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Thursday, January 22, 2013

To: Honorable District Judge Michael H. Simon

Re: **Considerations Regarding Proposed Elements of a Fairness Hearing Concerning Case Number 3:12-cv-02265-SI, USA vs City of Portland**

The means for securing public testimony, and for securing testimony the public might find germane, has been deficient in this case. In order to discern the will of The People, we must now seek to remedy these deficiencies. In order for The People to provide informed consent they must hear from all parties the proposed Agreement intends to influence. We propose the Court conducts two rounds of Fairness Hearings. First, the Parties must be able to demonstrate the proposed Agreement is actually a remedy to DoJ Findings and effectively addresses The People's petition to redress long-standing concerns. The Parties must also demonstrate they have not proposed remedies that are beyond their ability to obtain. Then should The People be heard, regarding the fairness of these proposed remedies.

No public testimony has been given, regarding the document now before the Court. The only opportunity for public input on an Agreement between the City and the US Department of Justice, Civil Rights Division, occurred on 8 November 2012. At that time, the City released a revised Agreement: none participating had an opportunity to read the amended, 77-page document. The City's Community Police Relations Committee was, as late as their December meeting, posting the outdated initial Agreement.

➤ The Court needs to make public, on-line & in printed format, the actual text under consideration.

No legislative testimony has been provided, regarding the document now before the Court. Violations in Constitutional protections, identified in Findings released by the DoJ on 12 Sep 2012, are also violations of the Oregon Constitution, Oregon law and even Portland Police policy, yet the Agreement only mandates changes by the City. DoJ Findings implicated police policy that is predicated on agreements the City has negotiated for ... with a body outside the Agreement's sphere of influence. Given that the City has a history of arguing that it cannot provide Constitutional protections, due to agreements they themselves have negotiated with the Portland Police Association, Fairness Hearings must show that this Agreement actually constitutes a remedy. Hearings must seek to disclose to The People how a myriad of institutions who allowed Constitutional violations to be perpetuated, now seek to agreeably engage in an effective remedy to DoJ Findings.

More than once did [public testimony at the City's 8 November hearing](#) make reference to the fact that, since parties allegedly representing The People's interest met in secret, the public has no way of knowing whether their concerns were advanced, negotiated away, or never addressed.

➤ The Parties should, in public hearing, match Findings to remedies in the Agreement. The Parties should describe what changes are necessary among bodies not under their authority. They should identify how state boards, the state legislature, the county District Attorney, unions, etc., must participate if an agreement is to be effective where existing state and federal law has not.

➤ Parties outside the Agreement, but expected to support its intent, should, in public hearing, describe such participation, and their organizational means of ensuring it. Parties should include,

but not be limited to Multnomah County District Attorney, Judicial Committees in the Oregon House and Senate, and unions representing Portland police officers.

- At least two weeks prior to a second round of Fairness Hearings, the City's Human Rights Commission and Citizen Review Committee, the Auditor's Police Review Board, and all other public bodies compelled to take action by this Agreement, should conduct open hearings – accessible to the public and scheduled to meet their needs – to explain to The People their positions on the effectiveness and or deficiencies of this Agreement, with regards to the protection of The People's civil liberties.

The public have been under artificial time constraints throughout the review process. While Seattle had six months to review DoJ Findings, Portland's citizens had mere weeks. Public turnout on 8 November was impressive by some standards, but review of the [City hearing](#) offers salient failures for the Court's consideration. Members of community organizations did not have sufficient preparation time to develop cogent positions, nor for informed members to be heard in their administrative boards or parent committees. Public testimony was limited to 120 seconds each. The City – complicit in this matter – did no outreach to solicit input. To this date, no city board or committee has convened to inform the public of the nuances in what can be considered the most important civil rights decisions to be made in Portland in a generation. The Court must now seek to remedy the City's unwillingness to hear from victims and their advocates. Advance notice should be sufficient so that churches can get announcements into bulletins, so that organizations can employ newsletters and then have time to draw up resolutions, based on monthly meeting cycles.

- The public must have, as a minimum, six weeks of advance notice of scheduled Fairness Hearings.
- Public testimony should be of sufficient duration so as to permit the detailed responses precluded by the Mayor's decision to limit it. We suggest a minimum of five minutes for individuals, and a means of ascertaining whether cogent testimony by organizations requires a longer period.

The Court should engage in outreach, to make known the value of public participation in Fairness Hearings.

- Thirty days prior to a scheduled hearing the Court should release notice to the public the goals of a Fairness Hearing, and notify the public of the means to participate. Media channels should include, but be not limited to:
 - El Hispanic News, KBOO Community Radio, Portland Community Media, Portland Indymedia, Street Roots, The Asian Reporter, The Portland Observer, and The Skanner.
- Thirty days prior to a scheduled hearing, the Court should extend invitations to community organizations well-suited to bring before the Court The People's considerations on how best to protect our civil rights. Justice will be served when we dip into a body of knowledge the city has historically ignored. Invitations to participate should be extended, at a minimum, to Portland chapters of the following:
 - Albina Ministerial Alliance for Justice and Police Reform, American Civil Liberty Union, Basic Rights Oregon, Cascadia Behavior Healthcare, Center for Intercultural Organizing, Disability Rights of Oregon, Ecumenical Ministries of Oregon, students from Jefferson High School and other secondary schools, League of Women Voters, National Association for the Advancement of Colored People, National Association for the Mentally Ill, National Lawyers Guild, Occupy Elder Caucus, Oregon Action, Partnership for Safety & Justice, Portland African American Leadership Forum, Portland Cop Watch, Portland Opportunities Industrialization Center, Portland Youth Build, Race Talks, Sisters of the Road, Student Associations at all college and university campuses city-wide, and the Urban League.
- The Court should contract with a community-based organization or consultancy to directly solicit public participation and make this opportunity known to those not currently represented by organizations or city apparatus. Specific attention should be given places where vulnerable populations, victims and their advocates are likely to gather and associate.

Landmark rulings at the outset of demands for Civil Rights protections have made the Courts into The People's most important ally for mandating changes to public policy. To date, the City and the DoJ have engaged primarily in behind-the-scenes negotiations. The sole open hearing held on this issue – on a document no longer under consideration – presented many hurdles to public participation. Believing it is ultimately The People's responsibility to advocate for their own Constitutional protections, the Court can conduct Fairness Hearings that reduce the hurdles to public participation by engaging in the following:

- Hearings must be held in proximity to the victims of unconstitutional patterns and practices. Consideration must be given that, in addition to downtown populations, recent migration patterns inform us that the Court should conduct hearings among populations most affected and likely without the means or time available to participate in the Hatfield Courthouse. We propose one meeting be held in North or Northeast Portland, and a second in outer East Portland.
- Public participation is likely to increase when attention is given to scheduling hearings in a time frame conducive to their needs. We propose one meeting be scheduled on a Saturday, from 10am to 2pm; another on a weekday evening, from 6pm to 9pm. Participants should not be required to be present from the hearing's outset, but be given opportunity to testify at any time after their arrival.
- Meetings must be accessible to the most vulnerable in our population. Considerations should be given to the following:
 - Meeting locations should be served by ample public transportation.
 - The Court should make no-cost child care services available.
 - Police presence and security measures are likely to inhibit participation by victims.
 - The Court should include in press releases and invitations that translation services will be available. Consideration should be given to ASL and Spanish, Russian and Somali languages, at a minimum.
- The means of testimony should be as broad as possible. Written testimony prior to the hearings should be digitized and included with all digital submissions (including video). Public testimony prior to the hearings should be made available for public review. The Court should recognize that video testimony at the City's 8 November hearing was popular and should consider facilities which accommodate such.

Thank you for your consideration of my concerns and this expression of a good-faith effort to bring police behavior into line with the U.S. Constitution. If I can be of further service, do not hesitate to ask for it.

Best regards,

Jo Ann A. Hardesty