

Russ Axelrod ([00:00](#)):

I'd like to welcome everyone to an executive session of the West Linn City Council for...

Russ Axelrod ([00:07](#)):

Tuesday, September 4, 2018 to discuss legal matters. Let's quickly go around the room, and then we'll do the script. Russ Axelrod, mayor.

Brenda Perry ([00:19](#)):

Brenda Perry, council president.

Patrick Malee ([00:21](#)):

Patrick Malee, West Linn Tidings.

Tim Ramis ([00:23](#)):

Tim Ramis, city attorney.

Terry Kruger ([00:25](#)):

Terry Kruger, chief of police.

Dee Rubinoff ([00:28](#)):

Dee Rubinoff, attorney.

Eileen Stein ([00:31](#)):

Eileen Stein, city manager.

Richard Sakelik ([00:33](#)):

Richard Sakelik, city councilor.

Teri Cummings ([00:35](#)):

Teri Cummings, city council.

Dylan Digby ([00:35](#)):

Dylan Digby, assistant city manager.

Kathy Mollusky ([00:38](#)):

Kathy Mollusky, city recorder.

Russ Axelrod ([00:40](#)):

Great. Thank you. Let's have the script.

Kathy Mollusky ([00:42](#)):

The city council will now meet in executive session pursuant to ORS 192.660(2)(h) to consult with council concerning the legal rights and duties of a public body with regard to current litigation or

litigation likely to be filed. Representatives of the news media and designated staff shall be allowed to attend the executive session. All the members of the audience are asked to leave the room. Representatives of the news media are specifically directed to not report on any of the deliberations during the executive session except to state the general subject of the session as previously announced. No decision may be made in the executive session. At the end of the executive session, we will return to open session and welcome the audience back to the room.

Russ Axelrod ([01:20](#)):

Thank you.

REDACT FROM HERE (01:21)

REDACT TO HERE (32:29)

Eileen Stein ([32:35](#)):

So I just got a email from Andrew, and he is 45 minutes to an hour away, if the council wanted to hear directly from him. But I think that let's start with Tim and go from there.

Tim Ramis ([32:49](#)):

Well, Andrew's going to know a lot more about the case than I do because he's defending it, but I'll certainly get it introduced. Think you all seen the complaint filed in the case. It's filed in Multnomah County. It asked for \$2.5 million. It's filed by someone who is asserting that investigation and arrest in their circumstance was illegal and was motivated by racial animus. And there are many, many claims that flow from those basic allegations. Currently, the status is that the city has done an internal investigation as it would in these kinds of cases. They've not found facts that would bear out this claim.

Tim Ramis ([33:48](#)):

In fact, it seems to me the most significant thing in the case, and I'll leave it to Andrew to have his own evaluation, but what you're looking for in defending these cases is probable cause, that there was actually a reasonable basis for the actions the police took. And in this case the facts were presented to a grand jury in Multnomah County, and they authorized, I believe five counts based upon the actions of this plaintiff in their employment. So it would seem to me a pretty good argument that if a grand jury has decided that five instances there were improper or illegal criminal activities going on, that there was probably a pretty good chance that we could say there was probable cause.

Tim Ramis ([34:39](#)):

Now it turns out that for other reasons the district attorney's office chose not to charge the case, chose not to take the case to trial. They resolved it saying that there'd been a civil compromise, because there'd been a settlement between the employee plaintiff here and their employer. And there are some facts that led to that, and I think that certainly colored the DA's decision not to take the case to trial. It turns out there are apparently emails where the employer's not very careful about his own attitudes and about political correctness in those communications. And I think the DA's office, our understanding is that they reached a conclusion that's not the sort of thing you want to put in front of a jury in a case.

Tim Ramis ([35:31](#)):

So they dismissed it. But that dismissal of course opens the door to a case like this claiming, well, I wasn't charged and therefore this is all done improperly and with bad motive. At least as far as at this point, we don't agree with that. And that's why CIS is defending. Is that a reasonable summary of the case?

Terry Kruger ([36:00](#)):

As I understand it, yeah.

Brenda Perry ([36:02](#)):

I guess my question is why was our department involved in this in the first place?

Teri Cummings ([36:02](#)):

Yeah.

Terry Kruger ([36:10](#)):

So I inherited this obviously, but as I understand it, the business owner came to Chief Timeus complaining about this suspected theft. They called to Portland Police Bureau and talked to the commander of the investigations unit about the potential theft. They had a couple of incidents, very small dollar amounts. They didn't know how long it had been going on. This man had been in the employment of A&B Towing for an extended period of time. But the dollar amounts that they had so far were small on a couple of incidents.

Terry Kruger ([36:49](#)):

Portland Police Bureau's investigative threshold with the case load that they have was such that they said that the dollar amounts that are present at this time aren't going to warrant us throwing investigative resources at this and declined to assign detectives to it. At that point, one of our, I think it was Lt. Mike Stradley, reached out to another investigator, not with the detective division of the Portland Police Bureau, looking for some cooperation from another investigator who was headed out of town on a month long vacation that he planned for over a year. At that point, we assigned detectives to look into it.

Terry Kruger ([37:25](#)):

The detectives that looked into it saw that there were many, many instances of theft and were able to establish probable cause on that. Notified the Portland Police Bureau, had them make the arrest, had an interview with Mr. Fesser. He was processed through Multnomah County detention center, and then West Linn police investigators, the detective division, forwarded the investigation to the Multnomah County district attorney's office for their review. It was lost within the Region, which was a new information recording system that ended up being a travesty, and many agencies jumped out of it, including West Linn.

Terry Kruger ([38:06](#)):

But it got lost within the system for a period of time, and they discovered it was lost in the system, got it forwarded to Multnomah County district attorney's office. They indicted him for five counts of theft one, so five felony charges.

Brenda Perry ([38:20](#)):

I guess, still, why West Linn? Why were West Linn so involved in this when this was Portland thing? Would they do it for any citizen or just a friend?

Eileen Stein ([38:30](#)):

You were talking once about how officers are licensed throughout the state, so it is possible-

Terry Kruger ([38:38](#)):

Yeah, you're a certified police officer within the state of Oregon, so you can conduct investigations, or your police powers are state wide. It's not uncommon for police agencies to conduct investigations outside of their areas, and then they inform, just as a matter of... What's the word I want? Polite isn't the right word.

Teri Cummings ([38:59](#)):

Courtesy?

Terry Kruger ([39:00](#)):

Courtesy. Yes, thank you. You inform the agency out of courtesy that you're doing a surveillance or an investigation inside of their city limits or their jurisdictions. But police jurisdictions are state wide.

Brenda Perry ([39:12](#)):

Yeah, I guess-

Eileen Stein ([39:13](#)):

So why West Linn picked up the case if Portland wasn't going to investigate it?

Terry Kruger ([39:21](#)):

Well, the owner of A&B Towing is a citizen or I say a resident in West Linn. He also... His tow company supplies tow services to West Linn and to the city. He's one of the tow providers to the city as well.

Eileen Stein ([39:39](#)):

So there was just a nexus of attention on this.

Russ Axelrod ([39:47](#)):

Well, that actually makes some kind of sense in a way.

Terry Kruger ([39:47](#)):

Some connection.

Russ Axelrod ([39:47](#)):

Yeah, some connection there.

Terry Kruger ([39:48](#)):

And he still resides within West Linn.

Russ Axelrod (39:50):

Isn't it also... My understanding is... I've heard Stradley talk about this, and we've talked about how policing is changing, and particularly with the Portland department not investigating, or at least having a very high bar, where just below which they no longer investigate crimes unless there's a shooting involved or a felon, whereas it's still our policy to investigate everything that comes before us. Isn't that still in our overriding policy, that when anything comes before us we look at it?

Terry Kruger (40:27):

We do. The officer's deal with it at their level and follow up, unless it reaches... looks to be a felony or a detailed investigation requiring additional resources, they then turn it over to our detectives who would do a more thorough investigation.

Russ Axelrod (40:43):

Is that pretty typical of other small cities around? Are they still doing that, the small cities?

Terry Kruger (40:48):

Yes, until the case load gets too large. Do more with less. But if it comes to the point where you're unable to carry your case load then you have to trim someplace, and that's the situation in Portland unfortunately.

Russ Axelrod (41:02):

Mm-hmm (affirmative). Okay.

Richard Sakelik (41:05):

So are you saying that what Chief Timeus did, the decision he made to investigate is somewhat standard procedure, can be?

Terry Kruger (41:14):

I would say it's not out of the ordinary for a resident who has business dealings within the city, who looks to be a victim of a crime, who can't get investigative resources in the jurisdiction he's in just due to overload, to assign detectives to look into it. See if there is criminal behavior. When they did find criminal behavior, they continued to dig and they uncovered quite a lot. The aggregate amount got substantial, and they only went back so far. Mr. Fesser had been in A&B's employment for quite some time. So really how deep it went, I don't think they ever dug all the way through. But five felony counts is substantial.

Russ Axelrod (41:49):

So my understanding from what you're saying too, is at the point when they discovered those violations that they also... Did they do the appropriate thing in going to the... you said, the Multnomah County, the district attorney's office. Is that what...

Terry Kruger (42:00):

That's correct. [crosstalk 00:42:01]

Russ Axelrod ([42:01](#)):

Is that the standard procedure once you've determined, hey, this is for real?

Eileen Stein ([42:05](#)):

There's something real here.

Russ Axelrod ([42:06](#)):

There's something real here. You hand it off to the authorities that should take a look at it.

Terry Kruger ([42:09](#)):

That's correct. It's your jurisdiction, so here's the investigation. Here's the proof, and here it is. So now it's in your jurisdiction that these crimes occurred, and it's up to you to take a look at it and decide whether you want to move forward. And they took it through grand jury, and then five counts at that point, indictments.

Brenda Perry ([42:28](#)):

So I can definitely see two problems for us, is the fact that there was a settlement between, a civil settlement between the employee and the employer, and secondly that they didn't go forward with the indictment. So those are two issues, I think, for us.

Eileen Stein ([42:48](#)):

Well, yeah. They're certainly the reasons that kept the case open and could be presented back again.

Tim Ramis ([43:00](#)):

I agree with you. That's the coloration of the case that allows it to proceed. If those things hadn't happened, I don't think we'd see this case. But the door was sort of opened by that.

Russ Axelrod ([43:11](#)):

What's the basis for \$2.5 million? Where'd he come up with \$2.5 million...

Eileen Stein ([43:20](#)):

Where do you come up with 17 months back-pay?

Russ Axelrod ([43:21](#)):

Well, is it as arbitrary and capricious as that? I don't know. Do they have to justify that? Don't they have to give some justification for...

Tim Ramis ([43:34](#)):

They will but the difficulty is that these are alleged to be injuries to reputation, emotional distress, anxiety, humiliation, and embarrassment.

Russ Axelrod ([43:47](#)):

Okay.

Tim Ramis ([43:49](#)):

So how you value that, that's up to who values it.

Eileen Stein ([43:55](#)):

Because there's a difference between humiliation and embarrassment.

Tim Ramis ([43:59](#)):

Yep. Or you get paid for both.

Eileen Stein ([44:01](#)):

Mm-hmm (affirmative).

Russ Axelrod ([44:03](#)):

So where we're at now is, again?

Eileen Stein ([44:07](#)):

So the jurisdiction has been moved to federal court, because these are federal civil rights violations that are being alleged, and on recommendation of Mr. Campbell. Other than that, we're just waiting for him to really get up to speed with the case and start to prepare a response. So have you...

Tim Ramis ([44:39](#)):

That's exactly right.

Eileen Stein ([44:40](#)):

Yeah.

Brenda Perry ([44:41](#)):

So maybe we should wait-

Tim Ramis ([44:44](#)):

In our early stages of preparing defense.

Russ Axelrod ([44:44](#)):

Wait for that.

Brenda Perry ([44:44](#)):

So maybe wait to hear his-

Eileen Stein ([44:46](#)):

[crosstalk 00:44:46] discovery, or we're in the process of pulling together background, all that discovery background documentation.

Brenda Perry ([44:52](#)):

So maybe wait until that's done, and then meet with him. Seems to make more sense.

Eileen Stein ([44:57](#)):

Sure. Yeah.

Eileen Stein ([44:59](#)):

Yeah. It felt a little preliminary. I just wanted to make sure you had the option, if he was available today, and it turns out he wasn't. But I think we're going to be with this one for a while.

Russ Axelrod ([45:09](#)):

I don't think it's... Yeah. Yeah, yeah.

Teri Cummings ([45:12](#)):

When did West Linn get aware of this? When were we informed about it?

Terry Kruger ([45:18](#)):

Of the tort claim? The day I started my job. June 4th, they walked in and dropped that tort claim on my desk. Welcome to the chief's office. Here's a tort claim.

Teri Cummings ([45:30](#)):

So as far as this other email when it went to-

Russ Axelrod ([45:33](#)):

And then emailed it to me, remember? I said they copied me on it.

Teri Cummings ([45:34](#)):

Oh, did they?

Russ Axelrod ([45:35](#)):

Yeah. And I immediately just passed it on to the city and said I felt sorry for Terry.

Teri Cummings ([45:39](#)):

But what about when it was going to Multnomah County and things like that and our officers were involved? When did we know about that? I mean, it sounds like it was in December of 2016, or 2017.

Terry Kruger ([45:56](#)):

I'm not sure what your question is about, the investigation itself or when they filed a tort claim against the city. The investigation was-

Russ Axelrod ([46:06](#)):

[crosstalk 00:46:06] part of a routine investigation, we wouldn't find out.

Teri Cummings ([46:08](#)):

I guess I'm just wondering when were we aware that our department was involved in stuff that was involving Multnomah County.

Terry Kruger ([46:18](#)):

Well, when Terry Timeus assigned his detectives to look into the case.

Teri Cummings ([46:22](#)):

Yeah.

Brenda Perry ([46:23](#)):

So we didn't know it was a problem for us until they filed the tort claim.

Teri Cummings ([46:29](#)):

Okay.

Terry Kruger ([46:30](#)):

Yeah, it's not an illegal investigation. There wasn't illegal surveillance. It wasn't an unlawful arrest. There wasn't a violation of his civil rights. These are the allegations. But it was a legitimate investigation. There was probable cause. They did arrest him lawfully. He was indicted for crimes, and then from there these other things occurred that left this door open, and Mr. Fesser has stepped through it. So the first indication that there was an issue would've been when we were served with the tort claim notice on June 4th.

Teri Cummings ([47:05](#)):

I guess it's just, we've had couple of other things through the years that have kind of given the public the impression that our police don't have that much to do, so they go do stuff elsewhere. I've heard that a number of times over the years. That kind of a thing. Or there's a prostitution sting in Fields Bridge Park one time that raised a lot of controversy because it wasn't that we had a problem with prostitution here. So it's kind of almost like a policy issue. How much of this do we do?

Brenda Perry ([47:44](#)):

I think that's what we're relying on Chief Kruger to change that appearance of the police, and to change the whole perception, because that was a perception. There as a lot of that, and that's going to be a big part of his job.

Russ Axelrod ([48:00](#)):

Well, but in defense also, the policy of police departments assisting other police departments where it's needed and to fill case work, and particularly, where there's a city that doesn't even bother to look at alleged crimes, I would hope that another police department would step in if they have the time to sort of just see if there's something legitimate and pass it on. I think that's a... I would do that as a-

Teri Cummings ([48:20](#)):

I would certainly see it if another city asked us to. But, so I was just wondering where the line is when that's not the case.

Brenda Perry (48:30):

I guess if it's one of our citizens, and they feel like they're-

Russ Axelrod (48:32):

It was one of our citizens.

Brenda Perry (48:34):

If it wasn't a West Linn citizen then I would have a concern. But if he lives in West Linn, does business in West Linn, then I think we should support our West Linn people. I mean, we go outside to do-

Russ Axelrod (48:45):

That's the first place I would turn to.

Brenda Perry (48:46):

Yeah. To do the truck checks too. But earn extra money to do that.

Teri Cummings (48:50):

But we get money for that.

Brenda Perry (48:51):

Right. But we're still assisting another department because they don't have the full resources as well.

Teri Cummings (48:56):

So then it's a question, how much of our resources can we afford to expand in other jurisdiction? That sort of a thing.

Brenda Perry (49:05):

And I agree with that. One of the things I would say is it's good for our guys to get experience outside of West Linn to do other things. So they do something like that, as long as it's legal, and as long as it's for West Linn in the end, because it's for a West Linn citizen, then I'm okay with it, for them to get a bit of extra experience, rather than sitting twiddling their thumbs.

Richard Sakelik (49:27):

What might be valuable is I think most citizens don't understand that what Chief Timeus did was perfectly legal and legitimate. I think most people say, "They're West Linn police. Why did they get involved?" That was my first reaction not knowing this. And I would imagine it'd be beneficial for people to really understand that moving forward, so that they don't jump to conclusions that are not accurate.

Brenda Perry (49:51):

Yeah.

Terry Kruger (49:51):

Police certification is state wide, and your police powers are state wide.

Brenda Perry ([49:54](#)):

And that we were supporting-

Richard Sakelik ([49:55](#)):

But the average public doesn't know that, I'm guessing. So an explanation-

Russ Axelrod ([50:01](#)):

And that's where it goes social media just jumps on that.

Richard Sakelik ([50:03](#)):

Right. And then you guys get a bad rap because of something that's ridiculous. And people look at it the wrong way. [crosstalk 00:50:11] How to educate... but it's good to educate people as much as possible.

Brenda Perry ([50:14](#)):

Yeah, and that we're supporting West Linn citizen in doing this.

Teri Cummings ([50:18](#)):

Yeah, but on the other hand, I also don't know how much I want to see our police chasing after little theft things, because-

Brenda Perry ([50:25](#)):

But we... Yeah.

Teri Cummings ([50:26](#)):

It's just a question of whether we have the time and the resources for that or not. So I think you're-

Russ Axelrod ([50:36](#)):

Well, I guess I don't know that I... If I could. Sorry. Just quickly. Just because of the comment about it being a little theft thing. It doesn't sound like a little theft thing for me, from hearing about it. And if I was a citizen and I had a business somewhere, and I wasn't getting a response from the police department, the first place I would turn to would be to ask my police department to ask them to look into it. And I agree, I mean, I don't think we want to be doing willy-nilly stuff in other places. I totally agree with that, but if something's brought forward to them and there's some credence to it, check on it, and an assessment...

Russ Axelrod ([51:13](#)):

As long as it's not distracting from our operations, that's kind of [crosstalk 00:51:17]

Eileen Stein ([51:17](#)):

So this is-

Terry Kruger ([51:18](#)):

In a perfect world, I would've loved, it would've been ideal if Portland would've said, "You bet, as a favor to you West Linn. This is below our investigative thresholds, but you know what? We'll have somebody

look at it." And they would've picked that ball up and run with it. That would be the ideal situation. That's certainly the direction I would go. That's the direction I would push. I would use every favor, friend, and network I had, because I think that's the best course of action. But the direction they went here is not unlawful, is not unethical.

Eileen Stein ([51:51](#)):

So I know we started late. It is five minutes after 3:00, and you have a work session upstairs starting at 3:00. These are excellent questions and are policy questions. They don't relate to the claim itself.

Russ Axelrod ([52:01](#)):

Okay. Okay.

Eileen Stein ([52:01](#)):

So I'm going to draw the line there. Put a hold on these thoughts as we get into the budget, and lo and behold do we ever get into a situation where we're having to prioritize police services. Typically, what happens, and what I've seen in other communities, is property crimes are the first that go out the door.

Teri Cummings ([52:20](#)):

That's right.

Eileen Stein ([52:20](#)):

Because person crimes are higher priority, and probably the city of Portland has gotten to that point to-

Teri Cummings ([52:26](#)):

Has higher priorities [inaudible 00:52:26]

Eileen Stein ([52:26](#)):

Exactly. But therefore this could happen to West Linn as well, is we get into a situation with the budget where we are unfortunately having to triage calls for service and all of that. But that's policy discussion, so I don't want to continue discussing that in executive session.

Russ Axelrod ([52:46](#)):

Okay. Fair enough.

Richard Sakelik ([52:47](#)):

One last question. I doubt anything's happened because we haven't heard anything, but that one threat, frivolous, whatever you want to call it, from the gentleman that sent something in basically warning us about a potential...

Teri Cummings ([53:04](#)):

The racist thing?

Richard Sakelik ([53:05](#)):

Yeah. Where he was... What was it? Arrested illegally, blah, blah, blah. I'm assuming it hasn't gone anywhere. We got a copy of his original letter saying... I just wondered if anything new happened on that.

Russ Axelrod ([53:20](#)):

Oh. That thing. That complaint thing. [crosstalk 00:53:23]

Tim Ramis ([53:22](#)):

Yeah, I haven't seen anything further. We have the tort claim notice, that's it.

Richard Sakelik ([53:30](#)):

TBD.

Eileen Stein ([53:30](#)):

Mm-hmm (affirmative). Keep you posted.

Russ Axelrod ([53:33](#)):

Okay.

Eileen Stein ([53:34](#)):

Okay. Be upstairs in a few minutes.

Russ Axelrod ([53:36](#)):

All right, so we are then... Are we adjourned then? We're done with the executive session on this topic?

Tim Ramis ([53:41](#)):

Yes.

Russ Axelrod ([53:41](#)):

Thank you.