185736

CONVENTION AGAINST TORTURE and Other Cruel, Inhuman or Degrading Treatment or Punishment

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975 (resolution 3452 (XXX)),

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

Part I

Article 1

1. For the purposes of this Convention, torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such

purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
    1. When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;

2. When the alleged offender is a national of that State;
3. When the victim was a national of that State if that State considers it appropriate.

2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in Paragraph 1 of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present, shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
2. Such State shall immediately make a preliminary inquiry into the facts.
3. Any person in custody pursuant to paragraph 1 of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, to the representative of the State where he usually resides.
4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said State and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found, shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the

proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.
2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offenses. Extradition shall be subject to the other conditions provided by the law of the requested State.
3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested state.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with civil proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph 1 of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.
2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such persons.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions,

methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committee in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to and to have his case promptly and impartially examined its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.

Article 14

1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
2. Nothing in this article shall affect any right of the victim or other person to compensation which may exist under national law.

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture or references to other forms of cruel, inhuman or degrading treatment or punishment.
2. The provisions of this Convention are without prejudice to the provisions of any

other international instrument or national law which prohibit cruel, inhuman or degrading treatment or punishment or which relate to extradition or expulsion.

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of 10 experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established under the International Covenant on Civil and Political Rights and are willing to serve on the Committee against Torture.
3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.
5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3.
6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the

Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that
    1. Six members shall constitute a quorum;
    2. Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.
4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
5. The State Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement of the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 above.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of this Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken, and such other reports as the Committee may request.
2. The Secretary-General shall transmit the reports to all States Parties.
3. [Each report shall be considered by the Committee which may make such comments or suggestions on the report as it considers appropriate, and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.
4. The Committee may, at its discretion, decide to include any comments or suggestions made by it in accordance with paragraph 3, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph 1.]

Article 20

1. If the Committee receives reliable information which appears to it to contain well-

founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.

2. Taking into account any observations which may have been submitted by the State Party concerned as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.
4. After examining the findings of its member or members submitted in accordance with paragraph 2, the Committee shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.
5. All the proceedings of the Committee referred to in paragraphs 1 to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article 3 that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
    1. If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, references to domestic procedures and remedies taken, pending, or available in the matter.
    2. If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial

communication, either State shall have the right to refer the matter to the Committee by notice given to the Committee and to the other State.

3. The Committee shall deal with a matter referred to it under this article only after it has ascertained that all domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
4. The Committee shall hold closed meetings when examining communications under this article.
5. Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in the present Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission.
6. In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information.
7. The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing.
8. The Committee shall, within 12 months after the date of receipt of notice under subparagraph (b), submit a report.
    1. If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached.
    2. If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party to the Convention which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous, or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communication submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph 1 and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned.
5. The Committee shall not consider any communication from an individual under this article unless it has ascertained that:
    1. The same matter has not been, and is not being examined under another procedure of international investigation or settlement;
    2. The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.
6. The Committee shall hold closed meetings when examining communications under this article.
7. The Committee shall forward its views to the State Party concerned and to the individual.
8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit parties thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 23

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph 1 (e), shall be entitled to the facilities, privileges and immunities of experts on missions for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

Part III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph 1 of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to the States Parties to this Convention with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the State Parties favours such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.
2. An amendment adopted in accordance with paragraph 1 shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.
3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.
2. Each State may at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by the preceding paragraph. The other States Parties shall not be bound by the preceding paragraph with respect to any State Party having made such a reservation.
3. Any State Party having made a reservation in accordance with the preceding paragraph may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective. Nor shall denunciation prejudice in any way the continued consideration of any matter which is already under consideration by the Committee prior to the date at which the

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denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all members of the United Nations and all States which have signed this Convention or acceded to it, or the following particulars:

1. Signatures, ratifications and accessions under articles 25 and 26;
2. The date of entry into force of this Convention under article 27, and the date of the entry into force of any amendments under article 29;
3. Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

On February 4, 1985, the Convention was opened for signature at United Nations Headquarters in New York. At that time, representatives of the following countries signed it: Afghanistan, Argentina, Belgium, Bolivia, Costa Rica, Denmark, Dominican Republic, Finland, France, Greece, Iceland, Italy, Netherlands, Norway, Portugal, Senegal, Spain, Sweden, Switzerland and Uruguay. Subsequently, signatures were received from Venezuela on February 15, from Luxembourg and Panama on February 22, from Austria on March 14, and from the United Kingdom on March 15, 1985.

(signatures)

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Comments for Portland City Council: Hearing on proposed USDOJ agreement. November 8, 2012

You are to be congratulated, individually and as a Council, to take on this serious issue - AGAIN. We've been here before as a City – at an inflection point, where substantive change in the culture of the Portland Police Bureau [PPB] seems possible. We urge you to take the tough stand to make it happen.

While we thank you for having begun this urgent task, we wish you had not kicked the can down the road by failing to include in the proposed agreement an independent civilian review authority that could make implementation real and binding. We have no faith in internal controls. They have been tried. And, they have failed us.

We have eagerly awaited the USDOJ report and its recommendations. We urge that the implementation guidelines **will** include the formation of a civilian, independent review authority with sufficient authority to have real influence. No doubt there are many dedicated, thoughtful and excellent officers in the PPB. Its organizational culture, however, has been tainted by a Police Association which appears to reflexively defend any and all conduct. It cannot be counted on to "police" itself. This we have witnessed. Transformational change rarely comes from inside and the community has voiced its concerns about PPB oversight for years. You should not duck this important part to insist on a process of accountability free of political or bureaucratic interference.

Following conventional wisdom [more funds, more officers], the proposed USDOJ agreement with the City of Portland is a halfway step that plays up remedies with a focus on the mentally ill – urgent no doubt and the most visible sign of the problem. Yet excessive use of force against this part of the City's population is only the tip of the iceberg. The real problem is much larger.

We believe a key ingredient in this compromised PPB culture is its disregard for the 'OTHER': the marginalized, the disenfranchised, often the different or the powerless in our society. Whether it's the homeless population, racial minorities, the LGBT community, protesters for economic equity today, or women in the past, PPB's social isolation stigmatizes and then mistreats, creating targets for excessive force.

We find the lack of PPB restraint appalling **AND** its disregard for constitutional rights unacceptable. Any remedial process must include opportunities for exposure to community norms and an on-going dialogue with citizens of all parts of Portland's community. The social isolation of PPB breeds a lack of understanding and it is urgent to restore a human face on all categories of citizens, not only the "mentals". We urge you to continue the work on the process of revising PPB training, hiring and promotion standards, internal review procedures and incentives to build a police force that is respectful, restraint and competent, consistent with the best standards of the profession in the 21st Century.

We wish for a future Portland Police Bureau that our City can be proud of - without reservations. This has not been the case in the 40 years that I have observed the bureau's track record. How can we promote Portland's livability, as a leader in sustainable practices, bike-friendliness, public transit, fine food, vibrant arts, robust commerce and trade, when malfeasance in our police force shames us? The police force should be above reproach and a model of modern law enforcement, not just modeling the latest in riot gear.

It's up to you to break the trend. We have watched and waited. Paid out on law suits and had forward-looking efforts swallowed by controversy. We are eager to have a professional force with standards, rules, training and behavior that have a focus on public safety, respect for ~~civil liberties~~ constitutional rights and a learned understanding that special circumstances demand restraint more than the use of force.

An independent civilian authority should be an indispensable part of the agreement and in your decision. You owe it us and our City

Inga Fisher Williams

Inga Fisher Williams, member,
Elder Caucus, OCCUPY Portland

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NATIONAL LAWYERS GUILD
PORTLAND, OREGON CHAPTER

185736

POST OFFICE BOX 40723
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November 8, 2012

Mayor Sam Adams
Commissioner Nick Fish
Commissioner Amanda Fritz
Commissioner Randy Leonard
Commissioner Dan Saltzman

RE: Proposed USDOJ/City of Portland Settlement Agreement

Dear Mayor Adams and City Commissioners:

The Portland Chapter of the National Lawyers Guild has been involved in Police Accountability work for many years, in conjunction with and in support of many active community organizations. We strongly believe members of our community should be treated fairly and with dignity by members of the Portland Police Bureau, so that everyone can leave a police encounter safely. As such, community oversight of perceived abuse of police authority is crucial to achieve the goal of public safety. In that regard, we submit the following comments regarding the Proposed Agreement ("Agreement") between the US Department of Justice (DOJ) and the City of Portland related to the DOJ's findings of a pattern and practice of excessive force by the Portland Police Bureau (PPB) against those in or perceived to be in mental health crisis.

We welcomed the DOJ investigation and findings, with the hope that the true reform sought for decades by members of the Portland community would come to fruition. We were part of the coalition of organizations who submitted extensive recommendations and comments to the DOJ and the City on September 27, 2012, and reiterate our support for those recommendations. This Agreement has the potential to change the culture of the PPB, and we urge the City to consider those detailed recommendations during the implementation phase in the coming months. Here, we highlight some of our key concerns, and support the recommendations of the AMA, ACLU, Copwatch, League of Women Voters, Tom Steenson, JoAnn Hardesty, and Disability Rights Oregon on use of force, oversight, crisis intervention, officer accountability and community engagement.

USE OF FORCE

We concur with the recommendations and comments made from communities impacted by PPB's practices at issue here. Specifically, we urge that the use of force policy be revised to require use of the least amount of force necessary to achieve a lawful objective, and to implement training and discipline to ensure that becomes the norm within the Bureau. This revised force directive should guide officers on entering a situation to use

low levels of force, and should include a table similar to the "continuum of force," letting officers know the maximum allowable force based on resistance of the subject, so they can gauge how to apply the "least force necessary."

The Agreement requires PPB implement policy and training for officers to de-escalate as resistance decreases, which we strongly support. (Paragraph 67.c.) However, for any policy and training to be effective, the City must discipline officers for excessive use of force, and the discipline must stick. The Agreement states that "unreasonable uses of force may result in disciplinary action." (Paragraph 67.d.) History has shown that very rarely are officers disciplined for excessive force, for example in the Chasse case, where the officers involved in this brutal beating were not disciplined for force, and one is now the Sheriff-elect of Wheeler County. Where officers are disciplined, as in the Campbell case, discipline is overturned.

It seems the only means for accountability is through the civil legal system, which results in jury awards, or million dollar settlements, but no systemic change. Just yesterday, two verdicts came in against Portland Police Officers who have a history of allegations of excessive force, one in federal court against Sgt. Leo Besner, see http://www.oregonlive.com/portland/index.ssf/2012/11/federal_judge_finds_portland_p.html, and another in Multnomah County Circuit Court. See http://www.oregonlive.com/portland/index.ssf/2012/11/vancouver_man_wins_11250_for_i.html.

So, while we support the Agreement's emphasis on de-escalation, which we note has been the plea of community groups and advocates for many years, training and enforcement of those policies, as well as effective accountability are crucial to achieving results.

TRAINING

The implementation of this Agreement and any changes to policy must be accompanied by adequate training. To this end, we welcome the role that the Addictions and Behavioral Health Unit (ABHU) Advisory Committee and the Community Oversight Advisory Board (COAB) have in development of training. However, we think this agreement should go further in defining the role that community input plays in the development and implementation of training. To the extent this Agreement will not be further modified, we strongly urge the City to take very seriously community input into training, incorporating input from impacted communities, including those with disabilities, especially when it comes to de-escalation, encounters with people with mental health issues or in mental health crisis, and when interacting with Portland's diverse communities. To that end, we support the recommendations and feedback by Jan Friedman and Disability Rights Oregon, and urge the City to address the concerns raised in her November 7, 2012 letter.

INDEPENDENT MONITOR

We strongly believe the Compliance Officer/Community Liaison (COCL) should be an independent position, reporting to the Court and the DOJ, and should have access to all City documents, rather than limited to receiving information through the Bureau

Compliance Coordinator. We have grave concerns about the COCL being an employee of the City; the City thus has supervisory and disciplinary authority, including the power to terminate employment. The COCL should be an independent contractor, which is an important legal distinction regarding direction and control of the position.

EMPLOYEE INFORMATION SYSTEM (EIS)

We believe the threshold to trigger review of an officer's use of force actions should be modified beyond the three-in-one-month trigger, to allow for stronger thresholds. It is our understanding that if something is not in the Agreement, it will not be implemented; we worry about the need for earlier triggers being prohibited by this Agreement.

We believe that an external body should have access to the EIS data, including ability to provide public information on how often EIS has identified at-risk officers, and patterns and trends in use of force identified by EIS. The EIS system has apparently been up and running for some time now, and the public should have access to the current data reflecting use of force trends, and be notified of its efficacy.

MEDICAL ATTENTION

We note the Agreement only briefly addresses providing medical attention to injured subjects, despite the DOJ's finding of lack of timely treatment for individuals who have been subjected to force or who appear to be injured. We refer to our recommendations made in the September 27, 2012 letter, pp. 6-7, which recommend that policy and training require Emergency Medical Services for injuries to those subjected to use of force, for officers not to interfere with the provision of prompt medical attention; transport to the nearest emergency room for any person who loses consciousness or exhibits other signs of health emergency via an ambulance; and an in-depth review of the use of force where incidents result in injury.

Again, we refer the City to our September 27, 2012 recommendations. It is not clear whether or how these recommendations were considered for the purposes of this Agreement.

We thank you for your continued commitment to members of our community and making this a safer city, for all its residents.

For a Better World,

NATIONAL LAWYERS GUILD
PORTLAND, OREGON CHAPTER

J. ASHLEE ALBIES
Co-Chair, Portland NLG Chapter

Submitted by
Dr. T Allen Bethel 11/8/12

ALBINA MINISTERIAL ALLIANCE (AMA) COALITION FOR JUSTICE AND POLICE REFORM
CONCERNS ABOUT DOJ AGREEMENT WITH THE CITY OF PORTLAND
November 5, 2012

185736

GENERAL COMMENTS:

* The US Department of Justice (DOJ)/City of Portland Agreement must be written in a way that encourages and allows more changes than are included in the current draft without concern that such changes would distract from, or be considered violations of, the Agreement. This is true for policies, training, oversight mechanisms, and just about every aspect of the Agreement.

* The Agreement needs to include more remedies designed to improve the way Portland Police interact with communities of color.

* The suggestions below are the minimum changes the AMA Coalition seeks before the Agreement can move forward.

USE OF FORCE

* We concur with the ACLU of Oregon, which asks that the Agreement provide that "even if a use of force in a particular case is lawful and constitutional it cannot be used if it is not the least amount of force necessary to achieve that lawful objective." We would add that the Force directive should guide officers on entering a situation using low levels of force, and should include a table similar to the "continuum of force" letting officers know the maximum allowable force based on resistance of the subject, so they can gauge how to apply the "least force necessary."

* With regard to Tasers, there need to be more restrictions added than are in the Agreement, including prohibition of the use of Tasers to threaten or intimidate when no threat exists.

* The Agreement should prohibit the use of force on injured persons who are likely mortally wounded in a police shooting; Portland officers have used Tasers, "bean-bags," police dogs and other force on downed subjects.

* In paragraph 67d, the word "may" needs to be replaced with "shall": "Unreasonable uses of force SHALL result in disciplinary action."

TRAINING

* Training officers should be screened out if they have been called in for counseling because of the prescribed triggers in the Employee Information System (EIS) which indicate a pattern and practice of inappropriate behavior, in addition to the prohibition for officers who have been disciplined for misconduct as laid out in paragraph 84. This includes the DOJ's new threshold of three uses of force in one month (paragraph 118).

* Community stakeholders should be involved directly in training officers, including people from the mental health community and people of color.

* The training on the Agreement's requirements (paragraph 85) must be ongoing and not one time only, and training must be evaluated with a form of evidence based outcome analysis to be sure it is effective.

CRISIS INTERVENTION

* The same prohibitions listed above for training officers should also apply to CIT-Team officers (paragraph 100).

* We acknowledge that not all officers are equally committed to using their CIT training, but that training must be used to hold officers accountable when they fail to de-escalate as trained.

EMPLOYEE INFORMATION SYSTEM (EIS)

* An external body must have access to the EIS in order to produce a quarterly report on how often the EIS has flagged at-risk officers, whether they have been counseled, and what kinds of patterns are being discovered.

* The thresholds to trigger review must be able to be modified beyond the DOJ's one recommendation in paragraph 118.

OFFICER ACCOUNTABILITY

* The suggestion from the DOJ's letter of findings to get rid of the so-called "48-hour rule" should be explicit in the agreement.

* The phrase "enable meaningful independent investigations" by the Independent Police Review Division (IPR) should be clarified to explain that IPR must have the power to compel officer testimony, including the involved officer (not just witnesses). IPR also needs to be given direction to conduct such investigations (paragraph 127).

* The timeline to complete investigations should be 180 days until the complainant receives the findings, then the timeline to complete Citizen Review Committee (CRC) appeals (or an appropriate subsequent body) should be at least 90 days, not 21 days (paragraph 120).

* It is not acceptable for the Agreement to lock in place language saying the Police Review Board (PRB) procedures currently in place shall remain with a few exceptions (paragraph 130). Among other things, the PRB must:

__not allow the Supervisor who already made a determination about misconduct to vote on the Board;
__allow the community member involved (and/or their advocate) to participate in the hearings;
__open up to public scrutiny when the incident being reviewed involves a community member.

* The sentence in paragraph 43 defining Misconduct Complaint that excludes shootings and deaths victims to appeal the PRB's findings must be struck from the Agreement.

* Similarly, paragraph 61 defining "supported by the evidence" (as referenced in paragraph 134) must be struck from the Agreement, unless it is used to redefine "supported by the evidence" as a less deferential standard.

COMMUNITY ENGAGEMENT

* The Compliance Officer/Community Liaison (COCL / paragraph 158) should be an entirely independent position, reporting to the Court, not to City Council, and should have access to all City documents, not limited to receiving information through the Bureau Compliance Coordinator. This role should be the same as the Monitor in other cities under DOJ jurisdiction.

* The COCL should administer and advise any community oversight body, not chair it, decide who is on it, or vote on it.

* The COCL and the oversight body must have standing in the court to declare that the City is not fulfilling the terms of the agreement.

* The current structure for the Community Oversight Advisory Board (paragraph 141) must give more weight to community stakeholders. Rather than five CPRC members and five elected community members, the ten slots not assigned to City Council should be mostly reserved for community stakeholders, including but not limited to people from the mental health community, communities of color, and people who experience police misconduct.

* When police present their annual report, they must be joined by community stakeholders to help interpret the information being shared, including the presentation on rights and responsibilities at police stops (paragraph 148).

* The police should engage another body that the COAB or its replacement to make a community outreach plan. The oversight body's function must be to ensure that the PPB is fulfilling the terms of its agreement.

* The DOJ recommendation (#9) that the Bureau track every citizen contact as a way to build community trust must be included in the Agreement.

Submitted by Austin Raglione 11/02/12

CITY OF PORTLAND, OREGON

Bureau of Police
Sam Adams, Mayor
Michael Reese, Chief of Police
1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000 • Fax: 503-823-0342

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185736

SERVICE COORDINATION TEAM PROGRAM STATISTICS: November, 2012

CLIENTS SERVED

Individual Clients Served 2008:	122
Individual Clients Served 2009:	143
Individual Clients Served 2010:	158
Individual Clients Served 2011:	190
Individual Clients Served 2012:	79 *
TOTAL Enrolled 2008-2012:	692
Subtract Duplicate Enrollments:	266
TOTAL Individuals Served 2008-2012:	426 **

PROGRAM GRADUATES

2009 Graduates:	21
2010 Graduates:	23
2011 Graduates:	30
2012 Graduates (May):	13
TOTAL Graduates:	87

REDUCTION IN RECIDIVISM

(Calculated using arrest records of SCT participants July 2008-July 2011 before and after receiving services)

- 54 graduates: 91% reduction in recidivism
- 211 non-graduating participants: 43% reduction in recidivism
- 265 total participants: 52% reduction in recidivism

SCT HOUSING AND TREATMENT ALLOCATIONS

Treatment Slots

Outpatient Men	13
Residential Men	12
Total Treatment Slots Men	25

Housing

Golden West Housing (Wet)	18
Estate Housing (Dry)	25
Women's Residential	5
RSP Residential VOA	12
Total Housing Units Available	60

* Through June 30, 2012

** 74 of these 426 were served but can no longer be served by SCT. In order to have success, these clients need more significant dual diagnosis treatment and housing with a higher level of mental health care services.

Submitted by
Rosa Klein
11/08/12
185736

health commons GRANT

Outreach Helping patients overcome barriers to health

The Outreach intervention, called Interdisciplinary Community Care Teams (ICCT), is a concentrated effort to deploy nontraditional healthcare workers throughout the Tri-County area to reduce the total cost of care and/or hospital and ED utilization for a subpopulation of members who have experienced recent high "potentially avoidable" utilization while improving the experience of care and indicators of health. This initiative represents the most significant potential savings across the Health Commons Grant interventions. ICCT program objectives are:

- Engage and mentor targeted members toward an optimal relationship with a primary health home (physical and behavioral, if appropriate), one in which the member actively participates in a culturally appropriate, trusting, and respectful partnership with a care team that knows him/her
- Facilitate the connection between targeted members and beneficial community resources, including peer specialists, and advocate for critical social services
- Educate and coach targeted members to improve health literacy, condition-specific self-management skills, and activation in wellness
- Coordinate services and communication between various providers of services with or on behalf of members, including specialty health services

To help a member avoid readmission to the hospital, community outreach workers may provide dietary education and food boxes when necessary; attend medical appointments and translate information or questions; model assertive behavior; and purchase a calendar for a member to help keep track of multiple appointments.

"My outreach worker has been very helpful," says a soft-spoken ICCT client. "I don't even look at her as a worker. I look at her as a friend." The ICCT client is a 21-year-old woman who for years bounced around foster homes before landing back with her mom in a Portland motel room. She was enrolled in the ICCT program after meeting the outreach worker in an emergency room two days after Christmas. At that time, the client had been in the ER five times within the previous month. The outreach worker assists the client with personal tasks and basic needs, such as finding a sandwich for lunch and offering her a bus ticket to get home. She texts the client throughout the day. Her goal is to help the client find enough self-sufficiency to control her anxieties and see a doctor regularly so she can overcome barriers to optimal health and wellbeing.

TARGET POPULATION

The Outreach intervention focuses on adults who have had at least 6 or more ED visits or one non-obstetric inpatient hospital admission in a year. Eligible patients are identified using a combination of claims data and care team referrals. Research is conducted to determine if these admissions were avoidable and might have been mitigated by extra supportive outreach or care coordination. Most often, a care team member warmly introduces a new eligible patient to the outreach worker; on occasion, the outreach worker may meet the patient for the first time in the community or in the ED or hospital.

WHY IS THIS IMPORTANT?

Local and national data provides clear evidence that socially and behaviorally based risk factors underlie a significant proportion of avoidable high-cost healthcare utilization. Our community needs to address these root causes in order to reduce this spending. Non-traditional health care workers, embedded within high performing health homes but caring for patients out in the community, offer a type of partnership to patients that has previously not been available in most of our local health care settings. Outreach workers have the time to customize care to each individual patient while building deep trust and rapport that identifies and even removes barriers. Empowering patients to become more active in their wellbeing will translate into a higher quality of life for patients and fewer expensive admissions.

WHAT IMPACT WILL THE GRANT HAVE?

The grant supports further development of the ICCT pilot and also provides a forum to share best practices and lessons learned across Health Share of Oregon partner organizations. Particular focus will be given to change management within partner organizations to ensure successful community-wide implementation. Over three years, grant funding will specifically be directed toward:

- 51 personnel, including 42 outreach workers providing direct care, 4 supervisory staff, and 5 analytic staff
- Competency-based training, including community health worker training provided by the Community Capacitation Center at Multnomah Cty Health Department, motivational interviewing, trauma-informed care, and SBIRT (Screening, Brief Intervention, Referral & Treatment)
- Rapid-cycle process improvement, including cross-site learning collaboratives

IMPLEMENTATION OBJECTIVES

Year 1
• Build an operations and supervisory staff
• Hire and deploy 33 outreach workers at 18 different sites across the region
• Provide standardized competency-based training to all outreach staff hired
• Launch an ICCT learning collaborative
• ICCT steering committee formed and meeting monthly
• Share best practices and lessons learned across Health Share partner organizations
Year 2-3
• Refine protocols and process improvement strategy
• Hire and deploy 9 additional outreach workers
• Prepare a scalable ICCT model for dissemination

FAST FACTS

Year 1 (July 1, 2012-June 30, 2013)
Staffing plan: 41 total personnel including outreach specialists within partner organizations, outreach workers hired centrally by CareOregon, team supervisors, project managers, process improvement coach and project leadership
Grant funds: $2,370,409
Potential impact: 1,078 patients

CONTACT INFO
Rebecca Ramsay, BSN, MPH, at
ramsayr@careoregon.org

ICCT Steering Committee Chair: Rebecca Ramsay, CareOregon; MCHD: Alison Frye, Judy Becher; Legacy: Maryna Thompson, Araminta Miller; Cascadia: Meaghan Caughey; The Oregon Clinic: Rhett Cummings, Ken Flora; PMG: Maggie Allee; CareOregon: Laurie Lockert, Debra Read; Clackamas County: Janelle McLeod; Virginia Garcia: Ann Turner; Central City Concern: Rachel Solotaroff; Neighborhood Health Clinics: Keith Trawick; OHSU Richmond: Christina Milano; OHSU ED: Sarah

185736

health commons GRANT

Mental Health Connecting patients to community resources

All care interventions funded by the grant focus on populations that are significantly impacted by physical health, mental health and addictions challenges. The specific grant-funded intervention around the psychiatric population is the Intensive Transition Team (ITT), which provides short-term intensive case management and mental health services to individuals experiencing a psychiatric crisis who are discharging from hospital inpatient units or emergency departments. The goal is to ensure the engagement of high-risk individuals into appropriate community-based services and supports in order to divert inpatient psychiatric admissions and prevent readmissions.

The intervention aids in reducing readmission and providing continuity of care by ensuring that patients have a strong and enduring connection with a behavioral health provider or medical home post-discharge, and have access to medications and any other needed resources between discharge and a first appointment with their provider. Mental health specialists generally follow program participants for 30 days, depending on the condition and needs of the participant, to ensure a smooth transition of care.

This intervention is based on a model implemented in Washington County, where it reduced readmissions by 26 percent. The intervention will be expanded region-wide to operate in Washington, Clackamas, and Multnomah counties through subcontracts to county mental health programs.

"ITT makes sure people get connected to the right place, otherwise they keep cycling through the emergency departments," said Kris Miller, licensed clinical social worker and an ITT program director. "We help people with immediate support in the community though brief counseling, intensive case management, and care coordination. This can include helping with basic needs, such as identifying safe housing, transportation, medication – whatever it takes to prevent a hospital readmission as well as to improve their health." The team includes two mental health clinicians and a nurse practitioner at LifeWorks Northwest, which offers prevention, mental health, and addiction services.

TARGET POPULATION

The target population is high acuity patients with mental health and substance abuse needs who have had a psychiatric hospitalization or emergency department admission, prioritizing Health Share members not connected with a community mental health care provider.

WHY IS IT IMPORTANT?

More than one third of all Medicaid psychiatric inpatient admissions in the Tri-County region are individuals who are not affiliated with an outpatient mental health care provider. Post-hospital connection into outpatient care is often unsuccessful, with some studies showing up to 65% of patients failing to make intake appointments for community mental health treatment following discharge. Connection to an outpatient provider while still in the hospital and intensive bridging services significantly improve a patient's connection to care upon discharge.

WHAT IMPACT WILL THE GRANT HAVE?

The grant supports the development of the pilot to reduce psychiatric inpatient readmissions and provides a forum to share best practices and lessons learned across Health Share of Oregon partner organizations. Particular focus will be given to change management within partner organizations to ensure successful community-wide implementation.

IMPLEMENTATION OBJECTIVES

Year 1
• Launch in Multnomah and Clackamas counties and expand in Washington County • Begin program and process evaluation • Share best practices and lessons learned across Health Share partner organizations
Year 2-3
• Program and processes will be refined

FAST FACTS

Year 1 (July 1, 2012-June 30, 2013)
Staffing plan: A total of 5.5 FTE of mental health specialists will be hired to staff the ITT teams for each county. Clackamas County will hire 2.0 FTE, Multnomah County will hire 3.0 via Cascadia, and Washington County will hire 0.5 FTE via LifeWorks NW
Grant funds: $441,491
Potential impact: 660 patients

CONTACT INFO

Kim Burgess, Washington County, at kim_burgesss@co.washington.or.us

ITT Workgroup/Oversight Committee: Kim Burgess, Washington County (chair); Multnomah County: Leonard Lomash, MHO Director; Washington County: Kristin Burke, Mental Health Program Supervisor; Clackamas County: Martha Spiers and Jeffery Anderson, Crisis Services Leads; Cascadia: Maggie Bennington Davis, MD, Medical Director; Jay Auslander, Supervisor Crises Services; LifeWorksNW: Kris Puttler Miller, Program Director

185736

health commons GRANT

ED Navigator Providing patients with pathways to the right care

The purpose of the ED Navigator pilot (ED Guide) is to implement processes that will ease a patient's way to the most appropriate level of connected care. Through education and navigation, the project seeks to strengthen the Triple Aim focus of making healthcare more affordable, providing the best experience, and improving the health of this population of patients. The ED Guide program is designed to reduce the use of ED services for non-emergent issues, using nontraditional workforce members to link patients to primary care homes and support services.

One key focus of the intervention is to address the specific needs of the Medicaid population. Current data suggests that as much as 60% of Oregon Health Plan (OHP) ED visits could be managed in a less costly setting such as primary care, urgent care, immediate care, or home care. In addition, the OHP ED utilization at Providence is 100% higher than Medicare and 400% higher than commercial plans. The current state of caring for non-emergent cases in an emergent setting is costly for our patients, customers, and communities, and causes delays for our truly emergent and vulnerable patients.

BACKGROUND

Providence Health & Services launched an ED Guide program at Providence Milwaukie Hospital in 2011. Early indications show that the service can make an impact in ensuring the right care in the right place. The program was expanded to Providence Portland Medical Center in early 2012. The Health Commons Grant funds expansion to Providence St. Vincent Medical Center in 2012-2013 and provides a launching ground to share learnings with partner organizations in support of creating a sustainable system of care delivery across the community.

WHY IS THIS IMPORTANT?

Treating non-emergent needs in the emergency room is very expensive for Medicaid patients and does not aid in ensuring ongoing care needs.

WHAT IMPACT WILL THE GRANT HAVE?

The Health Commons Grant supports the development of the ED Navigator pilot and provides a forum to share best practices and lessons learned across Health Share of Oregon partner organizations. Particular focus will be given to change management within partner organizations to ensure successful community-wide implementation.

Mr. Doe, an uninsured patient, presents to the ER for ongoing knee pain, conflicted about the cost of care yet feeling like there was nowhere else to go. After speaking with Dr. Knox, he was reassured to learn he was not having an emergency. The Patient Guide provided him with a next-day appointment with Dr. Herring at PMG Milwaukie Residency Clinic. Three days later, the Patient Guide made a follow-up call to Mr. Doe, who stated he was impressed with the level of care he has received at Providence and is thrilled to have a treatment plan with his new doctor. He thanked the Patient Guide program for setting him up with a very knowledgeable PCP and preventing him from accruing cascading medical bills.

Reported by Keyana Azari, Patient Guide, Providence

IMPLEMENTATION OBJECTIVES

Year 1
• Implement ED Guide program at Providence St. Vincent Medical Center • Serve 500 patients through the ED Guide program at Providence St. Vincent Medical Center • Share best practices and lessons learned across Health Share of Oregon partner organizations
Year 2-3
• The number of patients served will increase to 600 per year • Program and processes will be refined

FAST FACTS

Year 1 (July 1, 2012-June 30, 2013)
Staffing plan: 1 FTE
Grant funds: $43,800
Potential impact: 500 patients

CONTACT INFO

Barry Brown, Providence Health & Services, at barry.brown@providence.org

ED Guide Steering Committee at Providence: Pam Mariea-Nason, Community Health Division Executive, and Bonnie Forsh, Emergency Services Regional Director (sponsors); Janice Burger, Chief Executive, Providence St. Vincent Medical Center; Rebecca Coplin, Strategic Portfolio Management Director; Adele Hughes, Change Facilitator; William Olson, CFO – Hospitals; Dave Underriner, Chief Operating Officer

185736

Moore-Love, Karla

From: Jan Friedman [jan@disabilityrightsoregon.org]
Sent: Wednesday, November 07, 2012 3:38 PM
To: Commissioner Saltzman; Commissioner Fritz; Commissioner Fish; Leonard, Randy; Moore-Love, Karla
Subject: Jan Friedman's Comments on US DOJ City of Portland Settlement Agreement ATTACHED
Attachments: Jan Friedman's Comments on Agreement.doc.pdf

Commissioners,

I have attached my comments on the U.S. Department of Justice/ City of Portland Settlement A

Thank you for your consideration.

Sincerely, Jan Friedman

Jan E. Friedman
Attorney
Disability Rights Oregon
610 SW Broadway, Suite 200
Portland, OR 97205
Voice: 503- 243-2081 or 1-800-452-1694
TTY: 503-323-9161 or 1-800-556-5351
Fax: 503-243-1738

185736

DISABILITY RIGHTS OREGON

November 7, 2012

Mayor Sam Adams, City Commissioners, Auditor LaVonne Griffin-Valade
Portland City Hall
1221 SW 4th Ave.
Portland, OR 97204

Re: U.S. Department of Justice/ City of Portland Settlement Agreement

Dear Mayor Adams, Commissioners, and Auditor Griffin-Valade:

I am a staff attorney with Disability Rights Oregon (DRO). DRO is the federally-funded non-profit protection and advocacy agency for people with disabilities in our state. Moreover, I have been a member of the Portland Police Bureau (PPB)'s Crisis Intervention Team Advisory Board (CIT AB) since 1999. As such, I welcomed U.S. Department of Justice (DOJ)'s investigation and intervention. I am heartened that the U.S. DOJ found "reasonable cause to believe that there is a pattern or practice of unnecessary or excessive uses of force in certain encounters between police officers and persons with or perceived to have mental illness." Likewise, the U.S. DOJ/ City of Portland Settlement Agreement (Agreement) provisions that emphasize dis-engagement and de-escalation techniques in the field and stronger oversight will hopefully benefit the citizens of Portland. These provisions need operate in the context of a new police culture in order to be effective.

An effective and useful agreement should include provisions to ensure that:

- PPB must engage people with disabilities as human beings rather than problems;
- PPB must provide all relevant and requested information to its Advisory Boards;
- PPB must change its collective bargaining contracts to allow effective investigations and disciplinary action;

610 SW Broadway, Suite 200 / Portland, OR 97205
Voice: 503-243-2081 or 1-800-452-1694 / Fax: 503-243-1738 / **www.droregon.org**
Disability Rights Oregon is the Protection and Advocacy System for Oregon

- PPB must be subject to oversight that is actually independent; and
- PPB officers must provide clear notice before using a Taser and fully consider the risk of Taser use.

1. PPB Must Engage People with Disabilities as Human Beings Rather Than as Problems

One goal of this Agreement must be engaging people with disabilities in the community in a meaningful manner to allow healing to occur. People with disabilities are the largest minority in our community. They are not people who police have to "deal with" but instead are key members of our community.

Many people with mental illness or with family members with mental illness have become very frightened of the PPB and have refused to contact the PPB. The PPB must continue to reach out to members of our community who have disabilities and to listen to their concerns. There should be mechanisms in place for ensuring that the public has a voice and is heard. People with disabilities' voices are heard where they are part of the discussion. Inviting people with disabilities to a hearing or meeting after a decision has already been made is not the same thing. Members of our community should be able to be part of the decision-making, whether or not they choose to be part of any PPB advisory board or other body.[1]

Moreover, the governing and oversight bodies (including Community Oversight Advisory Board, Community Outreach Advisory Board, Compliance Officer and Community Liaison, Citizen Review Committee, Internal Affairs, Independent Police Review, Police Review Board, Adult Behavioral Health Unit Advisory Board, Training Advisory Council) should have members who are people with disabilities. The Agreement at paragraph 92 specifically indicates that the ABHU Advisory Committee "shall include representation from: . . . persons with [lived sic] experience with mental health services." Any reasonable accommodations that need to be made should be made. This is part of increasing community trust in PPB. "Nothing about us without us" means just that and is part of treating people with disabilities with dignity. Additionally, the governing and oversight bodies have much to gain by welcoming people with disabilities. More importantly, the input from people with disabilities needs to be allowed in a timely and respectful manner. It also needs to be actually considered and incorporated into policies and decisions.

---

[1] See Jo Ann Hardesty's Letter regarding the US DOJ/ City of Portland Settlement Agreement (October 31, 2012).

185736

2. PPB Must Provide All Relevant and Requested Information to its Advisory Boards

Moreover, no new or old advisory board will be able to function effectively without having relevant and/ or requested information, documents, policies and procedures pertaining to its area of advising. Furthermore, the consumers, family members, advocates and workers (in disability related fields) should be allowed to provide input into the content of the training, as well as have access to the training.

DRO has been a member of the Crisis Intervention Team Advisory Board (CIT AB) since its inception in 1996. I have been the DRO representative on the CIT AB since 1999. In the past several years, there has been a huge problem with PPB transparency and disclosure. This is different than in the early few years when I had a copy of the CIT Manual and was a trainer for the CIT training. Since mandatory CIT training was instituted, PPB has taken the following unfortunate positions:

- PPB discussed that there may be no need for the CIT AB and suggested that we disband. I disagreed because for people with disabilities, serious problems remained in terms of contact with the PPB;

- I requested the training manual or written training materials. This request was refused, but we were provided a one (1) page of "Content areas";

- I requested that people with disabilities be included in the training. This was refused (Video vignettes were allowed and I helped provide contacts for this);

- I hearkened back to when I was a trainer for the CIT class. I was told that the training would be strictly in-house. I suggested that this could worsen the "us" and "them" divide;

- I suggested that a scenario be developed that incorporated both de-escalation skills and use of force decision-making with a person with mental illness. PPB brought someone from the training division to speak with the CIT AB who emphasized all the difficulties in developing a scenario. The CIT AB was told that we could work on developing a scenario. The Agreement at paragraph 85(a)(v) may cover the concern of having a scenario that not only addresses de-escalation but also use of force; and

- I requested to attend the CIT training. This was refused because, to my understanding, allowing me to attend might have made officers uncomfortable.

There has been an utter lack of transparency. In my opinion, Liesbeth Gerritsen has tried hard to allow us to participate, but did not have the authority to allow us access to

the CIT training. We did look at evaluations by PPB officers attending the CIT training. We also discussed a few of the scenarios that were used.

I feel that the CIT AB has been very motivated to provide suggestions for change but has been stymied by this serious lack of information and transparency. I appreciate that paragraph 94 states, "The ABHU Advisory Committee shall analyze and recommend appropriate changes to policies, procedures, and training methods regarding police contact with persons who may be mentally ill or experiencing a mental health crisis, with the goal of de-escalating the potential for violent encounters". This can be accomplished only if the policies, procedures, and training methods are shared and suggestions are listened to and incorporated. In addition, the PPB recipient of the Advisory Board's advice (PPB Police Chief? PPB Head of Training Division? Someone else?) needs to be designated, including delineating that PPB member's way of communicating with the Advisory Board.

3. PPB Must Change its Collective Bargaining Contracts to Allow Effective Investigations and Disciplinary Action

One way that the public, including people with disabilities, may regain trust in the PPB is if members were not part of a Union that fosters the attitude that the officer is always right, regardless of the circumstances. This Agreement proposes many improvements to oversight. However, if the officer is always reinstated, the public's trust will be nil. Unless changes are made to the police union contract, meaningful independent review cannot be accomplished. The U.S. DOJ would be remiss to leave intact the City's provisions of collective bargaining contracts which inhibit effective investigations and disciplinary action. Similarly, paragraph 67(d) of this Agreement states, "Unreasonable uses of force may result in disciplinary action." There is no reason for unreasonable use of force to occur without disciplinary action. There should always be a consequence. Here is another place where public trust is squelched.

4. PPB Must be Subject to Oversight that is Actually Independent

The oversight system is broken and the Agreement does not go far enough to fix the problem. The Independent Police Review (IPR) has had the authority to conduct primary investigations, but to my understanding has never conducted one. Instead, PPB's IAD has conducted each and every primary investigation into police misconduct. IAD has been and still is in charge of all investigations of police. The problem with this set up is that the investigation is not independent, it is police investigating police. This Agreement does nothing to change the paradigm of the IAD taking charge of investigations.

The Agreement does call for 3 additional IPR employees. These additional people should be designated as primary investigators who complete investigations from beginning to end. Otherwise, there will simply be more people working for the IPR who

act only under the ultimate guidance of IAD. The "Independent" in IPR needs to have significance; otherwise IPR is more simply "PR". It is not a body that conducts independent primary investigations.

My understanding is that although IPR has a monitoring function with IAD, the IPR has always agreed with IAD's recommendations. IPR has asked IAD to modify its tone of a report, but that does not go to substance. The fact that there has been a "meeting of the minds" on all reports speaks against the "independence" of IPR's monitoring. There should be some body that independently and critically monitors IAD. Perhaps the three (3) new people can put some teeth into independent monitoring of the IAD in addition to conducting primary investigations. If that is not IPR's role, then IAD will continue to get a rubber stamp from IPR. Our citizens deserve truly independent investigations and monitoring. Additionally, PPB would benefit by having actual quality assurance. Independence in investigations and monitoring will help regain citizen's trust of the PPB.

5. PPB Officers Must Provide Clear Notice Before Using a Taser and Fully Consider the Risk of Taser Use

Paragraph 68(b) for use of Tasers should include that warnings should be effectively communicated to include that if the officer is aware that the person has a disability, then he or she should accommodate the person by modifying his or her communication. This could mean using hand signals, slowing speech down, writing down information, or whatever the situation calls for.

The Taser use revisions should go farther. Paragraph 68(e) should be changed to include the following text stated by the U.S. Department of Justice and PERF, "The Police Bureau should use a CEW for one standard cycle (five seconds) and then evaluate the situation to determine if subsequent cycles are necessary. Members should consider that exposure to the CEW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Any subsequent applications should be independently justifiable, and the risks should be weighted against other force options."[2] For our citizens who are subject to Taser use, there is much risk. This needs to be understood by members of the PPB before they use these weapons.

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[2] 2011 Electronic Control Weapon Guidelines, A Joint Project of PERF and U.S. DOJ (March 2011) @ p. 20, #21.

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Support with Others

In addition to the above noted concerns and recommendations, we generally support the comments and criticisms of: League of Women Voters (Letter, October 30, 2012); Copwatch (Letter, October 31, 2012), Becky Straus on Behalf of ACLU (Testimony, November 1, 2012); Jo Ann Hardesty (Letter, October 31, 2012); Tom Steenson (E-mail, October 31, 2012); Nyla McCarthy on behalf of the Office of Equity and Human Rights (Letter, November 5, 2012).

Thank you for your consideration.

Sincerely,

Jan E. Friedman

Jan E. Friedman, Staff Attorney with DRO

Cc: Karla Moore-Love, City Council Clerk
Thomas Perez, Assistant Attorney General, US DOJ
Adrian Brown, US DOJ
Jonas Geissler, US DOJ
Phillip Johnson, US DOJ

Office of Equity and Human Rights

Realizing Equity. Enhancing the City of Portland.

November 5, 2012

Re: DOJ settlement and Community Oversight Advisory Board (CPRC)

Dear Mayor Adams and Portland City Council

The Portland Commission on Disability (PCoD) has been following recent developments related to the Department of Justice (DOJ) report on the Portland Police Bureau's use of force, crisis intervention and officer accountability policies. Subsequent to the release of the report, a settlement agreement has been proposed between the DOJ and the City of Portland to address the use of unnecessary or excessive force when encountering persons with perceived or actual mental illness. Our Commission is writing to Council to address our concerns about the proposed agreement.

The PCoD is engaged to represent a wide spectrum of disabilities on behalf of the City of Portland and to facilitate increased collaboration and information exchange between persons with disabilities, City bureaus and City Council. The Commission was not consulted in any way regarding the settlement agreement and has substantial concerns about the Community Oversight Advisory Board (COAB) section of the agreement.

The focus of the DOJ report was specific to a review of excessive force used on persons with mental health issues. We feel that the agreement describes a COAB which lacks a strategic method to ensure proper representation of people with psychiatric disabilities.

Under the settlement agreement, to create the COAB, current HRC members of the Community and Police Relations Committee (CPRC) are to be moved from the CPRC to the COAB. However, the CPRC works to improve community and police relations, further a community policing culture and promote dignity, understanding and respect in police and community interactions. Stopping the CPRC's work is what leaders in the communities of color feared would happen when the DOJ moved its focus to mental health. We argue that it should not be either/or. We need both. The PCoD sees great value in the CPRC continuing its vital work.

We recommend that, instead of moving the five HRC members from the CPRC, Council allow the Commission on Disability and the Human Rights Commission to collaboratively choose representatives to serve on the COAB. We feel that this is the best approach to proper representation of the community of persons with psychiatric disabilities on the COAB. Combining the knowledge and background of both the HRC and PCoD offers a best practice to provide qualified and skilled members to serve on this important advisory body.

The Commission on Disability thanks City Council for the opportunity to work on this important agreement and looks forward to participating in its process.

Sincerely,

nyla mccarthy

Nyla McCarthy, Chair
Portland Commission on Disability

185736

Agenda Item 1232 TESTIMONY 2:00 PM TIME CERTAIN

AGREEMENT WITH DEPARTMENT OF JUSTICE FOR POLICE BUREAU

IF YOU WISH TO SPEAK TO CITY COUNCIL, PRINT YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ BECKY STRAUS	ACLU OF OREGON	
✓ DR LEROY HAYNES	AMA COALITION FOR JUSTICE & POLICE REFORM	
✓ TOM STEENSON	ATTORNEY	
✓ DAN HANDELMAN	PORTLAND COPWATCH	
✓ DEBBIE AIONA	LEAGUE OF WOMEN VOTERS	
Left MARK KRAMER	NATIONAL LAWYERS GUILD	
✓ Kyle Busse	Human Rights Commission	
✓ Allan Lazo	Human Rights Commission	
✓ Herman M. Frankel, M.D.	3310 NW Savier St, Portland, OR 97210-1937	frankelh@comcast.net
✓ Michael Meo	3003 NE Weidler Portland 97232	meoforcongress@gmail.com
✓ FRED BRYANT	JUSTICE FOR KOUTO NOTIS	

Date 11-1-12

185736

Agenda Item 1232 TESTIMONY 2:00 PM TIME CERTAIN

AGREEMENT WITH DEPARTMENT OF JUSTICE FOR POLICE BUREAU

IF YOU WISH TO SPEAK TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
✓ DR. T. ALLEN BETHEL	AMA COALITION	
✓ SYLVIA ZINGESER	NATIONAL ALLIANCE ON MENTAL ILLNESS - MULTNOMAH	
✓ JO ANN HARDESTY	HARDESTY CONSULTING	
✓ Donita Fry	Human Rights Commission	
✓ Angela Kimball	2793 SW Roswell Ave. PDX 97201 (NAMI)	
✓ Ann Brayfield	4019 SW Downsview Ct 97221 Concerned citizen	
✓ Jan Campbell		
~~Sylvia Zingeser~~	~~NAMI Multnomah Advocate~~	
✓ Shannon Pullen	NAMI Multnomah E.D.	spullen.nami@gmail.com
✓ Joseph Gordon	650 irving	Tequilh Sweet@hotmail
✓ BILL DENARDO	HAYDEN ISLAND,	

Date 11-1-12

185736

Agenda Item 1232 TESTIMONY 2:00 PM TIME CERTAIN

AGREEMENT WITH DEPARTMENT OF JUSTICE FOR POLICE BUREAU

IF YOU WISH TO **SPEAK** TO CITY COUNCIL, **PRINT** YOUR NAME, ADDRESS, AND EMAIL.

NAME (print)	ADDRESS AND ZIP CODE	Email
Evelyn Murray		grannybay@hotmail.com
Lisa Haynes		ladyboss503@gmail
Woody Broadnax	6707 N. Haight	Wbroadnax@Lycos.com
~~Ann Brayfield~~		
Jamie McCallen		JRMccallen@gmail.com
Tegula Baker		
James Kahan	2835 SE Lambert ST	jimKahan@alumni.reed.edu

Date 11-1-12

NAMI Multnomah
National Alliance on Mental Illness

To: Chief Reese, PPB

From: NAMI Multnomah Families and Peers

September 26, 2012

Dear Chief Reese,

Thank you for inviting NAMI Multnomah and NAMI families and peers to meet with you. We appreciate the opportunity to work with you and the PPB to meet the demands of the Federal Department of Justice's investigation of excessive use of force by Portland police officers.

We have heard from many NAMI members their disappointment that they can't attend this important meeting, due to such a short notice. Their inability to attend does not reflect any disinterest. As you well know, we are very concerned for our loved ones when they encounter police intervention during a mental health crisis.

Several Crisis Intervention Training (CIT) Advisory Board members are NAMI members. We participate because some of us have had family members in mental health crisis who had serious, bad outcomes with intervention by Portland police. Many NAMI families are so fearful of having a bad or fatal outcome.

NAMI families want a specialized CIT Team that is voluntary and receives additional training to serve as first responders when 911/Crisis Line mental health crisis calls come in, as well as be available for officers to call for assistance.

We believe all officers should continue to be trained in CIT since any officer may encounter someone in crisis. We want all officers to be proficient in using their CIT. We also want yearly refresher CIT courses scheduled like the yearly tactical requirements.

We understand having a voluntary, additionally trained CIT Team impacts police staffing and keeping enough officers on the street. We believe its implementation could strengthen the city budget by reducing the number of law suits paid out when police encounters caused loss of life or serious injury.

NAMI family members would like to see Crisis Intervention Training incorporate working directly with both peers and family members, as it was in the past. We believe this will enhance officers training so as to better understand what mentally ill people are

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email: nami.multnomah@gmail.com web: www.namimultnomah.org
NAMI Multnomah is a 501 (c) (3) non-profit organization. Federal Tax ID Number: 93-0862647

challenged with. Seeing peers NOT in crisis creates a very meaningful response from officers. It opens their eyes that these are real people with real feelings. And hearing from family members and their experiences dealing with the police in a crisis situation further educates police to the human side of their work.

NAMI family members and peers are extremely concerned about officers giving commands that people in mental health crisis *cannot* follow. They are often slow to react. They often do not want to be touched. They often have other physical illnesses and disabilities that don't allow them to move quickly. They may even have hearing problems or problems with eyesight. We need for officers to understand this possibility when they come into contact with people in mental health crisis. We need for officers to weigh the situation before getting into a position of reacting, because the person did not respond to commands. It is the greatest fear we as family members have: Will our family member not respond to commands and the worst possible scenario will develop?

NAMI family members want to trust our officers when we have to call upon them for assistance with our family members. We want our officers to be able to go home safely to their families and friends. When there are bad outcomes everyone suffers. We understand police work is a hazardous profession at times. We understand officers need to be prepared for the work they do, but we expect officers to operate with de-escalation practices. We want officers to work with families and peers.

On behalf of NAMI Multnomah Family Members and Peers,

Shannon Pullen
NAMI Multnomah Interim Executive Director

Terri Walker
NAMI Multnomah Board President

185736

Jo Ann Hardesty, Principal Partner
Hardesty Consulting
840 SE 166th Place
Portland, OR 97233
(503) 957-4364
joannhardesty@gmail.com

Hardesty Consulting
Producing a more just & equitable world.

31 October 2012

Mayor Sam Adams
City Commissioner Randy Leonard
City Commissioner Amanda Fritz
City Commissioner Dan Saltzman
City Commissioner Nick Fish

Dear Mayor, Commissioners:

The settlement agreement reached, between the City of Portland and the U.S. Department of Justice, Civil Rights Division (DoJ), to address patterns and practices of unconstitutional use of force by the Portland Police Bureau (PPB), is disappointing to the thousands of community members who believed that this process would lead to a publicly accountable police force. It is likely to disappoint anyone who has a desire to see that the culture of the PPB is sufficiently reformed so as to protect and serve our community … without breaking federal laws.

Assistant Attorney Perez declared, in the DoJ Investigative Findings Report (page 27) the current oversight process is a "Self Defeating Accountability System." Providing PPB with 26 new staff and Independent Police Review Board (IPR) with 3 additional staff, at a cost of over $5.8 million per year, is a slap in the face to unpaid advocates for social justice who have come before City Council, demanding police reform, for more than a decade. It appears that both PPB and the IPR have been *rewarded* for building and maintaining an inadequate accountability system, one that fails time and time again to hold police accountable.

The proposed agreement seems at odds with the DoJ Statement of Intent (dated 12 Sep 12). Point five, referring to a Community Outreach and Advisory Board (COAB), states:

> "*Community participation in the* oversight *of this agreement will be important to its success. A community body will be adopted to assess on an ongoing basis the implementation of this agreement, make recommendations to the parties on additional actions, and actions, and advise the Chief and Mayor on strategies to improve community relations. The body will also provide the community with information on this agreement, its implementation and receive comments and concerns. Membership will be representative of many the many and diverse communities in Portland, including persons with mental illness, mental health providers, faith communities, minority, ethnic and other community organizations, and student or youth organizations.*"

Ultimately, it is the public who needs to ensure the City of Portland obeys the Constitution. The settlement agreement gives lip service to community involvement by the people most impacted by police violence in our community. This agreement must be reworked to meet the above intent: to ensure their Constitutional protections, the community needs now to be given oversight responsibilities.

Public oversight of the protection of their civil rights should not be an advisory function. Nothing in this board's title should minimize the important roles of monitoring city boards and committees as they begin to embrace constitutional safeguards protecting our city's most vulnerable members.

The proposed Agreement should be changed to reflect:

- ✓ The community must have oversight authority
- ✓ Replace 'advisory' in the title. Add 'compliance or oversight'
- ✓ U.S. citizens must have the authority to ensure appropriate reforms are happening on the timeline laid out by the DOJ

Making former gatekeepers into reformers:

The settlement agreement calls for the Community Police Relations Committee (CPRC) of the Human Rights Commission (HRC) to become the backbone of a newly formed COAB. This is an inappropriate talent pool from which to draw for such a task.

Human Rights Commissioners hold appointments from the very body that has been found complicit in condoning unconstitutional conduct. Over the last six years, this Commission has been absent from any and all community efforts to hold police accountable for inappropriate behavior. Never has the HRC spoken on behalf of any victims of police use of force. Their silence, following the unjustified police killing of unarmed Aaron Campbell, during a 'welfare check,' should amply demonstrate that fundamental human rights violations are not their concern, particularly if the perpetrators of such violations are among the entities that appointed them. The HRC never supported community calls to assist, or even publicly comment on, in the DoJ investigation. Never has the HRC held hearings, to investigate whether any human rights violations occur in Portland. This body of passive observers has done little to raise awareness about human rights, let alone advocate for them. An absence of any history of soliciting broad, community participation makes them unfit to now represent the public interest. With no history of outreach or advocacy, these defenders of the status quo are ill suited to reform.

Reliance on HRC and CPRC means the agreement does not cast its net wide when proposing who should monitor the implementation of an agreement. Both the HRC and the CPRC rely on staff that derive their livelihood form the City of Portland. Theirs is a firm allegiance to the very governmental body that now stands accused of engaging in unconstitutional patterns and practices.

The CPRC is not entirely distinct from the HRC, as members of the latter also hold positions on the CPRC. The few members of the public chosen to serve on CPRC have been vetted by the PPB. This body has never connected to community efforts to reform the PPB. In attending their meetings I have witnessed police misleading members of this body: participants, filtered and screened prior to selection, have no history of pushing back for accurate information. While 'cooperation' has been their watchword, they follow a police agenda, rather than ascertain the aspirations of the public. This intersection of police/community relations reinforces insular City of Portland processes that allow misconduct to continue, unchecked. They have no history of outreach; have done nothing proactive to solicit community concerns. They have not held hearings on any issue sensitive to police, but which are vibrant in community debate. Public

input at CPRC – in the last few minutes of the meeting, when members prepare to leave – rarely, if ever, becomes agenda items for future consideration. Turning this group into an oversight committee will do nothing to enhance public confidence. Rightly so, their mission – as these violations have occurred - was relationship-building, and absolutely not about holding police accountable for violations of the U.S. Constitution.

In order for police to engage in *patterns* of illegal behavior, they must do so over time and without accountability from anyone in authority intervening to interrupt and correct that behavior. Much like the police union, neither the moribund HRC nor the window-dressing of the CPRC has ever considered that PPB has engaged in misconduct. Even if populated with new members, intent on obtaining justice, these bodies have been constituted as part of an insular process the City of Portland employs to *prevent* public intervention in identifying or addressing police misconduct.

Ultimately, it is the people's responsibility for protecting their civil rights. This agreement proposes an inadequate process for bringing the most motivated advocates for reform into the work. The means of electing public members to the COAB is inadequate. It is likely that the City of Portland will rely on its Office of Neighborhood Involvement (ONI) reach neighborhood coalitions (Agreement, page 51). While ONI has the ability to reach out to the grass roots, it has no history of advocating for any change in police practices. Ostensibly appeasing the concerns of property owners, ONI is primarily used by PPB as a one-way vehicle for PPB to download information about its programs. ONI has never convened the public to share their concerns about policing: ONI is another City of Portland apparatus that fails to encourage public participation that might in any way change police practices.

A remedy is weak that relies on advisory committees already established, that have been vetted by PPB, and have no history of advocating for the vulnerable populations most impacted by police violence. Relying on any of the PPB Chief's existing advisory committees means that the pattern of allowing police to determine who they deem appropriate to receive and provide information will now extend to efforts at reform. Internal advisory mechanisms inhibit the goal of community participation, a provision that the DoJ states is important to the success of this effort.

The proposed agreement relies on those who have histories of, if not actively stymieing calls for accountability, passively engaging in the patterns and practices we seek to remedy.

The proposed Agreement should be changed to reflect:

- ✓ Adopt a process that allows the public to choose who will serve on an oversight and compliance authority
- ✓ Ensure that such an authority is not reliant on the City of Portland, or any who have been complicit allowing constitutional protections to lapse
- ✓ The authority will raise its on resources to support its work
- ✓ Civil authority will insulate itself from the reporting structures that have allowed these patterns and practices to resist public demands for change
- ✓ The City of Portland shall make available to a civilian authority the data it needs to monitor compliance with this agreement

✓ Members of the public, engaged as an authority in monitoring compliance and proposing new ideas, shall publicly convene monthly to review ongoing implementation and take public input, it shall report quarterly to Portland City Council on the progress or lack of progress in implementing DoJ reforms, it shall report non-compliance to the court in a timely manner and propose further remedies

Compliance Officer/Community Liaison (COCL):

The settlement agreement (page 58, paragraph 161) states, in part, "The COCL shall hold open town hall meetings on a quarterly basis where they will present their draft compliance report. The public shall have the opportunity to raise comments or concerns at the open town hall meeting via on-line and/or electronic mail submission."

While the title implies a liaison relationship with the community, whoever holds this contract is more likely responsible for messaging from City of Portland to the community than for fostering two-way communication between the public and community-based organizations advocating changes to police policy. It appears that the public will be asked to quarterly meetings but will not discuss or deliberate while in attendance. These one-way channels are familiar; they give the *appearance* of community involvement while silencing community members' voices.

A COCL position, filled through a City of Portland Request for Proposals, indicates another 'partner' in reform will draw a paycheck from the party now charged with violating the public's civil rights. A liaison may be necessary, but those responsibilities should remain distinct from *administering* oversight. An engaged public can be relied upon to elect leadership for safeguarding constitutional protections. To know that executive leadership is in the hands of a member of the public, and not an employee of the City of Portland, would do much to build the trust that a restoration of community-based policing requires. If effective oversight is to be obtained, it must have sufficient distance from the perpetrators.

The proposed Agreement should be changed to reflect:

✓ Allow a community board to elect its own Chairperson

✓ Ensure the public of all financial means will have direct opportunity to participate in community meetings, by removing language that limits community participation to electronic means

✓ Ensure that the COCL is a non-voting member of the community board

Quarterly reports to community:

The proposed agreement states these reports will be produced quarterly and will be available on-line. This is inadequate. As we contemplate spending $29 million on reform over five years, it is apparent that a tiny fraction of those monies can improve public involvement, by improving communications with a public sufficiently engaged so as to request hard copies be mailed to them. Many decisions that have allowed unconstitutional patterns and practices to occur have been made without public knowledge. Reform should be no secret kept from the public.

The proposed Agreement should be changed to reflect:

✓ Provide hard copies of quarterly compliance reports to the public.

Missing from Settlement Agreement – General Civil Rights:

On 8 June 11, at the outset of his investigation, Ass't. Attorney General for Civil Rights publicly responded to my question as to whether the DoJ would investigate race-based civil rights violations. He assured those present that his investigation would 'follow the facts,' and investigate any violation of law. For me, this is part of a long-standing pattern: governmental authorities will agree publicly and then fail to live up to their agreement.

DoJ findings, (Item 2, Community Policing, page 38) recognizes the Mayor "made clear that one of his reasons to call for [a civil rights] investigation of PPB was PPB's relationships with communities of color." It was, after all, the Albina Ministerial Coalition for Justice and Police Reform, exasperated by another police killing after years of seeking greater accountability, who first called for DoJ involvement.

Though the DoJ, despite collecting evidence of racial disparity in police practices, declared such civil rights violations beyond the scope of this investigation, it appears that race fell off the table when addressing the reforms needed to ensure that Portland Police are operating in a constitutional manner. DoJ findings (pgs. 38-40) outline a series of recommendations that PPB should implement to address race-based policing.

The proposed Agreement should be changed to reflect:

- ✓ Fully implementing the Plan to Address Racial Profiling, made law in 2009.
- ✓ The PPB shall conduct department-wide, intensive cultural sensitivity and competence training to include members of the community
- ✓ The Auditor or civilian authority shall document *all* community contacts, including those described as 'mere conversation," and investigate for racial bias
- ✓ Conduct community education campaigns and inform the public that filing complaints is important and tied to performance improvement

Missing from Settlement Agreement – Engaged City Council:

City Council engagement seems to be absent from this agreement. While responsibility for oversight should now be delegated to the public, the best chances for reform depend on an informed and mutually engaged City Council. It is critical that Commissioners [including the Police Commissioner and the Director of the Office of Equity and Human Rights (OEHR)] are updated at least quarterly on the implementation of any final agreement. Signatories to it, it is important that each member of city council becomes proactive, addressing in a timely manner any flaws or shortcomings of this reform effort.

The proposed Agreement should be changed to reflect:

- ✓ Require a *quarterly* report to Portland City Council.
- ✓ Require each city commissioner to assign a staff person to attend community oversight board meetings & act as a liaison for community engagement

Missing from Settlement Agreement – Training:

DoJ findings (page 38) reports that police training, particularly around crisis intervention, "as currently delivered by PPB is a police based training lacking important community collaboration," [sic] and, "There does not appear to be good reason to deny reasonable access to a crisis intervention course to consumers, family members, advocates, or mental health workers."

The proposed agreement is vague, concerning a directive that the PPB Training Division shall annually take input from the community into consideration. It is better that this input be as highly informed as possible.

The proposed Agreement should be changed to reflect:

- ✓ Reasonable access to Police Training should be granted to the public, in a collaborative effort to improve results

I am familiar with and in firm support of comments and criticisms which I expect the Albina Ministerial Alliance, Portland Copwatch, The League of Women Voters of Portland, Disability Rights Oregon, Mental Health Association of Oregon, attorney Tom Steenson, and the ACLU will be providing to this proposed agreement.

Please find attached, **Portland CCRA 20121001 Draft.pdf**. I hope this proposal, for reform authority that draws strength from community involvement, will receive your attention as you pause to incorporate the above concerns. It stems from a collaborative history of the individuals and organizations that have devoted much study to community-based efforts to bring about effective police reform and improve law enforcement.

The DoJ's 14-month investigation covered much ground. Social justice advocates should be commended for participating in an accelerated review of DoJ findings, doing in weeks what other communities are given six months to accomplish. The public has had less than a week to prepare for a hearing on 74 pages of proposed reforms. The flaws here identified need to be addressed. I urge you to take the necessary steps to finalize an agreement more acceptable to the victims of unconstitutional patterns and practices, an agreement that will more effectively bring justice where it has been absent.

Best regards,

Jo Ann Hardesty

cc
Jonas Geissler
Michelle Jones
Jonathan Smith
Attorney General, Civil Rights Division, Thomas Perez

NAMI Multnomah
National Alliance on Mental Illness

November 1, 2012

Portland, Oregon City Hall

Statement to Mayor Adams and Commissioners on Community Members response to the DOJ's Investigation of the Portland Police Bureau's "*Excessive Use of Force*", especially when assisting people who are in mental health crisis

NAMI Family Members' Statement

1. As we have done previously, NAMI Family Members advocate for Portland volunteer CIT police officers to use the Memphis, TN model.
2. NAMI Family Members want to know these officers, as well as interact with them.
3. NAMI Family Members want family members and peers to be a part of the training process so the volunteer officers hear directly from family members and peers face-to-face. It is important for officers to get to know the family member's ill relative when they are not in crisis.

We believe Portland Police needs an "A Team" – a first tier response team of ***volunteer*** officers who receive extended CIT, and that they become the experts in dealing with mental health crises on the street.

We also believe all officers should still be trained in CIT, because an "A Team" - first tier team may not be available at all times. Officers are like emergency room doctors and nurses; they have to take things as they come in and are held accountable for their on-the-spot decisions.

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email: nami.multnomah@gmail.com web: www.namimultnomah.org
NAMI Multnomah is a 501 (c) (3) non-profit organization. Federal Tax ID Number: 93-0862647

In my opinion, any officer who doesn't want to respond to a mental health crisis call or a "family beef," is in the wrong job. A lot of "*bad guys*" have mental illnesses, too, and it's difficult to separate that out in the heat of the call.

My son stated recently, because of his own experience during one of his suicide attempts several years ago that police officers "need to get over treating people like they are guilty until proven innocent. The law says: Innocent until proven guilty."

In closing, I do want to commend the officers who assisted my son's recent suicide attempt. My husband, William Summerlight and I were on the scene. The officers' approach was CIT perfect and for that we are very grateful. The officers did not know my involvement with NAMI or that I was a member of the CIT Advisory Board.

Respectfully,

Sylvia Zingeser
NAMI Multnomah Board Secretary and
CIT Advisory Board Advocate

Shannon Pullen
NAMI Multnomah Interim Executive Director

Terri Walker
NAMI Multnomah President

185736

FAMILY NURTURING AND CARING FOR FAMILY, INC

Weekly Open Grass Root Forum

Oregon's DHS Child Welfare Racial Disparity , Racial Disporportionality and Disproportional Class Selection

DID YOU LOSE YOUR SECTION 8 CERTIFICATE IN YOUR DEALING WITH DHS CHILD WELFARE SYSTEM?, THEN YOU DON'T WANT TO MISS THIS MEETING!!!

Thursday November 1, November 8, November 15, November 22, 2012
11: am - 1:30 pm 301 NW Broadway Portland, OR 97211 at the Old Golden West Hotel in John's Cafe (503) 286-6513 Evelyn 503 875-9200, Margret

Agenda Info Link: https://www.facebook.com/events/388242677911352/
Oregon's DHS/CPS/CSD Child Welfare Case Workers have been going into Oregon low income comminutes, especially in the comminutes of color, Native Americans and American of African Ancestry/African Immigrants/Refugee removing our youngest family member, our children. Reporting to Oregon's Juvenile courts Judges such as Washington County Judge James L. Fun, Washington County Judge Eric Butterfield and Multnomah County Judge Nan Waller with the following "quote"
" Your honor, currently the parents are in a "unstable Living situation", "Mom or dad or both homeless and living on the streets or they are living with family members or sleeping where ever someone will allow them to "Couch hop" or crash for the night or for a little While"? Clearly, showing both parent to be unstable in their ability to provide a stable living situation" This is all these over worked burned out over whelmed case loaded Judges who sign off and approve what ever reports DHS/CPS/CSD place in front of them. Families who can safely have their youngest family members returned home, don't have a fighting chance against such blind and manipulative controlling power.
www.familynurturingcaringforfamily.com or
https://www.facebook.com/events/388242677911352/

Governor Directs State to Address Racial Disparity in Foster Care
Executive Order creates task force on disproportionality in child welfare

(Salem)– Governor Ted Kulongoski today signed Executive Order 09-02, which directs state agencies and child advocacy groups to identify strategies that will reduce racial disparities in Oregon's foster care system. In Oregon, Native American and African American children are over-represented in the foster care system compared to their numbers in the general population.

"On any given day in Oregon too many children of color, particularly Native American and African American children, are in foster care," Governor Ted Kulongoski said. "The time has come for us to move beyond good intentions *to intentional action* so that we can ensure that children with the same needs are treated equitably… no matter the color of their skin."

National studies reveal that minority children are not abused at higher rates than Caucasian children, but when a minority child enters a foster care system, that child and their families are treated differently.

In Oregon, these facts are revealed in the disproportionality of Native American and African American children in the foster care system. In Oregon's foster care system, Native American and African American children represent 9.9% and 6.8% respectively.

OREGON'S TASK FORCE ON RACIAL DISPAITY, RACIAL DISPORTPORTIONALTY WITH IN COMMUNITES OF COLOR AND CLASS SELECTION OF LOW INCOME WHITE FAMILIES IN WHITE COMMUNITES WITH NAME LIKE "FELONY FLATS"

Contacts:
Anna Richter Taylor, 503-378-5040
Rem Nivens, 503-378-6496

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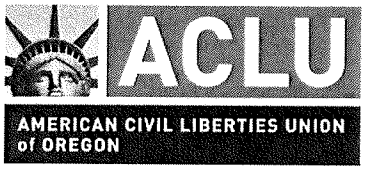

Testimony of Becky Straus
Legislative Director, ACLU of Oregon
Agenda Item 1232: DOJ/PPB Settlement Agreement
November 1, 2012

Mayor Adams and Commissioners:

Thank you for the opportunity to testify regarding the terms of the pending Settlement Agreement ("Agreement") between the U.S. Department of Justice ("DOJ"), the City, and the Portland Police Bureau ("PPB").

We appreciate the extensive work that has been done by the DOJ throughout its investigation to shine a spotlight on some of the most significant and concerning failures of PPB in recent years. And we appreciate the time spent and intensive work done over the past few weeks by Mayor Adams, Chief Reese, the Civil Rights Division, the U.S. Attorney, and others in crafting the proposed Agreement. This is a moment of great opportunity to achieve major improvements in PPB policies and practices that our entire community, as well as officers at all levels inside the Bureau, should be able to embrace.

At the same time, the ACLU hopes you will also recognize that there have been quite a few past attempts to implement lasting reforms of PPB that came up short. For that reason, there are many in the community who are skeptical that this time will be different – skepticism that is underscored by the hard reality that the City's leadership is in transition.

We understand there are critical portions of the Agreement that are designed to ensure that its promises will be achieved. We also know that if the City fails to follow through on its commitments, the most vulnerable in our community will pay the price – and so will the City. The community is counting on each of you to put in place the mechanisms – and the financing – to ensure that the potential of this Agreement is realized.

On September 27 we submitted, in partnership with allied organizations, a set of detailed recommendations to DOJ urging specific reforms be incorporated into the Agreement. On October 19 we submitted further comments to PPB, urging revisions to its proposed policy changes related to Application of Force, Deadly Physical Force, and Tasers. The Mayor, the Chief and DOJ representatives received copies of both sets of comments. Because the September 27 comments are lengthy, I am attaching only the October 19 comments to my testimony today, but the others are posted on the ACLU of Oregon website for your reference (www.aclu-or.org).

I intend to use my opportunity for comment today to focus on a few key pieces of the Agreement.

Agreement Implementation and Enforcement

Our September 27 comments highlighted the need for an independent monitor to oversee the implementation of the Agreement. We proposed that the monitor position would serve as an agent of the court, ensuring legal accountability if the City and PPB did not substantially comply within a set period of time. Because there is no such monitor set out in the Agreement, we continue to be concerned that there is not enough accountability to ensure that what is mandated will ever be actualized.

We acknowledge that the Compliance Officer and Community Liaison ("COCL") is intended to fill this role,[1] but point out that the COCL lacks any authority to prompt judicial enforcement to correct non-compliance.[2] We are disappointed that the Agreement stops short of this necessary safeguard. Along with the COCL and additional oversight bodies, we intend to be active participants in monitoring the implementation of the Agreement so as to hold all parties accountable.

Use of Force[3]

We appreciate the many specific terms in the Agreement that are in line with both sets of comments we have submitted over the past few months, especially our October 19 comments related to use of force policies. As one example, in a number of places throughout the Agreement's Use of Force section, PPB is directed to adopt a policy authorizing only the level of force necessary in each instance.[4] We think that this "necessary standard" should overlay all other policies on use of force, so that even if use of force in a particular case is lawful and constitutional it cannot be used if it is not the least amount necessary to achieve that lawful objective. The Agreement mandates as much and we agree with this change.

Further, the Agreement calls for policy and procedures that place emphasis on disengagement and de-escalation,[5] with particular focus on updated training programs to prepare officers to make important public safety decisions in a range of encounters with members of the community. These two pieces in tandem were a key message in both sets of comments we have recently submitted.

In the Electronic Control Weapons subsection, the Agreement should be more specific about when Taser use is or is not authorized. As noted in our October 19 comments, the presumption

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[1] Section X(b)
[2] See also Paragraph 5, which limits enforcement authority to DOJ, the City, and PPB: "This Agreement is enforceable only by the Parties. No person or entity is, or is intended to be, a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement."
[3] We acknowledge that in some areas (for example, police takedowns and use of Tasers) has declined in recent years, but also that pepper spray use and officer-involved shoots have risen (http://www.oregonlive.com/portland/index.ssf/2012/09/portland_police_release_report_3.html). That said, in all areas there remains much room for improvement in the policies, procedures, and training that guide an officer's decision-making as to when to deploy force and at what level.
[4] Section III, throughout
[5] Paragraph 67(a)

should be that Taser use is prohibited when applied to a person with mental illness or experiencing mental health crisis, and that presumption can be overcome only if there is both an imminent threat of harm to the officer or another person and the use of the Taser is the least amount of force necessary. The Agreement sets out this standard[6] and we agree, but the Agreement should then also set the standard for use of the Taser applied to a person who does not have a mental illness or is not experiencing mental health crisis. In general, the use of the Taser should only be permitted when the subject is displaying "active aggression"[7] and the use of the Taser is the least amount of force necessary in that instance. The Agreement should specify this limited and narrow authority.

Officer Accountability

Rather than replace an officer accountability system that the DOJ reported to be "self-defeating,"[8] the Agreement only seeks to tinker with a structure that deserves comprehensive overhaul.

We recognize that some of these small changes will benefit the goal of swift and fair response to incidents of alleged officer misconduct, including a 180-day timeframe for completion of administrative investigations,[9] Citizen Review Committee-member ("CRC") participation in Police Review Board ("PRB") procedures,[10] additional members on the CRC,[11] and an enhanced website to improve communication and transparency for a complainant and other members of the public tracking misconduct cases,[12] to name a few. Declining to accept several of the recommendations for improvement outlined in our September 27 comments, however, the Agreement reaffirms a standard of review[13] that is overly deferential to PRB and IA and, more generally, an oversight system that lacks independence and meaningful authority to identify problems when they arise.

As long as the officer accountability system is perceived to be ineffectual by the people most affected by officer misconduct, we will continue to struggle as a community to maintain trust in our public safety officers and system.[14]

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[6] Paragraph 68(a)
[7] "Active aggression" is defined in the current PPB Taser policy as "a threat or overt act of an assault (through physical or verbal means), coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent"
[8] September 12, 2012 DOJ Findings re Investigation of PPB, Page 27
[9] Paragraph 120. Additionally, of note, the ACLU of Oregon has been calling on the Council for staffing improvements and quicker timelines for Internal Affairs investigations since at least 2001, when we wrote a letter to then Mayor Katz with several recommendations to improve the Portland's Police Internal Investigations Auditing Committee (PIIAC).
[10] Paragraph 130(a)
[11] Paragraph 133
[12] Paragraph 137
[13] Paragraph 134: "The City and PPB agree that the CRC may find the outcome of an administrative investigation is unreasonable if the CRC finds the findings are not supported by the evidence."
[14] "The Parties further recognize that the ability of police officers to protect themselves and the community they serve is largely dependent on the quality of the relationship they have with that community. Public and officer safety, constitutional policing, and the community's trust in its police force are, thus, interdependent." Introduction, Page 3

On-Scene Public Safety Statements and Interviews

In any instance of use of deadly force by an officer, competing policy interests are at play: timely dissemination of information to the public and providing due process to officers who in rare instances may be subject to criminal prosecution. We have highlighted this tension in our prior comments and recognize that, in crafting the PPB draft policies and this Agreement, the Parties are wrestling, as well, with how to find the best balance.

It should be obvious that no police officer who believes he or she may be the subject of a criminal investigation is going to agree to a voluntary on-scene walk-through or on-scene interview. If the City is willing to foreclose the possibility of criminal investigation of police officers and guarantee immunity to the involved officer then there is no reason not to make the on-scene interview and walk-through mandatory. The likely insurmountable challenge is in striking a balance that allows the City to have it both ways and expect officers to cooperate voluntarily.

In any event this is an issue that needs further public discussion about the trade-offs involved. The Agreement calls for more deliberation,[15] but we anticipate that 90 days is not long enough. This discussion needs to happen openly, rather than just between the parties. The City and PPB should receive more public input so that the most affected members of the community can also fully consider these complex and competing interests and add their perspective.

Membership of COAB

The DOJ report in September raised concerns about the relationship between PPB and Portland communities of color: "We do not make any finding of a pattern or practice violation in this area. However, it is important to discuss the most prevalent concern identified in the course of our investigation – the often tense relationship between PPB and the African American community."[16]

The re-designation of five members of the Human Rights Commission ("HRC") who currently serve on the Community Police Relations Committee ("CPRC") to the new Community Oversight Advisory Board ("COAB")[17] risks a shift in focus from these issues to mental health issues. Both are equally important to the success of our public safety system and neither should be sacrificed for the sake of the other.

The mission of the HRC is to, in part, "work to eliminate discrimination and bigotry."[18] Because its members are better suited to engage on issues of police relations with communities of color and because the DOJ cited these issues as critically important in Portland, we think that these particular CPRC members should not move away from this work. So as not to isolate from each other these two important areas or devalue the racial equity work by excluding CPRC members from the COAB, however, our recommendation is to leave two seats on the COAB to a CPRC

[15] Paragraph 126
[16] September 12, 2012 DOJ Findings re Investigation of PPB, Page 38
[17] Paragraph 141(a)(ii)
[18] http://www.portlandonline.com/equityandhumanrights/?c=48749

member and replace the remaining four with community members that bring with them experience and skills related to dealing with issues of mental health.

Thank you again for the opportunity to comment and for your consideration of our recommendations. Please do not hesitate to contact me with any questions.

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AMERICAN CIVIL LIBERTIES UNION of OREGON

TO: Chief Mike Reese, Portland Police Bureau
FROM: David Fidanque, Executive Director
Becky Straus, Legislative Director
CC: Mayor Sam Adams, Clay Neal, Mike Kuykendall, Eric Hendricks, Larry O'Dea, Jim Van Dyke, David Woboril, Tom Perez, Michelle Jones, Jonas Geisslar, Adrian Brown
RE: Draft Policies on Application of Force; Taser, Less Lethal Weapon System; and Deadly Physical Force
DATE: October 19, 2012

Thank you for the opportunity to comment on draft Bureau policies relating to Use of Force, Use of Deadly Force, and Tasers.

1010.00 Application of Force

The policy should state more clearly that, although it is never permissible for an officer to use more force on a subject than the Constitution allows, the Bureau's policy is more restrictive than what is constitutionally permissible and requires the officer to use the least amount of force necessary in each instance. While we believe this is already the effect of the current policy, it could be made more clear. We therefore urge that you make the changes to the introductory section we have attached. Additional modifications may be required to the remainder of the policy if you accept our suggestions.

1051.00 Taser, Less Lethal Weapon System

General Comments

At its broadest parameters, the proposed Taser policy would permit an officer to discharge his/her Taser, in probe mode, in response to "active resistance" by a subject that may result in "physical injury" to the officer or another. Because the definition of "active resistance" in the proposed policy includes static resistance, such as "tensing," and because the definition of "physical injury" under Oregon law is extremely broad and includes "substantial pain,"[1] this proposal gives too much discretion to officers.

The 9th Circuit U.S. Court of Appeals has held that one effect of a Taser is to cause "an excruciating pain that radiates throughout the body."[2] An officer should not inflict "excruciating pain" on a subject that is engaging in static resistance unless there is a risk of greater injury to the officer or another person.

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[1] "Physical injury" means impairment of physical condition or substantial pain. (ORS 161.015(7))

[2] *Bryan v. McPherson,* 590 F.3d 767 (2009).

We believe the principal justification for deploying a Taser is to prevent a situation from spiraling out of control to the point that the officer or another person may face an imminent risk of "serious physical injury" – and therefore need to resort to the use of deadly force.[3]

Inconsistent with this purpose, we have seen too many departments rely on Tasers as a tool to avoid any hands-on contact with subjects. While we recognize that under the proposed policies officers will also be required to use the least force "practical", or "necessary" if you adopt our first recommendation, we strongly urge you to tighten the proposed Taser policy further.

For these reasons, we urge you to remove the authority to use a Taser on a subject engaging in "active resistance" so that Taser use is only permitted in response to "active aggression."

Policy (1051.00):
The policy states that "The Taser is not meant to take the place of deadly force options" and, while this statement is true in the most literal sense, the policy should state that Tasers are meant to prevent situations from escalating to the point that deadly force would be required. Hundreds of unintended deaths have been associated with the use of Tasers, and any policy authorizing their use must acknowledge this risk.

Considerations for Less Lethal Force Applications (1051.00):
"Members shall consider the current mental health condition of the subject as a factor in determining whether Taser is the appropriate tool to resolve a confrontation with as little reliance on force as practical." The policy should replace "practical" with "necessary" as the appropriate standard. Since the overuse of Tasers by the Bureau on persons in mental health crisis was a major focus of the Department of Justice investigation, the standard should be one based on necessity rather than practicality.

The policy states that "Members should evaluate their force options and give strong consideration to other force options, if the Taser is not effective after two applications on the same person." This portion of the policy should be clearer and more restrictive: it should restrict discharge of a Taser on a person to no more than 3 cycles of no more than 5 seconds each. Members should evaluate their force options, however, and give strong consideration to force options not only after two applications on the same person, but before and after *any* use of the Taser on a subject. After each cycle the officer should evaluate whether another cycle is likely to be effective and is necessary.

The "Considerations for Less Lethal Force Applications" replaces the "Authorized Use of Taser" section from the prior policy. In addition to the comments we made above regarding the breadth of the definitions of "active resistance" and "physical injury," this change of heading may create unnecessary ambiguity about when use of the Taser is permitted. The final three paragraphs in this section appear to govern when Taser use is authorized, but should be made clearer:

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[3] "Serious physical injury" means physical injury which creates a substantial risk of death or which causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ. (ORS 161.015(8))

1. While the Policy section includes general language noting that the Application of Force policy (DIR 1010.00) applies, the most critical principle needs to be reiterated here: The Bureau expects its members to resolve confrontations effectively and safely while relying on the least use of force necessary. [4]
2. Because the policy says that "members are authorized to use Taser in probe mode only in response to active aggression or active resistance..." (underline added). It is unclear whether this provision is limiting "probe mode only" use to these instances and leaving the "stun" mode use of the Taser open to a different standard, or whether this provision is referring to all use of the Taser and specifying that "probe mode only" is generally the only permissible mode for the Taser to be used – except in the specific paragraph addressing "drive stun" mode.

Prohibited Use of the Taser (1051.00):
The term "medically fragile" should be defined for purposes of the entire policy. The closest the policy comes currently to defining this term is in the section regarding required mental treatment after a Taser is deployed. In addition, persons experiencing a mental health crisis should be included in the definition of medically fragile.

The following change to the policy makes Taser use on passive subjects more likely and conflicts with limitations on authorized use described in prior sections: "Taser shall not be used on subjects engaging in passive resistance in an apparent act of civil disobedience who display no indication they might take action against members or others if not controlled" (underline added). The underlined segment of the sentence should be removed from the policy because the policy already prohibits the use of a Taser on anyone engaging only in passive resistance. If our interpretation of the current draft is incorrect on this point, the policy should state explicitly that the Taser shall not be used in *any* cases of passive resistance.

1010.10 Deadly Physical Force

General Comments
The policy recognizes that, in any instance of use of deadly force by an officer, competing policy interests are at play: dissemination of "timely and complete... [and] accurate information"[5] versus the "integrity of the investigation or information needed to complete the criminal investigation or any pending prosecution."[6] The officer who used deadly force may be subject to criminal investigation and that officer has a right against self-incrimination under the United States and Oregon Constitutions.[7] If the Bureau requires a mandatory on-scene interview of this

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[4] The language, as drafted, says that the standard is the level of force that is "practical" but, per our recommendation above, the standard ought to be what is "necessary."

[5] Release of Information (1010.10)

[6] Ibid.

[7] See *Garrity v.New Jersey*, 385 US 493 (1967) and *State v. Beugli*, 126 Or App 290 (1994); but compare *State v. Soriano*, 298 Or 392 (1984). The Oregon Court of Appeals has interpreted the Oregon constitutional right against self-incrimination regarding investigation of a law enforcement officer consistent with the U.S. Supreme Court's holding in *Garrity*. However, the Oregon Supreme Court has not heard a case regarding "use" or "derivative use" immunity involving a police officer. In *Soriano*, which did not involve a police officer, the Court held that only transactional immunity meets the constitutional requirements under Article I, section 12 of the Oregon Bill of Rights.

officer, doing so may foreclose the possibility of criminal prosecution and, while the Bureau and the City may decide that this risk is outweighed by the value of having accurate information in a timely manner, they should make this decision intentionally. In balancing these interests, the Bureau and the City should also consider that a policy that makes an on-scene interview of the officer voluntary will make it less likely that he/she will participate.

Thank you again for the opportunity to comment and for your consideration of our recommendations. Please do not hesitate to contact us at bstraus@aclu-or.org with any questions or for clarification.

Attachment to 10/19/12 ACLU-OR Memo to Chief Reese
Proposal re changes to 1010.00 Draft

1010.00 Application of Force
Index: Title:
Refer: ORS 161.015 (7) Physical Injury, defined
ORS 161.205 – 161.265 Use of Physical Force
DIR 630.45 Emergency Medical Custody Transports
DIR 630.50 Emergency Medical Aid
DIR 910.00 Field Reporting Handbook Instructions
DIR 940.00 After Action Reports
DIR 1030.00 Baton Use
DIR 1040.00 Aerosol Restraints
DIR 1050.00 Less Lethal Weapons and Munitions
DIR 1051.00Taser, Less Lethal Weapon System
Force Data Collection Report (SSD)
After Action Report (CHO)

It has long been the Bureau's stated goal and practice to rely on ~~as little~~the least amount of force ~~as practical~~ necessary ~~while~~ to performing its duties safely and effectively. Community members expect their police officers to avoid or minimize the use of force when taking criminal suspects into custody or providing help to people who are in mental, emotional or health crisis. ~~The Bureau is committed to adhering to the constitutional standards applied to the use of force, understanding that these standards are, by design, subject to constant review and interpretation.~~

This policy adopts the current United States Supreme Court's ~~limit on~~ method of analyzing the government use of force announced in Graham v. Connor. The constitutional standard, however, does not provide detailed and practical operational guidance to the Bureau or its members to ensure the best possible force and confrontation decision making. This policy supplements Graham's standard of lawful use of force with additional detailed and more restrictive performance standards. ~~by requiring that members use only force that is objectively reasonable given the totality of circumstances as viewed from the perspective of a reasonable officer at the scene, understanding that police officers must often make hurried decisions "in circumstances that are tense, uncertain and~~

~~rapidly evolving." This limit announced in Graham v. Connor (constitutional standard), requires those officers choose from reasonable options when deciding to apply force to resolve confrontations. The constitutional standard is a practical and fair limit by which our society judges whether a use of force is constitutionally permissible. The constitutional standard, however, does not provide detailed and practical operational guidance to the Bureau or its members to ensure the best possible force and confrontation decision making.~~

The Bureau's goal is to resolve confrontations effectively and safely while relying on the least amount of force ~~as little as practical~~necessary. ~~This policy supplements Graham's definition of lawful use of force with additional detailed performance standards.~~ These Bureau standards require officers to think well during confrontations and to work diligently toward applying, when practical, less force than the maximum allowed by the constitutional standard and minimizing or avoiding force altogether when possible. ~~It~~ This policy also requires that members show the skills and ability to regularly resolve confrontations through de-escalation and with less force than the maximum allowed by the constitutional standard.

Members are required to use only the force necessary that is objectively reasonable given the totality of circumstances as viewed from the perspective of a reasonable officer at the scene, understanding that police officers must often make hurried decisions in circumstances that are tense, uncertain and rapidly evolving.

POLICY (1010.00)

It is the policy of the Bureau to accomplish its mission as effectively as possible with as little reliance on force as ~~practical~~necessary. However, the Bureau recognizes that duty may require members to use force to accomplish a lawful objective. The Bureau requires that members be capable of using appropriate force when necessary.

The Bureau places a high value on resolving confrontations, when practical, with less force than the maximum that may be allowed by law. The Bureau also places a high value on the use of de-escalation tools that minimize the need to use force especially

when dealing with certain vulnerable populations. Specifically, the Bureau recognizes individuals in mental health crisis may require a specialized response to ensure that confrontations are resolved with as little reliance on force as practical.

The Bureau is dedicated to providing the training, resources and management that help members safely and effectively resolve confrontations through the application of de-escalation tools and lower levels of force.

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The League of Women Voters of Portland

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October 30, 2012

Mayor Sam Adams, City Commissioners, Auditor LaVonne Griffin-Valade
Portland City Hall
1221 SW 4th Ave.
Portland, OR 97204

RE: Department of Justice/City of Portland Settlement Agreement

Dear Mayor Adams, Commissioners, and Auditor Griffin-Valade:

The League of Women Voters of Portland has been involved in the city's police oversight system since its membership on the Storrs Committee that led to the creation of our first oversight agency, the Police Internal Investigations Auditing Committee, in 1982. A League representative regularly attends the full Citizen Review Committee (CRC) meetings and many of its workgroups.

We agree wholeheartedly with the following statement from the Department of Justice letter of findings: "An open, fair, and impartial process of receiving and investigating citizen complaints serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence in and respect for PPB." (p. 26) In addition, the League places a high value on public participation and the public's right to know. Our comments on the draft settlement agreement focus primarily on issues related to Portland's oversight system, public involvement and transparency.

Oversight system

The Department of Justice (DOJ) letter of findings called Portland's accountability system "self defeating." Unfortunately, the remedies outlined in the agreement do little to address many of the long-standing community concerns related to the system as it currently operates. The agreement also lacks clarity and specificity in several of its recommendations and we urge the city and DOJ to correct those.

It is encouraging to note that the agreement calls for all allegations of excessive use of force to be investigated unless IPR believes there is clear and convincing evidence that no misconduct occurred. We assume this means that use of force cases will no longer be eligible for mediation and suggest that this be added to the document.

Unfortunately, DOJ did not include in the agreement a recommendation from its letter of findings that states, "All allegations which, if true, would amount to a violation of policy should be investigated." (p. 28) IPR currently decides on the merit of a complaint without the information it would garner from a full investigation. A requirement to investigate all potential violations of policy should be added to the agreement.

In the letter of findings, the DOJ raised concerns about the large number of complaints resolved through the Service Improvement Opportunity designation, yet there is no mention of this issue in the agreement. The community has recommended that, at a minimum, these types of cases be eligible for appeal or reconsideration. This should be addressed in the agreement.

The DOJ points to the confusion over possible findings in misconduct cases in its letter of findings, yet does not provide explicit direction in the agreement. Several years ago, the Portland Police Bureau (PPB), with no public input, changed the possible findings of sustained, exonerated, insufficient evidence and unfounded to the current findings of sustained, unproven and exonerated. According to Eileen Luna-Firebaugh's expert review, the new findings took Portland outside the norm and she recommended returning to the original findings. We urge the DOJ to add this to the agreement.

The agreement calls for improvements that will be of benefit to the complainant in filing and tracking his or her complaint. It also requires the city to provide case-related documents to the complainant. Given the resistance the city has exhibited in the past to a similar suggestion from the community to provide items like police reports and other public records to the complainant, more specific direction should be included in the final agreement.

In the spirit of making the system more accessible and easier to navigate for the complainant, complainants should have the right to attend the Police Review Board hearing related to their case and survivors or the families of individuals involved in shootings or deaths in custody cases should have the right to appeal findings to the Citizen Review Committee (CRC).

Auditor LaVonne Griffin-Valade has stated that she is amenable to an expert review of the oversight system sometime in the next year. We hope that the DOJ investigation will not end up serving as a substitute for such a review. Although some

attention was devoted by the DOJ to the workings of the IPR and CRC, the oversight system did not receive the scrutiny it deserves.

Citizen Review Committee

The CRC performs an extremely important function in our community by hearing appeals of misconduct cases and serving as a window into the workings of the Police Bureau through its reviews and audits of closed cases. In the years since its creation, the community has recommended that CRC's role be strengthened. Instead, the agreement fails to address the most troublesome issues and creates a degree of uncertainty around others.

The CRC operates under the "reasonable person" standard of review in its appeal hearings. In her extensive examination of the system, Eileen Luna-Firebaugh recommended changing this deferential standard to something more appropriate. The Police Oversight Stakeholder Committee, CRC and community organizations have echoed that recommendation. It is disappointing that the agreement maintains the status quo.

In cases where the CRC believes it needs more information to make a good decision at an appeal hearing, it can request that Internal Affairs (IA) conduct additional investigation. IA is under no obligation to carry out that request and the ordinance does not provide clarity on how to resolve the resulting impasse. The provision in the DOJ letter of agreement that entitles CRC to make one request for additional investigation only muddies the water. The confusion and wrangling that occur during appeal hearings in the presence of the complainant and public over this issue and the standard of review only serve to erode trust in the system.

We appreciate the DOJ's desire to shorten the length of time it takes for a complaint to work itself through the appeal process, but think it is unrealistic to ask the CRC to complete the entire process in 21 days. CRC members are volunteers, most have jobs and families and the city is fortunate to have such talented and hard working individuals willing to serve. Each appeal hearing requires substantial preparation by CRC members and considerable discussion and deliberation at both the case file review and the full hearing. A more realistic timeline should be established.

The League supports the increase in the size of the CRC from nine to 11 members, but is puzzled by the provision that calls for maintaining the quorum at its current size of five members.

Independent Police Review Division

Since its inception, the IPR has had the authority to conduct independent investigations, although it never has. Many in the community do not trust a system in which the police investigate other police and have called repeatedly on IPR to begin conducting independent investigations, perhaps starting with certain types of cases. The DOJ letter of agreement points out that currently, both IPR and IA have the authority to conduct investigations, provided that IPR interviews of PPB officers are conducted jointly with IA. We are encouraged to see that the DOJ has directed the city to develop a plan that eliminates the redundant interviews in order to enable IPR to conduct meaningful independent investigations when it determines they are necessary. With the addition of three new IPR investigators, we hope to see a time when IPR utilizes its authority to conduct independent investigations.

There are two instances in the letter of agreement where it is not clear that IPR will retain the power to monitor IA investigations. In the definitions section, the Professional Standards Division (PSD) definition (p. 13) states that one of PSD's responsibilities is "conducting or overseeing all internal and administrative investigations of PPB officers, agents, and employees arising from complaints," but is silent on the role of IPR in misconduct cases. Furthermore, on p. 27, the agreement states that if audits of After Action Reports show evidence of misconduct those cases should be reported to PSD. It should be made clear that IPR will retain its ability to participate in and monitor all misconduct cases led by IA.

Public involvement, transparency and reporting

The League strongly supports measures that ensure the public's right to know the public's business. The letter of agreement contains a number of requirements for audits and reporting that will serve to keep bureau staff, decision makers, advisory committees and the public informed. The agreement states quite clearly that all audits and reports related to the implementation of this agreement be publicly available. (p. 57) We are concerned, however, that in some cases this is spelled out in regards to a specific audit or report and in others the document is silent.

In light of the importance of effective training, it is encouraging to see that the training plan will be reviewed and updated annually. It is essential that solicitations for public input go beyond the Training Advisory Council and also include the public at large, CRC and other interested parties. This is especially critical because, from what we understand, Training Advisory Council meetings will not consistently be open to the public. With this in mind, the letter of agreement should stipulate that the Training Advisory Council meetings must be open to the public when draft training plans and data from quarterly reports on patterns and trends in officers' use of force are presented.

The Portland Police Bureau annual report also will be a valuable tool for the public and we appreciate the fact that community members will have the opportunity to provide input to the Community Outreach Advisory Board (COAB) before it is finalized. In addition to presenting the report in each precinct area, it also should be presented at a City Council hearing with an opportunity for the public to offer testimony.

The COAB will provide community oversight of the implementation of the agreement and we appreciate the effort to offer more than one avenue for gaining membership. The police officer members of the board should serve in a truly advisory capacity and limit their participation to requests for information. We are concerned, however, about what will happen to the work of the Community Police Relations Committee. It is making headway on its project to address institutional racism within the PPB and also is charged with analyzing traffic and pedestrian stop data for evidence of biased-based policing. These efforts need to continue.

The requirements to enhance the Employee Information System are welcome, but given the long-standing lack of information and general confusion about the system, we suggest building in some level of outside monitoring and reporting to ensure that it is operating as intended.

In its letter of findings, the DOJ pointed to a number of serious deficiencies in PPB policies and training. These deficiencies lie at the heart of the DOJ's finding that PPB engages in unnecessary and unreasonable force during interactions with people who have mental illness. While we welcome the many opportunities for public information and participation outlined in the letter of agreement, there should be greater involvement by the community in development of bureau policies. In the past the League has suggested that draft directives be presented at monthly CRC meetings with the public in attendance given time to comment. Chief Reese recently requested public comment on new policies related to force and the Crisis Intervention Team. Perhaps the COAB would be an appropriate venue for this to occur. Regardless of how it is accomplished, the public must have input in Bureau policy development.

Other issues

As long time monitors of the CRC we have read and heard disturbing reports about absent or delayed medical care for individuals involved in encounters with the police. The findings letter points this out in stark terms, but it is not addressed adequately in the settlement agreement. We concur with the statement from the findings letter and urge inclusion of this in the settlement agreement.

> Instead, there should be a bright line rule that whenever an injury occurs or whenever a subject complains of an injury, EMS is summoned. PPB should review its data to determine if officers are routinely procuring medical care at the earliest opportunity and, if not, revise its policies and training accordingly. (p. 37)

Conclusion

The League appreciates and supports the many elements in the settlement agreement that will bring greater transparency and accountability to our Police Bureau and oversight system. There are a number of issues that need clarification and strengthening including public participation in policy development and a stronger role for the CRC.

Yours truly,

Mary McWilliams
President

Debbie Aiona
Action Committee Chair

cc: Department of Justice
Mary-Beth Baptista
Citizen Review Committee

185736

The League of Women Voters of Portland

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October 30, 2012

Mayor Sam Adams, City Commissioners, Auditor LaVonne Griffin-Valade
Portland City Hall
1221 SW 4th Ave.
Portland, OR 97204

RE: Department of Justice/City of Portland Settlement Agreement

Dear Mayor Adams, Commissioners, and Auditor Griffin-Valade:

The League of Women Voters of Portland has been involved in the city's police oversight system since its membership on the Storrs Committee that led to the creation of our first oversight agency, the Police Internal Investigations Auditing Committee, in 1982. A League representative regularly attends the full Citizen Review Committee (CRC) meetings and many of its workgroups.

We agree wholeheartedly with the following statement from the Department of Justice letter of findings: "An open, fair, and impartial process of receiving and investigating citizen complaints serves several important purposes. An appropriate complaint procedure ensures officer accountability and supervision, deters misconduct, and helps maintain good community relations by increasing public confidence in and respect for PPB." (p. 26) In addition, the League places a high value on public participation and the public's right to know. Our comments on the draft settlement agreement focus primarily on issues related to Portland's oversight system, public involvement and transparency.

Oversight system

The Department of Justice (DOJ) letter of findings called Portland's accountability system "self defeating." Unfortunately, the remedies outlined in the agreement do little to address many of the long-standing community concerns related to the system as it currently operates. The agreement also lacks clarity and specificity in several of its recommendations and we urge the city and DOJ to correct those.

It is encouraging to note that the agreement calls for all allegations of excessive use of force to be investigated unless IPR believes there is clear and convincing evidence that no misconduct occurred. We assume this means that use of force cases will no longer be eligible for mediation and suggest that this be added to the document.

Unfortunately, DOJ did not include in the agreement a recommendation from its letter of findings that states, "All allegations which, if true, would amount to a violation of policy should be investigated." (p. 28) IPR currently decides on the merit of a complaint without the information it would garner from a full investigation. A requirement to investigate all potential violations of policy should be added to the agreement.

In the letter of findings, the DOJ raised concerns about the large number of complaints resolved through the Service Improvement Opportunity designation, yet there is no mention of this issue in the agreement. The community has recommended that, at a minimum, these types of cases be eligible for appeal or reconsideration. This should be addressed in the agreement.

The DOJ points to the confusion over possible findings in misconduct cases in its letter of findings, yet does not provide explicit direction in the agreement. Several years ago, the Portland Police Bureau (PPB), with no public input, changed the possible findings of sustained, exonerated, insufficient evidence and unfounded to the current findings of sustained, unproven and exonerated. According to Eileen Luna-Firebaugh's expert review, the new findings took Portland outside the norm and she recommended returning to the original findings. We urge the DOJ to add this to the agreement.

The agreement calls for improvements that will be of benefit to the complainant in filing and tracking his or her complaint. It also requires the city to provide case-related documents to the complainant. Given the resistance the city has exhibited in the past to a similar suggestion from the community to provide items like police reports and other public records to the complainant, more specific direction should be included in the final agreement.

In the spirit of making the system more accessible and easier to navigate for the complainant, complainants should have the right to attend the Police Review Board hearing related to their case and survivors or the families of individuals involved in shootings or deaths in custody cases should have the right to appeal findings to the Citizen Review Committee (CRC).

Auditor LaVonne Griffin-Valade has stated that she is amenable to an expert review of the oversight system sometime in the next year. We hope that the DOJ investigation will not end up serving as a substitute for such a review. Although some

attention was devoted by the DOJ to the workings of the IPR and CRC, the oversight system did not receive the scrutiny it deserves.

Citizen Review Committee

The CRC performs an extremely important function in our community by hearing appeals of misconduct cases and serving as a window into the workings of the Police Bureau through its reviews and audits of closed cases. In the years since its creation, the community has recommended that CRC's role be strengthened. Instead, the agreement fails to address the most troublesome issues and creates a degree of uncertainty around others.

The CRC operates under the "reasonable person" standard of review in its appeal hearings. In her extensive examination of the system, Eileen Luna-Firebaugh recommended changing this deferential standard to something more appropriate. The Police Oversight Stakeholder Committee, CRC and community organizations have echoed that recommendation. It is disappointing that the agreement maintains the status quo.

In cases where the CRC believes it needs more information to make a good decision at an appeal hearing, it can request that Internal Affairs (IA) conduct additional investigation. IA is under no obligation to carry out that request and the ordinance does not provide clarity on how to resolve the resulting impasse. The provision in the DOJ letter of agreement that entitles CRC to make one request for additional investigation only muddies the water. The confusion and wrangling that occur during appeal hearings in the presence of the complainant and public over this issue and the standard of review only serve to erode trust in the system.

We appreciate the DOJ's desire to shorten the length of time it takes for a complaint to work itself through the appeal process, but think it is unrealistic to ask the CRC to complete the entire process in 21 days. CRC members are volunteers, most have jobs and families and the city is fortunate to have such talented and hard working individuals willing to serve. Each appeal hearing requires substantial preparation by CRC members and considerable discussion and deliberation at both the case file review and the full hearing. A more realistic timeline should be established.

The League supports the increase in the size of the CRC from nine to 11 members, but is puzzled by the provision that calls for maintaining the quorum at its current size of five members.

Independent Police Review Division

Since its inception, the IPR has had the authority to conduct independent investigations, although it never has. Many in the community do not trust a system in which the police investigate other police and have called repeatedly on IPR to begin conducting independent investigations, perhaps starting with certain types of cases. The DOJ letter of agreement points out that currently, both IPR and IA have the authority to conduct investigations, provided that IPR interviews of PPB officers are conducted jointly with IA. We are encouraged to see that the DOJ has directed the city to develop a plan that eliminates the redundant interviews in order to enable IPR to conduct meaningful independent investigations when it determines they are necessary. With the addition of three new IPR investigators, we hope to see a time when IPR utilizes its authority to conduct independent investigations.

There are two instances in the letter of agreement where it is not clear that IPR will retain the power to monitor IA investigations. In the definitions section, the Professional Standards Division (PSD) definition (p. 13) states that one of PSD's responsibilities is "conducting or overseeing all internal and administrative investigations of PPB officers, agents, and employees arising from complaints," but is silent on the role of IPR in misconduct cases. Furthermore, on p. 27, the agreement states that if audits of After Action Reports show evidence of misconduct those cases should be reported to PSD. It should be made clear that IPR will retain its ability to participate in and monitor all misconduct cases led by IA.

Public involvement, transparency and reporting

The League strongly supports measures that ensure the public's right to know the public's business. The letter of agreement contains a number of requirements for audits and reporting that will serve to keep bureau staff, decision makers, advisory committees and the public informed. The agreement states quite clearly that all audits and reports related to the implementation of this agreement be publicly available. (p. 57) We are concerned, however, that in some cases this is spelled out in regards to a specific audit or report and in others the document is silent.

In light of the importance of effective training, it is encouraging to see that the training plan will be reviewed and updated annually. It is essential that solicitations for public input go beyond the Training Advisory Council and also include the public at large, CRC and other interested parties. This is especially critical because, from what we understand, Training Advisory Council meetings will not consistently be open to the public. With this in mind, the letter of agreement should stipulate that the Training Advisory Council meetings must be open to the public when draft training plans and data from quarterly reports on patterns and trends in officers' use of force are presented.

The Portland Police Bureau annual report also will be a valuable tool for the public and we appreciate the fact that community members will have the opportunity to provide input to the Community Outreach Advisory Board (COAB) before it is finalized. In addition to presenting the report in each precinct area, it also should be presented at a City Council hearing with an opportunity for the public to offer testimony.

The COAB will provide community oversight of the implementation of the agreement and we appreciate the effort to offer more than one avenue for gaining membership. The police officer members of the board should serve in a truly advisory capacity and limit their participation to requests for information. We are concerned, however, about what will happen to the work of the Community Police Relations Committee. It is making headway on its project to address institutional racism within the PPB and also is charged with analyzing traffic and pedestrian stop data for evidence of biased-based policing. These efforts need to continue.

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Conclusion

The League appreciates and supports the many elements in the settlement agreement that will bring greater transparency and accountability to our Police Bureau and oversight system. There are a number of issues that need clarification and strengthening including public participation in policy development and a stronger role for the CRC.

Yours truly,

Mary McWilliams
President

Debbie Aiona
Action Committee Chair

cc: Department of Justice
Mary-Beth Baptista
Citizen Review Committee

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US DOJ/CITY OF PORTLAND AGREEMENT
"A PLASTIC MALLET TO HAMMER IN A PROBLEM NAIL"
Testimony by Dan Handelman, Portland Copwatch
November 1, 2012

Mayor Adams, City Council, and US Department of Justice (DOJ) folks:

Portland Copwatch (PCW) finds the DOJ Agreement with the City of Portland doesn't go far enough and is like bringing a plastic mallet to hammer in a problem nail. While we applaud potentially useful aspects of the agreement, we find that the Agreement does not go far enough and/or is ambiguous enough for the City to avoid fulfilling the intent of the proposals: to alleviate the pattern and practice of Portland Police Bureau (PPB) excessive use of force.

We are concerned that previous communications are not to be considered when interpreting this document (paragraph 3). Many recommendations made by the DOJ are not reflected in the Agreement. We asked to see all communications between the City Attorney, the Portland Police Association (PPA), the Auditor, the Independent Police Review Division (IPR) and the DOJ, hoping they might shed light on why so many common sense community demands are not part of this Agreement. It is of great concern because the Agreement could last for as long as five years (paragraph 175) with no way for the community to directly intervene, since only the City and the DOJ are parties to the court (paragraph 5). We hope this does not mean that the DOJ expects the people of Portland to suffer through inadequate use of force training and policies, and our "byzantine" accountability system for that long.

Our major concerns about the Agreement include:

—It doesn't call for terminating officers for egregious rights violations (paragraph 136) and even suggests that some excessive force will not result in discipline (paragraph 67-d);

—It does not order the City to change provisions of existing collective bargaining contracts which are inhibiting effective investigations and disciplinary action;

—It keeps Police Review Board (PRB) meetings closed to the public including the person involved in the incident,* further frustrating attempts to integrate and make transparent the City's oversight system, and explicitly prohibits appeals to the Citizen Review Committee (CRC) by people who survive police shootings or the survivors of a death in custody victim about the findings regarding officer misconduct (paragraph 43);

—Rather than create a solution for when CRC asks for more investigation and the Bureau and the IPR refuse (DOJ report recommendation #10), the Agreement restricts CRC to making one request for more investigation (paragraph 135);

—The DOJ endorses the "reasonable person" standard of review used by the CRC (paragraph 61), even though outside experts (the Luna-Firebaugh report), repeated community input (Police Oversight Stakeholder report, AMA Coalition, etc) and the CRC itself have asked for that standard to be changed; and

—It jettisons all mentions of race relations that were in the findings letter, including recommendations to build trust such as tracking all citizen contacts (DOJ recommendation #9) and creating a policy explaining when it is ok for officers to move from "mere conversation" to a stop.

Among the positives, PCW notes the Agreement:

—calls for police to de-escalate their use of violence as the resistance from the subject(s) decreases (paragraph 67-c);

—subjects officers who are found in civil court to have violated someone's rights to an Internal Affairs (IA) investigation, presuming they are guilty of misconduct unless the evidence shows they are not (paragraph 132-iii);

—requires Supervisors to be trained to conduct annual performance reviews on officers (paragraph 85-b-ii); and

—bans officers from using offensive epithets (including "mentals"), a prohibition that extends to internal communication (paragraph 85-a-v).

Other concerns about the Agreement include:

—It guts the existing Community/Police Relations Committee (CPRC) of the Human Rights Commission, which is creating a program to educate officers on institutional racism, to create an oversight body specific to the Agreement, and for the second time in just a few years pits one set of oppressed Portlanders (people with mental health issues) against another (people of color);

—It creates the new position of Compliance Officer/Community Liaison (COCL—paragraph 158), but does not give that office power before the federal court when recommending changes to the Agreement (paragraph 162);

—It retains and expands loopholes for excessive Taser use while creating a few new restrictions (paragraph 68);

—It isn't explicit enough about compelling the PPB to provide immediate medical treatment to suspects;

—It prohibits officers with sustained use of force complaints from serving on the Crisis Intervention Teams (paragraph 100) or Training Division (paragraph 84), even though very few such complaints are ever sustained;

—It is vague about how to compel officers to testify about deadly force incidents (paragraph 123) and whether the IPR will be given power to do so (paragraph 127);

—It endorses the new PPB policy sending Supervisors to the scene of uses of force but doesn't acknowledge those supervisors are mostly Sergeants in the same collective bargaining unit as the line officers;

—It calls for automatic investigation of all use of force complaints unless the IPR says not to (paragraph 128), but doesn't say whether the complainant can appeal that decision, nor does it compel investigations for lower-level complaints;

—It creates optimistic but unrealistic timelines to finish misconduct investigations including appeals to CRC (paragraph 120); and

—It enshrines a controversial program that provides addiction treatment only to people who have been arrested multiple times and has disproportionately affected African Americans (paragraph 111).

While we feel our group has a lot to contribute, our members would not serve on the community board to oversee the Agreement because of its flaws. There are too many people who have suffered too long to see yet another chance for real change be squandered by compromise. If these weak changes are locked in place by a court order lasting five years, the community will unfairly suffer.

We urge you to step back and make more changes before accepting this Agreement.

PCW's full 7-page analysis is on line as a PDF <http://www.portlandcopwatch.org/copwatch_analysis_doj_1012.pdf> and as a text document <http://www.portlandcopwatch.org/copwatch_analysis_doj_1012.html>.

Thank you for your time.

**The DOJ called the exclusion of the complainant "curious" in its findings letter (DOJ page 33).*

BRINGING A PLASTIC MALLET TO HAMMER IN A PROBLEM NAIL: US DOJ/CITY OF PORTLAND AGREEMENT DOESN'T GO FAR ENOUGH

an analysis by Portland Copwatch
October 31, 2012

Below are comments from Portland Copwatch on the US Department of Justice (DOJ) Agreement with the City of Portland regarding changes to the Portland Police Bureau (PPB) and other agencies to alleviate the pattern and practice of excessive use of force. In making these comments, we referred back to a number of documents, most significantly the DOJ's findings letter to the City dated September 13 and the AMA Coalition/Portland Copwatch recommendations based on those findings. Some of this information was sent previously on October 28; this is a more definitive document.

GENERAL COMMENTS--Promising Changes, But Still, Questions

While we overall are concerned that the changes in the Agreement do not go far enough and/or are ambiguous enough for the City to avoid fulfilling the intent of the proposals, there are several items that appear to be in favor of community accountability and transparency.

--One of the best recommended changes is for police to de-escalate their use of violence as the resistance from the subject(s) decreases (paragraph 67-c). Often, officers take out their frustrations on someone they feel has disrespected or tried to injure them.

--Another encouraging prospect is that officers who are found in civil court to have violated someone's rights will be subject to an Internal Affairs (IA) investigation, which presumes they are guilty of misconduct unless the evidence shows they are not (paragraph 132-iii). If the case has already been investigated and found in policy, an examination to find more evidence will be done (paragraph 132-iv). If no new evidence is found, IA and the Independent Police Review Division (IPR) need to explain the discrepancy (paragraph 132-v). We hope that this explanation will be made public, since the officer's allegations will already be in the public sphere due to the trial.

--It is important that the community is being asked to participate in choosing the Compliance Officer/Community Liaison (COCL--paragraph 158). Though we'd prefer the COCL to be entirely independent, having him/her responsive to the entire City Council is better than being under just one person's auspices.

--The document states explicitly that all PPB reports related to the Agreement will be public (paragraph 156), which seems to extend to the COCL's quarterly reports (paragraph 160) and the PPB's Compliance Coordinator status reports (paragraph 173). What isn't clear is whether presentation of the Professional Standards Division (PSD) Inspector reports to the Training Advisory Council (paragraph 74) and the COCL's semi annual outcome assessments (paragraph 170) will be public.

--We are encouraged that the COCL's outcome assessments require analysis of sustained force complaints, including by demographic group, and especially by the source of the complaint, as Bureau-initiated complaints have far higher sustain rates the Community-initiated ones. In fact, there have only been a handful of Community-based force complaints sustained in the entire 10+ years since the IPR was created.

--It is a good idea for the Chief to assess the effectiveness of new policies 180 days after initiation and annually thereafter (paragraph 168). Frequently, new policies go into effect and are never revisited. We recommend that the Chief's assessments be made public and allow for public feedback, including from groups such as the Citizen Review Committee (CRC).

--While it is buried in a strange place in the Agreement, we are glad that Supervisors will be trained to conduct annual performance reviews on officers (paragraph 85-b-ii). We hope this means that such reviews will also be mandated.

--We have also been concerned for years that officers who discharge firearms at animals are not investigated for possible wrongdoing. The definition of "Critical firearm discharge," which only exempts practice shooting and accidental discharges (paragraph 19), tied with the definition of "Serious use of force" (paragraph 58), indicates that these acts of violence will be treated more seriously to cull out officers looking for an excuse to fire a gun.

--We applaud the Agreement's broad admonishment of officers using offensive epithets (including "mentals") and that the prohibition extends to internal communication (paragraph 85-a-v).*

--It is a good step forward to call for more information to be released to people who file complaints about misconduct (paragraph 138) including any remedial steps taken after a finding is reached (paragraph 139). We hope this means that at least complainants will receive their own police reports without having to pay for them.

--The policy to prohibit retaliation against anyone involved in a complaint against police (paragraph 129) should be expanded to their family members, as many families of police deadly force victims can tell you.

GENERAL COMMENTS--Concerns

--It is of great concern that all previous communications are not to be considered when interpreting this document (paragraph 3). There are many recommendations made by the Dept. of Justice that are not reflected in the final document. In fact, we would like to see any and all correspondence from the City Attorney's office, the Portland Police Association, the Auditor's office and the IPR to the DOJ, since their fingerprints appear to be all over the weakest parts of the Agreement.

--It is discouraging that despite efforts to include the community in this process, the Agreement explicitly excludes anyone but the DOJ or the City from having standing to challenge the enforcement in court (paragraph 5).

--Many of the provisions do not go far enough, and the Agreement is slated to last for five years (paragraph 175). We hope this does not mean that the DOJ expects the people of Portland to suffer through inadequate use of force training and policies, and our "Byzantine" accountability system that is de facto endorsed in this Agreement, for that long.

--We want to echo our colleagues at the Mental Health Association of Portland (MHAP) who pointed out that the Agreement doesn't do enough to allow Portland to fire officers who have used excessive force, including deadly force. The section on discipline wisely calls for a system to be set up to be fair and consistent, but doesn't call for terminating officers for egregious rights violations (paragraph 136).

--The Agreement does not order the City to change provisions of existing collective bargaining contracts which are inhibiting effective investigations and disciplinary action. Instead, it defers to the "just cause" provisions of the contract (paragraph 130c), acknowledges that some changes may take time because of bargaining issues (paragraph 177), and asks the City to keep DOJ apprised of negotiations (paragraph 186). What our community needs is a law or a court order that removes the public policy provisions of what is supposed to be a labor contract from the PPA (and PPCOA) document. We hope the DOJ and/or the City (or the PPA itself) will give us an answer about how much the PPA influenced the terms of the Agreement.

--Generally speaking, the Agreement creates more levels of Bureaucracy, rather than streamlining the accountability system it critiqued in the findings letter. A new Inspector in the PSD, a Compliance Coordinator, a COCL who will chair a Community Oversight Advisory Board (COAB), an Addictions and Behavioral Health Unit (ABHU) with its own Advisory Board, the continuation of the CRC and the Police Review Board (PRB) with little changes to their structure, composition or authority... it makes one's head spin thinking of making a flowchart to graph it all.

----To be fair, it appears that the ABHU advisory board (paragraphs 90-95) will likely replace the current Crisis Intervention Training (CIT) advisory board. The Agreement implies, but isn't explicit, that the ABHU board will have access to the actual training curricula and materials that the CIT board does not (paragraph 97); we hope that they will, or the board will be ineffective.**

----While we have our complaints about the Community/Police Relations Committee (CPRC) of the Human Rights Commission, we are seriously concerned about the idea of replacing them with the COAB rather than selecting a committee specific to the Agreement to oversee its implementation (and yes, this is a suggestion that a new body would be better than using or modifying an existing one). While slow-moving and somewhat compromised by its PPB voting members, the CPRC has at least helped move the Bureau to where it admits that institutional racism exists and is creating a program to educate officers and confront implicit bias in the system. The CPRC was also charged with following up on the Racial Profiling Committee's work on traffic and pedestrian stop data. Since the Agreement has jettisoned all mentions of race relations that were in the findings letter (DOJ pp. 38-40) it seems a further insult to communities of color to disband the CPRC to focus on changes mostly tailored to help people with mental health issues (we acknowledge, of course, that there is some overlap).

----On that note, the CPRC previously conducted a survey of police outreach efforts (paragraph 145c), which may save the COAB some time.

----We also share the concern with MHAP that people living with mental illnesses may not be able to attain a seat on the COAB using the systems outlined in the Agreement (paragraphs 141 and 144); that might also extend to others who are not treated fairly in our society including women, LGBQT community members, immigrants and people of color.

--It is also of concern that the COCL has tremendous responsibilities and abilities to collect and synthesize data (paragraphs 159-163 and others), but has no power before the federal court when recommending changes to the Agreement (paragraph 162).

--While we appreciate that some forward movement has been happening under Chief Reese, we're a bit concerned by the inclusion of the statement that "The United States feels that the continuity of management and effort is essential for timely compliance with the terms of this Agreement" (paragraph 8). Along with unresponsiveness to recommendations, violent crackdown on the Occupy protests, and ongoing racial disparity in traffic stops and other police actions, the Chief has not diversified his command staff despite community input (AMA 2012.3).

USE OF FORCE

For detailed comments on our Use of Force concerns, please also refer to the comments we sent to Chief Reese and the DOJ regarding the Force, Deadly Force and Taser draft directives on October 22.

--The Taser*** directive will continue to have loopholes allowing police to zap people more than two times (paragraph 68, though paragraph 58 defines more than two uses as a "serious use of force"), use Tasers on handcuffed subjects, and otherwise use Tasers during certain (but vaguely defined) exceptional circumstances.

----For example, paragraph 68-a prohibits the use of Tasers on people in mental health crisis "except in exigent circumstances, and the only to avoid the use of a higher level of force." Paragraph 68-d prohibits use by multiple officers on the same person "except where lethal force would be permitted."**** Paragraph 68-f tells officers to "avoid" using more than three Taser cycles "unless exigent circumstances warrant use." And 68-g says they can use Tasers on handcuffed or otherwise restrained people "to prevent them from causing serious physical injury... or if lesser attempts of control have been ineffective." The Inspector and the COCL are explicitly asked to allow for such exceptions (paragraph 75-b-iv). We've seen the 9th Circuit decisions on Taser use, and we feel the PPB should have far more stringent limits put on them. While the DOJ opened the door for "exigent circumstances" exceptions in the findings letter (DOJ p. 16), we were hoping that so many loopholes would not be accommodated.

----In addition, paragraph 68-b creates over-broad exceptions for giving verbal warnings before Taser use.

--We do, however, appreciate that officers are asked to allow the subject to comply with the officer before re-activating a Taser (paragraph 68-e).

--We are glad to see the DOJ defining lethal force to include strikes to the head, neck or throat with hard objects (paragraph 38) and serious use of force (paragraph 58-iv) to include head, neck and throat strikes. It's curious that carotid holds are included, as they were banned in Portland after police choked to death an innocent (African American) security guard they mistook for a criminal in 1985.

USE OF FORCE--Medical Treatment

--The Agreement discusses medical treatment in the vaguest of terms; once under "ECW" use (paragraph 68-c), calling for officers to follow medical protocols, and once under supervisory responsibilities (paragraph 70-c) calling for supervisors to ensure medical attention to the subject. A supervisor might not get onto the scene soon enough if a civilian needs urgent care. We expected a strong change to policy, based on this recommendation from the findings letter: "There should be a bright line rule that whenever an injury occurs or whenever a subject complains of an injury, EMS is summoned. PPB should review its data to determine if officers are routinely procuring medical care at the earliest opportunity and, if not, revise its policies and training accordingly." (DOJ p. 37)

CRISIS INTERVENTION

--As we wrote in our analysis of the Bureau's proposed new policies, we support the idea of a hybrid CIT model that includes all officers being trained (paragraphs 96-97) but also specific skilled members being an "on call" CIT Team (paragraphs 98-104), with the caveat that the existence of such Teams should not relieve members of their responsibility to de-escalate and use their own training to resolve situations without violence. Jose Mejia Poot was shot when the second set of officers came to the mental hospital he was in, after the first set which included a CIT-trained officer had gone off duty. Nobody wants to see a repeat of that scenario.

--We also encourage that in addition to asking for volunteers for CIT teams (paragraph 99), the Bureau should seek out those officers known to have excellent communication and de-escalation skills.

--While it is appropriate to highlight successes of the CIT program (paragraph 103), it should not be done to divert attention away from incidents gone wrong, or the systemic use of violence by the police.

--Although we agree that no officers who have been found out of policy for force or other mistreatment of people with mental illnesses should be allowed to be on the CIT Teams (paragraph 100), the fact is that very few officers are ever disciplined for such actions. In fact, the men who killed James Chasse, Jr. in 2006 had their discipline (for failing to bring him to the hospital after tasering him) overturned.

TRAINING (new topic in Agreement)

--We have the same concern about the exclusion criteria for trainers as we do for the CIT Team; the bar is set too high, since very few officers will be disqualified using the criteria currently established regarding sustained complaints (paragraph 84).

--We urge the DOJ to specify that the Training Division's consideration of public input not be limited to the Training Advisory Council (paragraph 80-f).

--It is not clear whether the reference to incorporating changes based on "concerns reflected in court decisions" (paragraph 80-g) means the results of lawsuits against the PPB or, for example, US Supreme Court decisions, or, perhaps, and preferably, both.

--The Division's criteria for changes should not only look at "law enforcement trends" (paragraph 80-i) but also the history of Portland Police to avoid re-introducing problematic tactics.

--We support the ideas of role playing (paragraph 85-a-i), incorporating de-escalation into making arrests without force (paragraph 85-a-ii) and teaching tactics such as disengaging, waiting, and calling for appropriate backup units (not necessarily for more firepower--paragraph 85-a-iii).

--Teaching officers how force could lead to civil liability (paragraph 85-a-iv) would be more meaningful if the lawsuit payouts in Portland came out of their pockets or their budget, rather than from the City's insurance fund.

EMPLOYEE INFORMATION SYSTEM (was: EARLY INTERVENTION SYSTEM)

--We appreciate the changes proposed in the Agreement to make the Employee Information System (EIS) more of a tool to identify "at risk employees" (paragraph 115) and to add to existing thresholds that trigger command review, though only one example, three uses of force in one month, is being implemented (paragraph 118). It is our understanding that the IPR currently has access to the EIS and can monitor its use; we hope that such external oversight will be included in any final Agreement as integral to the effectiveness of the system.

--We hope that the steps proposed will allow patterns found in the EIS to be used for counseling or discipline, as recommended by the AMA Coalition and Portland Copwatch in our letter to DOJ (AMA 2012.1).

MISCONDUCT INVESTIGATION

--The Agreement talks about invoking "Garrity" rights, which would mean the possibility of compelling officers to testify on scene in exchange for their protection from being criminally prosecuted (paragraph 123). However, the explicit idea of getting rid of the PPA's so-called "48-hour rule" mentioned in the findings letter (DOJ p. 31) is gone.

--The Agreement implies that IPR will continue to be allowed to determine whether they will conduct independent investigations, and only vaguely asks that policies be changed so such investigations will be "meaningful" (paragraph 127). The same paragraph calls for an end to duplication of effort to interview witnesses by both IA and IPR, after talking about IPR's dependence on IA to interview officers. We hope this is pointing toward IPR sitting in on initial investigations and asking questions to both officers and witnesses, and/or conducting the investigation instead of IA, rather than as a means to shut IPR out of the process, which is one possible interpretation.

--The DOJ seems content to have Supervisors head to the scene of uses of force to conduct investigations (paragraph 70), but fails to acknowledge two issues of concern: 1) that a civilian review board investigator should also be sent to the scene to be sure the supervisor doesn't try to minimize or rationalize the officer's actions (AMA recommendation 2012.2) and 2) that the new line Sergeants hired to support this protocol (paragraph 71) are in the same collective bargaining unit as the line officers. Until the Sergeants are removed from the Portland Police Association (PPA) and put in the Portland Police Commanding Officers Association (PPCOA), this policy presents a conflict of interest.

--We strongly agree with the imperative to investigate all Use of Force complaints (paragraph 128), though we hope there will be a formal appeal process to challenge the IPR's decision that "clear and convincing evidence" excludes certain cases. We are disappointed that the DOJ's recommendation in the findings letter that "all allegations which, if true, would amount to a violation of policy should be investigated" (DOJ p. 28) did not make its way into the Agreement.

MISCONDUCT INVESTIGATION--Discipline

--It is extremely discouraging to read the DOJ state that "unreasonable force may result in discipline" (paragraph 67-d). In what instance would DOJ proposed that such force not result in discipline?

MISCONDUCT INVESTIGATION--Review Boards

Beyond the comments made in this section, we support all the comments made by the League of Women Voters regarding the Agreement.

--Rather than create a solution for when CRC asks for more investigation and the Bureau and the IPR refuse (DOJ findings letter recommendation #10, p. 41), the report restricts CRC to making one request for more investigation (paragraph 135), presumably at the Case File Review level, but not, we hope, preventing another request during an appeals hearing. (The Agreement is also ambiguous as to whether that means only one aspect of the complaint can be reinvestigated, rather than one broad request for several aspects being made.)

----Similarly, there is no recourse/remedy offered if the PRB asks for more investigation by IA or IPR and is refused (paragraph 131).

--While moving toward an integrated accountability system, assigning one CRC member (on a rotating basis) to sit on Police Review Boards involving deadly force (paragraph 130-a/b), but then restricting them from talking about the case (paragraphs 130-c, d-iii, and e-v) voids any transparency or ability to bring lessons learned from the PRB to the CRC or the public.

----The Police Review Board will remain closed not just to the public, but also to the person against whom the force was used; the only changes proposed (paragraphs 130-131) do not remedy this issue that DOJ noted in its report (on page 33).

----It is unclear what is meant by concurrent administrative and criminal investigations being subject to "tolling period... as necessary to meet the CRC or PRB recommendation to further investigate" (paragraph 121).

----Hidden in the definitions section, the DOJ is explicitly endorsing the current standard of review used by the CRC, the "reasonable person" standard (paragraph 61) , when outside experts (the 2008 Luna-Firebaugh report), repeated community input (the 2010 Police Oversight Stakeholder report, AMA Coalition, etc.) and the CRC itself have asked for that standard to be changed.

----It's also not clear why the Agreement states that "The City and PPB agree that the CRC may find the outcome of an investigation is unreasonable if the CRC finds the findings are not supported by the evidence" (paragraph 134). The standard is to determine whether a reasonable person could come to the same finding as the commander, which is not the same as saying the outcome is unreasonable. Furthermore, there is no apparent purpose to this paragraph other than to affirm (or weaken) the current standard. Similarly, the definition paragraph refers to the "evidence developed by the investigation," which is not part of the City ordinance... it only refers to "the evidence" (Portland City Code 3.21.010-S). It's not appropriate for the City to use the Agreement to modify the meaning of the Code.

----The Agreement explicitly prohibits appeals to the CRC by people who survive police shootings or the survivors of a death in custody victim about the findings regarding whether an officer committed misconduct (paragraph 43--also in the definitions section, a poor place to be setting policy). After the IPR refused an appeal from the father of Keaton Otis, we had hoped the DOJ would force the City to follow its own policies. After all, the DOJ wrote: "there exists no apparent prohibition on CRC's consideration of officer accountability incidents involving in-custody deaths or officer-related deaths" (DOJ p. 34).

---Appeals to CRC will be required to be disposed of in 21 days, within the 180 timeline to complete investigations (paragraph 120). Under the current structure, the appellant has 30 days to appeal a finding, at which point the CRC needs to hold a "Case File Review" (after reading the entire investigative file) the month before holding a hearing. This would mean that the maximum amount of time to complete an investigation and assign findings would be 113 days, assuming the CRC needs one week to read the files (30 days to appeal + 7 days to read + CRC Case File Review + 30 days to next meeting), which is not realistic. The volunteers on CRC already are pushed to their limit on time invested, so unless a new structure is devised, this timeline needs to be re-worked.

---One item we do support: the CRC will be expanded to 11 members (paragraph 133). However, we wonder why the City would keep the quorum at 5 members on an 11 member board (Portland City Code 3.21.090-A-1). Perhaps the lower quorum will allow the CRC to split into smaller panels to hear more appeals.

--We wonder what happened to the DOJ's strong recommendation in the report (DOJ p. 30) to add "unfounded" to the existing list of possible findings used in outcomes of administrative investigations. While that idea is absent in the Agreement, it instead refers to the COCL analyzing the rate of "sustained, not sustained, exonerated" findings (paragraph 170-e-ii). Does this mean that the Bureau is replacing the ambiguous "Unproven" finding with "Not Sustained" instead of splitting it into the clearer "Insufficient Evidence" and "Unfounded" findings recommended by the community, the Luna-Firebaugh report and the DOJ?

--The item stating that CRC members have to limit terms on the Police Review Board to three years (paragraph 130-g) is incorrect; PRB members can serve up to two 3-year terms plus any partial term they are appointed to fill (Portland City Code 3.20.140-C-1-a-[1]-[a]).

--While we welcome the idea of complainants being able to track the progress of their complaints on line (paragraph 137), having such information available for anyone in the community to see with confidential information redacted would be even better.

COMMUNITY ENGAGEMENT AND OUTREACH:

--As mentioned above, we are concerned about the lack of attention to race relations in the Agreement, considering the findings letter.

----The COCL's semi-annual assessments are supposed to include demographic data connected to use of force, force complaints, and sustained force complaints (paragraph 170-a-ii through iv).

----The only other mention in the report comes is calling for outreach work to be done by the COAB to use the PPB's demographic data to tailor outreach and community policing (paragraph 146).

----However, CIT Team data collection is to include name, age, gender, and address but not race (paragraph 104-b).

----The entire formal recommendation by DOJ (#9) that the Bureau track every citizen contact as a way to build community trust is absent from the Agreement (DOJ p. 41), as is the informal recommendation to create a policy around when to initiate stops and go beyond "mere conversation" (DOJ p. 40).

----One of the programs that has disproportionately targeted African Americans, the Service Coordination Team, is being hailed and embedded into permanent City policy by the Agreement (paragraph 111). While we applaud getting people into treatment rather than jail, we question whether such social service triage should be done by the police rather than appropriate agencies (similar to the remedies being proposed vis a vis mental health), and why money is available for people who have criminal records to get treatment, but not others who may seek it.

--We welcome the data on lawsuit payouts being included in the COCL semi-annual reviews, but urge the DOJ to replace the term "settlement" with "settlements, judgments, and jury awards" (paragraph 170-e-v). After the James Chasse settlement in 2010, very few lawsuit payouts have been brought up publicly to Council, likely because they are being entered as judgments and are thus not subject to Council review. (City law requires any payment over $5000 to be agreed to by a majority of Council.)

--It's a nice idea to have the police present their annual report in each of the City's precincts (paragraph 148), but there need to be civil rights or oversight organizations present to augment any claims they make about force, "biased-free policing" and people's rights and responsibilities when stopped by police. In an ideal world, the police would be interested in ensuring people know their rights (such as the rights to remain silent and ask for an attorney), but the reality is that they are trained to circumvent those rights to solve crimes and gather information.

CONCLUSION:

While the Agreement has a few items that can help Portland move forward, it needs serious revisions before being entered into court and locking us in to inadequate reforms for as long as five years. Furthermore, we believe that our organization has a lot to offer in terms of oversight of any changes made, but would not want to serve on the COAB if our task would be to ensure implementation of this Agreement as written. There are too many people who have suffered too long to see yet another chance for real change be squandered by compromise.

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footnotes

*--The Illegal Gun Exclusion Zone oversight group recently accepted the Bureau's use of the term "black-style gangs" based on that term being "standard nationwide." When Portland Copwatch pointed out that this means the first thing officers seek out is skin color rather than violence or guns, the group seemed to understand our concern.

**--Note: the ABHU is asked to put out a status report within 240 days, but not to make ongoing reports (paragraph 95).

***--We dislike the term "Electronic Control Weapon" because it implies that officers should use stun guns to "control" a person's behavior, rather than the more accurate and neutral "Conductive Energy Weapons" generic term.

****--If this policy had been in place before Keaton Otis was killed, the three officers Tasering him before he allegedly pulled out a gun would have been disciplined.

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Call upon the Portland City Council to address serious concerns regarding the proposed agreement between the City of Portland and the US Department of Justice

Herman M. Frankel, M.D.

As a Portland resident since 1965, I share the worry voiced by Portland Copwatch that although the proposed (10/26/12) US Department of Justice/City of Portland agreement that is designed to "change the way the Portland Police Bureau provides service to the community" would implement some welcome changes, it leaves some important issues unresolved. It guts the existing Community/Police Relations Committee (CPRC) of the Human Rights Commission, which is currently creating a program to educate officers on institutional racism, to create instead an oversight body specific to the Agreement and **devoid of any mission to deal with race issues. Further,** it creates the risk of "weak changes being locked in place" to the detriment of Portlanders.
http://www.portlandonline.com/auditor/index.cfm?c=50265&a=418205
www.**portland**online.com/shared/cfm/image.cfm?id=418083

Here is a summary of the "positives" and "concerns" noted in the detailed 10/31/12 analysis of US DOJ/City of Portland agreement prepared by Portland Copwatch:
http://www.portlandcopwatch.org/copwatch_analysis_doj_1012.html

Positives:

--calls for police to de-escalate their use of violence as the resistance from the subject(s) decreases (paragraph 67-c);

--subjects officers who are found in civil court to have violated someone's rights to an Internal Affairs (IA) investigation, presuming they are guilty of misconduct unless the evidence shows they are not (paragraph 132-iii);

--requires Supervisors to be trained to conduct annual performance reviews on officers (paragraph 85-b-ii); and

--bans officers from using offensive epithets (including "mentals"), a prohibition that extends to internal communication (paragraph 85-a-v).

Concerns:
--doesn't call for terminating officers for egregious rights violations (paragraph 136) and even suggests that some excessive force will not result in discipline (paragraph 67-d);

--does not order the City to change provisions of existing collective bargaining contracts which are inhibiting effective investigations and disciplinary action;

--guts the existing Community/Police Relations Committee (CPRC) of the Human Rights Commission, which is currently creating a program to educate officers on institutional racism, to create instead an oversight body specific to the Agreement and **devoid of any mission to deal with race issues** (paragraph 140);

--creates the new position of Compliance Officer/Community Liaison (COCL--paragraph 158), but does not give that office power before the federal court when recommending changes to the

Agreement (paragraph 162);

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--retains and expands loopholes for excessive Taser use while creating a few new restrictions (paragraph 68);

--isn't explicit enough about compelling the PPB to provide immediate medical treatment to suspects;

--prohibits officers with sustained complaints (about use of force or mistreatment of people with mental illnesses) from serving on the Crisis Intervention Teams (paragraph 100) or Training Division (paragraph 84), even though very few such complaints are ever sustained;

--is vague about how to compel officers to testify about deadly force incidents (paragraph 123) and whether the Independent Police Review Division (IPR) will be given power to do so (paragraph 127);

--endorses the new PPB policy sending Supervisors to the scene of uses of force but doesn't acknowledge those supervisors are mostly Sergeants in the same collective bargaining unit as the line officers;

--calls for automatic investigation of all use of force complaints unless the IPR says not to (paragraph 128), but doesn't say whether the complainant can appeal that decision or compel investigations for lower-level complaints;

--doesn't solve a problem raised in the DOJ's findings letter where the Citizen Review Committee (CRC) can request but not compel more investigation on a case, nor address what happens if the Police Review Board (PRB) is refused a similar request (paragraph 131);

--keeps the PRB meetings closed to the public and the person involved in the incident being reviewed for possible misconduct, further frustrating attempts to integrate and make transparent the City's oversight system;

--prohibits appeals to the CRC by people who survive police shootings or the survivors of a death in custody victim;

--creates optimistic but unrealistic timelines to finish misconduct investigations including appeals to CRC (paragraph 120);

--enshrines a controversial program that provides addiction treatment only to people who have been arrested multiple times and has disproportionately affected African Americans (paragraph 111); and

--jettisons all mentions of race relations that were in the findings letter, including recommendations to build trust such as tracking all citizen contacts (DOJ recommendation #9) and creating a policy explaining when officers may move from "mere conversation" to a stop.

Portland Copwatch concludes its analysis by stating that its members would not serve on the community board to oversee the Agreement because of its flaws. "There are too many people who have suffered too long to see yet another chance for real change be squandered by compromise," says PCW, repeating its worry that if these weak changes are locked in place by a court order lasting five years, the community will unfairly suffer.

As a Portland resident since 1965, I share this worry, and fervently call upon the members of my City Council to address thoughtfully the concerns presented in the Portland Copwatch analysis before moving forward with the proposed agreement.