

Police Policy Committee Minutes February 12, 2008

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on February 12, 2008 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31 p.m. by Chair Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Chair, Oregon State Sheriffs' Association
Andrew Jordan, Vice Chair, Oregon Association Chiefs of Police
Brian Martinek, Portland Police Bureau Assistant Chief
Ray Gruby, Non-Management Law Enforcement
Rob Gordon, Oregon State Sheriffs' Association
Dave Miller, SAC FBI, Oregon
Robert King, Non-Management Law Enforcement
Steven Piper, Non-Management Law Enforcement
Stuart Roberts, Oregon Association Chiefs of Police
Tim McLain, Superintendent, Oregon State Police
Mike Healy, Oregon Association Chiefs of Police
Edward Mouery, Oregon State Police
Raul Ramirez, Oregon State Sheriffs' Association

DPSST Staff:

Eriks Gabliks, Deputy Director
Cameron Campbell, Director of Academy Training
Marilyn Lorange, Standards and Certification Supervisor
Bonnie Salle, Certification Coordinator
Theresa King, Professional Standards Coordinator
Shirley Parsons, Second Investigator and Lead Interviewer
Lorraine Anglemier, Legal Services Coordinator
Darin Tweedt, Assistant Attorney General, Oregon Department of Justice
Jeanine Hohn, Public Information Officer
Carolyn Kendrick, Administrative Assistant

Guests:

Eric Taylor, KOIN Television
Dean Barron, KOIN Television
Alan Scaia, 1190 KEX Radio
Lee Cason Doss
Alexa Jeddelloh
Kate Ashby Jeddelloh
James McConney, KPTV Television

Andrew Theen, Oregon Public Broadcasting
Bruce McCain, Attorney for Bernard Giusto
Nicholas Budnick, Tribune
Pat Dooris, KGW Television
Arthur Sulzburger, Oregonian
Colby Reade, KXL Radio
Rod Stevens, KGW Television
Stephanie Yap, Oregonian
Melica Johnson, KATU Television
Gino Corridori, KATU Television
D'ana Jordan, KPAM Radio



1. Minutes of November 13, 2007 Meeting

Approve minutes from the November 13, 2007 meeting.

Tim McLain moved to approve the minutes from the November 13, 2007 meeting. Michael Healy seconded the motion. The motion carried unanimously by all present.

See Appendix A for details

2. Bernard GIUSTO – DPSST #07617

Overview of the process of denial and revocation presented by Marilyn Lorance
Staff summary presented by Theresa King

See Appendix B for details

Chair Andrew Bentz advised the committee of seeing and conversing with Sheriff Giusto at a conference in December. He stated that the conversation did not relate to anything to do with this case. Chair Bentz did, however, reiterate the process the Police Policy Committee and Board follows and that the Committee and Board would not be receiving any information until mid-January.

Robert King voiced his concerns of the neutrality and objectivity of the investigation itself as well as the use of the polygraph examination. In his earlier email to the committee, he asked for discussion about any concerns that might be present regarding the investigative process. Mr. King presented the committee with his analysis of the allegations. Mr. King asked the committee if anyone other than committee members would be able to speak at this meeting and how that decision would be made.

Loraine Anglemeier, DPSST Legal Services Coordinator, stated this committee can ultimately do whatever it wishes to do individually and collectively as far as the introduction and consideration of polygraph results but there is nothing operating in Oregon law that would bar the committee from consideration of the polygraph in this proceeding.

Darin Tweedt, Assistant Attorney General, stated in regards to secondary testimony on this issue, there is no precedent for allowing anyone else to participate in this proceeding. Counsel's concern is that if it is allowed, the Committee would be setting precedent for future cases.

Rob Gordon moved to disallow any secondary testimony during this case as this is not what this body was designed for. Contested case hearings are the proper venue for additional testimony. Steven Piper seconded the motion. The motion carried 12 to 1 with Robert King voting no.

Concern was voiced as to the credibility of allegations being brought forth. Staff stated that complaints are received from a variety of sources. Frequently complainants are turned back to an employer, to a district attorney if criminal in nature, or staff deals with the issue if it falls under DPSST jurisdiction. Staff assured the committee that all allegations were investigated for credibility.

Displeasure was voiced regarding the early release of the staff draft summary to the media. Darin Tweedt stated that the early release of the staff's draft summary to the media was due to a formal request of said information from the media. DPSST did not want to release the summary, especially in draft form, however, due to advice of counsel, reluctantly did so. The committee stated that DPSST should have declined the formal request and that the governing rules need to be changed to allow DPSST the right to do so.

Eriks Gabliks shared with the committee, DPSST's desire to address this loophole through legislation which will be introduced when the session convenes in January 2009.

After much discussion about the four allegations brought against Sheriff Giusto, the following questions were brought forth:

- *Does the committee consider other allegations not brought forth by staff? Can we add another allegation or are we asking for additional information from staff.*
- *Does staff want the committee to respond to the allegations as framed today regardless if we ask you to look into a 5th allegation that potentially exists?*

Staff stated the process would be best served by the committee determining how comfortable they are in closing out what is framed fully. Or, if the committee is more comfortable bringing a request for additional information and leaving the entire matter open to see if staff is able to obtain the requested information rather than a direct vote to close all allegations.

If there is going to be another allegation, in all fairness we would want to re-notice Sheriff Giusto and give him the opportunity through his counsel to provide any mitigating circumstances to committee for their review, as we do in all of the cases.

- *The question was brought up about the conversation with the Oregon State Police Executives and Lt. Giusto which occurred in 1989. Lt. Giusto, at that time, would not*

have been a certified officer under BPST. If then he was not certified in 1989, and this committee is reviewing facts about a conversation that happened so long ago, why is this committee entertaining this discussion?

Committee members stated that we're in a system that is designed to make sure arbitrary and capricious decisions are not made and that's what we're doing here. For us to look at that other part of it is our responsibility. The pattern of behavior is concerning, and unfortunately, what was given the committee to look at was not broad enough. Integrity and honesty are not negotiable.

- *Did then Lt. Giusto, at that time, respond truthfully to the Oregon State Police executives and does that effect his certification?*

The committee asked staff to supply additional information to insert into current policy committee binders.

ACTION REQUESTED:

Staff requests the Police Policy Committee review each allegation and make a recommendation to the Board whether GIUSTO's certifications should be revoked based on a violation, or violations of the established standards for Oregon public safety officers.

Robert King moved to not send the first allegation to the Board because the information does not meet the preponderance of evidence for a violation of the moral fitness standard for the purposes of revocation. Robert King recommended the file be closed and not available for further investigation.

Brian Martinek proposed to amend Robert King's motion to include allegations one through four not be sent to the Board and that the committee specify that they want to keep the supporting materials available for further consideration.

Robert King withdrew his motion.

Brian Martinek moved that the four allegations as framed by staff in this investigation not be recommended for revocation to the Board. Michael Healy seconded the motion. The motion carried unanimously by all present.

Rob Gordon moved to have DPSST staff, as a separate allegation, rephrase incident number four so that Sheriff Giusto can receive notice and staff can review either current and/or additional information to inquire whether Sheriff Giusto truthfully answered Oregon State Police executives, whether he was honest or not as it relates to his relationship with the Governor's wife at the time.

Tim McLain seconded the motion. Motion carried with a 12 to 1 vote with Robert King voting no.

The committee asked staff to accelerate the Giusto investigation in order to bring resolution. A special Police Policy Committee meeting will be scheduled no later than the

second week of March in order to have information available for the Board meeting in April.

3. **Break**

4. **Convene in Executive Session**

The committee convened in Executive Session at 4:30pm to discuss matters exempt from disclosure under ORS 92.660(2)(f) related to whether a medical waiver for Bobby Davis should be recommended to the Board.

5. **Reconvene in Regular Session**

The committee reconvened in regular session at 4:36pm to take final action regarding a determination of whether a medical waiver for Bobby Davis should be recommended to the Board.

ACTION ITEM #1: The committee needs to determine whether they will recommend approval to the Executive Committee for a waiver of the visual acuity standard for Bobby Davis so he can attend the next Basic Police course beginning March 3, 2008.

ACTION ITEM #2: The committee needs to determine whether they will recommend approval to the Executive Committee for a waiver of the depth perception standard for Bobby Davis so he can attend the next Basic Police course beginning March 3, 2008.

Robert King moved to recommend approval for a waiver of the visual acuity and depth perception standard for Bobby Davis to the Executive Committee so that he can attend the Basic Police course beginning March 3, 2008. Ray Gruby seconded the motion. The motion carried unanimously by all present.

6. **OAR 259-008-0010 Proposed Administrative Rule**

Contested Case Process
Presented by Bonnie Salle

See Appendix C for details.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

Andrew Jordan moved to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Steve Piper seconded the motion. The motion carried unanimously by all present.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the committee that there is no fiscal impact on small business.

7. OAR 259-008-0045(5) Proposed Administrative Rule

Official College Transcripts
Presented by Bonnie Salle

See Appendix D for details.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a permanent rule if no comments are received.

Raul Ramirez moved to recommend filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Ed Mouery seconded the motion. The motion carried unanimously by all present.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the committee that there is no fiscal impact on small business.

8. OAR 259-008-0060(9)(d) Proposed Administrative Rule Change

Presented by Marilyn Lorance

See Appendix D for details.

Raul Ramirez moved to distinguish between instructor training and instructor-provided training. Instructors must maintain their maintenance training. Andrew Jordon seconded the motion. Motion carried in a 7-6 vote with Chair Andrew Bentz, Brian Martinek, Rob Gordon, Dave Miller, Robert King, and Steven Piper voting no.

9. Basic Police Training Update

Due to the length of the meeting, the committee requested staff to present the Basic Police Training update information at the special meeting in March.

With no further business before the committee, the meeting adjourned at 5:06pm.

Appendix A

Police Policy Committee Minutes (Draft) November 13, 2007

The Police Policy Committee of the Board on Public Safety Standards and Training held a regular meeting on November 13, 2007 in the Governor Victor G. Atiyeh Boardroom of the Oregon Public Safety Academy. The meeting was called to order at 1:31 p.m. by Chair Andrew Bentz.

Attendees

Policy Committee Members:

Andrew Bentz, Chair, Oregon State Sheriffs' Association
Andrew Jordan, Oregon Association Chiefs of Police
Raul Ramirez, Oregon State Sheriffs' Association
Rob Gordon, Oregon State Sheriffs' Association - teleconference
Mike Healy, Oregon Association Chiefs of Police
Brian Martinek, Portland Police Bureau Assistant Chief
Stuart Roberts, Oregon Association Chiefs of Police - teleconference
Tim McLain, Superintendent, Oregon State Police
Ray Gruby, Non-Management Law Enforcement
Robert King, Non-Management Law Enforcement - teleconference
Edward Mouery, Oregon State Police

Policy Committee Members Absent:

Dan Nielsen, Federal Bureau of Investigation – Oregon
Steven Piper, Non-Management Law Enforcement

DPSST Staff:

Eriks Gabliks, Deputy Director
Marilyn Lorange, Standards and Certification Supervisor
Bonnie Salle, Certification Coordinator
Lorraine Anglemier, Legal Services Coordinator
Carolyn Kendrick, Administrative Assistant



10. Minutes of August 14, 2007 Meeting

Approve minutes from the August 14, 2007 meeting.

Andrew Jordan moved to approve the minutes from the August 14, 2007 meeting. Tim McLain seconded the motion. The motion carried unanimously by all present.

11. Law Enforcement Memorial Wall Nomination

Eriks Gabliks presented information.

Action Item: Determine whether Deputy Kelly Fredinburg's name will be included on the Law Enforcement Memorial Wall.

Raul Ramirez moved to include Deputy Kelly Fredinburg's name on the Law Enforcement Memorial Wall. Michael Healy seconded the motion. The motion carried unanimously by all present.

12. Policy Discussion – Workgroup Update

Recalled Certification – Maintenance Training Deficiency Information presented by Bonnie Salle.

See Appendix A for further details.

The Committee asked if there were/are sanctions other than monetary that can be used by the Department. Staff clarified that the statute was extremely limiting and only provided for monetary sanctions. A few agencies did not respond to notification of certification recall. Each non-compliant agency was sent by certified mail the letter of recall as well as the individual being recalled.

There are still a number of law enforcement agencies that believe they are only responsible for getting an officer signed up for basic academy and the annual firearms qualifications. Those agencies think any continuing education is the sole responsibility of the employee. It would seem to make more sense to apply the monetary fine not to the law enforcement agency but to the governmental entity of which he/she belongs. Possibly the letter of recall should also go to the District Attorney's office.

Staff inquired of the Committee how to handle the situation when an officer retires with recalled certification. In order to be "honorably retired" means retiring in good standing with current certifications. Recall is an administrative process not a punitive process.

Some Committee members think that communication is key between the agency and the individual. If an individual states they've received notification, however they plan to retire in a month, then fulfilling the maintenance requirements is a waste of time for the individual as well as the agency. That makes a big difference as to whether retirement is in good standing or not.

Tim McLain moved to have staff go back to DOJ for legal advisement prior to proceeding to a decision on Question 1 and bring it back to the Committee. They will then vote to move all five action items forward to the Board. Brian Martinek seconded the motion. The motion carried unanimously by all present.

Action Item 1: Determine whether to approve the workgroup's recommended response to Question 1 which imposes a monetary sanction on an agency when an officer fails to

complete mandatory maintenance training, certification is recalled, and the officer remains employed with the same agency.

Action Item 2: Determine whether to approve the workgroup's recommend response to Question 2 which requires an officer with a recalled certification for up to 2 ½ years to complete maintenance training for the current period for which their certification was recalled if they remain with the same agency.

Action Item 3: Determine whether to approve the workgroup's recommended response to Question 3 which requires an officer who returns to a certifiable position from a recalled status of up to five years to be required to complete an 8-hour firearms/use of force component within 30 days (as well as COD for those with recalled certifications between 2 ½ and 5 years).

Action Item 4: Determine whether to approve the workgroup's recommend response to Question 4 which allows an officer with a lapsed or recalled certification to resume employment with a different employer without requiring the subsequent employer to make up the previous training deficiencies.

Action Item 5: Determine whether to approve the workgroup's recommended response to Question 5 which allows an officer who resumes public safety after an absence to begin a current maintenance training cycle at the time of re-employment, but requires firearms proficiency within 30 days of employment.

13. OAR 259-008-0060(17) – Proposed Administrative Rule Change

Multi-Discipline Recall

Information presented by Bonnie Salle.

See Appendix B for further details.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a permanent rule if no comments are received.

Raul Ramirez moved to recommend to the Board filing the proposed language for OAR 259-008-0060(17) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Andrew Jordan seconded the motion. The motion carried unanimously by all present.

Action Item 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the Committee that there is no fiscal impact on small businesses.

14. OAR 259-008-0070 and OAR 259-008-0010 – Discussion

Information presented by Marilyn Lorange.

There was minimal discussion and the Committee moved forward to item 5a.

5a. OAR 259-008-0070 Proposed Administrative Rule Change

Information presented by Marilyn Lorange.

See Appendix C for further details.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070 with the Secretary of State as a permanent rule if no comments are received.

Andrew Jordan moved to recommend to the Board filing the proposed language for OAR 259-008-0070 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Martinek seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.

Action Item 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the Committee that there is no fiscal impact on small businesses.

15. OAR 259-008-0010 – Proposed Administrative Rule Change

Information presented by Marilyn Lorange.

See Appendix D for further details.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

Tim McLain moved to recommend to the Board filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Raul Ramirez seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.

Action Item 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the Committee that there is no fiscal impact on small business.

16. OAR 259-008-0070(5) Proposed Administrative Rule Change

Employment arbitration on revocation and denial cases

Information presented by Marilyn Lorange on behalf of Board Chair Harold Burke-Sivers.

See Appendix E for further details.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a permanent rule if no comments are received.

Tim McLain moved to recommend to the Board filing the proposed language for OAR 259-008-0070(5) with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Brian Martinek seconded the motion. The motion carried in a 10-1 vote with Robert King voting no.

Action Item 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the Committee that there is no fiscal impact on small business.

17. OAR 259-008-0200 – Proposed Rule

Civil Penalties

Information presented by Bonnie Salle.

See Appendix F for further details.

Staff welcomes any input from the Committee and the Board in defining the amounts and usage of civil penalties. The Department sincerely wishes to reflect the intent of the Committee and Board on this issue. The statute gives formal authority to assess civil penalties to the Department not the Board. The Committee is concerned about how to administer the penalties fairly to everyone (large and small agencies) who ends up going through the process. Procedurally, this is a concept still being developed. The Committee is concerned about the continued separation of the Department and the Board and encouraged staff to consider ample face-to-face discussions with the Chiefs and Sheriffs to inform all of the civil penalties procedures being defined and adopted.

Action Item 1: Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule.

Action Item 2: Determine whether to recommend filing the proposed language for OAR 259-008-0200 with the Secretary of State as a permanent rule if no comments are received.

Ed Mouery moved to recommend to the Board filing the proposed language for OAR 259-008-0200 with the Secretary of State as a proposed rule and as a permanent rule if no comments are received. Raul Ramirez seconded the motion. The motion carried unanimously by all present.

Action Item 3: Pursuant to HB 3238, determine whether there is a significant fiscal impact on small businesses.

It is the consensus of the Committee that there is no fiscal impact on small business.

18. Additional Information

Information presented by Eriks Gabliks.

a.) Oregon Mayors' Association – ORPAT

Information was given to the Committee about the Oregon Mayors' Association's adopted position on ORPAT. Chair Andrew Bentz suggested placing this item on the agenda for the next Police Policy Committee meeting.

See Appendix G for further details.

b.) Sheriff Bernie Guisto has asked for and received an extension. His response is due Friday, November 16, 2007. The Department is taking care of media inquiries on the Committee's behalf. The release of public documents is scheduled for November 14th. These public documents are in digital form. The Committee will be receiving the summary and exhibits (as hard copy) well in advance of the next scheduled meeting to allow for ample time to review the case.

c.) Partnership with Nike has been established. You may be aware they are looking into VO testing which corresponds well with the ORPAT training. The Academy will be beta testing tactical footwear for NIKE. They are moving into the development of footwear for military and public safety functions. Footwear will be issued to students coming here (both male and female) for the different programs. Students will sign an agreement stating that the footwear belongs to their agency after training to avoid ethical issues.

d.) In January, we start the 300th Basic Police class. Tim McLain's father was in the very first Basic Police class. Tim McLain will be the guest speaker for that class' graduation and his father should be in attendance. The Department is also trying to contact other members from the first Basic Police class to invite them to the event.

e.) Tim McLain announced that as of two weeks ago OSP's first class of lateral officers is out on the road and doing well.

f.) A bureau of OSP was renamed to Public Safety Services which includes Forensics, LEDS, and the Communications sections. Chris Brown has accepted the position of overseeing this bureau and will start January 1, 2008.

With no further business before the committee, the meeting was adjourned at 3:17 p.m.

Appendix B

Department of Public Safety Standards and Training Staff Report

DATE: February 12, 2008

TO: Police Policy Committee

FROM: Theresa King
Professional Standards Coordinator

SUBJECT: Bernard GIUSTO DPSST #07617

ISSUE:

Should Bernard GIUSTO's certifications be revoked based on a violation of the Moral Fitness standards defined in OAR 259-008-0010(6)?

BACKGROUND:

GIUSTO began his public safety career on October 1, 1974, as a police officer with the Oregon State Police. On January 1, 1985, GIUSTO was promoted to Sergeant and on March 1, 1988, was reclassified to Lieutenant. On July 31, 1996, GIUSTO resigned from the Oregon State Police (OSP). On August 1, 1996, GIUSTO was hired as the Chief of Police for the Gresham Police Department and served in this position until December 2, 2002. In 2002 GIUSTO was first elected as the Sheriff of Multnomah County. On January 1, 2003, he began serving in this position. In May of 2006, GIUSTO was re-elected to the office of Sheriff. During GIUSTO's public safety career he has attained Basic, Intermediate, Advanced, Supervisory, Management and Executive Police certificates. GIUSTO has approximately 1,900 hours of state-reported public safety training.

In April 2007, this matter initially came to the attention of DPSST when complainant Robert KIM wrote a letter to DPSST asserting numerous allegations of misconduct on the part of GIUSTO. Subsequent to this, complainant Fred LEONHARDT wrote a letter to DPSST asserting additional complaints of misconduct by GIUSTO. In late October, 2007, additional allegations were brought forward by a private citizen and by the media.

An investigative team was formed, comprised of the following: DPSST Investigators Theresa KING and Shirley PARSONS, DPSST Legal Services Coordinator Lorraine ANGLEMIER, Esq., and AAG Darin TWEEDT, Oregon Department of Justice, whose role was to provide the team with legal advice.

Investigation #1

During the months of April 2007 through January 2008, the investigative team addressed each of KIM's and LEONHARDT's allegations to determine whether it was within DPSST's jurisdiction; if so, if there was evidence to substantiate it; and if substantiated, what the appropriate course of action should be. The investigative team initially concluded there was sufficient cause to refer Investigation #1, Allegations 5, 12 and 17. (Allegation 17 contained three parts.)

On October 15, 2007, GIUSTO was contacted and advised Investigation #1 would be heard before the Police Policy Committee. GIUSTO was advised he had an opportunity to provide mitigating circumstances, in writing, for the Committee's consideration. This letter was sent regular mail and certified mail, return receipt requested.

On October 19, 2007, GIUSTO, through Lt. McCAIN, requested a 30-day extension, until November 16, 2007. On October 20, 2007, Lt. McCAIN sent DPSST a letter advising he was representing GIUSTO as his attorney.

On October 26, 2007, McCAIN requested, and received, materials that DPSST relied upon for Investigation #1. Subsequent to this, DPSST provided McCAIN with additional materials in response to his public records requests consistent with the materials DPSST provided to the media based on legal advice from DOJ.

On November 15, 2007, GIUSTO, through McCAIN, provided information for the Police Policy Committee's, and the Board's consideration. DPSST carefully reviewed and analyzed GIUSTO's response. A summary of the staff analysis and conclusions is included in this document. Based on staff concurrence with two elements of GIUSTO's response, and on additional information received before the staff investigation concluded, the investigative team concluded that administrative closure of parts B and C of Allegation #17 was appropriate.

Although GIUSTO's response is summarized in this staff report, Policy Committee and Board members are asked to review GIUSTO's response in its entirety.

As documented fully in its Investigation Report #1, the investigative team concluded that there was sufficient cause to refer Investigation #1, Allegations 5, 12 and 17A to the Police Policy Committee.

On January 4, 2008, GIUSTO, through McCAIN, submitted to DPSST an email and a copy of a letter from the Oregon State Bar to Lars LARSON.

Investigation #2

On October 23rd and October 24th, 2007, the investigative team received two additional allegations of misconduct on the part of GIUSTO. Investigation #2 commenced.

On October 26, 2007, KING, LORANCE and McCAIN met at DPSST. McCAIN was notified that the new allegations would be considered, not as a part of Investigation #1, but as a separate investigation, with the goal not to interfere with the timeline of Investigation #1, but to be presented concurrent with that investigation to the February 2008 Police Policy Committee meeting.

During the months of October 2007 through January 2008, the investigative team addressed the new allegations to determine whether they were within DPSST's jurisdiction; if so, if there was evidence to substantiate them; and if substantiated, what the appropriate course of action should be.

On November 8, 2007, DPSST referred potential criminal allegations (based on Investigation #2, Allegation #1) against GIUSTO to the Oregon Department of Justice, based on the October 23, 2007 complaint. Also on November 8, 2007, DPSST referred potential ethical violations to the Government Standards and Practices Commission, based on the same complaint.

On November 8, 2007, AAG TWEEDT sent a letter to McCAIN identifying concerns related to McCAIN's legal representation of GIUSTO, based on the Oregon Bar Rules, the Rules of Professional Conduct. On November 12, 2007, McCAIN responded to TWEEDT's concerns.

On November 30, 2007, GIUSTO was invited to participate in an interview regarding the new allegations. A follow-up certified letter was mailed to GIUSTO on December 4, 2007, and faxed to both GIUSTO and McCAIN.

On December 14, 2007, GIUSTO was mailed a certified letter that an additional allegation, Investigation #2, Allegation #2, would be referred to the Police Policy Committee. GIUSTO was advised he had an opportunity to provide mitigating circumstances, in writing, for the Committee's consideration by January 14, 2008. This letter was also faxed to GIUSTO and McCAIN. Numerous fax attempts failed and the letter was emailed to GIUSTO's staff.

On December 18, 2007, McCAIN requested a copy of the materials DPSST relied upon for Investigation #2. These materials were mailed to him on December 19, 2007.

On January 14, 2008, GIUSTO, through McCAIN, emailed his response to Investigation #2 and provided an Affidavit. DPSST carefully reviewed and analyzed GIUSTO's response. A summary of the staff analysis and conclusions is included in this document.

Although this is summarized in this staff report, Policy Committee and Board members are asked to review GIUSTO's response in its entirety.

Case Review:

This case involves a 57-year old police officer who has served in public safety for over thirty (30) years. At issue is whether GIUSTO was untruthful with the public on one or more occasions during the timeframe of 2004 through 2007.

The following are four incidents involving alleged untruthfulness which are brought before the Policy Committee for consideration to determine if GIUSTO's conduct has fallen below the minimum standards for an Oregon public safety officer. The Committee need not sustain all allegations; each allegation may be independently considered for violation of the moral fitness standards.

Relevant Case Documents

This staff report summarizes the process, analysis, and findings regarding Investigation #1 and #2. The following documents are also provided:

1. The entire 302-page report on Investigation #1
2. The entire 30-page Report on Investigation #2
3. The Exhibit Lists for Investigation #1 and #2. Within each Exhibit List, the exhibits relevant to the allegations moving forward are identified in **Bold**.
4. All exhibits identified in **Bold** on the Exhibit Lists for Investigation #1 and #2.

Policy Committee and Board members are requested to review in their entirety all documents relating to the matters presented to them. Each of these documents is referenced in the text or footnotes of this staff report.

Of the twenty-six (26) allegations, four (4) are moving forward for review to the Policy Committee and the Board. Therefore, only those exhibits relating to the four allegations will be included for review. If any Policy Committee or Board member would like to review additional exhibits, they will be made available.

Incident 1

Related documents are in Investigation #1, Allegation #5, pages 48-58, and referenced exhibits

GIUSTO's statements to the public, in 2004 and later, about his knowledge, or the extent of his knowledge, of the Goldschmidt crime, are in conflict with statements obtained during the course of the investigation.

On June 13, 2007, Brent Walth and Jeff Mapes of *The Oregonian* reported, “Giusto told the *Oregonian* that he *doesn’t remember talking specifics with Leonhardt* but may have discussed *vague rumors* in 1989 . . .” On June 18, 2004, Phil Stanford of *The Portland Tribune* reported, “Giusto was saying this week he *didn’t know about the ‘substance of the story’ until he ‘read it in the papers . . . before that it was just a rumor.’* ‘When you’re in law enforcement you hear a lot of rumors. If you followed up on all of them you wouldn’t have time to do anything else.’” On June 18, 2004, Jim Redding of *The Portland Tribune* reported, “*Giusto says he cannot recall hearing any rumors about Goldschmidt and an underage girl* even though he was romantically involved with the governor’s wife, Margie, during that time.” On June 24, 2007, Arthur Sulzberger of *The Oregonian* reported, “Giusto, in his second term as sheriff, has *provided differing accounts concerning how much he knew about Goldschmidt and the girl.* He has admitted to hearing rumors but denied knowing concrete facts. ‘*It was all very vague – some gal, some time, some place*’ he told *The Oregonian* in 2004, describing a conversation with Leonhardt.”

During another contact with the media, in a June, 2004 radio talk show with Victoria TAFT (for which a transcript is provided), she quoted from the *Oregonian* that, “*He [GIUSTO] doesn’t remember talking specifics with Leonhardt, but may have discussed vague rumors in 1989. He also said that he was aware of potential legal settlement between Goldschmidt and his victim around 1994, and that he may have talked to Leonhardt about it.*” TAFT asked, “Did you say that to the *Oregonian*?” GIUSTO stated, “**That’s what I said.**”

On November 15, 2007, *Oregonian* Executive Editor Peter BHATIA wrote regarding GIUSTO’s document responding to DPSST in Investigation #1 and stated, “We received no request for correction or challenge to the accuracy of our reporting from Sheriff Giusto before this document and there is nothing within it that is specific or substantial.”

During a November 17, 2004, Rules and Executive Appointments Senate Interim Committee on Reappointment of Bernie Giusto to the Tri Met Board, in response to Senator Vicki WALKER’s questions, GIUSTO stated that *the legal responsibility for anybody to report it had long since past.* GIUSTO then stated, “. . . in my tenure with the former governor and all my time around in the two years I sat in that administration, I never saw anything that would lead me to believe there were *other victims* of anything.”

At issue is what GIUSTO knew, when he knew it, and whether GIUSTO’s statements to the public were truthful.

GIUSTO characterizes what he knew of the GOLDSCHMIDT crime as “vague rumors.” During his interview with DPSST investigators, GIUSTO acknowledged his prior knowledge of the following specifics:

1. The victim was a female;
2. The victim was underage;

3. The crime was past the statute of limitations, thereby acknowledging the conduct as criminal; and
4. The approximate timeframe of the crime so that he could formulate an assessment that the statute of limitations had run.

Beyond GIUSTO's own admission to specifics, there is cumulative corroboration by several credible witnesses who assert GIUSTO had specific knowledge of the various elements of the GOLDSCHMIDT crime.

LEONHARDT asserted GIUSTO told him the above specifics, among others, over breakfast. After this breakfast, LEONHARDT asserted he reported what he had learned to his supervisor, Greg KANTOR. KANTOR corroborated that LEONHARDT came to him with information obtained from GIUSTO and that the information included Neil GOLDSCHMIDT having sex with an underage girl.

LEONHARDT asserted he went home and told his wife, Christy, what GIUSTO had told him. Christy LEONHARDT corroborated that Fred came home and told her that GIUSTO had told him Neil GOLDSCHMIDT had sex with an underage girl, along with additional specifics. Christy LEONHARDT corroborated that Fred told her he had told his supervisor Greg KANTOR.

Separate from LEONHARDT's assertions, Debby KENNEDY asserted that GIUSTO came to her home and told her that Neil GOLDSCHMIDT had decided not to run for re-election, in part, due to an "issue with an underage girl." KENNEDY's assertions are corroborated by Senator Ginny BURDICK who told investigators KENNEDY had told her about what GIUSTO had told her. KENNEDY and LEONHARDT identify the same timeframe that GIUSTO told them of the GOLDSCHMIDT crime.

KULONGOSKI does not corroborate that LEONHARDT told him about Neil GOLDSCHMIDT's crime.

LEONHARDT signed an affidavit in the presence of a notary affirming his recollections. LEONHARDT subsequently passed a polygraph regarding the truthfulness of his affidavit. Polygraph examiner Derry YORK concluded, "It is my opinion that the physiological responses recorded during the polygraph examination, in reference to the relevant questions, are consistent with the usual indications of truthfulness."

Christy LEONHARDT signed her affidavit in the presence of a notary affirming her recollections.

KULONGOSKI provided a signed affidavit swearing to the accuracy of his previously provided written response.

Bernard GIUSTO was offered an affidavit, as well as a polygraph examination, and he declined both. GIUSTO subsequently provided an affidavit swearing to the accuracy of his responses to questions posed by DPSST investigators on October 1, 2007, and responses to questions posed by DOJ investigators on December 15, 2005.

Incident 2

Related documents are in Investigation #1, Allegation #12, pages 67-74, and referenced exhibits

A. GIUSTO's statements to the public, in 2005 and 2007, and regarding his knowledge of JEDDELOH's DUII diversion and domestic violence incident are in conflict with statements made to DOJ investigators and physical evidence obtained during the course of the investigation.

- On January 5, 2007, one day after the release of the DOJ investigative report on GIUSTO's role in the JEDDELOH intervention, GIUSTO told the Oregonian he was unaware of allegations of domestic violence when he signed the license. Later, on October 11, 2007, Nick BUDNICK of The Portland Tribune reported, "Giusto told reporters he had not been aware of Jeddelloh's criminal background, which included two arrests for drunken driving and allegations of domestic violence, when he approved his application." Again on October 12, 2007, Les ZAITZ and Arthur SULZBERGER of *The Oregonian* reported, "In February 2005, Giusto approved Jeddelloh's application for the concealed handgun permit. He later said he had done so before learning Jeddelloh had a drunken driving conviction, which would make him ineligible under state law to get approval."
- On November 15, 2007, *Oregonian* Executive Editor Peter BHATIA wrote regarding GIUSTO's document responding to DPSST in Investigation #1 and stated, "We received no request for correction or challenge to the accuracy of our reporting from Sheriff Giusto before this document and there is nothing within it that is specific or substantial."
- In contrast to what GIUSTO told the media, on December 9, 2005, when DOJ investigators asked GIUSTO, "Did you get involved in that [approval of JEDDELOH's CHL] process at all?" GIUSTO replied, "I did very late in the process and that was after Chief GRAHAM brought it to my attention that before we approve it I should look carefully at, uh, his file because there was an indication of domestic violence . . . with that I took a careful look at the file at that point."

DOJ investigators later asked, "so you learned of the DV reports, prior to talking to . . . Mrs. JEDDELOH?" GIUSTO replied, "I learned, no. I learned that there was something in the file that I needed to report, some domestic violence. . . I hadn't reviewed the reports yet, at that point." GIUSTO went on to assert that he knew there was something that GRAHAM wanted him to look at "but. . . I hadn't specifically looked at them . . . when she [Lee JEDDELOH] . . . asked me to look at them . . . I went and got the file." In follow up, DOJ investigators asked, "you found out about the reports, or at least read the reports after you talked to Mrs. JEDDELOH," to which GIUSTO replied, "Right." (*GIUSTO had already signed his approval on three separate documents in the file, including one that specified both the DV and the DUII*)

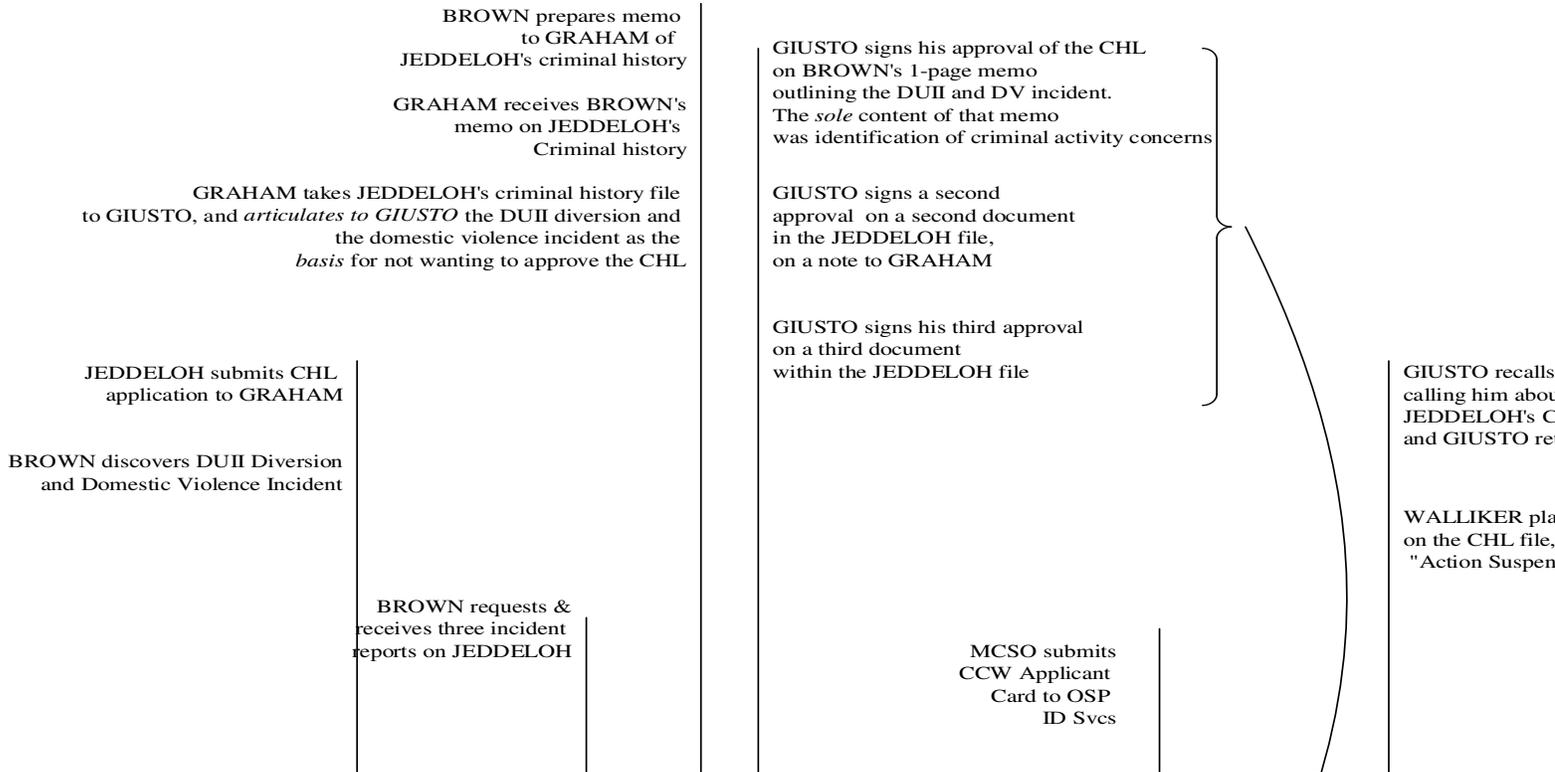
GIUSTO stated, “I freely admit I didn’t look at it carefully enough.” Later GIUSTO stated, “I recall Chief GRAHAM mentioning a DUI to me, . . . in his original conversation.”

- *In his November 14, 2007, Affidavit for the Police Policy Committee and the Board, GIUSTO affirms that his statements to DOJ investigators are “true and accurate to the best of my knowledge.”*

B. GIUSTO’s statements to DOJ investigators that he (a) became involved “very late in the process,” and (b) “hadn’t reviewed the reports yet, at that point,” are in conflict with physical evidence obtained during the course of the investigation.

- GIUSTO became involved in JEDDELOH’s CHL application seven (7) days after the application was filed. GIUSTO approved JEDDELOH’s CHL on three separate file documents one (1) day after GRAHAM brought the file to him, told him of the criminal background and stated he would not approve the license. This is in direct conflict with GIUSTO’s statement that he became involved “late in the process.” GIUSTO’s only documented action “*late in the process*,” was his written confirmation of the termination of process on February 22, 2005, to negate his earlier approval of the CHL.
- On February 10, 2005, MCSO Senior Office Assistant Jeanne BROWN wrote a memorandum to then Chief Deputy Lee GRAHAM outlining the both the DUII diversion and the domestic violence incidents. On that *same day* GRAHAM brought GIUSTO the JEDDELOH file containing both the DUII diversion and the domestic violence incidents. GRAHAM told GIUSTO what the file contained and that GRAHAM refused to approve the CHL. GRAHAM then left the file with GIUSTO. The *very next day*, GIUSTO had handwritten his approval on three of the documents within the JEDDELOH file. One of the three documents was a one-page memorandum specifically addressing all three criminal issues that GRAHAM had verbally identified to GIUSTO.
- See visual timeline

GIUSTO/JEDDELOH 2005 CHL time



FEB 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24

Early 2005

Feb 4th

Feb 8th

Feb 10th

Feb 11th

Feb 18th

Feb 22nd

- ★ On Thursday, January 4, 2007, Oregon Department of Justice released their report on GIUSTO which included his role in the JEDDELOH intervention as well as the application by JEDDELOH for a concealed handgun license (CHL).
- ★ January 5, 2007, Arthur Sulzberger of The Oregonian reported, "Giusto said Thursday that he had been *unaware* of allegations of domestic violence..."
- ★ On October 11, 2007, Nick Budnick of The Portland Tribune reported, "Giusto told reporters he had not been aware of Jeddelloh's criminal background which included two arrests for drunken driving and allegations of domestic violence, when he approved his application."
- ★ On October 12, 2007, Les Zaitz and Arthur Sulzberger of The Oregonian reported, "In February 2005, Giusto approved Jeddelloh's application. He later said he had done so before learning Jeddelloh had a drunken driving conviction, which would make him ineligible under state law."
- ★ In response to DOJ investigator's question, "Did you get involved in that process at all?" GIUSTO stated, "*I did very late in the process.*"
- ★ GIUSTO: "I freely admit I didn't look at it [CHL file] carefully enough."

Incident 3

Related documents are in Investigation #1, Allegation #17, pages 79-84, and referenced exhibits

GIUSTO's statements to the public in 2005, and in a 2006 deposition, regarding a trip to Seattle with Lee DOSS while her husband was in rehabilitation, are in conflict with statements he made to DPSST.

- On October 12, 2007, Les ZAITZ and Arthur SULZBERGER of *The Oregonian* reported, "Investigators in the current review asked her [Lee DOSS] about a trip to Seattle. She told *The Oregonian* that soon after her husband left for rehabilitation, she asked Giusto to drive her to Seattle to see her college-age daughter. She said it was 'not a romantic trip' and that the two stayed at her daughter's apartment with her boyfriend. In a July 23, 2005, interview with *The Oregonian*, Giusto was asked about traveling to Seattle with Doss in May 2005. 'I didn't take a trip to Seattle,' he said."
- On November 15, 2007, *Oregonian* Executive Editor Peter BHATIA wrote regarding GIUSTO's document responding to DPSST in Investigation #1 and stated, "We received no request for correction or challenge to the accuracy of our reporting from Sheriff Giusto before this document and there is nothing within it that is specific or substantial."
- On October 6, 2006, when asked during a deposition when asked if took any trips outside of the state with Lee (Jeddeloh) Doss other than to [the east coast], GIUSTO stated, "No." When GIUSTO was again asked, "And you can't recall any other instances of travel with Ms. Jeddeloh outside the state of Oregon in 2004, 2005, 2006?" GIUSTO stated, "No. . ." When asked specifically, "In the last 30 days have you traveled to Seattle with Ashby" [Lee's daughter] GIUSTO stated, "Yes." GIUSTO then admitted that Ms. JEDDELOH accompanied him to Seattle. Then when questioned, "Having refreshed your recollection on that trip, are you aware of any other travel with Ms. Jeddeloh outside the geographic boundary of the state of Oregon in 2004, 2005, 2006? GIUSTO stated, "I just can't recall that."
- On October 1, 2007, approximately one year after his 2006 deposition in which GIUSTO *could not recall his 2005 trip*, DPSST investigators interviewed him. When asked, "*While he [Jim JEDDELOH] was in rehab, did you and Lee go to Seattle for a weekend together . . .?*" GIUSTO replied, "Yes." When asked "were her children with her at the time?" GIUSTO replied, "No." When asked, "so it was just the two of you on that particular trip?" GIUSTO replied, "Right."

Incident 4

Related documents are in Investigation #2, Allegation #2, and referenced exhibits

GIUSTO's statements to the public in 2004, that no one in state police command had ever questioned him about an affair [with Margie GOLDSCHMIDT], and that his transfer out of Goldschmidt's [security] detail was unrelated [to his affair with Margie GOLDSCHMIDT], are in direct conflict with statements obtained during the course of the investigation.

- During a 2004 interview with the Oregonian, GIUSTO told reporters that no one in state police command had ever questioned him about his affair with Margie Goldschmidt, and that his transfer out of the Goldschmidt security detail was unrelated.
- During the DPSST investigators' interviews with retired Oregon State Police Superintendents Reginald MADSEN and LeRon HOWLAND, both identified specific occasions on which they asked GIUSTO if he was having an affair with Margie GOLDSCHMIDT. MADSEN also asserted that although GIUSTO denied having an affair with Margie GOLDSCHMIDT, “. . . I believe I told him then or maybe later that the rumors were bad enough and it concerned the governor's office, and he was getting transferred out of there.”
- In his January 14, 2007, response to the Police Policy Committee and Board members, GIUSTO asserted in an affidavit that he did *not* tell the Oregonian, “no one in the state police had ever questioned [me]” about my relationship with Margie Goldschmidt and that [my] transfer out of Goldschmidt's [security]detail was unrelated” to such relationship.
- On January 15, 2007, Sandy Rowe, editor for the Oregonian, was identified in an Oregonian article as stating that the newspaper's reporting was accurate. ROWE further stated, “Sheriff Giusto has had many opportunities since October to challenge the accuracy of the article, an article for which he declined to be interviewed or to answer detailed written questions . . . at no time, until now, has Sheriff Giusto told us the statement was inaccurate. At no time, to this day, has he asked us for a correction.”

DISCUSSION:

Oregon law requires that DPSST, through its Board, identify in Oregon Administrative Rules (OAR) the conduct or criminal convictions that require denial or revocation. For all other conduct or convictions, denial or revocation is discretionary, based on Policy Committee and Board review.

Under Oregon Revised Statute 181.662(5), DPSST may take action on an Oregon public safety officer's certification, regardless of its status.

Discretionary Disqualifying Conduct

OAR 259-008-0070(3) states, in part, “The Department may deny or revoke the certification of any public safety professional . . . based upon a finding that . . .

(3) (c) “The public safety professional . . . fails to meet the applicable minimum standards . . . established under ORS 181.640.

ORS.181.640(a), states, in part, “ The department shall recommend and the board shall establish by rule reasonable minimum standards of . . .moral fitness for public safety personnel . . .”

OAR 259-008-0010(6), states, in part, “(Moral Fitness)

(a) For purposes of this standard, lack of good moral fitness means conduct not restricted to those acts that reflect moral turpitude but rather extending to acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or the nation.

(b) The following are indicators of a lack of good moral fitness:

(A) Illegal conduct involving moral turpitude;

*(B) Conduct involving **dishonesty, fraud, deceit, or misrepresentation;***

(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or other document for securing certification or eligibility for certification;

(D) Conduct that is prejudicial to the administration of justice;

*(E) Conduct that adversely reflects on his or her fitness to perform as a law enforcement Officer. Examples include but are not limited to: Intoxication while on duty, **untruthfulness**, unauthorized absences from duty not involving extenuating circumstances, or a history of personal habits off the job which would affect the Officer's performance on the job which makes the Officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the Officer's ability to perform competently. **(emphasis added)***

Mitigating or Aggravating Circumstances:

OAR 259-008-0070(5)(d) allows for mitigating and aggravating circumstances to be considered in making a decision to deny or revoke certification based on discretionary disqualifying conduct, including the following:

...

(H) Do the actions violate the established moral fitness standards for Oregon public safety officers identified in OAR 259-008-0010(6) moral turpitude, dishonesty, fraud, deceit, misrepresentation, conduct prejudicial to the administration of justice, conduct that reflects adversely on the profession, or conduct that would cause a reasonable person to have substantial doubts about the public safety professional's honesty, fairness, respect for the rights of others, or for the laws of the state or the nation? (emphasis added)

...

(K) Does the conduct involve domestic violence?

(L) Did the public safety professional self report the conduct?

GIUSTO seeks to mitigate or refute the allegations by raising a number of issues, discussed more fully below, and in the table that follows.

An aggravating factor is that GIUSTO has served as an Oregon public safety professional for over thirty (30) years. GIUSTO is well aware of the importance of truthfulness as a cornerstone for public safety officers.

Issues raised by GIUSTO

In November 15 2007, November 21, 2007, January 4, 2008, and January 14, 2008 responses, GIUSTO raised a number of issues that are addressed in two formats; those requiring a more lengthy staff analysis are addressed below. Those with a brief staff analysis are addressed in a table format in the subsequent pages.

Standard of Proof

GIUSTO raises the issue of standard of proof. Rather than address mitigating circumstances, GIUSTO suggests that DPSST's preliminary usage of the term "misrepresentation" in its courtesy letter to Giusto, somehow obligates the Committee to apply a higher standard of proof than has *ever* been applied in an administrative revocation proceeding.

DPSST's legal counsel, Oregon Department of Justice, advised the investigative team, and the investigative team represents to this Committee, that the standard of proof which applies in this proceeding is indeed preponderance of the evidence. In the history of DPSST's consideration of similar cases, the preponderance of evidence standard of proof has always been applied. A higher standard of proof has never been applied at Committee level or at the contested case hearing level. Furthermore, the investigative team knows of no Oregon Court of Appeals decisions addressing revocation cases which challenged this established standard of proof.

AAG TWEEDT's response regarding GIUSTO's assertion states, in part, that DOJ believes "the two main cases cited by McCAIN, Van Gordon and Bernard, were based on fatal analytical errors. Bernard is the principal case, and was decided based on cases involving attorney disciplinary proceedings. Absent legislation, attorney discipline is wholly the province of the Oregon Supreme Court. Consequently the Supreme Court is free to establish the standard of proof for attorney disciplinary proceedings.

In contrast, administrative law is a product of statutes and administrative rules. Thus, the rules the Oregon Supreme Court have crafted to control attorney disciplinary proceedings have absolutely no bearing on the correct standard of proof in administrative proceedings under the APA and a specific agency's enabling statutes . . . that burden of proof is by a preponderance of the evidence."

Corroboration

In the interest of clarity, the Investigative Team relied on the following definition provided in the Black's Law Dictionary, Eighth Edition (2004) .

"Corroboration": "To strengthen or confirm; to make more certain."

Reliable Evidence – Polygraph

GIUSTO's response, on page 16 of 71, asserts, "As for [LEONHARDT'S] polygraph results, the PPC and the Board are well aware of the limited usefulness of the polygraph as evidence. In this case, the polygraph examiner wrote that the issue was whether Fred Leonhardt's sworn affidavit made on July 6, 2007 is true and accurate *to the best of Mr. Leonhardt's recollection* (emphasis added). As will be shown below, there are good reasons polygraphs are considered unreliable and inadmissible."

The Investigative Team notes the remainder of GIUSTO's response does not, in fact, recite these "good reasons."

Pursuant to its analysis of GIUSTO's response, the Investigative Team submits that Oregon law does not support GIUSTO'S implication that these polygraph results should be disregarded in the current matter. The Oregon Supreme Court in State v. Brown, 297 Or 404 (1984) held polygraph evidence is inadmissible over proper objection, in any proceeding *subject to the Oregon Evidence Code* (emphasis added). However, if this matter proceeds to hearing, it will be subject to the provisions of the Administrative Procedures Act, not the Oregon Evidence Code:

"The rule for contested case hearings [such as this revocation proceeding] is to admit evidence that will be helpful to full fact-finding. The rules of

the Oregon Evidence Code generally do not apply. Evidence should be excluded if immaterial, irrelevant or unduly repetitious, but otherwise is admissible if ‘of a type commonly relied upon by reasonably prudent persons in conduct of their serious affairs.’ ORS 183.450(1).” Oregon Attorney General’s Administrative Law Manual and Uniform and Model Rules of Procedure under the Administrative Procedures Act, January 1, 2006, page 143.

The Investigative Team sought a polygraph from LEONHARDT to test the credibility of his allegations. Such action on behalf of the Team can only be considered prudent and responsible, given the nature of these allegations. This is not unlike the frequent practice of law enforcement agencies, which use polygraphs to test the credibility of informants before relying on their information when applying for a search warrant. In State v. Fink, 79 Or App 590 (1986), the Oregon Court of Appeals supported this type of use, ruling that “a magistrate may properly consider the results of a polygraph examination in determining whether an unnamed informant is credible.”

The following excerpt from the April, 2005 issue of the FBI Law Enforcement Bulletin is also consistent with the Team’s utilization of a polygraph in this matter. Author William J. Warner, J.D., M.A., observes the following in his article, “Polygraph testing: a utilitarian tool”:
“Time and again, the debate over the use of polygraph testing centers around its reliability and validity (or lack thereof) with little discussion from either side as to its utilitarian component...Regardless of its validity or reliability, polygraph testing offers investigators another tool they can employ in interviews to help them obtain additional valuable information.”

Political Manipulation, Influence, Motivation

When addressing the moral fitness definition, on page 5 of 71 GIUSTO asserts, “. . .as this present case before the PPC and Board demonstrates, there will be no end of allegations and investigations of the careers of elected sheriffs, police chiefs, or even rank-and-file police officers such as union presidents, who find themselves in the public eye facing *determined political opponents*.” (*emphasis added*).

In the conclusion of GIUSTO’s response, on page 70 of 71, GIUSTO further asserts, “[He] understands the dynamics of his political world, including the fact that he has become the target of *other elected officials*, as well as *powerful people* with political influence, who want to remove him as Multnomah County Sheriff. And *they* view this DPPST certification process as a means to that end.” (*emphasis added*).

GIUSTO fails to identify which “political opponents, elected officials and powerful people” are allegedly driving this revocation process. He impliedly

asserts that the work of the Investigative Team, and potentially that of the Committee and Board, is politically motivated and/or threatened by unidentified political manipulations. GIUSTO's assertion that DPSST's review of his moral fitness was generated by political impetus, rather than GIUSTO's own alleged conduct, is baseless, lacking in evidence, and completely without merit.

GIUSTO Initial Issues Analysis and Outcome

Issue	Page	Analysis	Outcome
"media-driven case"	1	This investigation was initiated by allegations submitted to DPSST from two private citizens, Robert Kim, and Fred Leonhardt	Do Not Concur
"trial by media"	3	GIUSTO released a DPSST document to the media, which subsequently caused the media to seek the Draft Report. DPSST only released that document after consulting with legal counsel.	Without Merit
"investigators turned fact-finder"	3	West's Legal Thesaurus/Dictionary: Investigator means ". . . one who investigates . . . factfinder." It is unclear what GIUSTO's issue is.	Concur
"relevant public statements 'purportedly' made to the public"	3	GIUSTO asserts these statements are "stories made about" GIUSTO by the media. The investigative team's focus is on GIUSTO's statements made to the media, which were then reported. GIUSTO has not challenged the accuracy of what the media attributes to him, in Investigation #1.	Do Not Concur
"disputes those newspaper excerpts as constituting a statement made by him to the public"	55, 57	<p>As noted in Ex.A12.c., on November 15, 2007, <i>Oregonian</i> Executive Editor Peter BHATIA discussed GIUSTO's document responding to DPSST in Investigation #1 and stated, "We received no request for correction or challenge to the accuracy of our reporting from Sheriff Giusto before this document and there is nothing within it that is specific or substantial. His response to the state board seems to assume that speaking to a reporter is not speaking to the public. That's kind of amazing."</p> <p>According to a transcript of a radio talk show program hosted by Victoria TAFT, GIUSTO confirmed the accuracy of specific information cited in the <i>Oregonian</i>, as quoted by TAFT. (Ex A74, p 6-7)</p> <p>GIUSTO does not believe statements to the media constitute the statements to the public.</p>	
Is the media the		Blacks Law Dictionary (8 th ed. 2004) Public: (adj) Relating or belonging to an entire community, state, or nation. (n) The people of a nation or community as a	

public?

whole, a place open or visible to the public.

“determined political
opponents”

5

GIUSTO’s assertion that DPSST’s review of his moral fitness was generated by political impetus, rather than by GIUSTO’s alleged misconduct, is baseless, lacking in evidence and completely without merit

No Factual
Basis

“no criminal conduct”

5

The allegations in investigation #1 do not include criminal conduct.

Concur

“misrepresentation”	6, 7, 10,4 7, 52, 68	Black’s Law Dictionary defines “misrepresentation” as “the act of making a false or misleading assertion . . .with the intent to deceive. . . written or spoken words . . .any other conduct that amounts to a false assertion.”	Do Not Concur
		GIUSTO himself uses “misrepresentation” interchangeably with “lying” in his response. (p.52, 54, 60)	
		The legal question is whether GIUSTO violated the minimum moral fitness standards; misrepresentation among the terms used in the description of lack of moral fitness.	
		The basis for DPSST action is a violation of moral fitness standards, per applicable OAR and ORS.	
“willful deception <i>required</i> ”	6, 7,40, 45, 46, 47, 56,	“Willful” deception is <u>not</u> a required element. GIUSTO’s response confuses a summary statement found in previous committee minutes with a legal standard.	Do Not Concur
		GIUSTO’s assertion that willfulness is required is incorrect. DPSST relies upon prevailing caselaw in <i>Pierce v. DPSST</i> in which Pierce falsified a document submitted to DPSST. The appellate court concluded that the legislature did not intend for ORS 181.662 to <i>require</i> a specific and heightened mental state such as “intent to deceive.” 196 Ore. App. 190 (2004)	
		Each case is unique and considered on its own merits. In a recent case, <i>DPSST v. Bertsch</i> , a Chief’s untruthful statements to the media resulted in a recommendation to revoke.	
		In the case cited by GIUSTO, <i>DPSST v. Gary Longhorn</i> , the policy committee found that Longhorn’s untruthfulness was an issue of competence rather than willful deception. The PPC made its recommendation based on <u>all</u> facts in that case.	
“lack of criminal or other misconduct	6	GIUSTO seeks to reframe the allegations against him by suggesting that there must be some other criminal or similar misconduct committed by the officer. In the case of <i>DPSST v. Bertsch</i> , the sole misconduct was the untruthfulness to the media.	Without Merit

GIUSTO asserts that in most of the prior revocation cases involving misrepresentation, the misrepresentation usually involved lying about some additional criminal or similar misconduct committed by the officer, and suggests that without some underlying misconduct, the PPC and Board cannot/should not proceed. Contrary to this, in the Bertsch case, the sole issue was his untruthfulness. In other cases, lying has been the sole factor leading committee and Board to recommend denial or revocation.

<p>“ . . .the PPC and Board may recommend and uphold revocation only if it finds in this record credible evidence that Sheriff Giusto deliberately and willfully intended to misrepresent material facts to the public.”</p>	<p>7, 45, 55</p>	<p>GIUSTO misunderstands the role and scope of the PPC and Board authority. OAR 259-008-0070(5)(d) provides the Policy Committee and the Board, “may consider mitigating and aggravating circumstances in making a decision to deny or revoke certification based on discretionary disqualifying misconduct. . . .”</p> <p>GIUSTO also introduces the term “material fact” as a purported standard for gauging the relevance of the untruthfulness under consideration. Nowhere in law are there such restrictions as GIUSTO asserts.</p> <p>Nowhere is there a requirement that it must be proven that GIUSTO deliberately and willfully intended to misrepresent material facts to the public.</p>	<p>Do Not Concur</p>
<p>Affidavits or testimony under oath?</p>	<p>8, 15</p>	<p>Again, the issue before the PPC and the Board is whether GIUSTO violated the minimum standards of moral fitness for a public safety officer.</p> <p>It is not in the purview of the investigators to place an individual under oath. GIUSTO protests that investigators used affidavits when interview questions could have been asked under oath. Investigators had the prerogative to request and use affidavits and properly used this tool.</p>	<p>Without Merit</p>
<p>Transcripts vs. Media Article</p>	<p>8,55</p>	<p>GIUSTO properly identifies the role of the PPC and Board to evaluate evidence.</p> <p>GIUSTO implies that lack of a transcript diminishes the credibility of the media reports. However, nowhere in Investigation #1 does GIUSTO question the accuracy of the statements that are the subject of this investigation. Additionally, there is no record that GIUSTO has asked the media to correct any of the statements attributed to him.</p>	<p>Without Merit</p>
<p>Polygraphs</p>	<p>16</p>	<p>And finally, as earlier referenced, there is a transcript of the TAFT interview in which GIUSTO confirmed the accuracy of specific information cited in the Oregonian, as quoted by TAFT.</p> <p>Although GIUSTO questions the usefulness of the polygraph and asserts “as will be shown below, there are good reasons polygraphs are considered unreliable and inadmissible as evidence in many proceedings” GIUSTO does not, in fact, recite these “good reasons.”</p> <p>Additional analysis of the value of polygraph is found in</p>	<p>No Factual Basis</p>

the DPSST Staff Report.

<p>“corroborate”</p>	<p>18,19, 21, 22, 23, 25,26, 27, 28, 30, 33, 40, 41, 43, 45, 46</p>	<p>GIUSTO misunderstands the legal concept of “corroborate,” DPSST properly relies on the legal definition of “corroborate” found in Blacks Law Dictionary, “To strengthen or confirm; to make more certain.”</p> <p>GIUSTO attempts to create an artificial standard to which he then seeks to bind every “corroborating” witness. There is no requirement that each individual corroborate every assertion another witness has made.</p>	<p>Do Not Concur</p>
<p>“seven specific things”</p>	<p>16,17,18, 19, 20, 22, 25, 27 40, 45,</p>	<p>GIUSTO demonstrates two flaws in his reasoning:</p> <p>First, corroborative witnesses need not corroborate all of another witnesses’ recollections; witnesses need not include “seven specific things.”</p> <ul style="list-style-type: none"> • There is no requirement that each individual corroborate every assertion another witness has made, to be deemed a credible witness. • The number of LEONHARDT’s recollections is irrelevant to whether others’ recollections corroborate one or more of LEONHARDT’S recollections. • Witnesses need not recite each and every allegation to be corroborative. <p>Secondly, GIUSTO inappropriately narrows the relevance of LEONHARDT’s recollections into the single breakfast conversation he had with GIUSTO, thereby overlooking substantial corroborative information from other witnesses.</p>	<p>Do Not Concur</p>
<p>“there are no corroborating witnesses to that alleged conversation. . .”</p>	<p>18, 41</p>	<p>At no time has DPSST asserted there were witnesses to the breakfast conversation between Giusto and Leonhardt.</p>	<p>Concur; irrelevant to staff analysis</p>
<p>“it is disingenuous for DPSST staff to present to the PPC and Board the claim that Margie Goldschmidt’s statements “corroborate” Fred Leonhardt’s story”</p>	<p>30</p>	<p>Rather than addressing the substantive issues raised, GIUSTO focused on a single statement in a <i>Draft</i> report, and then misstated what was written. The draft report actually stated, “Leonhardt’s assertions are corroborated by Margie Goldschmidt who stated that Giusto knew about Goldschmidt’s crime during the Goldschmidt administration.”</p> <p>GIUSTO attempts to reframe this statement as a global</p>	<p>Do Not Concur</p>

statement regarding all of LEONHARDT's assertions, and then accuses DPSST staff of being disingenuous.

DPSST staff refers PPC and Board members to the Investigative Report #1, Allegation #5 and to Exhibit A21g, both of which cite the relevant statements in their entirety.

<p>“ . . .claims that ‘Fred Leonhardt’s assertions are corroborated by’ several persons are false and misleading</p>	<p>18, 19, 22, 23,2 5, 26, 27, 28, 30, 33, 40, 43</p>	<p>GIUSTO misunderstands the legal concept of “corroborate.” DPSST properly relies on the legal definition of “corroborate” in Blacks Law Dictionary, “To strengthen or confirm; to make more certain.”</p> <p>GIUSTO attempts to create a standard to which he then seeks to bind every “corroborating” witness. Corroborative witnesses need not corroborate all of another witnesses’ recollections.</p> <p>There is no requirement that each individual corroborate every assertion Leonhardt has made. To the contrary, public safety personnel well know that various witnesses may corroborate various elements in a case, and if two witness statements are exactly identical, they can be suspect.</p>	<p>Without Merit</p>
<p>“it appears Giusto knew far too much detail about Goldschmidt’s crime to credibly call what he knew ‘rumors’ . . . an erroneous conclusion”</p>	<p>10</p>	<p>GIUSTO seeks to reframe the issue, again attempting to diminish the recollections of LEONHARDT and others. The issue remains <i>what</i> GIUSTO knew.</p> <p>A number of individuals corroborate LEONHARDT’s recollections on numerous points.</p> <ul style="list-style-type: none"> • KANTOR corroborated that LEONHARDT told him that GIUSTO had shared information about GOLDSCHMIDT’s crime after he had learned of it. • KENNEDY corroborated that GIUSTO also told her of GOLDSCHMIDT’s crime. • BURDICK corroborated that KENNEDY told her that GIUSTO provided KENNEDY with the same information about GOLDSCHMIDT’s crime. • Christy LEONHARDT corroborated when and what Fred LEONHARDT told her about GIUSTO’s statements to her husband, and that he told his supervisor, KANTOR. 	<p>Do Not Concur</p>
<p>“PPC and Board cannot rely on those excerpts as the basis for revoking the certifications. . .”</p>	<p>55</p>	<p>In his interview with DPSST investigators, GIUSTO acknowledged he had heard that GOLDSCHMIDT had sex with a minor, that the minor was female, that he knew it was a crime and that the statute of limitations had run.</p> <p>Whereas GIUSTO previously properly identified the role of the PPC and Board to <u>evaluate</u> evidence (ref. p. 8) he now directs them regarding what they may or may not evaluate.</p>	<p>Do Not Concur</p>
<p>“ . . .I should have looked at the file more</p>	<p>52</p>	<p>Looking at Jeddelloh’s file more carefully would have provided GIUSTO nothing more than what he had already</p>	<p>Do Not</p>

carefully. . .”		been told by GRAHAM; that there was a DUII diversion and a domestic violence incident. Additionally, it is improbable to think that GIUSTO looked at the JEDDELOH file and signed his approval on three separate documents which contained the same information that GRAHAM had provided to GIUSTO, without clearly understanding he was using his authority to override what would have been disqualifying factors, especially considering GRAHAM told GIUSTO he refused to sign the application because of the criminal issues.	Concur
“ . . I hadn’t looked at them specifically. . .”			
		GIUSTO <u>does not deny</u> he told the media he was unaware of Jeddelloh’s criminal issues; he instead disputes the newspaper excerpts as constituting a statement made by him to the public.	
Giusto’s handling of the Jeddelloh CHL . . . amounted to an “issue of competence, and not willful misrepresentation”	56	GIUSTO appears to be making an assertion that, but for GIUSTO’S lack of competence, he would not have approved the Jeddelloh CHL. McCAIN/GIUSTO has not offered factual information to support this assertion.	No Factual Basis
Allegation 17-A – a trip to Seattle	57	GIUSTO admitted to investigators he took a trip to Seattle with Lee Jeddelloh DOSS. GIUSTO denied to reporters he took a trip to Seattle with Lee Jeddelloh DOSS.	Without Merit
		GIUSTO disputes whether statements to the media constitute statements to the public.	
Allegation 17-B – a loan offer	57	GIUSTO asserts that he did not offer to loan Lee DOSS \$10,000 for JEDDELOH’s rehabilitation, contrary to an email that DOSS sent to a third party indicating that he made the offer. Although the DOJ investigation reviewed this issue in their criminal case and under a different burden of proof standard, DPSST considered the issue related to its administrative jurisdiction.	Concur
		Documents received subsequent to the draft report are consistent with GIUSTO’s position. Staff concurs with GIUSTO’s response; this portion of the case will be administratively closed.	
Allegation 17-C – Giusto’s involvement in the	57	GIUSTO asserts that because DPSST does not define “involvement,” this portion of the case is a vague and ambiguous allegation. At issue was GIUSTO’s involvement in an intervention which subsequently led to	Concur

intervention

Jim JEDDELOH going to rehabilitation and GIUSTO and Jim JEDDELOH's wife (Lee DOSS) going to Seattle for a weekend.

"Involvement" is subject to different interpretations. Staff concurs with GIUSTO's response; this portion of the case will be administratively closed.

GIUSTO Subsequent Issues Analysis and Outcome

On January 4, 2008, McCAIN submitted additional information to be included for the Police Policy Committee and Board member's consideration. Staff analysis of McCAIN's email concerning a letter from the Oregon State Bar to Lars LARSON follows:

Issue	Page	Analysis	Outcome
"The Leonhardt affidavit is the sole source of information of one of the allegations against Sheriff Giusto"	Ex A79	McCAIN affirmatively misleads the PPC by this statement. There are numerous individuals who are sources in Incident #1 (Investigation 1, Allegation 5) and are corroborating witnesses to LEONHARDT's allegations against GIUSTO	Factually inaccurate
"Fred Leonhardt's inadmissible polygraph evidence was given "little weight."	Ex A79	The Bar and DPSST concur that polygraphs are inadmissible in matters subject to the rules of evidence. DPSST has addressed that in this report and identified the role of LEONHARDT's polygraph.	Without Merit
"the conflicting testimony of two equally credible witnesses . . . "	E A79	McCAIN is now on record supporting the Bar's finding, which includes a statement regarding Leonhardt's credibility.	Concur
"identical issue"	Ex A79	McCAIN incorrectly reframes the Oregon State Bar's response regarding an allegation against KULONGOSKI as an "identical issue" regarding Sheriff Giusto.	Factually inaccurate
"clear and convincing" evidence	Ex A79	McCAIN seeks to replace the Policy Committee and Board's burden of proof of "preponderance of the evidence" with a distinctly different standard in the Bar complaint. Per DOJ, absent legislation, attorney discipline is wholly the province of the Oregon Supreme Court. Consequently the Supreme Court is free to establish the standard of proof for attorney disciplinary proceedings. DPSST is a state agency, with a standard of proof as governed by the Administrative Procedures Act.	Factually inaccurate
"I have seen and demonstrated how the staff have selectively sifted through the huge record in this case to present only materials that	Ex A79	In its history of providing an overview of a case before the Policy Committee and the Board, DPSST staff has consistently provided all documents relevant to the matter and asked that that members review the officer's response, in its entirety.	Factually inaccurate

supports their position.”

With more than 5,000 pages of materials to review, I am concerned PPC members will be overwhelmed by the sheer volume of material and would instead rely upon DPSST staff’s selective presentation of the evidence in this case.”

E A79

Policy Committee and Board members consistently have used the Staff report as an overview and have reviewed all supporting materials.

Without Merit

On January 14, 2008, GIUSTO submitted his response to Investigation#2, Allegation #2 to be included for the Police Policy Committee and Board member’s consideration. Staff analysis follows:

Issue	Page	Analysis	Outcome
“DPSST actually is contemplating two new allegations”	2	DPSST is only considering Allegation #2 of Investigation #2 at this time.	Factually inaccurate
“Sheriff Giusto is extremely concerned about Ms. King’s reckless allegations of criminal activity against him.”	3	Regarding Allegation #1, the language of the Investigative Report states: “The investigative team considered this allegation, to the extent of determining if the allegation had substance and if so, if it was within DPSST’s jurisdiction. The investigative team determined that this allegation should properly be referred to Government Standards and Practices Commission for follow-up on possible ethics violation, and to the Oregon Department of Justice Criminal Division for follow-up on possible criminal conduct.”	Factually inaccurate
		DPSST’s letters of referral, in context, include the statement: “During the course of our administrative investigation, DPSST has received information which appears to be in your jurisdiction; therefore we are referring the matter to you for review and disposition.” It is standard agency practice to refer complaints to the entity that would have jurisdiction over the conduct.	
		In addition to omitting the language above, Giusto’s response misquotes the sentence attributed to Ms. King by	

omitting the word “alleged.” The correct quote is “If the alleged facts are accurate...” (emphasis added). Refer to Exhibits for information in context.

<p>“at no time did either Ms. Parsons or Ms. King ask Sheriff Giusto which vehicle he drove”</p>	3	<p>DPSST investigators interviewed GIUSTO on October 1, 2007. The <i>new</i> information regarding allegations about GIUSTO driving an agency vehicle did not emerge until October 23, 2007.</p>	Without Merit
<p>“clear and convincing”</p>	4	<p>Since the <i>new</i> information came to light, GIUSTO has declined a request by DPSST investigators to be interviewed.</p> <p>GIUSTO misapplies the standard of proof, refer to the narrative on “Standard of Proof”</p>	Without Merit
<p>“staff has relied upon an uncorroborated newspaper article as the sole basis for bringing an allegation against Sheriff Giusto”</p>	5	<p>DPSST investigators reviewed the Oregonian article citing what GIUSTO told reporters.</p> <p>GIUSTO did not seek correction or clarification from the Oregonian.</p> <p>DPSST investigators followed up and conducted independent interviews with each former superintendent.</p>	Do Not Concur
<p>“reliability and use of media stories”</p>	5	<p>The two circumstances are not comparable. In the cited interview of KIM, DPSST investigators correctly identified that third-hand reporting of information reported by another cannot be considered credible for <u>purposes of an investigation</u>. By contrast, the article cited in Allegation #2 reported on a first-hand, direct contact between an Oregonian reporter and GIUSTO.</p>	Do Not Concur
<p>Excerpts of Parson’s interview of KIM October 24, 2007 article versus 2004 interview</p>	7	<p>Clarification: The October 2007 article referenced a 2004 interview regarding GIUSTO being questioned by OSP. GIUSTO acknowledged he was interviewed by ZAITZ in October 2004. The October 24, 2007 article was written by SULZBERGER; ZAITZ was identified as a contributor.</p>	Clarified
<p>“no corroborating evidence from the Oregon State Police documenting either the Madsen conversation or Madsen’s claim that he personally transferred Sheriff Giusto from the Governor’s security detail . . .”</p> <p>“faded recollections of two men”</p>	9	<p>Madsen was the head of the Oregon State Police. The potential impact to the Oregon State Police and the community, regarding rumors of the governor’s bodyguard having an affair with the governor’s wife is significant. It is reasonable that MADSEN would recall the related events, including questioning GIUSTO and transferring him away from the security detail.</p> <p>The recollections of both former OSP superintendents are consistent with one another. In his interview, MADSEN clearly articulated what he was and was not able to recall.</p>	Do Not Concur

“burden of proof”	11	See prior response	Without Merit
Affidavit “In my interactions with the media I have consistently refused to discuss my relationship with Margie Goldschmidt, which I consider a personal matter.”		Non-responsive to allegation.	Irrelevant
“In 2004, I did not tell reporters from the Oregonian that “no one in the state police had ever questioned [me]” about my relationship with Margie Goldschmidt and that “[my] transfer out of Goldschmidt’s [security] detail was unrelated” to such relationship.”	11	<p>The Oregonian article cited in Investigation #2 <u>summarized</u> an interview in which GIUSTO denied being questioned by anyone in state police regarding an affair with Margie Goldschmidt and asserted that his transfer was unrelated to an affair.</p> <p>In DPSST’s notification to Giusto, DPSST identified the relevant language from the Oregonian article in quotation marks.</p> <p>DPSST also provided GIUSTO with the full text of the article. Neither the Oregonian nor DPSST investigators asserted that the relevant passage was a direct quote by GIUSTO.</p> <p>It is unclear whether in his affidavit GIUSTO denies the <u>substance</u> of the interview and statements attributed to him, or whether he denies only using particular language.</p>	Unclear

CONSIDERATIONS FOR THE COMMITTEE:

The Committee may consider any one or more of the factors cited below in its analysis of each allegation.

Under OAR 259-008-0010(6):

1. Would GIUSTO’s actions cause a reasonable person to have doubts about his honesty, respect for the rights of others, and respect for the laws of the state, or
2. Did GIUSTO’s conduct involve dishonesty, fraud, deceit, or misrepresentation, or
3. Was GIUSTO’s conduct prejudicial to the administration of justice, or
4. Would GIUSTO’s conduct adversely reflect on his fitness to perform as a law enforcement officer and do his actions make him inefficient and otherwise unfit to render effective service because of the agency’s and public’s loss of confidence in his ability to perform competently?

STANDARD OF PROOF:

The standard of proof on this matter is a preponderance of evidence; evidence that is of greater weight and more convincing than the evidence offered in opposition to it; more probable than not.

ACTION REQUESTED:

Staff requests the Police Policy Committee review each allegation and make a recommendation to the Board whether GIUSTO's certifications should be revoked based on a violation, or violations of the established standards for Oregon public safety officers.

Information Only

SUBSEQUENT DUE PROCESS:

Each Oregon public safety professional is entitled to due process when revocation or denial action is considered.

The Policy Committee's recommendation will be forwarded to the Board. Upon review the Board will either affirm the Policy Committee's decision, or overturn it with a 2/3 vote. If the Board determines that revocation action is not appropriate, DPSST will close the case. If the Board upholds a revocation recommendation by the Policy Committee, DPSST will issue a Notice of Intent to Revoke to the officer. The officer will have twenty (20) days to request a hearing to contest the revocation action in front of an Administrative Law Judge.

Due process is an important part of the contested case hearing. Every public safety professional has the right to:

- *Examine reports and evidence against them as a part of discovery.*
- *Face or cross-examine their accuser.*
- *Call witnesses.*
- *Appear in person.*
- *Be represented by counsel.*

The Administrative Law Judge hearing the case is assigned the case through the Office of Administrative Hearings. All hearings are subject to the Administrative Procedures Act. The hearing is similar to a trial; full discovery is provided and each side calls witnesses and offers evidence. The Judge issues a Proposed Order; each side may review it and file legal exceptions. A Final Order is then issued. Due process allows for a judicial review to the Court of Appeals where three Oregon justices will review the case.

OAR Rules

OAR 259-008-0010(6)(a) Moral Fitness. Acts and conduct which would cause a reasonable person to have substantial doubts about the individual's honesty, fairness, respect for the rights of others, or for the laws of the state and/or nation.

(b)(A) Illegal conduct involving moral turpitude

(b)(B) Conduct involving dishonesty, fraud, deceit, or misrepresentation

(b)(C) Intentional deception or fraud or attempted deception or fraud in any application, examination, or documentation for securing certification or eligibility for certification.

(b)(D) Conduct that is prejudicial to the administration of justice

(b)(E) Conduct that adversely affects on his or her fitness to perform as a law enforcement officer. Examples include but are not limited to intoxication while on duty, untruthfulness, unauthorized absences, or a history of personal habits off the job which would affect the officer's performance on the job which makes the officer both inefficient and otherwise unfit to render effective service because of the agency's and/or public's loss of confidence in the officer's ability to perform competently.

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Bernard GIUSTO

Incidents

Incident 1 (Investigation #1, Allegation #1)
GIUSTO's statements to the public, in 2004, to the extent of his knowledge, of the Goldschmidts' statements obtained during the course of the investigation.

Incident 2 (Investigation #1, Allegation #2)
A. GIUSTO's statements to the public, in 2004, to the extent of his knowledge of JEDDELOH's DUII diversion, are in conflict with statements made to DOJ investigators and physical evidence obtained during the course of the investigation.
B. GIUSTO's statements to DOJ investigators, "very late in the process," and (b) "hadn't read the report" are in conflict with physical evidence obtained during the course of the investigation.

Incident 3 (Investigation #1, Allegation #3)
GIUSTO's statements to the public in 2005, regarding a trip to Seattle with Lee DOSS while her husband was on duty, are in conflict with statements he made to DPSST.

Incident 4 (Investigation #2, Allegation #1)
GIUSTO's statements to the public in 2004, regarding his transfer out of Goldschmidt's [security] detail, had he ever questioned him about an affair [with Margie GOLDSCHMIDT], are in direct conflict with statements he made during the course of the investigation.

Appendix C

Date: January 15, 2008
To: Police Policy Committee
From: Bonnie Sallé
Subject: Oregon Administrative Rule – Proposed Rule
259-008-0010 - Medical Waivers / Contested Case Process

Issue 1: The Portland Police Bureau requested a contested case hearing after the Board denied its request for a physical waiver of the medical requirements for Police Officers Hebert, Stanton and Kuemper. The Board has the authority to grant or deny a medical waiver. However, the Department does not currently have a process outlined in rule to initiate a contested case hearing notice and process without Board approval.

On October 25, 2007, the Board approved staff's proposal to file a temporary rule to authorize the Department to conduct the contested hearing processes after the Board denied a waiver of the physical requirements for Police Officers Hebert, Stanton and Kuemper.

A temporary rule is in effect for a period of six (6) months from the date of filing. Approval to file a temporary rule allows the respective Policy Committees time to present a proposed permanent rule to the Board. If the Board approves the proposed permanent rule, the proposed rule will be filed with the Secretary of State and open for comment. If no comments are received the Department will file the rule as permanent.

The current temporary rule expires April 18, 2008. .

The following revised language contains recommended deletions (~~striketrough text~~) and additions (**bold and underlined text**). For ease of reading, only the relevant proposed text is provided.

259-008-0010(8)

* * *

(n) The Board may waive any physical requirement where, in its judgment, the waiver would not be detrimental to the performance of an officer's duties, including the protection of the public and the safety of co-workers. The applicant may be required to demonstrate the ability to perform the essential functions of the job.

(o) A person or department head requesting a waiver of any physical requirement set forth in section (8) of this rule shall submit the request to the Department in writing, accompanied by supporting documents or pertinent testimony which would justify the

action requested. The supporting documents must include information pertinent to the waiver request. The Board or Department may require additional documentation or testimony by the person or department head requesting the waiver if clarification is needed. Any expense associated with providing documentation or testimony will be borne by the person requesting the waiver or the requesting agency. If the person requesting the waiver does not obtain employment within one (1) year from the date a waiver is granted, the waiver will be considered void.

(A) If the Board grants a waiver, it will be recorded on the certification and any subsequent certification unless removed by the Board upon proof that the condition prompting the waiver no longer exists.

(B) If the Board denies a request for a waiver of any physical requirement set forth in section (8) of this rule, the Department will issue Notice and proceed as provided in section (9) of this rule.

(9) Contested Case Hearing Process for denial of waiver.

(a) Initiation of Proceedings: Upon determination that the reason for denial of a waiver is supported by factual data meeting the statutory and administrative rule requirements, a contested case notice will be prepared.

(b) Contested Case Notice: The "Contested Case Notice" will be prepared in accordance with the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015. The Department will have a copy of the notice served on the public safety professional or individual.

(c) Response Time: A party who has been served with a "Contested Case Notice" has 60 days from the date of mailing or personal service of the notice in which to file with the Department a written request for a hearing.

(d) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver.

(e) Hearing Request: When a request for a hearing is received in a timely manner, the Department will refer the matter to the Office of Administrative Hearings.

(f) Proposed Order: The assigned Administrative Law Judge will prepare Findings of Fact, Conclusions of Law and Proposed Final Order and serve a copy on the Department and on each party.

(g) Exceptions and Arguments: A party must file specific written exceptions and arguments with the Department no later than 14 days from date of service of the Findings of Fact, Conclusions of Law, and Proposed Final Order.

(A) The Department may extend the time within which the exceptions and arguments must be filed upon a showing of good cause.

(B) When the exceptions and arguments are filed, the party making the exceptions and arguments must serve a copy on all parties of record in the case and provide the Department with proof of service. A failure to serve copies and provide proof of service will invalidate the filing of exceptions and arguments as being untimely, and the Department may disregard the filing in making a final determination of the case.

(h) Final Order: The Department will issue a final order if a public safety professional or individual fails to file exceptions and arguments in a timely manner.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0010 with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-0010 with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses. (see form attached)

Appendix D

Date: January 15, 2008
To: Police Policy Committee
From: Bonnie Sallé
Rules Coordinator
Subject: OAR 259-008-0045(5) – Proposed Rule
Official College transcripts

Issue:

The Department has historically accepted certified true copies of college transcripts. However, it is often extremely difficult to decipher copies of transcripts that are faxed or mailed to the Department, due to the type of paper utilized for copies and the copy mediums (*see attached samples*). Staff is recommending a change to the current rule to require individuals requesting college credit for upper levels of certification to submit official transcripts directly to the Department.

The following revised language for OAR 259-008-0045(5) contains recommended deletions (~~striketrough text~~). For ease of review, only the recommended new language has been included.

259-008-0045

College Education Credits

(5) Certification Credit. The Department must receive sealed official transcripts from a college ~~or a certified true copy of official transcripts~~ prior to entering college credit on an applicant's official record. Evaluation of these credits is subject to the conditions prescribed in sections (3) and (4) of this rule and OAR 259-008-0060.

ACTION ITEM 1: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to approve filing the proposed language for OAR 259-008-0045(5) with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses. (see form attached)

Appendix E

DATE: January 15, 2008

TO: Police Policy Committee

FROM: Marilyn Lorance
Standards & Certification Program Supervisor

SUBJECT: Proposed Changes to OAR 259-008-0060(9)(d)

Background:

Since approximately 2004, DPSST has been adding “Instructed” hours to officer training records when instructors are identified on F-6 Attendance Rosters. In addition, current DPSST rules provide for instructors to receive “passed” credit once each year for each course that they instruct. This provision has been included in the agency’s administrative rules since at least 1984, and has remained unchanged since that time.

Issue:

DPSST has identified two concerns with continuing this traditional practice.

1. As we worked with constituents to develop the current standardized course list, and to walk through the first maintenance training period for police officers, a number of constituents expressed concern with giving “passed” credit to instructors for instructional hours. It is quite possible for some training officers to meet all maintenance training requirements simply by instructing sufficient hours, without ever participating in training themselves. Many constituents have stated that training attended and training instructed should not be considered interchangeable. Some noted that it is critical for public safety trainers/instructors to attend sufficient training to ensure that the knowledge and skills they pass on are at the level they should be.
2. We were able to implement the provisions of the current rule with our current database system using a “band-aid” approach that required significant “work-around” processes. These processes are not fool-proof; in fact, problems related to these “work-arounds” contributed to the delays in sending out the initial and final 2006 police maintenance deficiency reports to agencies.

We are currently preparing to migrate all officer records to the same Internet-based program we acquired to manage venue scheduling and training at the Academy. We can continue to track “instructed” as well as “passed” hours in our new system, as we do in our current system. However, vendors and staff are both concerned about transferring technology problems and “work-arounds,” associated with granting both “instructed” and “passed” credit for the same classes, into the new system, unless there is a substantive business need to do so.

Request:

DPSST staff requests discussion and recommendation by Committee members regarding whether individuals should continue to receive “passed” credit for courses that they instruct. The change proposed in the attached rule language would remove this option from our administrative rules.

ACTION ITEM 1: Determine whether to recommend filing the proposed language for OAR 259-008-0060(9)(d) with the Secretary of State as a proposed rule.

ACTION ITEM 2: Determine whether to recommend filing the proposed language for OAR 259-008-0060(9)(d) with the Secretary of State as a permanent rule if no comments are received.

ACTION ITEM 3: Determine whether there is a significant fiscal impact on small businesses. (see form attached)