it would present to the City.

We are very concerned by this action. While Mr. Stull did not want the City to have the liability presented by an employee placing a lamp on her desk, he was willing to accept the liability of having an uncertified motor officer on the street, an officer that did not even want the job.

We conclude that Mr. Stull used poor judgement in putting the Officer back on a motorcycle after he failed his certification exam. He also put the City at significant risk.

CONCLUSIONS:

After reviewing all the evidence, we conclude that there are significant problems with Mr. Stull's current and historic management philosophy, style, and practice. We believe there are irreconcilable differences between his leadership style and management practices, and the needs of the Department, the city government as an institution, and City of Keizer. We find that he is not the right person to serve as Police Chief of the City of Keizer.

We recommend the Council affirm our decision to terminate Charles Stull as Chief of Police.

The Council may also conclude that there are numerous incidents detailed in the investigative report, unsuccessfully rebutted by Mr. Stull, to warrant dismissal for cause. The Council may find that he has refused and repeatedly failed to comply with the policies, standards and regulations of the City. The Council may further find that Mr. Stull is guilty of dishonesty and misconduct in the rendering of services on behalf of the City. Finally, the Council may find that Mr. Stull failed to perform faithfully and diligently the duties provided for in his employment agreement. While any single incident or even multiple incidents may not warrant dismissal for cause, it is the pattern of activity over time, and the volume of incidents, that may lead to the Council Decision.

We recommend the Council determine if the termination of Charles Stull should be for cause.

RECOMMENDATION:

It is recommended the Council, by motion, affirm the decision of the Co-City Managers Pro Tem to terminate Charles Stull as Chief of Police in accordance with Section 4a of his Employment Agreement with the City.

It is further recommended the Council, by motion, determine if there is sufficient cause to terminate Charles Stull as Chief of Police in accordance with Section 4b of his Employment Agreement with the City.

This is a confidential communication. This report and all information contained herein has been completed at the direction and under the supervision of legal counsel. It is to be considered of a confidential and privileged nature and subject to the attorney/client and work product privileges.

John Lein
City Attorney
4255 River Rd. N.
Keizer, Oregon 97303

Employer: City of Keizer
Re: Investigation for City Council
Date: April 29, 1991

Dear John:

As you have asked, I am preparing my report to you as per our conversations by phone. It is my expectation that this report be privileged within Attorney/Client privilege. The following report is as a result of my work product concerning this investigation.

I have been provided copies of the tape recording made when the City Council met in executive session and discussed my employment, and the scope of the investigation. From that discussion, I have accepted the challenge of investigating any possible improprieties of City Recorder Sue Darby, and Sergeant Robert Kershaw. The Council wanted me to take an overview look/see, and then proceed as far as I felt necessary, should other facts lead me toward other possible wrong doing. It is with this in mind that I present the following report.

As you will see from a reading of this report, I have spoken to a great many people. Most all of them were completely cooperative, and some were evasive. Two of the Council members, Jerry McGee, and Al Miller, asked to speak to me in person. Miller made it quite clear to me from the beginning that he was a personal friend of the Chief of Police, and he continually provided me helpful information during my investigation.

Original Scope Of My Investigation

Sue Darby and Bob Kershaw did take a City of Keizer detective car to the Oregon Coast on 1/27/91. With them were the two Kershaw children, and the two Darby children. They were seen having lunch at Mo's Restaurant by Audress Ryan, who works as the Records Supervisor in the Police Department.

Later on, in fact during spring vacation, Sue Darby told Wally, the Public Works Supervisor that she had gone to the Coast with Kershaw in the city car.

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personally owns, as well as what Darby drives, he told me that his is a small pickup, which would not have room for the four children plus Kershaw and Darby. He further told me both that Darby's Jeep Cherokee was having trouble with an oil leak, and they did not want to drive it to the Coast that day. Kershaw added that the oil leak did not figure into his decision to take the city car.

Other Uses Of The City Cars

Kershaw admits that while he was the Supervisor of Detectives, and had the dark blue city car in his possession, he used it very much like a private vehicle. He tells me that he picked his children up and delivered them to the baby-sitter, and also that he used it from time to time to have private lunches.

Sergeant Kershaw admits that a number of times he used the car to go to lunch with Sue Darby, stating that most of the time she would drive her personal car to one or another of the variety stores in the area, and then they would take the city car to a restaurant. They tell me they did this so as to keep their relationship private.

Detectives got cars in August of 1990. Kershaw told me that he is not the only one who uses the city car for personal business. He mentioned that the Chief had taken his wife, more than once, in a city car to places throughout Oregon. Following up on this, I was able to find out that the Chief had taken his wife in a city car to the Chiefs' Conferences, at the Oregon Chiefs Association, which had been held in cities such as Bandon and Bend. The Chief also tells me that he uses one of these cars when he goes to Rotary, or on business in Salem or Portland. You should know just for the record, that the Chief gets a \$200 per month allowance for the use of his own car, and that the city has a policy requiring employees to use city cars for trips over 25 miles, when on city business.

In my investigation, I also learned that Kershaw was living in his home for one week on, and then out of the home, one week off, starting on January 19, 1991. This was part of the divorce proceedings that he and his wife were going through, when the custody had not yet been decided.

Kershaw tells me, and the Chief confirms, that Kershaw requested permission to use the car to drive to and from his brother's house in Monmouth, on the weeks that he would not be living in his Keizer home. In actuality, Kershaw did not stay even one night in Monmouth, but instead stayed at Sue Darby's house in Silverton.

Bob Kershaw also admits, as does Sue Darby, that she rode with him in the city car to the Silverton house one day for lunch, to allow him to change into a different set of clothes due to the fact that he had been working the shooting range that morning, and had become quite dirty.

On 11/28/90, Kershaw made a call on his city cellular telephone at 6:35 pm to the Red Lion Inn, Columbia River, where Sue Darby was attending a training session. He and she tell me that he drove to Portland and met her, where they

Timeline

In order for you to have a good feeling for the things I am about to present, I think it would be wise to give you a timeline, detailing some of the important aspects that will be described later in this report.

Date Event

1/22/90	Major conflict between Sue Darby and Chief concerning new Keizer Municipal Court.
1/26/90	Kershaw tells his fellow supervisors at a Team Building Session about his wife's being unfaithful. The Team Building facilitator recommends that Kershaw is suffering from burnout, and should be assigned to detectives as a possible way of rejuvenating him.
2/22/90	Chief conducts problem solving workshop between Police Department and Municipal Court.
2/14/90	Kershaw becomes Detective
5/25/90	Kershaw shows up late at a three-day Team Building session, saying he could not get a baby-sitter, when in actuality he had gone to Bend with his wife and children.
6/4/90	Sue Darby complains about a police officer who made a derogatory remark about the City Newsletter.
6/21/90	Kershaw reprimanded for taking the entire Detective Division golfing during a workday without informing the Chief.
8/1/90	All supervisors are assigned to participate in Toastmasters Training Exercise.
8/29/90	Cellular phone installed in detective's car
9/15/90	Kershaw is confronted about not attending Toastmasters. Advises that he will, but never does attend. Other sergeants resent this.
9/17/90	Kershaw reprimanded for failure to keep the Chief informed concerning a direct assignment from the City Manager.
9/26/90	Argument between Chief Stull and Bob Kershaw Audress Ryan becomes sick with stomach pains and goes to the hospital. Chief was telling Don Otterman, during this period of time, that Bob Kershaw wasn't making it. Otterman advised him to hold on and wait and see what would happen. Kershaw reprimanded for failure to comply with a direct order, telling him to include Supervisor Ryan in his Team Building assignment process.
Sept & Oct '90	Bob Kershaw and Sue Darby were continually going to Don Otterman to complain about Chief Stull
10/1/90	First record of a telephone call from Kershaw's city cellular phone to City Hall at 4:56 pm. He told me these were to Darby.
10/9/90	Kershaw makes phone call to the <u>Keizer Times</u> at 5:14 pm.
10/1990	Team Evaluations completed, and Kershaw receives the worst. Kershaw's fellow detectives blast him about this.
Early Nov.	Sue Darby, in her deposition, admits to becoming romantically involved with Bob Kershaw during this period of time.
11/28/90	Kershaw travels to Portland to meet Darby at Red Lion

Sometime in Jan Sue Darby, under oath, says that her sexual relationship with Kershaw began sometime in January.

1/17/91 Don Otterman tells Chief Stull he has until 7/1/91 to find work elsewhere.

1/18/91 Otterman writes a memo to the Council detailing his firing of the Chief. Sue Darby types this letter for Otterman.

1/19/91 The Kershaw's begin the week on/week off. This is Bob Kershaw's first time out of the house.

1/23/91 Otterman sends Kershaw to seize the Police Employee Records.

1/27/91 Kershaw and Darby take their children and go to the beach.

1/29/91 Al Miller interviews Address Ryan and Carol Pacholl about Address Ryan's worker's comp claim.

Bob Kershaw calls Officer Boedigheimer's home at 4:54 pm.

2/7/91 Kershaw fails to comply with an order to send a detective to a special meeting that had been previously arranged.

2/11/91 Kershaw is notified of his change of duty. He is no longer to be a Detective.

2/12/91 Kershaw requests a delay in being transferred from the Detective Division, and is denied.

2/20/91 At the request of Otterman, Chief Stull takes Sue Darby to lunch trying to clear the air and work out their problems.

2/22/91 Kershaw begins his new duty, and is asked to take a different schedule.

3/1/91 At 3:00 pm Paul Soucy, Abby Kershaw's attorney, calls Darby and asks who is the keeper of the personnel records.

At 4:00 pm Soucy serves Darby with a subpoena to produce the records, and appear herself. This is a Friday.

3/4/91 Judie Martin begins to merge Kershaw's two files.

The Department issues a new policy for private use of city cars.

3/5/91 Judie Martin completes purging of files.

Sue Darby calls Bob Kershaw's divorce attorney and asks her if she wants to read his personnel file, after it was purged.

3/7/91 John Lein reviews the now purged Kershaw personnel file.

3/12/91 Bob Kershaw and Sue Darby are deposed by Paul Soucy.

3/21/91 Complaint received from the District Attorney's office regarding a follow-up interview Kershaw was supposed to have completed.

Sue Darby reports the Citizen's Committee working on the serial levy for alleged election law improprieties.

3/25/91 Jerry McGee goes to Don Otterman to talk to him about the beach trip.

A complaint is received regarding an investigation report Sergeant Kershaw was supposed to have forwarded to Salem Police Department regarding a sexual assault.

3/30/91 Kershaw reopens his old worker's comp claim involving his injured shoulder.

4/1/91 City Council requests an outside investigator to look at possible misconduct.

Records Production For Custody Hearing

On Friday, March 1st at 3:00 in the afternoon, Paul Soucy, Abby Kershaw's

subpoena ... we had a meeting set up to sit down and purge everyone's files together and for one reason or another that meeting was delayed and when I got the subpoena I just turned around and asked Judie Martin who testified earlier today to go ahead and Kershaw's file and that I didn't want to touch it. I guess what we were trying to do was get a complete concise ... one complete concise file.

AN You still haven't answered my question. If you got a subpoena that says bring all the records in your possession, why did you purge it?

SD I guess we didn't fol...

AN Why didn't you follow the subpoena?

SD I guess we didn't follow the subpoena then....unknowingly.

AN That's clear ma'am, you didn't, and I'm asking you, why didn't you?

SD It was unknowingly.

AN No ma'am, you consciously said to purge the records....

SD No, I....

AN ... so it was knowingly. I'll again ask you. Why didn't you provide all the records?

SD Does it say all pertinent?

AN I'll read it again. Bring with you all documents which are in your possession. Include, but not limited to biographical information, training records, discipline reports, performance evaluations and work schedule records. And I'll repeat the prior sentence. Bring with you all documents which are in your possession.

SD I guess we screwed up.

AN Ma'am I agree with that also, but you still haven't answered me why you screwed up.

SD We believed we were doing the right thing and that was verified by the City Attorney.

AN The City Attorney.

SD Correct.

AN Who's the City Attorney?

SD John Lein.

don't know if it was between that time and the .. the time that we actually received the subpoena that the purging might have been done.

PS I contacted you on a Friday at about 3:00 by phone.

SD Right.

PS Within an hour you were served with the subpoena, correct?

SD It was... that... yes, you're correct.

PS You talked during that hour's time you called John Lein?

SD I believe so, yes.

PS Now, you're under oath.

SD Yes.

PS You're also under investigation by the City of Keiser. You know that?

SD Yes.

PS I talked to John Lein. I think the Judge is as interested in this as I am. That's not what John Lein told me. Would you like to think about your answer again?

SD That's the best of my recollection, Mr. Saucey.

PS You asked him for permission to purge those files before you did it?

SD No, I discussed the subpoena with Mr. Lein, before I received the subpoena.

PS You never told him you were going to purge the files, did you?

SD I told Mr. Lein that... what we had done... that we had purged the files and we had not returned... at that time I don't believe we had returned any documents yet.

PS Okay, you had purged them before you talked to John Lein then?

SD I talked to John Lein on several occasions involving this.

PS Did you talk to John Lein, the City Attorney for Keiser before you purged the files

SD Yes.

PS And you asked his permission to do it?

CB? Wait a minute, let me ask a question here. I think I got it straight. Mr. Saucey called you at 3:00.

SD Um hmm. Somewhere around there.

AN Said, I'm going to issue a duces tecum subpoena. You called Mr. Lein and said, I'm going to get the subpoena. You got the subpoena at 4:00 or so on Friday.

SD End of the day.

AN Alright, on Monday you talked to the City Manager and you people decided to purge the files. You then purged the files..

?? ----- don't answer that.

AN ... let me finish.

?? Don't answer that question.

AN You then purged the file. Then had the stuff setting there prior to giving it to Mr. Kershaw... you then called Mr. Lein and said, is it okay if I don't provide the purged stuff to Mr. Saucey and Mr. Lein said, yes, that's okay. Is that... that's what I get out of all that.

SD I don't think that's the second time that I called Mr. Lein... he showed up in my office to look at the file and he did show up ... he reviewed Bob's file. I explained to him what we had done on the purging and he said, that's fine, just explain it to Mr. Saucey and it should be no problem.

AN And did he see the purged stuff?

SD I don't believe he did.

AN And the purged stuff had not been given to Mr. Kershaw at the time he showed up and looked at the file.

SD I don't believe so, no.

AN You had possession of that?

SD Either I did or the Personnel Clerk did.

AN And you did not show that to Mr. Lein

SD No.

AN And Mr. Lein said it was okay not to give Mr. Saucey the purged stuff?

SD Oh, it depends because if you have... for instance we're working on a salary survey... that has the highest priority. This would take second seat to that

PS But you decided that having his ... Mr. Kershaw's purged.. all of a sudden took high priority after getting my subpoena.

SD It took a higher priority, yeah.

PS But you just did it because it was regularly scheduled?

SD It was regularly scheduled.

PS Is that why you purged it then

SD Yes.

PS Not because you'd received the subpoena?

SD We did Mr. Kershaw's file first because we received the subpoena.

PS But had there been something more important to do you wouldn't have gotten to it? Is that correct?

SD Well if the walls were falling down around us I suppose not.

PS Or if your budget process was underway as you say it is now, you wouldn't have done it?

SD I really can't answer that.

PS Was it just a happy coincidence that you had the time on that Monday to purge it?

SD Probably was, yeah.

PS Rather than you dictating to your subordinate that it was a priority job that needed to be done that day?

SD I think she understood the situation. I don't know exactly what day it was done because this deposition got moved forward, if you remember correctly, so I don't know whether it was done that day... in fact I don't believe it was done that day. It was done several days later, if I remember correct.

In fact the Personnel Clerk only works part time mornings.

PS Could you have postponed the purging of the files until after the deposition?

SD Certainly.

SD No.

CB And the work schedule records were actually maintained by the Work Sergeant or the Schedules Sergeant so you didn't have those either?

SD Correct.

CB So, in attempting to meet the subpoena, you needed to get these other records from the police sergeants involved and incorporate those into the personnel files. Is that right?

SD I would have had to, yes.

CB Okay. And is that part of the reason the decision was made by the City officials to consolidate these two, if you will, separate sets of files into one file in one place?

SD The intent was to bring all the personnel files together into one file instead of having two separate files.

CB So, if you had provided the documents that were within your custody to Mr. Saucey, you actually would have been providing a file without any of the training documents and without the work schedule documents, is that right?

Unless he had subpoenaed the Police Department... you didn't have those things over there in the

SD Right.

CB ... City offices.

SD In our original file we did not have those items.

CB You would have been providing him substantially less....

SD Correct.

CBif the files had not been consolidated?

SD Correct.

CB Were you aware as to whether or not Mr. Saucey subpoenaed any records from the Police Department itself?

SD I'm not aware of any.

CB I don't have any further questions, sir.

PS I have a follow up. I didn't subpoena any records from the Police Department because when I talked to you at 3:00 you told me that you were

basis as she has done other files.

- a. Policies and Procedures - City Council Guidelines
- b. Oregon State Retention Records Manual
- c. Keizer Police Association Contract Guidelines

City Hall Wanted The Police Department's Records

In December of 1990, Don Otterman told the Chief that he wanted to upgrade the records that the city had, which were being kept in City Hall. A couple of different memos went back and forth, and the long and short of it is Otterman sent a memo to Bob Kershaw, who was the officer on duty in charge that day, because the Chief was at a Chiefs' meeting in Bend, ordering that the records be delivered immediately to City Hall.

John, you should know that there were actually two sets of "personnel files". One was the working file that the Chief used on a fairly day to day basis, and the other was a true personnel file that was kept in City Hall. The Police Department would add to it whenever something needed to be included. Also in the Chief's personal working files, were private notes concerning each of his officers and employees.

When Kershaw arrived with the memo presenting it to the Chief's secretary Carol, she refused to give up the records. He then went back to City Hall, later returning and took the files.

What isn't known, is that the Chief's secretary quickly removed all the extremely personal information in each person's file, before she gave it to Kershaw.

In visiting with Don Otterman about this history, I have learned that Sue Darby, as well as Judie Martin to some degree, had been telling Otterman that the Police Department had some type of a conspiracy going, whereby they were unwilling to give up the records. The memo that eventually was sent to Kershaw the day the records were seized, was actually written by Darby. Another thing that needs to be noted is that when Kershaw went back to City Hall after being rebuked by the Chief's secretary, he did not go to Otterman who had signed the memo, but instead went to Darby. In fact, Darby was the one who originally delivered the memo to Kershaw.

This entire seizing of the documents leads me to believe that it was Sue Darby who wanted these records, and gave Otterman information that was incorrect in order to get him to sign memos which allowed the seizure. This is but one instance I found whereby Sue Darby manipulated others for her own benefit.

This Investigator's Opinion On The Motives of Bob Kershaw and Sue Darby

John, as you have already seen, and will see more of later in this report, there is a great deal of evidence, some of it circumstantial, some of it solid, which points to what I believe to be a conspiracy between Sue Darby and Bob Kershaw

her personal involvement with Bob Kershaw. She was sworn to tell the truth in both the deposition and the hearing.

City and Community Politics

I'm sure I don't have to tell you that my investigation has told me a lot about different factions trying to create and keep power within the City structure.

When Otterman took over as City Manager, in July of 1989, there were many who told him that the Chief of Police had to go. There are also a lot of politics within the Police Department, especially between the union and management. In my work with cities and police departments, I find this to be quite normal, and also have found your Police Department to be very much better than most.

Bob Kershaw's Health

It was stated by qualified psychologists at hearing, that Bob Kershaw was clinically depressed. One of them even talked about the risk of possible suicide, and pointed out the fact that he had lost 30 pounds most recently. I also told you earlier in this report that the Facilitator for the Team Building Session in 1989 diagnosed Kershaw as a burnout, and suggested that he needed help or he would cause harm to himself or his department in one way or another. That's the reason that Chief Stull decided to give him a detective position, and hopefully rejuvenate him.

Although Kershaw denies to use alcohol in any excess, at hearing Attorney Soucy, using Kershaw's check register, pointed out that there had been a number of steady purchases from the liquor store. Kershaw explained these as lottery tickets, and Seven Up, and occasionally some liquor.

When Bob Kershaw obtained a restraining order to have his wife removed from their house in mid-December, he told the court that he was afraid that his wife was going to take his gun and harm him, and then even stated that she might harm the children and herself. Evidence also was presented to show that since 1989 Kershaw has been planning this divorce, even with secret bank accounts and credit lines.

Recently, after the judge had made his decision about the custody, Kershaw told me that he has been taking the decision very hard. He said that he's been doing a good deal of crying, and led me to believe that he felt that members of the Council had been conspiring against him so he would lose at hearing.

The Judge Has to Order Sue Darby To Answer Questions At Deposition

I received a tape recording of the deposition of Darby taken by Paul Soucy. Again, let me remind you that she was there under a double role. At one time she absolutely flatly denied that she had ridden as a passenger in the city car with Bob Kershaw when it went to the Coast. She then later changed her story and told the truth.

John, the important issue here isn't really the worker's comp claim, but I believe that Sue Darby was using this circumstance to cause grief for the Chief with the City Manager Don Otterman. Just looking at the dates shows me that this had become a non-issue that was resurrected for Darby's gain.

As far as Miller's involvement is concerned, I believe it was taken as an attempt to help his friend, the Chief. Ryan didn't like it at all!

The Moir Incident

On 12/4/90 Sergeant Jenness wrote a memo to Officer Moir stating information that was personal. The memo was then placed in the Chief's secretary's mailbox upside down underneath some papers and left overnight. In the morning Carol retrieved the memo and showed it to the Chief, made a copy of it, and put it in a sealed envelope and later that day took it to the records office in City Hall to be placed in Moir's personnel file.

A few days later, on Sunday the 9th, the president of the union, Officer Chet Arnett, approached Moir telling him that he knew about the content of the memo, and told him that he was willing to have the union file a grievance against the department. Moir didn't want to have anything to do with this, but went back to Jenness asking why Arnett knew about Moir's personal business. The department then took a look at the possible way that Arnett could have found out this information, and as you know, and as the Council knows, suspensions were issued, and lawsuits have been filed.

I have found out what happened, and how this information was passed on to the union.

In speaking to Judie Martin, I asked her to look in Moir's personnel file and tell me if a memo dated the 4th was in the file. Remember John, there are two files, one that came from the Chief's office, and the other that has always been in City Hall. The memo was present in the Police Department's file, but was not present in the city's personnel file. It should have been there, because it was brought over.

This tells me that if anybody stole this memo, it happened on the City Hall side, and probably was not read while in the mailbox on the Police Department side. There'd be no reason for someone to read it, and then go back later across the parking lot and steal it.

I also asked Judie Martin to look at her calendar and tell me if she worked on the 5th and the 6th. She told me that she had been sick all day on the 5th, and had taken the day off to go to Portland with her husband on the 6th. When she finally did return to work, there was no memo present to be filed. Somebody had taken it from her in-basket where Carol had left it.

Although I do not have hard evidence to show that Sue Darby took this memo and passed it on to her boyfriend who was in a fight with the Police Department, I do know that there was another great deal of telephone activity between

As I continued to question him about his motives, I could see that he completely failed to understand the connection between his sabotage, and a man losing his job and the department losing face. Kershaw was so focused on his feeling of what he thought the Chief was going to do that was wrong, that he seemed to have failed to see what he had done wrong.

Later that day, Kershaw called me by telephone wanting to talk about this matter again. When I asked him how come he had never stepped forward to tell the Chief that he was the one who had passed on the information, thus allowing Arnett to get off the hook, he told me that it was probably because of fear, and that he was a coward.

We further discussed what he was going to do about this in the future, and when I told him that if it were me I would march right down to the Chief's office immediately and tell him, he told me that the Chief was gone for the rest of the afternoon. He then stated that he probably would see the Chief on Monday and tell him then. He also told me that he expected that he would be fired.

My Thoughts On The Moir Information Incident

John, I purposely have not enclosed a copy of the memo that Sergeant Jenness wrote to Officer David Moir, because it is personal in its content, and I believe should remain so without permission of Moir. I will tell you that it involves a physical agility test which Moir had trouble with due to a pulled hamstring muscle. The memo gives Moir six months to recondition himself, and pass a test which he could take as many times as he wanted, and whenever he wanted. There is absolutely no comment or discussion about attitude or uncooperativeness.

I spoke with both the Chief and Jenness about their understanding of the memo, and the meeting that occurred previous to its writing where Sergeant Kershaw was present. They deny there was anything in a negative manner discussed, and that neither Jenness nor Stull had any thought of getting rid of Moir.

This admission that Kershaw makes is extremely serious! I believe that Kershaw has been so intent upon causing trouble for the Chief, that he completely compromised himself, his department, and three of his fellow officers.

An unanswered question, that still bothers me, is the fact that Kershaw passed on information, which eventually got to Arnett, supposedly without reading the memo. He states emphatically that he has never seen the memo. But, the memo is missing from the City Hall side of the personnel records.

One theory I have, and it is just that, is that after Arnett started to get in trouble for approaching Moir, or after Kershaw knew that he had defied a confidence and passed on the information, he felt that it would be necessary to make it appear that the slip had occurred on the City Hall side, not the Police Department side, thus drawing attention away from himself. Not until I asked to see if the memo was present in the file, did anyone think of looking. It is

to him, and I believe he will now tell you that he has been used.

Perhaps though, the most extraordinary thing that happened to the Chief, is the fact that when Otterman decided to dismiss the Chief, he wrote a memo to the Council, but did not want his regular office staff to know about it, so he asked Darby to type it. This was the last person in the world that Otterman would want to know that the Chief was on his way out. If you take a look at the cellular phone calls made from Kershaw's car to Darby, you will see that there was a great deal of activity around January 18th, when Darby typed Otterman's confidential memo. This had to be fantastic news for Darby's boyfriend Kershaw, who had wanted to be Chief for a long, long time. As of yet, Otterman still did not know about the relationship between Kershaw and Darby. Darby has denied to me that she told Kershaw about the Chief being fired.

Another Document Appears To Be Missing

On 2/19/91 Chief Stull signed a merit increase status report, giving Officer Jack Boedigheimer a \$50/mo. increase in pay, retroactive to 1/14/91. This memo was signed on the 19th, and sent to the City Manager for his signature on the same day.

On 3/11/91 Judie Martin sent a handwritten note to Chief Stull's secretary Carol, asking for a copy of the merit increase for Boedigheimer, stating that only the congratulatory letter had been received.

Somehow, another document didn't make it to the proper source.

City Personnel Policy Grievance Rights

The City, as you know, recently adopted on December 16th a revised personnel policy. On the outset, this looks like a normal thing to do, but I don't believe that it ended up being so.

Don Otterman, instructed Sue Darby to work with the Local Government Personnel Institute, namely Pam Harbeck, to take the resolutions that the Council had made in the past, that had not yet been included in personnel policies, and do so. He further told her that he did not want any major changes done to the personnel policy.

What happened, is that Sue Darby gave Otterman the copy of the changes, telling him that everything was minor, and that there had been no major changes. Otterman trusted her, did not read the revisions, and wrote a Council Agenda item introducing the changes to the policy, and saying that they were not major. He actually believed this to be true until after they were passed.

In actuality, what happened is that Sue Darby, working with the LGPI changed the city's personnel policy to include grievance rights to be provided to department heads. The Council in December passed the resolution, based upon Otterman's recommendation. She now has grievance rights!

When I asked Otterman how he happened to let this get by him, he told me that this was one of those things that is delegated, and he put his trust in the City Recorder to do as he had asked, "... don't make any major changes."

Misuse Of City Cellular Phone

John, take a good close look at the records I am submitting of the cellular phone that was installed in Kershaw's city vehicle. The billings I am giving you include October of '90 through February of '91. Besides twenty different calls to the Kershaw's baby-sitters, you will see that there are a great many calls to Sue Darby, both at her home, and I presume to be calls to her made to City Hall.

Kershaw called the Keizer Times on 12/28/90 at 5:28 pm. I'm looking at a possible relationship between the call to the Keizer Times, and articles that may have been written that week.

Auto Insurance Coverage

John, I think that somebody would be wise to take a look at the auto insurance policy for city vehicles. I wonder if there is any kind of coverage tha would exclude the driving around of employee's children, and other city employees on non-city business. I also wonder what the liability would be for Kershaw driving to Portland and drinking alcohol, and then returning to Keizer.

Wire Tap

At hearing Kershaw admitted taping a conversation of his son with Abby Kershaw. He told me that he used a device which can be purchased from Radio Shack, known as a splitter, and that he owned it himself. He further told me that it was legal for him to do so under ORS 165.540.

Personalities As I Have Found Them

John, please allow me to give you a feel for what I have found in this investigation.

Don Otterman is a person who doesn't like confrontation and conflict. He's political. There are members of his office personnel who have loyalties that seem to be placed elsewhere, and have made it difficult for Otterman to find his comfort zone. Sue Darby was the one person whom he completely trusted, and he placed a great deal of responsibility on her shoulders. I believe that she has abused that trust and responsibility.

Chief Stull was hired to build a department that was in chaos when he arrived. He is not political! His mandate was to use his personal strengths to wrestle the control of the department away from the union, and establish a quality police department. This is a very difficult job in any city.

In the beginning, Stull had to rule like a dictator, and made a good many

policy, which benefitted her immensely, to be processed as if it were no different than before. As to her conduct before the court, it seems to me that it would be the judge's responsibility to discipline her if he wished.

Without a doubt I believe that Sue Darby has proven that she is not a friend of Don Otterman. I would be very concerned about the manipulation that happened surrounding the seizure of the Police Department's records. In trying to make my imagination figure out why Sue Darby would want her hands on those records, I was only able to come up with the fact that it was known that Chief Stull had personal comments kept in his files, and that while he was out of town, a quick grab of those records might allow boyfriend Kershaw to read those records and therefore gain an advantage in seeking his hope of being Chief. Again, let me repeat, this is just conjecture on my part. If I wanted to be Chief, I would certainly like to have pieces of information that I could use with individual members of the department, which might gain me their support.

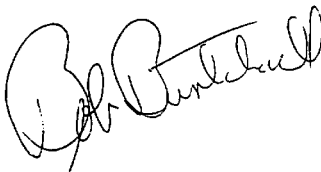
John, I definitely found more than a Sunday afternoon drive to the beach! Hopefully the information I am providing, will allow any decision makers to proceed for the best interests of the City. I have two final recommendations.

One would be that the Chief of Police be allowed to have copies of his files that were seized by Darby, because these files are a working tool of an ongoing, growing department. It is foolish for him not to have access to those records.

I also would like to suggest that this report be shared with both Don Otterman and Chuck Stull as a learning tool. It also provides an opportunity for each of these men to have a basis for their "new start" of working together.

The Department also has to make a decision on how they are going to handle the suspension of Arnett, and the additional involvement of Barker and Schmitz. Schmitz, being a member of the problem solving committee, that was to investigate and report the source of the leak, appears to be even more involved.

If there is anything else you should like me to do, please feel free and I shall ask. Many thanks for the opportunity to provide you with this report.

A handwritten signature in dark ink, appearing to read "Don Otterman". The signature is stylized with a large, looped "D" and a cursive "O".

RESPONSE TO SUMMARY OF ROBERT PARKS REPORT

The following synopsis is not intended to be an exhaustive response to each statement in the Parks report, but it is a synopsis of Chief Stull's response to those areas covered in the June 27, 1997 meeting with City Manager Wally Mull. The following points out areas in which further information and investigation is warranted, and a rebuttal of all allegations of misconduct.

First of all, the very prolixity of this report is testimony to its weakness. The report seeks to substitute quantity for quality. Surely, if there were a few unimpeachable examples of misconduct, then the copious recitation of bruised egos, mistrust, and miscommunications would be unnecessary.

The report starts off with a long-winded discussion of the Louie-Bishop report, which did provide some constructive criticism of Chief Stull's management style and made a number of recommendations which he has implemented. Although the author makes a detailed summary of the criticisms, he utterly fails to comment upon the numerous changes which were implemented as a result of that report, and which enhanced the environment and productivity of the department. He culls selective quotes from performance evaluations, and fails to explain the disappearance of performance evaluations favorable to Chief Stull (page 7, page 16). Although Mr. Parks was provided a copy of the Burtchaell report by counsel for Chief Stull, there is absolutely no reference to that more recent report in his summary. The Burtchaell report should be read in its entirety; it documents many of the difficult problems with which Chief Stull had to wrestle, and places a substantial portion of the blame for poor employment relations on other entities.

Excerpts of Burtchaell Report

For the benefit for the reader who does not possess a copy of the Burtchaell report, following are excerpts from that 1991 report. That report documents a number of complaints against Chief Stull, which a thorough and accurate investigation revealed to be completely unfounded. Mr. Burtchaell writes:

"I'm sure I don't have to tell you that my investigation has told me a lot about different factions trying to create and keep power within the City structure. When Otterman took over as City Manager, in July of 1989, there were many who told him that the Chief of Police had to go. There were also a lot of politics within the Police Department, especially between the union and management. In my work with cities and police departments, I find this to be quite normal, and also have found your police department to be very much better than most."

The report documents complaints made by a number of City employees, including Bob Kershaw, Sue Darby, Audress Ryan, and Officer Moir. Although the report is quite involved, the bottom line is that this thorough investigation established that most of the allegations were unfounded, not credible, or in one case recanted.

The Audress Ryan workers' comp. claim seems very typical of a pattern that can be discerned in the Parks report. Audress Ryan filled out a workers' compensation stress claim which relied in part on a verbal argument between Chief Stull and Sergeant Kershaw which she

said caused her stress. Chief Stull, trying to be helpful, suggested that she leave out the part about the Chief and Kershaw having a fight. The investigation revealed that Chief Stull told her "I will guarantee you that they will refuse it. If you rewrite it and leave out [those] details they will accept it." . . . It was very clear [to Burtchaell] that the Chief was saying that he felt the claim would be denied if it was processed the original way, but said that he was willing to sign it either way." However, Ryan took this to be coercive - an attempt at a coverup. According to Burtchaell, Chief Stull was making what he thought was a helpful suggestion

The significance of this is that Burtchaell discovered a pattern which Parks did not discern or investigate. The pattern is one in which Chief Stull makes a comment or suggestion, and the employee with an axe to grind reports it as an order, demand, coercion, or coverup. The difference between the Parks and Burtchaell reports is that Burtchaell did not take every report of a comment by Chief Stull at face value, but investigated the context in which the conversation took place to determine the truth.¹

In one sequence, Burtchaell dealt with an incident in which an officer learned of, and disclosed, a confidential memo. The officer refused to tell how he learned of the contents of the memo, and Chief Stull imposed a 14-day suspension. Burtchaell notes

"It should be pointed out here that only because Chief Stull refused to fire Arnett, instead of going for the 14-day suspension, did a major catastrophe be diverted."

Burtchaell discovered that it was Kershaw who had released the confidential information:

I asked Kershaw how he was able to live with himself knowing that he had released confidential information about a fellow officer in the department, and that the information had created a brouhaha which was going to result in the dismissal of one of his fellow officers, as well as bringing negative notoriety and shame to the department. He went on to tell me that he did it because 'you had to be there to understand' meaning that he believed that Jenness and Stull had it in for Moir, supposedly because Moir had been vocal and a rabble-rouser at a union meeting. As I continued to question him about his motives, I can see that he completely failed to understand the connection between his sabotage, and a man losing his job and the department losing face. Kershaw was so focused on his feeling of what he thought the chief was going to do that was wrong, that he seemed to fail to see what he had done wrong . . . I believe that Kershaw has been so intent upon causing trouble for the chief, that he completely compromised himself, his department, and three of his fellow officers."

This sort of myopia, has, unfortunately, become pandemic in this department. The report notes that at one point City Manager Otterman made a decision to fire the Chief:

"Otterman tells me that he had been very uncomfortable about this decision . . . when I asked Otterman to tell me what criteria he did use for telling the chief that he had to go, he told me that he had

¹ Burtchaell was also quite astute in his investigative work. He got a hold of phone activity logs to determine who was speaking with whom whenever there was a great deal of activity in the department (Burtchaell report page 24).

three issues that he relied upon while discussing with the Council, that made the difference. One was the Audress Ryan workers' comp. claim, the second one was the union disharmony, and the other one was Otterman's opinion that had come about mostly from information he had been given by Darby and Kershaw. John, I want to tell you that I fully believe that Chief Stull got hammered by Darby and Kershaw, and used Otterman as the blunt instrument. The Audress Ryan incident was a non-incident, that Darby blew into something much bigger. The union problem was created and fanned by Kershaw for sure and probably Darby as well."

In giving his assessment of Chief Stull's performance, Burtchaeil was quite blunt:

"Chief Stull was hired to build a department that was in chaos when he arrived. He is not political! His mandate was to use his personal strengths to wrestle the control of the department away from the union, and establish a quality police department. This is a very difficult job in any city.

In the beginning, Stull had to rule like a dictator and made a good many enemies. I think a close look at the record will show that in the last year to year and a half he has lightened up considerably, and is now ruling like it was democracy. Your police department is well equipped, and trained, and is building its reputation among other law enforcement officers in this state. I talked with a number of them to get a feel for the Keizer Police Department.

Team building is easy to understand and difficult to perform . . . of course, as everywhere, there are those who want to fight the system and are most ready to step forward and call for a new leader.

I have seen these difficulties in other governments and businesses, and should like to throw in my caution. The last chief of police was thrown out, due mostly to the influence and power shown by the union organization. If you dismiss Chief Stull, word will get out that he was fired, probably due to the fact that he will fight the City legally for damages, and a message will be sent again to the police union that they can get rid of anybody by creating havoc. . . . I also suggest that the City Council reverse its decision on Chief Stull, and send a clear message to the troops of the department, that he is in charge."

I submit to the reader that between the lines of the Parks report, one can see many of the patterns more ably investigated in the Burtchaeil report.

The Thirty-Page Introduction

The purpose of this report, at least initially, was to investigate allegations of misconduct and report the facts found as a consequence of that investigation. Subsequently, the investigation was expanded to review not only misconduct, but an overall evaluation of management style,² perhaps because little evidence of misconduct was forthcoming.

The result is something that reads unlike any investigative report that one is likely to find in any other context. The report requires much patience before the reader gets to any relevant factual allegations.

The report begins with a 20-page litany of emotional quotes by employees expressing general feelings of anger, fear, retaliation, abuse, discrimination, and harassment. The reader must wade through the first **21 pages** of the Parks report before one is finally confronted with factual allegations regarding things that Chief Stull has actually said or done. Without such stage-setting, many of these facts would appear trivial.

The allegations themselves are quite disappointing. The Parks report seldom alleges actual violations of rules or regulations; but focuses primarily on Chief Stull's personal style. The author proceeds for page upon page of comments that Chief Stull made about the personal appearance of his officers.³ This is interspersed with numerous complaints about how picked-upon those officers feel about the brusqueness of Chief Stull's demeanor. It is particularly significant that none of these officers are identified by name in the summary. It is as though the author has intentionally made it as difficult as possible to corroborate statements in the summary with the remainder of the 2,500 pages, for fear that the larger context would reveal the misleading nature of these excerpts.

Throughout the report, facts favorable to Chief Stull are either not reported or are reported without comment. Criticisms of Chief Stull are reported with copious commentary regarding how upset, angry, concerned, emotional, or indignant the alleged witnesses were. Numerous comments testified to employees' fear of being terminated if they objected to what they claim was outrageous behavior. Nevertheless, the entire report provides no suggestion that any employee has been terminated by Chief Stull without more-than-sufficient cause.⁴ Therefore, this reported fear seems quite unfounded.

² That job requires someone with different qualifications. Mr. Parks is no doubt a very able Drug Enforcement Agency investigator, but he has never run a police agency. Bishop and Louie, who did the 1991 report, did have those qualifications.

³ Chief Stull could have saved him the trouble; he readily acknowledged to Mr. Parks that he has always been a "stickler for appearance," because he believes that appearance reflects positively upon both the public perception of his department, and the pride each officer takes in his or her position.

⁴ Only one officer was actually terminated by Chief Stull; a couple others resigned when they were caught in situations where termination was the obvious and inevitable result.

The purpose of this lengthy editorial introduction is apparent: the reader might not otherwise "correctly" interpret the subsequent reported conduct and statements, which in a larger, more objective context might be seen as either petty or benign. The author insults the reader's intelligence by telling the reader what to think of these facts before describing them.

Pages 20-30 are primarily concerned with comments that Chief Stull allegedly made, which are variously described as abusive, unprofessional, intimidating, etc. Many are misreported or taken out of context; several are simply false. Some were deserved. All are fairly petty. Virtually every attempt at humor is alleged to be malevolent, intimidating, or derisive. They are supported by the serious recitation of such "objective" factors as the witnesses observation of Chief Stull's "body language" or red-faced complexion.

At **page 30** the report commences editorial speculation attributing all employee turnover to Chief Stull's management style.

Discussion of "Misconduct" Allegations

On **page 32**, the report discusses an incident in which Officer Trump was placed on leave. Contrary to the characterization in the report, Officer Trump was placed on leave because of violation of bureau policy regarding traffic enforcement. Officer Trump and Officer Babcock had previously been told not to work in pairs while doing traffic enforcement. Chief Stull believed that gave a bad image to the department because he had received citizen complaints about them doing such traffic enforcement on a short street that had no history of traffic accidents but at which they could write minor speeding citations. They were not following the directive to write citations at locations which had high accidents, rather than finding a "duck pond" to get numbers of citations. They wrote 19 traffic citations between the two of them, a single day after the speed limit sign was changed on McCloud; department practice was to wait a week to ten days before enforcing such a change in the speed limit. All of this information is documented in the internal affairs investigation file; those documents did not make it into Parks' report, even though Chief Stull explained to Parks:

Two motorcycle officers down there on a street that has relatively no traffic accidents, simply sitting there trying to generate numbers. I go complaints on that and I told both of them previously don't do that, I don't want you working together. I want you at literally opposite ends of the city doing traffic enforcement. They were caught a second time. They were on Trail Avenue, which is 3/4 mile long and is a "duck pond." That was number one. Number two, the Water Department employees complained to Mr. _____ that police officers were writing speeding tickets a day after the speed sign had been lowered. So these two rocket scientists are out there writing, I think it was 21 tickets, something like that between them, at a speed sign less than 12 hours after it had been changed. We don't do anything less than a minimum of a week or 2 weeks or notice or something in a newspaper.

* * *

We told them, here's a list of accidents in the city. *They are given that every week that they come to work. These are the areas that we want you to concentrate on and write tickets for violations that are causing accidents.* . . . I don't need numbers, I need to bring traffic accidents down.

Shortly after Officer Trump was placed on administrative leave during this investigation, he declared that he was taking parental leave instead. After consulting with labor attorney Akin

Blitz,⁵ Chief Stull determined it was not proper, and so informed Officer Trump. The union alleged violations of family leave law, and after some negotiation (which intimately involved Mr. Blitz), it was determined that because it would actually be cheaper to allow Trump to use up his sick leave while off on parental leave, that this alternative was acceptable. Unfortunately, there was a downside to this result: because Officer Trump was on parental leave for three months, he could not be called in for his internal affairs investigation interview until completion of his parental leave. Of course, the author of the report did not have this information because he did not ask for it.

On page 36 Sergeant Barker criticized Chief Stull's comment about permitting the participation of the union representative in an investigatory interview. Under current Employment Relations Board standards, union representatives are entitled to observe and to interject comments only for the purposes of clarifying questions or responses that have been given. They are not permitted any more active participation in an investigatory interview unless specifically authorized by contract to do so, and they are not permitted to speak for the employee. See Washington Co. Police Officers Association v. Washington County, ERB UP-15-90 (1991). Therefore, from a management standpoint, an investigator is indeed subject to justified criticism by his supervisor if he permits the union representative greater scope in participation in the investigatory interview than has been negotiated in the union contract. Sergeant Barker erroneously interpreted Chief Stull's comments about his letting the union representative have an excessive role in the interview as implying that the union representative was not permitted to be in the room at all.

On page 37 the author reports an incident in which Babcock was allegedly refused the right to union representative. However, the author fails to note that this was simply not an investigatory interview. The interview was following the internal affairs investigation related to Officer Trump, and Officer Babcock had basically been cleared of any wrongdoing. Chief Stull was calling him in to inform him of this fact. The law is perfectly clear that an employee is not entitled to union representation whenever the employer deigns to speak to them; it is only permitted when the interview is one which potentially lead to discipline.⁶ Therefore, the criteria for union representation was simply not satisfied. Again, Mr. Parks failed to obtain the relevant information to determine the appropriateness of a union representative in that situation.

On page 38, the author cites an incident in which Officer Nashif was to be interviewed in relation to an internal affairs investigation. However, the author fails to note that the internal affairs investigation was not an investigation of Officer Nashif. There is simply no right to union representation when the interviewee is not subject to discipline or potential discipline as a result of the interview. Chief Stull was completely appropriate in his action when he directed that the union representative be excluded from such a witness interview. Again, had the author bothered to check with the labor relations attorney who advised Chief Stull on these matters, he would

⁵ There is no evidence in the entire 2500 pages that Mr. Parks accommodated Chief Stull's strong suggestion that he talk to Mr. Blitz and to former City Manager Dotty Tryk about each of the disciplinary decisions, on which they advised Chief Stull.

⁶ The remedy for a violation of this rule is that any statements made after denial of access to the union representative cannot be used against the officer in any subsequent disciplinary proceeding.

realize that these complaints were utterly groundless.

On page 39, the report references an anonymous officer who stated that Chief Stull threatened to fire him if he messed up again, and that the union wouldn't protect him. Of course, depending upon who the officer was, that may be literally true.⁷ Unfortunately, the author gives no hint of who that officer might be, and has never raised this issue in a context where Chief Stull would have had an opportunity to respond. Again, this is simply a McCarthyist tactic in the guise of an objective report.

On page 40 the report indicates that Chief Stull made a comment to Detective Johnson about not needing a narcotics detective. The time, date, and context are not given, and the comment makes not sense. Chief Stull has no recollection of this statement, and denies it. Perhaps if the author had given Chief Stull more information, then Chief Stull might be able to reasonably respond. Perhaps a comment was made that was misinterpreted or taken out of context. In any case, without further information it is impossible to respond.

Pages 40 to 41: Budget constraints required the taking away of free coffee, Franklin Planner refills, picnic and golf tournament. The response shows an obvious misunderstanding of public body budget processes. When the City Council limits a department budget, it is atypical for the Council to direct where to cut expenditures. It is the Council's clear intention that the department should spend less money. How that intention is implemented is typically up to the manager of the department -- in this case Chief Stull.⁸ When the manager of a department takes away perks in response to this pressure from the City Council or pressures from the local press, he is acting responsibly even though he may not feel that reduction of these benefits is in the best interests of his employees. It is unfair and highly misleading to attribute to Chief Stull the intention to penalize his employees when he is simply complying with the money-saving directions coming from ultimately, the tax payers. To characterize the decision as a decision of the City Council is entirely accurate because the City Council has ultimate authority over the budget. However, Chief Stull did not say that the particular reductions reflected direct orders from the City Council. Moreover, to respond to press inquiries regarding alleged waste in the department by eliminating the controversial items is also prudent from the public relations standpoint, if no other.

Chief Stull was never asked about these budget-cutting measures by Mr. Parks before he wrote the report.

Apparently, Mr. Parks would have been more satisfied if Chief Stull cut services to the public, necessary overtime, or positions rather than these perks. It is appalling that he reports Detective Kuhns' editorializing as the gospel on this topic.

⁷ At the June 28, 1997 interview, Mr. Parks expressed the belief that this referred to Officer Wampler. In light of officer Wampler's disciplinary history, a blunt warning may have been quite necessary and appropriate.

⁸ It is noteworthy that under Chief Stull's leadership, this department has provided excellent law enforcement service while having the second-lowest ratio of sworn officers per capita *in the State*, according to the most recent survey conducted by the state Bureau of Public Safety Standards and Training.

Detective Johnson's report (page 42) about the discussion of the letter of support is simply a grotesque exaggeration of what actually happened. Chief Stull asked for support, Johnson did not refuse but agreed to take the issue to the membership. The membership rejected it, and that was the end of the issue. Johnson may have feared retaliation, and articulated those fears, but retaliation was not threatened. Detective Johnson said that he "felt" like Chief Stull was insisting upon answers to questions about the meaning of the refusal, but he has no objective facts to support this claim.

When Chief Stull met with Detective Johnson in his office, Chief Stull showed Detective Johnson a copy of the newspaper clipping reporting a "loss of confidence" of Chief Stull's officers. Detective Johnson advised Chief Stull that he had no idea where that came from, or how Zaitz came up with that statement. Detective Johnson stated to Chief Stull that it probably came from some malcontent in the association. It was at that point that Chief Stull asked Detective Johnson if the Keizer Police Association would give him a letter of support. Detective Johnson wrote down his request and stated that the association was having a meeting that night and that he would bring it up. Chief Stull did not order, did not threaten, did not intimidate, did not get angry, did not jump up and down, and did not make any negative or threatening statements to Detective Johnson.⁹ The entire meeting with Detective Johnson took ten minutes.

The remainder of the narrative between pages 42-47 is a fabrication. Detective Johnson was present for some of the conversations that Chief Stull had with Kuhns; the report does not indicate whether the investigator bothered to match or corroborate these statements. Chief Stull recalls that the next day Detective Johnson stated to him that their attorney Mr. Makler told them not to get involved with any conflicts between the City Council and the administration of the police department. Johnson also noted that the attorney advised them that the new union contract was not yet signed and that this was the most important issue to them right now. Chief Stull informed them that the contract was all but done, and that as soon as the attorneys typed up the final draft that the City Council had voted to approve it. That was the extent of the discussion concerning the involvement of the City Council.¹⁰

At lunch that day with Lt Bowe, Chief Stull heard that Makler's legal advice had little to do with the decision, and learned for the first time that the Union membership was not supportive of him.

One observation is worth noting at this point: Kuhns, Johnson, Barker, and a couple of others are copiously quoted throughout the report. They are, coincidentally, individuals who have been the most serious agitators against Chief Stull. Although the author of this report indicates at the very beginning that he would not report anything which could not be independently corroborated, he copiously recites conversations with these individuals in which no one else was present, in direct contradiction to his announced methodology on the first page

⁹ Common sense suggests that when you ask someone for a favor, such behavior is not likely to achieve the goal, especially since Johnson could not unilaterally grant the favor - it required a vote of the Union.

¹⁰ The comments attributed to Chief Stull about Doty Tryk holding up the contract (page 46) are incoherent; obviously, Officers Kuhns and Johnson forgot that this conversation took place weeks or months after Ms. Tryk separated employment from the City.

of the report. Johnson and Kuhns may well have imagined or feared retaliation from Chief Stull, but when they put those fears into writing as reported statements by Chief Stull, it is appalling that these statements are reported without corroboration. None of the statements of such extremely biased and bitter individuals should make their way into this type of an investigative report without independent corroboration by a nonbiased individual.

Page 46: The Chief does not recall having a conversation with Johnson about suing those who had defamed him, but even if the comment were made, it is certainly within any individual's rights to sue for defamation. Mr. Makler's letter was clearly defamatory. If Mr. Makler did not warn the union of this possibility, he should have.

Page 47: Comments about scrapping a City Council "Mar-po deposit system" program. Chief Stull has never had anything to do with the program and never raised the issue.

Page 48: Detective Kuhns expressed the opinion that it was "not legal for the Chief to be seeking information" from Kuhns about the discussion of his leadership in the union meeting. Although Detective Kuhns was certainly within his rights to refuse to give the Chief information, there is nothing in the slightest bit illegal about asking for that information. The comment that the Chief threatened to sue the police association "if they took a vote of no confidence against him" is simply ridiculous, since the conversation allegedly took place after the vote of no confidence was taken. As indicated earlier, to the extent that Mr. Makler's letter was in fact defamatory, warnings about the potential liability attached to that letter were certainly appropriate information for the union leadership to have. That information is not coercive; it is simply factually and legally correct. Furthermore, the comments on **page 49** that the Chief would be entitled to call every employee of the police department in a due process hearing is also correct as a matter of law. Anyone in the law enforcement business, and certainly anyone in the litigation business, is well aware that people who would feel compelled towards honesty when testifying on a witness stand, will nevertheless readily stretch the truth in an informal private interview with no others present. Often a reminder to such individuals that statements made in an informal context could come back to haunt them in a more formal setting is both appropriate, and an effective admonishment to tell the truth.

Page 49: Comments about threatening to call Wampler and cross-examine him with his personnel file. This makes no sense and is probably a fabrication and distortion. Wampler is not involved in employee relations, though he was the subject of disciplinary investigations.

Page 52-57: Gender Insensitivity and Sexual Harassment. It is preposterous to allege that profanity was common in the police department as a result of Chief Stull's influence. The suggestion that Chief Stull was "sexually harassing" female officers by demanding that they turn around to view their uniforms is simply ridiculous. Chief Stull explained to Mr. Parks that he was concerned with the way the female uniforms were fitting, because they had had some problems with ordering those uniforms. Chief Stull explained to Parks in his first interview:

We were trying to find a female uniform and make sure that the uniform was in proper order and was tailored properly. We were having great difficulty with some of our female officers because of their small stature and size to get a female uniform that would fit and not be bulky and obtrusive in looks and appearance. And there was always somebody there, usually when that's happened and we were exploring different options . . .

* * *

The important part, the uniform or piece of equipment must fit. Gun belt, name tag, tie,

hat, things like that. I am a stickler on dress. I have always been, I always will be. So if I inspect my employees as they are going down the hallway or something is said . . . about they're not dressed properly, that they are not wearing their uniform properly.

The author omitted that explanation from his report.

The report spends several pages (pages 54-57) attempting to generate what can only be characterized as a spurious legal opinion to the effect that these occasional inspections of female uniforms constituted sexual harassment because of how they may have been perceived by the female officers. The entire discussion is probably an excellent demonstration of why the legal opinion and analysis should be left to the lawyers, not police investigators. By juxtaposing regulations, comments, and Bureau of Labor literature, the author attempts to suggest that any conduct, no matter how innocuous, which creates fear or gives offense to female employees and is in the slightest way related to their appearance, constitutes sexual harassment. Taken literally, the reasoning would require that any dress code regulations that give rise to a sexual harassment complaint if the employee against whom the regulations were being enforced had a subjective fear or paranoia concerning the supervisor, regardless of the supervisor's intent. This reasoning does not comport with the law of sexual harassment, nor does it comport with common sense.¹¹

Page 58: The author takes issue with Chief Stull's questioning Officer Tucker concerning the wreck of her patrol car. The author expresses no knowledge or opinion as to whether Chief Stull had already obtained other information regarding her physical condition, and established that Officer Tucker was in fact not seriously injured. The same comment applies to the Mendoza motorcycle wreck -- this is consistent with the pattern of reporting only those comments of Chief Stull to which people took offense and reporting none of the comments of Chief Stull which may have been innocuous or helpful.

Page 59: Powers purchased a lamp. There was no inquiry conducted. There was protocol for getting special equipment or furniture, and it was not followed in this case.

Page 59: Sergeant Barker's fan. Contrary to Sergeant Barker's contention, this was simply a joke. Sergeant Barker probably knew that, but decided to raise the issue as if he took it seriously.

Page 60: Allegations of racial harassment or insensitivity. It is remarkable to call these "racially motivated" incidents when the author's own diatribe seeks to establish that insensitive conduct is routine for Chief Stull and is inflicted upon everyone in the department. If these allegations were true, then it would be completely ridiculous for any individual to feel singled out for this type of treatment. Either it is Chief Stull's "management style" or it is not. If it is not, then obviously many of the witnesses are exaggerating. If it is, then how can it be characterized as racially motivated?

Page 61: Patrol Officer Mendoza found living arrangements outside the 30-minute response time as required by policy. The author of the report indicates that "three other Caucasian officers reside outside of the department policy and have never been ordered to

¹¹ In fact, the objective nature of the conduct which is the primary factor in determining whether such conduct is harassing; the subjective interpretation alone cannot be sufficient grounds for harassment.

relocate.” To the best of Chief Stull’s knowledge, to this day, that is false. Chief Stull’s understanding is that although some officers reside barely within the 30-minute limit, they nevertheless live in locations that are close enough to be on the job within 30 minutes. In Mendoza’s case, Lieutenant Jenness informed Chief Stull that his residence was clearly outside that range. If in fact some of the Caucasian officers lived outside the 30-minute limit radius, it was not brought to Chief Stull’s attention, and has never been brought to Chief Stull’s attention to this day. The report does not indicate which officers are allegedly in violation of the policy, although it suggests that one of them lives in Newberg, which is considerably closer than Portland and would not, to Chief Stull’s knowledge, be a violation of the policy. Again, the author was given this explanation in the meeting with Chief Stull and completely neglected to include it in his report. He also neglected to mention that Chief Stull was aware for several months that Mendoza was living in Portland but did nothing about it because he knew Mendoza was going through a divorce. Mendoza was intentionally left alone for a number of months before he was finally approached on the issue and asked to rectify the situation.

Page 62: The next allegation of racial discrimination was related to Officer Mendoza, and his assignment to the traffic team. The report indicates that Mendoza “was told that one of the non-negotiable requirements for membership to the team was that he would have to ride a motorcycle.” *The report does not indicate who told him this.* He was denied the opportunity to operate a regular traffic car. He complained that Officer Carrie Anderson, however, was permitted to ride a regular traffic car, because she insisted that she would not ride a motorcycle. Sergeant Miranda apparently did not ask Chief Stull for any explanation of the assignment, and neither did Mr. Parks. Nevertheless, he deemed it appropriate to include this assignment in his report and attributed it to racial motivation. Presumably, if Chief Stull had assigned the female officer to the motorcycle and let Mr. Mendoza ride in the car, it would have been attributed to gender discrimination. Mr. Parks notes that Lieutenant Bowe and Sergeant Miranda could “offer no reasonable explanations that would refute the allegations.” The report leaves open a variety of questions: (1) Were they asked? (2) Is Sergeant Miranda one of the sergeants who has “closed ranks” with the officers and if so, why wouldn’t he give an explanation that was incriminating to Chief Stull? (3) Why wasn’t Chief Stull asked for an explanation in his interview? The answer is that Officer Anderson was simply better qualified for the work.¹² Assignments are not made by seniority, but by skills and ability.

Page 63: The next allegation of racial harassment concerns Officer Byrd. Even if the comments were made, it is remarkable that comments addressed to Mr. Byrd concerning his appearance would be attributable to racial motivations, but not comments to other people along those lines. The comments were not made about his cowboy boots, but his overall attire, which was completely inappropriate for police work. The inappropriateness of the attire for a plainclothes officer was immediately apparent to both Chief Stull and Lt. Bowe.

Page 64: Comment About “Ray you have no rhythm.” Chief Stull first made this comment while they were dancing at a Christmas party; Officer Byrd laughed. Chief Stull made this comment on a number of occasions over the next five years and Officer Byrd laughed or smiled every time. It was always in a humorous vein and never intended to be offensive in nature. Until reading this report, Chief Stull never had reason to believe that it was ever taken in an offensive spirit, and would have stopped making those comments if he received the slightest

¹² Chief Stull explained his reasoning in detail to Mull, Morgan, and Parks on 6/27/97, and will gladly explain it to anyone who is interested.

hint that Officer Byrd was offended by them.

Allegations of Double Standards

Page 64: The author appears to take issue with the notion that there can be different standards for managers than for subordinates. Apparently, the author seems to feel that the suggestion that the president of the company should spend less time doing the dishes or sweeping the shop floor than the rank and file presents a radical notion.

The author also takes seriously the notion that every single rule and regulation in every department that could be enforced must be enforced. As in any police department, there are literally hundreds of rules for the orderly, clean, efficient, safe, etc., operation of the department which are more in the nature of conventions and guidelines than hard and fast rules for which individuals would be disciplined (and in fact, for which no one ever has been disciplined). Nevertheless, the author seizes upon any perceived violation of policy as a pretext for the claim that Chief Stull is hypocritical, even as he faults Chief Stull for being too picky in enforcing department regulations. In Chief Stull's own words to Mr. Parks:

As you know, there isn't a policy or procedure to cover every situation or event that could occur in any aspect of employment. The policies and procedures manual is a reference manual that we use a lot.¹³

Page 66: Firearms Qualifications. Firearms qualifications is simply a form of training. It is a form of training which most officers are happy to receive; no officer has ever been disciplined for failure to undergo such training. It is not untypical for management employees to be more sporadic in taking advantage of training opportunities than the rank and file, for the simple reason that (1) it is not as essential for their day-to-day duties, and (2) they are more pressed for time due to the managerial demands of their position. If an officer had repeatedly failed to take advantage of training opportunities, he might conceivably be ordered to undergo the training. If he then refused to undergo the training he would then be subject to disciplinary action. However, the possibility of disciplinary action does not pre-empt room for common sense in the administration of such training. The manual does *not* state how often firearms training must occur, but for patrol officers, the department tries to get firearms qualification twice a year. As Chief Stull explained before the report was prepared:

You are trying to get me to say that there is some mandatory written down policy that you have to qualify twice a year. The policy in the manual refers to qualifications on a firearm by an employee, and that is established when a new employee comes on board that they have to show proficiency with a firearm before they can be hired as a police officer. That's what the policy refers to. . . no one has ever been disciplined or

¹³ The policy expressly authorizes the use of common sense in its application. Policy 1.00.00 states in part:

The policies, procedures, directives, rules and regulations are set forth in this manual in order to direct all Department members in carrying out their duties and responsibilities and provides the *guidelines* to which each member is expected to adhere. However, *these policies are not intended to cover every possible type of situation which may arise as much is left to the intelligence and discretion of each member.* (emphasis added)

discharged for [violations of] that policy.

Chief Stull's explanation is missing from the report summary.

The author notes that Chief Stull had directed sergeants to inspect weapons to ensure compliance with firearms maintenance policy. Indeed, that is another example of Chief Stull's attention to detail, but no one has ever been disciplined based on such an inspection. It should not require tremendous insight to understand that not every assignment is done for the purpose of catching potential violations leading to discipline.¹⁴

For example, Chief Stull asked his administrative assistant to maintain his files according to certain configurations, so that materials could be easily located in those files. This is a matter of convenience for the department. Of course the secretary could be disciplined if she absolutely refused to organize the files that way, but why would anybody give such a refusal? It is simply a matter of good housekeeping. Theoretically a person could be disciplined for such a violation but as a practical matter it never happens because as soon as it is called to the attention of the individual, it is invariably fixed. Apparently both the author and a number of employees failed to understand that not every directive need be viewed as a power struggle.

Page 67 and 68: Protective Vests. This is a perfect example of the foolishness of permitting policy to override common sense. The policy literally requires officers to wear protective vests at social events, meetings, and graduation ceremonies. Chief Stull stated he has never required that, and has never disciplined anyone for failing to wear a protective vest. One generally only wears a protective vest when one is in a situation where there is a modest likelihood of encountering a projectile. The average officer is commonly in that situation; Chief Stull is not. Chief Stull does not require investigators to wear protective vests. Chief Stull believes that the allegation that he was not wearing a protective vest in the hostage situation is false.¹⁵ Given the fact that the protective vest typically goes under one's outer clothing, it is doubtful that anyone noticed that his vest was on.

Page 68 and 69: Motor Vehicle Pursuit. It is remarkable that the author did not bother to include Chief Stull's explanation of this incident. Chief Stull explained that he followed an obviously drunk driver at a reasonable rate of speed which only rarely exceeded the speed limit and never by more than 5 miles per hour. He did not run any stoplights, he did not put himself or

¹⁴ The author makes much of the fact that he asked Lt. Bowe whether officers would be disciplined for various policy violations including this one, and Bowe answered yes. Because we don't know how the question was asked, (and because both Chief Stull and his counsel have been prohibited from contacting Bowe, despite repeated requests), we can only speculate what Lt. Bowe meant - most likely, he meant that an officer who *refused* to comply with these policies after being asked would be subject to discipline. Obviously that is true, but has never been an issue.

¹⁵ The only incident discussed (at the 6/27/97 meeting) was an incident in which Chief Stull directed operations from 500 yards away, beyond two established police perimeters, in an area deemed secure enough for the press and public to have access. Chief Stull was by no means the only person at that location lacking a safety vest; again, the policy may be tempered by common sense.

any citizens in danger, and he simply radioed in a request for assistance while he followed the drunken driver. Apparently, Mr. Parks latched on to the fact that Chief Stull used the word "pursue" to describe the activity rather than "follow." However, this is a purely semantical distinction. It was not the type of high speed pursuit that is prohibited by the policy; again, a modicum of common sense is required in the application of this policy. Chief Stull has never disciplined, and would never discipline, anyone engaged in similar activity.¹⁶ Of course, the author did not even ask Chief Stull these questions, because he apparently was not interested in the answers. It was up to Chief Stull's attorney to ask what seemed to be obvious questions regarding the nature of the "pursuit." The author's failure to include this additional information in his report is unconscionable. Furthermore, the comment by Lieutenant Bowe was obviously premised upon the assumption that someone admitted to engaging in a blatant violation of the policy, which is obviously not applicable here.

Page 70: Alcohol Consumption. Chief Stull acknowledged having a beer with other members of the department, but did not drive his assigned police vehicle to or from that location. The same applies to the Keizer Iris Festival (page 71). Chief Stull flatly denied these allegations. No doubt, the confusion is due to the fact that Chief Stull's personal vehicle has the same body style and color as his City car. Moreover, no department member has ever been disciplined based on that policy.

Page 71-72: Motor Vehicle Accident Investigation. On September 13, 1996, Chief Stull was involved in a minor fender-bender which happened when someone else backed into his car. The other driver had no license or insurance. The Chief called for a Keizer police unit and two officers showed up, along with Sergeant McKowan. Nobody was injured in the accident. Sergeant McKowan, pursuant to normal policy, asked for an outside agency to come and investigate the accident. He was informed that the Salem Police Department was unable to respond, and that OSP's response would require approximately a two-hour delay. At that point Chief Stull told Sergeant McKowan to go ahead and have the Keizer department do the investigation of this extremely minor accident.

The accident report was filed, but Chief Stull's secretary neglected to send a copy to the DMV. After the DMV notice came in, a report was filed. To suggest that Chief Stull intentionally disregarded DMV rules simply makes no sense -- even if the accident were Chief Stull's fault, the filing of a DMV would not cause any problems -- the insurance company had already been notified the day after the accident. Chief Stull had nothing to fear by reporting this to DMV. In the ordinary course, the secretary should have simply forwarded a copy of the department's report to DMV and the failure to do so was a mere oversight. Chief Stull was never asked about this before the report was written.

Page 72: DARE Golf Tournament -- Lieutenant Bowe allegedly paid for attendance. It is unknown whether this allegation is true, but it was never brought to Chief Stull's attention until he received this report. Chief Stull did not receive additional pay for the golf tournament (and nobody says that he did). The suggestion that Chief Stull's conduct at the tournament was in some way "undignified" is not explained, and is false.

¹⁶ The author made a ridiculous analogy to the discipline of Mindy Tucker, who ran a red light and got into a three-car collision while chasing a suspect for the offense of expired tags, which is obviously not an immediate threat to public safety. Drunk drivers are. Common sense is helpful in discerning that distinction.

Page 73: Cooking Hamburgers. It is apparent that if one employee asks another employee to do something, it is a request, but if Chief Stull asks an employee to do something, it is an "order." This double standard pervades the report. Under this standard, Chief Stull cannot make the mildest request without a person feeling threatened for their job. If the individual involved didn't wish to cook the hamburgers, he should have expressed that preference at the time, rather than speculating it would result in discipline. With respect to the employees who were "offended" by Chief Stull's allegedly, (yet only vaguely described) "obnoxious" conduct, the disingenuousness of these opinions must be presumed. To hire a professional investigator to ask people to catalog every comment, nuance, quirk, or practice which they found personally distasteful is an absurd waste of money.

Page 73-75: Vacation Accruals. This issue reflects the author's utter lack of understanding of personnel management issues. Supervisors have a right and an obligation to track the wages and benefits of their employees. Employees have no right or obligation to track the wages or benefits of their supervisor. Therefore, Chief Stull's reluctance to provide his employees with information about his vacation accruals was completely proper because it was simply none of their business. It was the business of the finance office, which had complete and full knowledge of his vacation accruals. Chief Stull's counsel personally spoke to City Manager Dottie Trick, and asked her if there was any way that Chief Stull could possibly have hidden that accrual information from the finance office. She said he could not, and did not.

Contrary to the author's allegation, there is no mention of maximum vacation accruals in Chief Stull's contract. Presumably, it would be covered by City Policy and the author has failed to provide a copy of City Policy applicable to managers. The general City policy does put a two-year maximum on accruals, but Chief Stull had asked Doty Tryk to exempt him from that policy¹⁷ because he was simply unable to take sufficient vacation due to the requirements of his position, and his limited staffing.

If, indeed, Chief Stull's vacation accruals exceeded that permitted by the separate City policy for managerial employees, then the finance office should simply have stopped permitting the accrual. The City cannot, and should not force Chief Stull to take vacation when he is too busy to do so. If Chief Stull was running the risk of losing vacation accruals by not taking vacation, that is a risk which he bears alone. If the City chose to not take away those accruals, that is simply none of the business of the employees of the department. Chief Stull is not in a position to make policy concerning vacation accruals, and did not make policy concerning accruals. The finance department bears full responsibility for Chief Stull's vacation accruals and they are controlled by the City Manager. The fact that Chief Stull properly enforced the benefits of the officers under him simply has nothing to do with his separate compensation package. Officers get many benefits different from Chief Stull, including overtime for excess hours worked. If Chief Stull is to be limited to those benefits available to officers beneath him, then what, indeed, is the point of having a separate contract from the Chief of Police which is different from the collective bargaining agreement governing the other employees?

This is another example of the author substituting bias for legal research. An additional

¹⁷ The author makes much of the fact that Doty Tryk apparently has forgotten this discussion. Obviously, if Chief Stull knew the finance office would not permit him to keep excess accruals, he would have been motivated to get his accruals down by taking more vacation. Neither Chief Stull nor his subordinates have any authority on this issue.

point is that the sanction for this alleged violation is built-in: the employee may stop accruing vacation. To suggest that discipline is warranted for refusing to take vacation is both unjustified and bizarre.

Page 75-79: Preferential Treatment for Derrick Beach: Notably, this is one of the many incidents complained about by Sergeant Barker, who clearly has an axe to grind. Sergeant Barker issued a defective citation to Derrick Beach, the grandson of City Council Member Carl Beach. When this defect was brought to his attention, the citation had to be dismissed. Under the circumstances, it was certainly appropriate to issue a warning letter to Beach's mother, because the youth seemed to be at risk. Barker's accounting of the issue is biased and distorted because it was his error that required the dismissal of the citation. This was thoroughly discussed in the meeting on June 27.

Page 80-81: Media Relations. The exchanges between Chief Stull and his employees are simply not relevant to media relations. Media often ask for documents to which they are not entitled.¹⁸ The nature of the specific documents at issue are not described in the report. However, if they are documents which are not subject to public disclosure, then it is certainly proper to refuse to "cooperate"¹⁹ with those media requests.

It is extremely common for someone other than the Chief of Police to handle media relations, and for the Chief of Police to be utterly candid with his media relations person. It is then incumbent upon the media relations person to exercise their judgment and discretion in handling media inquiries consistent with the Chief's direction. The fact that the Chief is more blunt in speaking to his own media relations person than he would be in speaking to the media itself is not only understandable, it is common. To suggest that the media relationship is strained because of comments that a chief made to his subordinate who handles those relations, presumes that the subordinate repeated the chief's comment verbatim to the media. Any subordinate who did so would be extremely derelict in his or her duty.

Page 81: Memoranda Regarding Contacts with Media Representatives. This is a common practice in a number of departments.

UNFAIR LABOR PRACTICES

Page 81: A central contention of the Makler letter which precipitated this report related to allegations of unfair labor practices. The first 80 pages of the report ignore these allegations. On the 81st page of the report we are told by the author that "many of the incidents are documented in the reports of interview, but are rather lengthy and often difficult to describe in writing." Based on this excuse, the author dwells only on two incidents which he believes have some merit.

It cannot be over-emphasized that the Union's complaints on these issues were the

¹⁸ The report does not reveal what documents were requested, or whether that request was in any way reasonable.

¹⁹ The lawful and proper refusal of a request for confidential documents literally constitutes a lack of "cooperation" with the media. Nevertheless, the cooperation policy is not intended to override the exemptions to the public records law.

impetus for hiring an "independent" investigator, but the investigator considered the interview over without asking about any of these allegations. It was only at the behest of Chief Stull's counsel that the investigator sat and listened to Chief Stull's responses to these complaints. The investigator then failed to portray Chief Stull's side of the story in his report.

Before describing these incidents, one point bears reiteration: the union has remedies for these violations which it could have, but chose not to, pursue. The only explanation given for the failure to pursue charges was that (1) the attorney recommended they pursue them (thereby generating more business for himself) and (2) the union feared retaliation if they pursued these remedies. However, because the union would also have a valid ULP if there was retaliation for pursuit of these remedies, that explanation simply does not wash. The more plausible explanation is that they were not pursued because they were simply not meritorious, and the employees were aware of that.

Page 82: The Tucker Accident Grievance. Officer Tucker was a probationary rookie officer on solo patrol. She observed vehicle pass her in the opposite direction and claimed that the license tags were expired. She turned around in the street and pursued the vehicle, although her red lights and siren were not activated. The alleged suspect went through a signal-controlled major intersection and was followed by Officer Tucker, who activated her red lights and siren to proceed across the intersection in pursuit of a suspect vehicle with expired tags. Since expired tags are not considered a danger to the public safety, this action was clearly improper. Officer Tucker was hit broadside by a vehicle traveling through the intersection with a green light, totaling his vehicle, as well as Officer Tucker's brand-new police vehicle. The end result was three persons injured, two vehicles totaled, and a third parked vehicle had additional damage. A full investigation was done by the traffic sergeant and since it involved a police vehicle, the agency was required to have an outside agency do an independent investigation so no questions regarding credibility might later arise. Both independent reports showed that Officer Tucker was obviously at fault. Although she was probationary and could have been terminated without any grievance, Chief Stull felt it was a rookie mistake and gave her only a short suspension. A number of members of the union thought that the punishment was too light. Nevertheless, the union leadership filed a grievance, concomitant with Chief Stull's requesting that the detectives be put in plain clothes.²⁰ (Chief Stull has not been permitted to speak with Lieutenant Bowe to help refresh his recollection about what the reason was for putting them into uniforms.) Chief Stull specifically called Akin Blitz, and discussed the decision with him. Mr. Blitz explicitly told Chief Stull that he could put the detectives back into their regular uniforms. However, because the author did not interview Mr. Blitz, he did not receive that information. Chief Stull's actions were consistent with the legal advice of the attorney handling the labor relations for the City.

Ultimately, this complaint is another extremely petty one. The officers ended up wearing their uniforms for a total of six days.

Page 85: The Troncoso "Glove Incident." This incident is very well documented in an internal affairs investigation file. Officer Tucker found in her mailbox at work a black leather glove with all the fingers of the glove taped down on the palm of the glove except the middle index finger. Officer Tucker turned the glove over to Sergeant Mark Miranda, who in turn

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In the report (p. 82) Parks states that "the severity of the discipline is debatable". In the interview itself, he admitted: "I think that the 5 days that Mindy Tucker was a gift. I don't dispute that."

contacted the Chief or Lieutenant Bowe. There was no indication where the glove was from, so the only way to determine that was to send it to the OSP crime lab for processing. This was at a time when the department had recently had other incidents involving employees which were sexual in nature. The Chief had gone to great lengths to hire female officers, and two of them had been involved in incidents of a sexual nature. One of them involved Officer Tucker, who had complained about a reserve officer using inappropriate sexual language towards her. Under these circumstances, any attorney would have advised Chief Stull that the City would be exposed to substantial liability if any additional incidents of sexual harassment towards Mindy Tucker were ignored.

A few days later Detective Sergeant Kent Barker advised that Detective John Troncoso had confessed to being the person who placed the glove in Officer Tucker's mailbox. As a result of this confession, little or no internal affairs investigation was needed -- the IA file could be closed based upon the confession alone. Some discipline was absolutely required based on current case law regarding potential liability for sexual harassment. If Officer Troncoso was involved in another harassing incident and had not been previously disciplined for this incident, then the City would be exposed to substantial liability. Dismissing the incident as a "joke" does not constitute an excuse in the eyes of the law; that is the defense of virtually every defendant who is accused of sexual harassment, and it is routinely rejected by courts and juries.

Officer Troncoso was given a contingent two-day suspension, which would not be imposed if there were no similar incidents for a year. The discipline is certainly appropriate to change behavior patterns, as well as to avoid any potential future liability.

The suggestion that Chief Stull did not want any detail put into the letter of discipline, and the directive to cite only which policies were violated was absolutely proper. No third parties get to see what is in a personnel file; that is available for inspection only by the individual officer and future supervisors. Any future supervisor who wanted to know the details of the incident had access to the internal affairs investigation files. The notion that Chief Stull would somehow be hiding information by the manner in which he phrased the letter of reprimand is muddleheaded and incoherent. After all, the documentation in the internal affairs investigation file was relied upon by the author of this report. By simply citing which policies were violated, there is no need to characterize the behavior of sexual harassment in the personnel file. Therefore, this seemed best suited to everybody's interests. If it is not necessary to characterize something as sexual harassment within the personnel record, why do it? The liability concerns had been satisfied, the behavioral concerns had been satisfied, and the discipline was over.

Indeed, if Chief Stull wanted to use this case as a precedent for imposing discipline for minor transgressions, it would have made more sense for him to include more detail in the letter of discipline. The reasoning of the author simply makes no sense and reflects a lack of understanding of the interplay between employment law and personnel records. The motives which he imputes to Chief Stull simply do not bear scrutiny.

Page 91: Comments to Sergeant Barker. Sergeant Barker attempts to make a mountain out of a molehill when he reports that Chief Stull disagreed with him about whether or not he had conducted a sufficient internal affairs investigation. Obviously, once you have a full confession there is no need to conduct any further investigation; to do so would be a waste of taxpayer money. Chief Stull sought not to exalt procedure over substance. Again, there is room for common sense in the administration of policy, especially where it will save the taxpayers money with no administrative loss. There was already more than sufficient documentation to justify the

imposition of discipline. Moreover, if there were any significant procedural defects, the union certainly had the right to challenge the disciplinary process.

The remainder of this narrative simply shows that Chief Stull sought legal advice in response to the union grievance and followed that legal advice. The tiresome and inaccurate recounting of the discussions is simply not relevant, but Chief Stull did give Mr. Parks a thorough explanation.²¹ Moreover, if the author was interested in corroborating those discussions, he should have followed the suggestion of Chief Stull's counsel and contacted Akin Blitz -- he declined to do so.

Incidentally, the ultimate resolution of the glove incident (page 93) demonstrates the City's concern with liability. It was agreed as part of the resolution of the grievance that the letter of suspension would not be placed in Detective Troncoso's personnel file but would be kept in the custody of the attorney for the City for one year and then removed. This would mean that the letter remained available to be used in defense of any tort claims filed against the City. It may be that Officer Troncoso was intimidated by this process, but Chief Stull was clearly acting in the best interest of the City.

Page 94: Officer Wampler's Cell Phone Conversation. It is ironic that when Officer Wampler uses the phrase "bullshit" repeatedly in the course of conversations aired over a non-secure cell phone, the author describes the use of this phrase as "lighthearted in nature and typical of the type any average police officer would have with another law enforcement employee." (Pages 94-95) However, when Chief Stull uses the identical term, he is considered angry and intimidating. This is typical of the double standard which permeates this report.

Page 95-96: Internal Affairs Investigation. The author is critical of Chief Stull for authorizing an internal affairs investigation regarding Officer Wampler. The comment might have some merit, if it was Officer Wampler's first transgression. However, Officer Wampler had a history of disciplinary problems, and was aware that based upon his previous issues, his conduct was being justifiably monitored. It is all too easy to second guess the decision to investigate misconduct, from the standpoint of someone who is not responsible to the public for police behavior. However, the public demands accountability and administrators are often well advised to err on the side of caution. One of the issues not disclosed was the question whether Officer Wampler was using the cell phone for an improper purpose.

Page 97-98: Cell Phone Use. This concerns Lieutenant Bowe and Ms. Pacholl; there is not evidence that Chief was even aware of the allegation that these individuals failed to adhere to the cell phone policy. He was not.

Page 97: Chief Stull's Possession of Key to the Evidence Room. This is puzzling; if the boss doesn't have the keys to the building, who should. If the evidence technician lost the only key, what would the department do? Who should hold on to the second key (it is currently kept locked in a safe in Chief Stull's office).

Page 99: Traffic Citation "Quotas." The Keizer Police Department, like many, many

²¹ Without recounting all the details, Chief Stull wanted this to be a training exercise for Sergeant Barker, who was having difficulty making reasonable discipline recommendations, which is obviously a necessary skill for any supervisor to develop.

other police departments, has departmental policies expressing the expectation that officers assigned to traffic enforcement are expected to (1) patrol areas where there has been a history of traffic problems and to issue tickets or citations as appropriate, with the expectation that such tickets would ordinarily average a certain number per day. Their purpose is to write citations at locations which have had a high incidence of accidents, and not simply find a street with no history of problems to snag unsuspecting motorists and quickly satisfy the department's expectations. Officers who simply write tickets to satisfy the expectation, rather than to deter unsafe drivers on dangerous thoroughfares, are not effectively accomplishing the mission of the Bureau.

This distinction may seem subtle, but it is fairly obvious to most experienced officers.

To suggest that budget constraints have no impact on law enforcement priorities is naive in the extreme. The level of citation writing activity is within the discretion of the department manager, who must balance the needs of the public, the financial constraints of the department, and the public safety. There is no suggestion that Chief Stull raised or lower these citation writing expectations based upon anything to do with employment relationships -- what, then is the issue? The report expressly acknowledges that during this period of time the number of traffic accidents was increasing. (Page 102) Surely, a program of increased citation writing was an appropriate response to these increases which both served the public safety needs of the City while at the same time meeting budgetary expectations handed down by the City Council. To suggest that citation writing activity is somehow less important than other law enforcement activities reflects a grossly distorted view of the role of public safety. Traffic fatalities and traffic injuries are every bit as serious a problem from the standpoint of public safety as investigating crime reports, responding to calls for service, or engaging in community policing programs. The author belies his ignorance when he states: "When operating a law enforcement agency, it has been stated that the measure of productivity is the service given the community served, not the amount of revenue generated." Whoever stated this is not mentioned, but if the person quoted is someone other than the author of this report, they undoubtedly made the statement in the context of a larger understanding of community and law enforcement priorities.

Page 102: Officer Trump Incident. Officer Trump attended a motorcycle training class and passed all phases of the training except for the final exam on handling. Chief Stull was told that the instructor indicated that Officer Trump needed more practice and then could return and take the handling and maneuvering portion of the test again. Chief Stull was told that Officer Trump initially wanted to stay on motorcycles, so the initial decision was made to allow him to continue to ride and gain more experience handling the motorcycle. Chief Stull was not opposed to removing Officer Trump from the motorcycle but this alleged desire to not work on motorcycles was never revealed until after his accident. In all likelihood, Trump changed his mind about working motorcycles after his accident, but claims he made that decision before the accident. If he did, he never told Chief Stull.

Officer Trump was responding to a call for assistance regarding a foot pursuit by another officer of a crime suspect. He accelerated too fast through a stop sign controlled intersection and lost control of his motorcycle. Both Trump and the motorcycle went down on the roadway, Officer Trump put out over the police radio a "Code 0" which means that an officer is in a life-threatening situation and needs immediate help. Normally, all law enforcement agencies in Marion and Polk counties would be notified and all responding police officers would be responding with flashing lights and sirens. Consequently, police units which were supposed to be covering the foot pursuit of the criminal were diverted to the emergency call from Officer

Trump. Not knowing the facts, most officers assumed that Trump was engaged in some life-threatening situation. The first officers who arrived on the scene concluded that Trump was in fact not in any immediate life-threatening danger and immediately canceled the "Code 0" cover call, and sent the police units back to respond to the original cover call by the officers on foot pursuit.

This use of "Code 0" is completely inappropriate. Although Officer Trump was no doubt in pain at the time that he issued the "Code 0," it is simply not a reasonable response to the situation. He was not in danger of further immediate harm. Any of a number of other codes could have been used to summon the immediate assistance of a single officer, instead of alerting three departments.

Officer Trump's traffic accident was investigated by both the Keizer department and another police department. Both investigations concluded that Officer Trump was driving too fast for conditions. It was determined that Officer Trump did not properly utilize the "Code 0" call for assistance, and that he could have unnecessarily placed other officers in jeopardy who were in foot pursuit. The union had the right to grieve that finding, but apparently elected not to take the issue to arbitration.

The suggestion that the officer had requested not to ride on a motorcycle and that the chief knew that the officer was not certified to ride a motorcycle is simply false. Officer Trump passed his DMV motorcycle endorsement requirements to ride a motorcycle in the State of Oregon and received training from the "Police Motorcycle Operations Training Course" put on twice yearly by the Washington State Police; he passed all but the maneuvering portion of that test and needed more experience before taking it again. There is no state administrative requirement that he complete such training before operating a police motorcycle. Furthermore, Officer Trump did not request that he be taken off motorcycles until much later. If Officer Trump had requested to be taken off motorcycles, then he never would have been sent to the training in the first place.

As a result of the motorcycle accident, Officer Trump developed a foot problem which prevented him from returning to full duty right away. His light duty assignments were problematic because co-workers did not want to work with him. Consequently, Chief Stull assigned him to patrol and took direct supervision of Officer Trump. Shortly after that happened Officer Trump obtained a full release from his doctor and returned to work in traffic, although not as a motorcycle operator.

Chief Stull's entire explanation was given in writing to the author *before* he wrote the report; yet the report summary fails to mention it.

Page 106-107: Comments About Union Representative. These comments do not concern Chief Stull, but Lieutenant Bowe; he can verify or refute the allegations.

Page 109: The author raises the question of "how can an individual be punished for wrecking a police patrol vehicle he is not even police certified to ride." The author obviously has no understanding of the relationship between certification and assignments. Both public safety and officer safety requires that officers act reasonably under all circumstances. Furthermore, the disciplinary action was due in part to the improper use of the "Code 0" call. Officer Trump was riding the motorcycle so he could get the *experience* that he needed in order to fulfil his

certification requirements.²² Fire fighters drive fire trucks while working on their certification requirements; teenagers drive cars with learner's permits while working on their licensing requirements. Experience is the best teacher.

Page 110: The objection to the abuse of the "Code 0" call is simply ludicrous. Each code is designed for a particular purpose. It is intended to communicate the nature of the situation so that the resources of the department can respond appropriately. A person who is in no danger of further immediate injury simply should not use that code because of the area-wide level of response that it requires. To do so is simply irresponsible. The suggestion that an officer who is legitimately in dire immediate danger will not utilize this call for assistance when he desperately needs to, as a result of this incident, is ridiculous.

Page 110-112: The allegation that some unnamed departmental member was in the process of buying a house in 1993, and that Chief Stull made a comment to him about the inadvisability of this purchase, is responded to on two levels: (1) Chief Stull has absolutely no recollection of this conversation and doubts that it occurs as reported; and (2) the comment made by Chief Stull has no apparent connection to the actual problem with the purchase. The author reports (page 111) that Chief Stull stated that there was "no guarantee what would be going in behind [the purchased] house, as it is currently a small farm." It was discovered that the purchased lot, not the adjacent one, had already been purchased by someone else and therefore gave rise to a title dispute. How Chief Stull's alleged comments might be connected to this title dispute is simply not explained.

Page 112: Conduct During the Interview. It is appalling that the author as the temerity to describe Chief Stull's conduct during the hearing interview as one of appearing to "anger easily" and alleges that Chief Stull was "rude, intimidating, and unprofessional." Chief Stull sat in his chair and never shouted or yelled at all. The tape recording is available for anyone to review. At one point, the author stated on the tape that Chief Stull was trying to intimidate him, but counsel for Chief Stull called him on this misstatement, and got his assent on the tape in which he retracted the allegation that Chief Stull was doing anything intimidating. If this type of behavior is typical of the type of behavior that employees regard as "intimidating," then every such allegation is completely spurious.

In summary, the report by Robert Parks was shoddy, biased, and uninformed. Many parts are misleading. The report summary is carefully selective both in its choice of content, and in its characterizations of each allegation reported. Due to a lack of substantive content, it substitutes false, petty, irrelevant, and disingenuous editorials for simple recitation of facts. It does not offer facts for the reader's judgment, but throughout the report offers the opinion and judgment of an individual who is not qualified to give such judgments. It insults the reader's intelligence by telling the reader what to think or how to interpret every allegation or comment, rather than letting the facts speak for themselves. It should be discounted in its entirety due to the obvious bias on its face.

HK/jc
25-lk/stull/wmemo

²² The only part of the test he flunked was the maneuvering portion; the only way to acquire that skill is practice.

EMPLOYMENT AGREEMENT

PARTIES: CITY OF KEIZER (an Oregon Municipal Corporation)

and

Charles Stull

RECITALS:

1. The City and some employees of the City are parties to an employment agreement which includes fringe benefit provisions.
2. The City has personnel rules regarding retirement plans.
3. The parties herein wish to address and clarify the issue of employer and employee contributions to the employee retirement plans.

AGREEMENT:

IN CONSIDERATION OF the mutual covenants herein contained, the parties agree as follows:

- A. If the employee is eligible for PERS, the City will pay to PERS (or pick up) an eligible employee's contribution equal to six percent (6%) of the employee's salary through June 30, 1997.
- B. If the employee is eligible for ICMA retirement plan benefits, then the employee is not required to contribute to the ICMA retirement plan in excess of the amount the employee currently contributes and the City of Keizer is authorized to contribute to the employee's qualified ICMA retirement account.
- C. The term of this Agreement shall begin December 5, 1994, and extend through June 30, 1997.
- D. The parties enter into this Agreement as individuals and not collectively, and there is no claim that the parties are to be considered as a bargaining unit.
- E. This Agreement is not intended to limit or modify other provisions of the City's personnel rules or an employment agreement between the parties.

Dated this 6th day of December, 1994.

CITY OF KEIZER, OREGON

By: Dotty Tryk
Dotty Tryk, City Manager

Charles Stull
Employee

AGREEMENT

PARTIES: CITY OF KEIZER
(An Oregon Municipal Corporation)

and

Charles R. Stull

RECITALS:

1. The City desires to continue to employ Charles R. Stull as Chief of Police and to establish by this Agreement the terms and conditions of employment of the City's Chief of Police.

2. Charles R. Stull desires to continue his employment as Chief of Police.

3. The parties desire to create an agreement which provides an inducement for the Chief of Police to remain in employment, to establish regular process for evaluating performance, and to provide a just means for ending the employment relationship at such time as the Chief of Police should become unable to discharge his duties due to some intervening event or condition or because the City or the Chief of Police desires to otherwise end the employment relationship.

IT IS AGREED:

1. Duties. The City shall continue to employ Charles R. Stull as Chief of Police, to perform the functions and duties of Chief of Police as specified in the policies and procedures, rules and regulations of the City and as hereinafter set forth, and as prescribed or assigned by the City Manager, whether by job description or otherwise. The City vests in the Chief of Police day-to-day operational control of department operations, including primary responsibility for aspects of employment relations under the general direction and supervision of the City Manager.

2. Term of Agreement. The term of this Agreement is indefinite. Unless the City Manager notifies the Chief of Police to the contrary in writing thirty (30) days before the start of each remaining agreement year, it shall be deemed that the City has renewed this Agreement for one (1) year beyond the term of that current Agreement. Unless the Chief of Police notifies the City Manager to the contrary in writing at least thirty (30) days before the start of the remaining agreement year, the Chief of Police agrees to accept renewal of this Agreement as heretofore stated. Unless the term of the Agreement is altered in a particular year, it shall be allowed to reach its existing effective date.

a. The foregoing paragraph shall take full effect on at the time of signing,

and, absent notice as provided above to the contrary, shall automatically renew annually for the succeeding agreement year, which shall extend from July 1, 1993 through June 30, 1994, and during like period each year thereafter.

b. Nothing in this Agreement shall grant the Chief of Police a property right in his/her position, nor prevent, limit, or otherwise interfere with the right of the City to terminate the services of the Chief of Police at any time, with or without cause, subject only to the provisions of this Agreement pertaining to termination and severance pay.

c. The Chief of Police may resign at any time, subject only to the provisions of this Agreement relating to Notice.

3. Outside Employment. The Chief of Police will remain in the exclusive employ of the City and not become employed by any other municipal employer. As used in this paragraph, the term "employed" shall not be construed to prevent occasional teaching, writing or consulting work, or employment which does not interfere with the Chief of Police's ability to effectively discharge his assigned duties and responsibilities, or any activity engaged in with the prior written approval of the City Manager.

4. Termination and Severance.

a. No Fault Termination. This Agreement may be terminated either by the City or the Chief of Police for any reason whatsoever upon the giving of thirty (30) days written notice to the other party.

b. Termination For Cause. This Agreement may be terminated immediately in the sole discretion of the City upon the occurrence of any one of the following events provided that the action taken is in compliance with this agreement, for sufficient cause and is not arbitrary and capricious:

1. Charles R. Stull willfully refuses or repeatedly fails to comply with the policies, standards and regulations of the City as are established periodically;

2. Charles R. Stull shall be guilty of fraud, dishonesty, misappropriation of funds, embezzlement, or other act of misconduct in the rendering of the services on behalf of the City;

3. Charles R. Stull shall fail or refuse to perform faithfully or diligently any of the duties provided for in this Agreement.

c. Severance Upon Termination. In the event Charles R. Stull is involuntarily terminated by the City for any reason except cause described in 4.b above before the expiration of the term of employment and during such time as the Chief of Police is willing and able to perform assigned duties, then in that event the City agrees

to pay the Chief of Police a sum equal to six (6) months' pay (computed based upon current annual base salary), payable on an ongoing basis on the City's current pay schedule and at the same rate as provided for in this Agreement until such benefits are exhausted. Such severance payments shall terminate upon the Chief of Police's obtaining comparable, full-time employment. Any portion of a month shall be pro-rated. However, if the Chief of Police is convicted of any illegal act, felony or misdemeanor calling into question trust or confidence, then the City shall have no obligation to provide for or pay severance payments.

d. Severance Under Other Circumstances. If the City reduces the salary or financial benefits of the Chief of Police, or if the City refuses a written request that the City comply with any provision benefiting the Chief of Police in this Agreement, or if the Chief of Police resigns following public suggestion that he do so whether formal or informal by the City Manager or a majority of the members of the City Council, then the Chief of Police may, at his option, deem the Agreement to be involuntarily terminated at the date of such reduction or refusal to comply or resignation, and the severance pay provision under subparagraph (c) of this section shall apply.

e. Disciplinary Hearing and Appeal. The standards of conduct, performance and discipline to which the City holds the department heads and managers is quantitatively and qualitatively different (higher) than the standards by which other employees are judged. Discussions of expectations, goals and objectives and coaching and counselling should be sufficient. In rare cases of misconduct, it may be that a suspension could be justified, however, ordinarily instances committed by this level of employee warrant either discharge or counselling. The City Manager will insure standards are established and met, and that an appropriate combination of performance plans, evaluations and counselling are utilized to help Chief of Police succeed. In the event that the Chief of Police is discharged, asked to resign or suspended without pay, the Chief of Police may request review of the decision of the City Manager by the City Council. In the event such a hearing is requested, the procedure shall meet the requirements detailed in the Addendum, hereto attached and made a part of this Agreement.

f. Vacation Payoff. Termination or resignation in good standing shall entitle the Chief of Police to a lump sum payment equivalent to all accrued vacation.

g. Sick leave benefits shall be subject to PERS fold-in as provided by law.

h. Severance Upon Non-Renewal. Expiration of the Agreement term due to non-renewal by the City shall entitle the Chief of Police to severance as provided for in the event of involuntary termination during mid-term of the Agreement.

i. Voluntary Resignation. If the Chief of Police voluntarily resigns his position with the City before the expiration of the term of employment, then the Chief of Police shall give the City at least thirty days notice in advance, in order to resign in good standing.

EMPLOYMENT AGREEMENT

5. Salary. Commencing on the effective date, the City agrees to pay the Chief of Police for services rendered a monthly base salary of \$4,037, or an increase of 5%, and July 1, 1993 a salary increase of 5% and January 1, 1994 an additional increase of 5%. These increases will be in addition to cost of living increases awarded to non represented employees by Council. Salary will be payable in installments at the same times as City employees are paid. In addition, the City agrees to review the base salary and other benefits of the Chief of Police at his annual performance review, which will be conducted annually by September of each year. The City's ability to increase compensation is limited by availability of funds for that purpose. The City will exercise good faith in attempting to increase the Chief of Police's wages in an amount which keeps the salary level competitive in the local labor market and which is fair in view of the City's size and resources.

6. Paid Time Off.

a. The Chief of Police shall be entitled to paid time off (holidays, vacations, etc.) with accrual, accumulation, and limitations consistent with City policies applicable to other non-bargaining unit employees of the City. The Chief of Police may request and the City Manager may approve paid compensation each year for up to fifty percent of unused unpaid leave.

b. The Chief of Police shall be entitled to accumulate sick leave benefits without limitation.

c. The Chief of Police shall be entitled to holidays consistent with Council policy for non represented employees.

d. The Chief of Police shall be entitled to vacation accrual consistent with Council policy concerning department head fringe benefits. The Chief of Police may request any accumulated unused vacation pay available at the time of retirement be added to his final salary for the purposes of PERS retirement benefits.

7. Hours of Work. The parties recognize that the Chief of Police must devote a great deal of time outside of normal office hours to duties as and when required. The Chief of Police is entitled to take management time off to such an extent as the Chief of Police deems necessary and proper during business hours, an otherwise, provided that time off taken does not interfere unduly with the performance of the Chief of Police's duties. In recognition of these responsibilities, the Chief of Police may be granted administrative leave of up to two days a month. Such leave must be approved by the City Manager. Unused administrative leave is non accruable and shall have no monetary value and is not to be used in lieu of sick leave.

8. Automobile. A City owned vehicle will be provided for the professional use of the Chief of Police. Any use of a City owned vehicle will be consistent with the Oregon Ethics in Government Act.

9. General Expenses. The City shall reimburse the Chief of Police for expenses of a non-personal and generally job-related nature which are incurred, upon receipt of expense vouchers, receipts, statements or personally written justification request. The Chief of Police is authorized to expend City funds in the execution of City business and in representing the City at events such as conferences and meetings and to incur travel and lodging expenses in accordance with City policy in the conduct of City business.
10. Dues and Subscriptions. The City will reimburse the Chief of Police for professional dues and subscriptions appropriate for his full participation in appropriate associations and organizations necessary and desirable for professional participation, growth and advancement, and to improve his performance of duties as Chief of Police. The Chief of Police shall report to the City Manager on each professional organization for which the City pays dues and subscription services.
11. Professional Development. In accordance with City policy, the City shall budget and pay registration, travel and subsistence expenses of the Chief of Police for professional and official travel, meetings, and occasions deemed necessary or desirable to continue the professional development of the Chief of Police and to pursue official functions of the City. The Chief of Police shall make periodic reports to the City Manager on such activities.
12. Fringe Benefits. A management benefit package is allowed in an amount equal to 32% over and above base monthly pay. The structure will be determined by the Chief within the confines of those benefits offered by the City to include:
- a. Employee health insurance: dental, life, vision, long-term, short-term disability insurance program.
 - b. PERS retirement benefits.
 - c. The Chief of Police shall have the option of receiving a portion of this Management Benefit Package as earned income not to exceed ten percent (10%) of base monthly pay.
13. Indemnification. The City will defend and indemnify the Chief of Police to the fullest extent in accordance with procedures and practices as provided by the Oregon Tort Claims Act.
14. Annual Goal Setting and Performance Evaluation. The City Manager shall periodically identify her goals, priorities and concerns to the Chief of Police either by informal discussions with the Chief of Police or by more formal means. The City Manager shall meet with the Chief of Police at least annually for the purpose of setting City goals and priorities. The City Manager and the Chief of Police shall meet at least annually to evaluate and assess the

performance of the Chief of Police in meeting or progressing toward established goals.

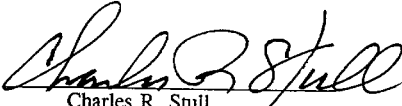
In the event the City Manager determines that the performance of the Chief of Police is unsatisfactory in any respect or needs significant improvement in any area, the City Manager shall describe these concerns in writing and in reasonable details or with specific examples as to be objective and positive in nature. As provided in Section 5 of this Agreement, the Chief of Police's salary shall be reviewed at least annually after the performance evaluation has been communicated.

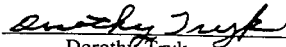
15. Amendments. Amendment to this Agreement shall be in writing and signed by both parties.

16. General Provisions. This Agreement shall be binding upon and inure to the benefit of the heirs-at-law and executors of the Chief of Police. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall be deemed severable and shall not be affected but shall remain in full force and effect. Items not directly addressed in the agreement are considered to be regulated by the City's Personnel Rules.

17. Effective Date. This Agreement shall be effective commencing on signing this agreement.

Dated this 19th day of March, 1993


Charles R. Stull


Dorothy Tryk
Keizer City Manager

**ADDENDUM
TO THE AGREEMENT BETWEEN
THE CITY OF KEIZER
and
CHARLES R. STULL**

In the event that the Chief of Police is discharged, asked to resign or suspended without pay, the Chief of Police may request review of the decision of the City Manager by the City Council. The Council shall determine whether the action was taken for sufficient cause and is not arbitrary and capricious. Sufficient cause shall be judged based on factors which include the considerations set forth above.

In the event such a hearing is requested, the request shall meet the following requirements:

1. Right to appeal from discipline. If the Chief of Police has been suspended, had a reduction in pay, been demoted or dismissed, the Chief shall have the right of appeal to the City Council. Notice of the appeal must be filed not later than ten (10) days of the effective date of the action. The Notice of appeal shall include at least the following information:

- a. a statement of the complaint and the facts upon which it is based;
- b. the remedial action requested;
- c. a statement of the reasons why the remedial action is appropriate;
- d. a statement of any policies, procedures or law or rules which have not been adhered to or which should be followed. The appeal shall be heard by the City Council within twenty (20) days after receipt of the request.

2. Hearings on appeal.

Procedure. The City Council shall set a hearing upon timely requests made under this agreement. The Chief of Police shall be given written notification of the time and place of the hearing. The order of procedure at the hearing will be as follows:

- a. The City Manager will set forth the reasons for the action and the facts on which it is based. The Chief of Police or his designee may conduct cross-examination if appropriate.
- b. The Chief of Police may present evidence in support of the appeal with or without the assistance of legal counsel or other representative.
- c. The City Manager or designee and the Chief of Police or his designee may cross-examine or submit evidence in rebuttal or both.

d. Opening statements, if any, will be brief and confined to the issues. Closing argument, if any, will be first by the City Manager or designee then by the Chief of Police. The City Manager may offer rebuttal evidence if desired.

e. Evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their serious affairs shall be admissible. The parties may also call witnesses. Irrelevant, immaterial or unduly repetitious evidence may be excluded. Affidavits and counter-affidavits are acceptable as evidence. If either party intends to rely on an affidavit, it shall provide the other party with such affidavit together with the name, address and telephone number of the affiant at least ten (10) days prior to the hearing.

f. A hearing before the City Council is intended solely for the purpose of receiving evidence either to refute or substantiate specific charges brought to the City Council. The hearing shall be conducted accordingly. The City Council may impose limits on questioning in the interest of the orderly conduct of the hearing and fairness.

g. In appealing a disciplinary action to the City Council, the Chief of Police may, but is not required to have counsel or other representative.

h. Evidence objected to may be received by the City Council and, in the Council's discretion, rulings on admissibility or exclusion may be reserved until such time as the Council's findings are issued. In considering the admissibility of evidence, the Council may consider but is not bound by the Oregon's Rules of Evidence.

i. If, after receiving evidence presented in hearings on disciplinary actions, the City Council finds that the complained-of action taken by the City Manager was taken for sufficient cause and was not arbitrary and capricious, the City Council may affirm the action; if the City Council finds that the complained-of action taken was for insufficient cause, the employee shall be reinstated to the position and shall not suffer any loss in pay or status and the official personnel file shall be purged of such record. The City Council, in lieu of affirming the disciplinary action, may modify it as the circumstances may warrant. The decision of the City Council shall include findings of fact and shall be final and binding on all interested parties.

j. The Council may refer any issue to an independent Hearings Officer who shall conduct the proceedings in accordance with these rules. In such event, all provisions of these rules relating to the duties and authority of the Council shall also apply to the Hearings Officer in the conduct of the hearing. The Hearings Officer shall issue Recommended Findings which shall be reviewed by the Council based solely on the record and applicable law. The Council may adopt the Findings by voice vote. In all other cases the Council shall issue a final written decision within twenty (20) working days from receipt of the Recommended Findings.