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01/31/14

RE: [United States of America v. City of Portland, Case No. 3:12-cv-02265-SI](#)

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Please find attached **Hardesty Testimony Form.pdf**. We seek to notify the Court that we will continue our participation in this case by testifying orally on 18 Feb. We humbly request our group of consultants be considered an organization. Three will testify. I anticipate we'll use 30 minutes wisely.

We had difficulty filling the form out, so we here provide information regarding pg. 2

Previous participation

We have previously provided written comments or oral testimony to the City of Portland, City Council, or the U.S. Department of Justice (including the United States Attorney) on the matters.

8 Jun 2011 – Asked of US Atty Civil Rights Thomas Perez whether his investigation would cover “race-based civil rights violations.” His response was that he would, “follow the facts, wherever they led.”

From that point we had sustained written and oral conversations with DoJ investigators. Among them were Jonas Geissler & Michell Jones. My language is reflected in the Findings.

12 Sep 2012 - Invited to confer with Perez in the announcement of Findings. To my direct question, Perez declared that, given evidence in the time-frame investigators explored, he could not make a race-based case with the same likelihood of success that a case protecting civil rights of those perceived to be in mental health crisis offers.

1 Oct 2012 – Proposed the model of a Civilian Compliance & Reform Authority to Perez. (See [portland-ccra-20121001-draft.pdf](#), attached.). Sought a reform model of truly independent oversight and means to sustain ongoing civil rights protections as part of governance.

3 Oct 2012 – Conference call with US Atty & DoJ reps. Consult Hardesty recommendations for a public conference call adopted by US Attorney for Oregon's office.

31 Oct 2012 – Provided Portland City Council with written testimony on the initial version of the Agreement; testified in both hearings; including the passage of the current Agreement, which the public had not seen

Nov 2012 – Conference with US Attorney. Were told Perez had not authorized pursuit of racial, civil rights violations.

22 Jan 2013 – We provided the Court with input on the design of a Fairness Hearing. (If [fairness_hearings_input_hardesty.pdf](#) is not in your files, please request.)

Specific areas of concern regarding the fairness, adequacy, and reasonableness of the proposed settlement agreement

On pg. 38 of the [Findings](#), you will find the DoJ asserting, “Data provided to us by a local watch group indicated that PPB disproportionately stops African Americans.” We believe this reporting to be disingenuous. Attached, please find [PPB Stop Data.PDF](#). The 2011 data (presented in 2014) is that of the Portland Police Bureau, *provided* by a local organization. We believe you now hold in your hands probable cause that constitutional violations are occurring. We do not believe you can concur with DoJ Findings that declare such illegal practice beyond the scope of this investigation. As an officer of the Court we assume you have some responsibility to report this crime. For cross examination, we suggest the Portland Police Capt. Michael Marshman, in the Strategic Services Division.

The agreement on civil rights protections is inadequate, as it does not flow from the facts. The agreement is unreasonable as it contains Sec. 148, which provides data collection system to be in place no later than 31 Dec. 2013. The City of Portland has, in fact not made traffic and pedestrian stop data available to the public since 2011, when the investigation began. We do not believe you can, in good faith, receive a document with missed milestones ... particularly in light of the fact that the work has not begun.

In addition, Sec. 89 of the Agreement stipulates that “local CCOs will establish, by mid-2013, one or more drop-off center(s) ...” Despite the DoJ's parallel suit against the State of Oregon, (See [DoJ Interim Report on Oregon's Mental Health System](#), attached.), no drop-off centers have been established. In fact, with the City's inability to get PPB to engage with County services (Multnomah County Crisis Assessment and Treatment Center) specifically designed to reduce harm done to vulnerable populations by police, the victims actually have *fewer* facilities than when these investigations began. The Agreement must be rejected; parties must be ordered to create new fake dates, at the very least.

Sec. 145 describes an election process for COAB members. In a process absent of public involvement the parties have substantially changed the process. You are requested to either describe the actual process or to negotiate with victims the methodology they require to select representation. The behind-the-scenes changes already in play violate Sec. 187: “Any modification of this Agreement by the City of Portland must be approved by the City Council of the City by written ordinance.”

Of primary concern to Consult Hardesty is the Court's continued participation in this matter. We believe, for an Agreement to be fair, it should receive a ruling that the parties should provide the Court with annual reviews, to ensure fair and speedy progress toward compliance is being carried out.

We come seeking the Court's protection from local government's abuse of power. We believe that the COCL should have a direct line of report to the Court, regarding non-compliance. Sec. 163 & 164 need your attention: is the mere forwarding of a report sufficient? We join the League of Women Voters, ACLU & NLG in testifying that the Albina Ministerial Alliance Coalition for Justice and Police reform retain 'friend of the court status.'

We seek the Court's guidance, should this Agreement receive a rubber stamp of approval, we require – in your ruling – how the parties should interpret phrasing in Sec. 141: The COAB shall, “make recommendations to the Parties and the COCL on *additional actions*.”

Will you, in your ruling, assure the victims that this community board is not limited solely to engaging the flaws of this Agreement? An analysis by Consult Hardesty reveals many flaws in what Findings (pg. 27) describe as a 'self-defeating accountability system.' Please preserve our aspirational goals that the COAB will not be confined to tinkering with the vision of keeping it largely intact by this Agreement, negotiated behind closed doors, without public involvement.

We need hints in your ruling, guiding victims to the Court's understanding of 'substantial' non-compliance. Will there be metrics? Will they be measured in beatings, or deaths?

Based upon the boxes you checked above, please clearly describe the specific areas of your concern regarding the fairness, adequacy, and reasonableness of the proposed settlement agreement which you would like to bring to the Court's attention. If attaching additional pages, you are limited to 20 pages (single-sided):

Training. Chief's refusal to engage the community (including professional organizations) in development and review of Training obstructs the delivery of constitutional policing. Background checks, confidentiality agreements & police vetting prior to acceptance, lack of community outreach, all configure to keep the victims from finding redress in current conditions.

Use of Force Policy (General). Developed in a vacuum, absent of public deliberation. Victims did not participate: therefore we lack a matrix by which use of force can be assessed, reported & restore confidence. Development & implementation does not address civil rights violations made known on pg. 19. Sec. 69 in the Agreement.

Mental Health Services (General). Deadline has passed; no drop-in center, due by June 2013. Failure to address DoJ concerns in Sec. 89. Result of DoJ involvement at state & city level: decline in services on offer during the investigative period.

EVIDENCE: US Atty Letter of Finding, dated 2 Jan 2014, #DJ-168-61-30. (See **Oregon-MH-Cover-Letter-Interim-Report-Final-1-2-14-1 copy.pdf**, attached.)

Behavioral Health Unit and Advisory Committee. Collaborators refuse to grant victims redress. The BHU Advisory Committee remains firmly under perpetrator's authority; perpetrators refuse to engage in outreach among individuals & organizations not historically complicit in identified, unconstitutional patterns and practices. Background checks inhibit broad involvement and contribute to results that one serves without police authority approval. Confidentiality requirements prevent members from obtaining broad, restorative input and any publicly deliberative process.

BHU unit itself fails to adopt psych eval criteria as to who is fit to serve in this group. Auditor fails to provide any estimates as to how many calls require these kind of services. No benchmarks established, for analysis of effectiveness. There are no sanctions for perpetrators who fail to employ this team to reduce their illegal use of force. Lack of bureau cooperation with existing services. No accountability; when it fails or stops performing, no one will know.

EVIDENCE: [Officer involved in James Chasse case now part of mental health unit](#)

Bureau of Emergency Communication. Training to triage distress calls to appropriate care providers, keeping victims safe from police misconduct at the outset. (Agreement, Sec. 89 & 113-115.)

Employee Information System. The court needs to know DoJ investigators were misled about employee evaluations, which in fact were not being conducted by the perpetrators. (Agreement, Sec. 116-120) The entire evaluation process is flawed and does not meet any standard of employee management: Agreement should be sent back for a Collaborative Agreement on information collection, reporting, analysis and marriage of EIS to officer evaluations, and fitness to serve in delivery of care, and assignments most likely to lead to civil rights violations.

Cross examination witnesses: Chief Reese, Jonas Geissler

[] Conduct of IA Investigations. Is at the crux of systemic patterns of civil rights denial. At the heart of the ‘self-defeating accountability system’ (Findings pp. 10-25, Section V) lie police self-exonerations. Victims now require a system of checks and balances, to restore constitutional protections. We reiterate our contention that this can only be had by trained investigators, external to the perpetrators, with access to evidence and the authority to compel testimony. Failure of IA investigations have led to arbitration decisions that the City failed to make a case of misconduct.

[] CRC Appeals. Last list of action items posted is dated April, 2012. This volunteer group, meeting monthly, is overworked. Reduction to a 21-day turnaround in no way redresses victim’s needs. The court appreciates the value of judicial review. This body, if presented with new evidence is prohibited from pressing for re-investigation. Instead of being relegated to reviewing IA self-exoneration, this body needs to be replaced by a system designed to provide redress of grievances. Victims should be provided investigators, with power and authority to ascertain facts.

We are interviewing former CRC members to provide testimony on the ‘reasonable person’ vs. ‘a preponderance of the evidence.’ Early indications are that this judicial standard impairs the delivery of justice.

[] Discipline. A solid thread in long-held patterns of police misconduct is an almost complete lack of accountability. For a restoration of civil rights protections, discipline for misconduct must be as transparent as the lapses which result in death, beatings and other condemned conduct. (Findings, Sec. 5) Police identify among themselves ‘Million Dollar Cops,’ men and women whose conduct has resulted in astronomical dollar amounts in judgments, awards & settlement totals. Once standards are clearly identified, officer conduct that deviates from it must be reported. We live in a world where an officer disciplined for bringing shame on the bureau (for nailing Nazi plaques to trees in a park) is promoted to command staff training; where an officer repeatedly disciplined for improper sexual conduct is then tasked with supervising sex assault investigators in the Detective Division. An officer held responsible for the stomping death of unarmed James Chasse is hired out of the Multnomah Sheriff’s Office to be the first assigned to the BHU.

[] Service Coordination Team. Not germane to reforming civil rights violations; does not draw logically from the Findings. As a civil rights matter, trading a felony plea bargain for access to chemical dependency and other social services is problematic and not at all indicative of a restoration of those rights. Perpetrators should remove this role from police and be required to engage existent community organizations with proven success in delivery of such services. (Agreement, Sec. 112) An approach nearer best practices, among those we’ve consulted, is obviously a peer counseling model.

[] Community Oversight Advisory Board. As the closest thing in the Agreement likely to lead to a restoration of The People’s civil rights protections, the body will fail without a ruling from the court, that they are expected to engage in the work of making ‘other changes.’ (Agreement, Sec. 140-157)

The People now rely on the Court, for the power to refute false reform and to overcome unwillingness to restore our rights (painted as delay). We expect a ruling that sets an expectation that the matter will return annually to the Court for review. After holding public hearings obtaining public input, the COAB; parties to the Agreement; the COCL; as well as public

testimony should inform the Court of any failure for this Agreement to measurably contribute to a restoration of The People's civil rights.

We expect of the court a ruling on what rises to the level of 'substantial' non-compliance. Will the killing of another unarmed man, during a welfare check, automatically constitute a failure of the collaborators' Agreement? How long, and to what degree shall constitutional protections remain in abeyance before perpetrators are deemed non-compliant with a restoration of The People's rights?

Best regards,

Roger David & Jo Ann Hardesty
Minority Partner Principle Partner