

Cops v. Auditor

Dismissal of criminal complaint leaves unanswered questions about EPD

The district attorney's dismissal of the criminal complaint by Eugene police Sgt. Ron Swanson against the city's independent police auditor leaves many questions unanswered — not about the auditor, but about the police.

Should Swanson himself be investigated for criminal wrongdoing?

Swanson's complaint apparently involves an allegation by Auditor Cristina Beamud that Swanson wrongly dismissed a complaint against one of the officers he supervises, according to sources.

Swanson alleged that Beamud's allegation against him was biased and not factual, according to sources. He alleged that her action constituted the crime of "official misconduct."

Official misconduct is defined by state statute (ORS 162.415) as a public servant who "knowingly performs an act constituting an unauthorized exercise in official duties" with the "intent to obtain a benefit or to harm another."

But after the DA dismissed Swanson's complaint, was the sergeant's complaint itself "official misconduct?"

Swanson wrote the complaint on official city letterhead, apparently in his official police sergeant capacity. The complaint reportedly calls for harming the auditor by firing and prosecuting her. The complaint may benefit Swanson by removing the person who has alleged he was involved in misconduct.

Members of the Eugene Police Department have been accused of seeking to intimidate people who complain about them in the past.

Indeed, allegations about police seeking to intimidate complainants helped spark the creation of the police auditor position to handle complaint intake. Police previously had allegedly sought to intimidate potential complainants by threatening to arrest the person for filing a false report or by first running a warrant check to see if the complainant could be arrested.

Police intimidation of complainants came up repeatedly in the civil suits involving EPD Officer Roger Magaña, the police officer

convicted in 2004 of official misconduct, rape and other crimes for using his badge to coerce sex from a dozen women.

Magaña's final victim complained repeatedly to police who "asked her questions designed to intimidate or discourage her" from complaining, according to a brief by attorney Marry Burrows, who successfully sued the department.

After another woman complained to police, two fellow officers told her "to stop 'making up' information about Magaña. ... The woman apparently believed she had been threatened," Burrows wrote.

After a third woman's complaint to police, fellow officers told Magaña. The woman testified in criminal court that Magaña confronted her, ripped off her pants, "touched my genitals with his gun," and said, "If you tell anyone anything about me, I'll blow you up from the inside out."

Swanson also could be investigated for the crime of "initiating a false report" (ORS 162.375) if he knowingly provided false information. If Swanson's actions weren't criminal, he could still be disciplined. But under the city charter, that would be up to the city manager and police chief.

Was police chief Robert Lehner biased in immediately referring Swanson's complaint to the district attorney?

Chief Lehner told the *R-G* last week that while he didn't think the complaint was "prosecutable," he had to refer it to the DA as a matter of "routine."

But Lehner, who has opposed independent oversight of police, in fact routinely does not refer complaints of official misconduct to the DA. In the Magaña case Lehner has repeatedly refused to act on complaints that fellow EPD officers engaged in official misconduct by not acting on repeated complaints of Magaña's sexual abuse.

In 2006 the *Philadelphia Inquirer* reported on the sexual abuse scandal: "Mistakes were made, Lehner said, but he's not sure that means anyone should be punished: 'Do I go back and end [someone's] career because of it?'"



Mayor Kitty Piercy (right) spoke in support of Police Auditor Cristina Beamud (left) at a press conference last week.

More recently Lehner did not refer a case to the DA in which the police found that an officer apparently unlawfully punched a suspect in the face last summer. Unlawfully punching someone is often prosecuted as assault.

Why did District Attorney Doug Harclerod take two weeks to dismiss the complaint?

In 2005 Harclerod took only a day to declare that the fatal Springfield police shooting of Jason Porter, an unarmed 15-year-old, was justified. In 2006 Harclerod took three days to rule the Eugene police shooting of mentally ill 19-year-old Ryan Salisbury was justified.

The DA works closely with the Eugene police on a daily basis. In the past Harclerod has referred some criminal investigations involving the Eugene police to outside agencies due to real or perceived conflicts of interest.

Why did city staff keep information about the complaint from city councilors for more than a week?

Although Swanson's complaint was addressed to the City Council in a Feb. 4 memo, councilors did not actually see the complaint until eight days later. City staff have not accounted for the long delay despite repeated questions from city councilors.

Councilors have complained for more than a decade that Eugene city staff keep them in the dark on vital information. Some progressive councilors are now calling for the creation of a city performance auditor to provide the council with an independent source of information.

Former City Manager Dennis Taylor and other city staff opposed the creation of an independent police auditor. Councilors have also questioned whether the city

attorney represents their interests or the city manager's.

"My client is the city," city attorney Glenn Klein told the council. "It's not the city manager."

But if the "client" is defined as the one who hires and fires the attorney and decides what to pay the firm, under the city charter, that's the city manager, not the council.

What was this complaint really about anyway?

Although city staff know the details of exactly why Swanson complained, they haven't told the city council or the public.

But on Feb. 4 the auditor and Citizen Review Board handled a case that appears similar to the facts in Swanson's complaint. Although it is the only case so far completed by the review board and auditor, it is uncertain if the two cases are related.

The reviewed incident dates from last August and involved a police officer who stopped a man for jaywalking, found he had a burglary warrant and cuffed him and placed him in the back seat of a patrol car, according to the auditor's case summary, which does not include names. The officer said he then punched the handcuffed man in the mouth because he believed that the man was going to spit at him. The man denied that he was going to spit and said the officer punched him because he was being verbally difficult.

The supervising sergeant and lieutenant dismissed the complaint, but a police captain and Lehner overruled them, and the auditor and review board agreed with Lehner.

Will police officers use criminal complaints again and again to subvert independent oversight?

In most other cities with police auditors, criminal complaints against the auditor by police officers disagreeing with them are unheard of. But in Eugene, if the police chief sees no problem with quickly referring dubious criminal complaints about the police auditor to the district attorney, and the DA sees no problem in launching two-week investigations before clearing the auditor, will this become the norm? Every time the auditor disagrees with a police officer, will the DA grab headlines with another major criminal investigation?

If so, the EPD may be able to use the DA to defeat the independent police oversight that they couldn't defeat at the ballot box. **EW**

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