

**Jo Ann A. Hardesty, Principle Partner**

**Consult Hardesty** 840 SE 166th Place, Portland, OR 97233 - (503) 957-4364  
[j\\_oannhardesty@gmail.com](mailto:j_oannhardesty@gmail.com) - [www.consulthardesty.com](http://www.consulthardesty.com)



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Testimony, Fairness Hearing – USA v City of Portland Case No. 3:12-cv-02265-SI

The Honorable Michael Simon,

Consult Hardesty respectfully asks you to reject the settlement agreement and direct the parties to prepare for trial. A verdict that Portland Police Officers are guilty of using excessive force against the most vulnerable people in our community is the only fair and reasonable approach to solving the problems identified by the DOJ.

To that end, Consult Hardesty submitted to the DOJ and others the included outline of an independent oversight process called the **Civilian Compliance Reform Authority (CCRA)**. (EVIDENCE jah1) The CCRA represents a bifurcated system. It is designed to build capacity in the community to engage in police oversight. In addition, the CCRA envisions a process that will engage the broader community through trainings, workshops and convening, thereby creating a motivated and constitutionally aware community who will become the ultimate protectors of our civil rights.

The CCRA continues to be presented as a draft document. We desire to incorporate the best and brightest minds to provide us their best practices and experience for consideration not just our own conclusions, drawn from decades of participation in social justice.

In *Citizen Oversight Committees in Law Enforcement*, a study released by California State University Fullerton Center for Public Policy, they note “Oversight bodies with no statutory mandate have little leverage in their negotiations with police agencies and can become symbolic groups rather than a force for change and reforms”. (EVIDENCE jah2 Citizen Oversight Committees in Law Enforcement)

“To be effective, citizen oversight committees must be skillful at getting policing issues on the city’s agenda so that officials will address rather than ignore, suppress or minimize problems in the police agencies.”

The CCRA would build an oversight system that incorporates the aspirations of persons who have experienced police violence. We seek to include of all the expertise on offer, including academia, professional associations, community-led advocacy groups, funders, retired criminal justice professionals, and grassroots community members, to serve and advise in its creation. The holistic approach of the CCRA allows for the creation of an oversight process that ultimately will receive voter approval and be codified in the Portland City Charter.

A truly independent oversight process must be:

- Independent from the police & City Hall
- Publicly accessible
- Sensitive and respectful to complainants who've already suffered harm

In addition it would:

- Provide know-your-rights training in middle schools, high schools, alternative schools and on all college campuses within the city of Portland
- Assist community members filling out complaint forms, identifying the officer who is the subject of the complaint, and gathering any other information that will assist investigators
- Provide intimate knowledge of the U.S. Constitution and the protections it provides
- Identify & advocate for legislative action needed in state, county and city governance
- Not entertain apologists for unconstitutional practices of Portland Police, but rather work to identify those officers, and hold them accountable
- Research best practices in police departments around the globe & advocate for policy changes that move accountability forward. (EVIDENCE jah3 Monitoring the Performance of Police Oversight Agencies)

A truly independent police review process, as proposed under the CCRA, would evaluate civil payouts on court awards and jury verdicts in police misconduct cases. It would ensure that the Police Commissioner, Police Chief, City Council and others with responsibilities identify policy, training, supervision or other deficits, in order to prevent a repeat of the behavior that led to the verdict or award. *What Police Learn From Lawsuits* (EVIDENCE jah4) states many police forces are using information gleaned from civil suits to improve performance of officers.

The beauty of this system is that it would make room for all who wanted to participate through research groups, work groups and limited-term action groups.

Imagine a Police Oversight Process, owned by the people of the City of Portland, rather than the police. Each involved person would have a stake in creating the system. Each person (police & civilian) would be treated fairly. Those harmed would be provided services, regardless of their status. It is my hope that, by directing parties to trial, the community will be left to work for real reform.

### **Second portion of testimony:**

We were optimistic when the DOJ agreed to conduct this investigation; however I will say this is not my parents' DOJ. As a kid I remember when the DOJ Civil Rights division showed up, they were going to stop civil rights violations in their tracks. And prosecute the violators to the fullest extent of the law.

Sadly, the DOJ Civil Rights Division of today is not that champion. (EVIDENCE jah5 U.S. Department of Justice Community Relations Service, Police Use of Force Addressing Community Racial Tension) In September 2003 the DOJ released a report laying out sanctions for police departments that use excessive force against community members. It included threats of loss of Federal financing. A decade ago, the DoJ provided resources to community organizations, so they could hold police accountable. Yet when they came to Portland, the DOJ figured out how to bloat PPB's budget, adding duties they are not qualified to perform.

The letter of findings that the DOJ released on 9/12/12 shows the institutional nature of the unconstitutional practices embraced by Portland Police (pgs 10-18). I knew after 25-years of working on police reform that we had severe problems within Portland Police Bureau. I had no idea how bad it was until I read the findings.

Unfortunately, the settlement agreement doesn't go far enough to create an accountability system that is fair, transparent, and applied equally ... regardless of the race, sex, social, economic & housing status of the individuals involved.

The settlement agreement before this court is inadequate. It would continue to deny justice to most victims of police violence, especially people of color in Portland, and provide political cover for the *next five years* to the institutions and elected officials who have legislative responsibilities to enforce the U.S. Constitution.

Those responsible have allowed the over-policing of African American and Latino communities, houseless families and anyone else assumed to have little power ... including people with mental health concerns.

The settlement agreement rewards the failure of our current, misnamed oversight process. It rewards IPRB by giving it more staff. Without setting standards or performance targets, they'll likely continue to reject 77% of the complaints that come through their door (confirmed by the IPR annual report of 2012). Clearly this system is not set up to provide justice, but to pretend we are addressing abuse community members suffer at the hands of Portland Police.

The settlement agreement (pgs 43-50, sections 120 thru 140) reinforces, and locks in for 5-years, a system the DOJ describes as a 'self-defeating accountability system.' I am amazed at the lack of outside-the-box thinking that went into this rushed agreement, and recommend the court reject it as inadequate to hold police accountable.

In order to find this agreement fair you would have to ignore the egregious behavior of some Portland police officers, and an IPR designed to frustrate community members. The mis-titled Independent Police Review Division is not independent. They can't even ask an officer under investigation a direct question. They do not conduct investigations ... although they have the

authority to do so. It would be more honest to call the IPR the 'Police IAD Review Division.'

### **Bad Faith Dealings:**

Each summer Portland Police roll out a new program that is supposed to keep us safe. In 2012 it was Clean Sweep, sold as a program to get weapons out of the hands of kids after several shootings had taken place. The results of this effort: 300 people arrested. Of those arrested, 163 were 30 years or older, with 102 being over 50 years old. Only 38 people under 18 were arrested. Portland Police success in getting guns off the street was negligible: 125 arrests were alcohol related, 28 drug-related. Only .5% of those arrested had a weapon of any sort. Portland police lowered the quality of life for 300 people in an historically black neighborhood. They removed no known guns from our community. Portland Police calls this success. (EVIDENCE jah 9 PPB charts)

Since the DOJ has been providing oversight to Portland Police, they have rolled out two new initiatives that are sure to produce unconstitutional behavior by Portland Police. The first, is a new community-policing Program called 'stop and pat' and modeled after NY's stop and frisk. Portland police are required to spend 15 minutes of each hour engaging in community policing. (EVIDENCE: jh- *Portland Tribune* Article dated 12/19/13, back cover of evidence packet: Pat downs likely to increase as cops take to the street) News reports have Portland police saying they want to build relationships in community - by having dialog - but they don't feel safe unless they do a pat down first. This Community Policing strategy focuses on young men of color, especially African American and Latino youth. Although Multnomah County has a large number of concealed weapons permit holders, its unlikely police are patting down white businessmen downtown. This policy clearly targets a specific subsection of our community (the people the AMA Coalition originally invited the DOJ to come and protect).

The second program rolled out last month by Chief Reese is the 'Prosperity Portland' initiative, which over-polices homeless community members. It is to force them to move out of sight of the downtown business interests. This must be a violation of the U.S. Constitution; yet the DOJ, Police Commissioner and City Council have all been deathly silent on this police policy.

We also believe that the DOJ was deficient in the development of this settlement agreement due to their premise that Portland Police are the right people to interact with people with mental illness. Why not firefighters? Why not EMTs or mental health professionals? Any or all of these options make more sense than assuming PPB will change its culture to an officer-friendly type when someone is in distress. This failure by the DOJ to redesign our emergency response system and allow health professionals to diagnose the needs and dispatch the right agencies for this job is disappointing at best and incompetence at it's worst. It is unfair to a community who expects help.

(EVIDENCE jah6 *Oregonian* article dated 4/30/13) Portland Police already had options to get people to mental health professionals, but refused to use that system. It is unreasonable that the

DOJ thinks having PPB build their own BHU is the solution to this unwillingness to use available resources. In addition, we have uncovered some alarming information about how the BHU operates now (Evidence jah7 notes from BHU October 2013 newsletter) which shows how police are using this new unit in ways that are troubling and I believe violate the public's right to privacy.

The first hire for Portland Police Behavioral Health Unit was Brett Burton, one of the law enforcement officers who stomped James Chasse to death. This shows the disconnect between psych evaluation services and officers' suitability for an assignment.

### **Training Advisory Committee/ABHU Advisory Committee/CPRC**

This settlement agreement (pgs 28-31 sections 78-84) solidifies an oversight process that requires people to go through a background check, and sign a confidentiality agreement in order to volunteer for advisory boards. Community members most knowledgeable about police training deficiencies have generally decided not to apply to be on the committee. We pressured then-Mayor Adams to change the appointment process, to open it to people who may be critical of current operations, but are willing to work with Portland Police to correct it. This change never took place. The settlement agreement before you is silent on opening such opportunity.

The Community Police Relations Committee is a sham. It proposed to build relations between the community and the police, but police get to determine who serves on the committee. People with detailed knowledge of police abuse are kept off of this committee. This body would be better named the 'Police Relations Committee,' whose goal is to justify inappropriate police action rather than introduce any meaningful policy or reform any practice.

### **Other bad faith actions that prohibits accountability include but are not limited to:**

- Retaliation against family members who have suffered police violence.
- Chief Reese's letter to the CRC, outlining a criminal history for a community member who was racially profiled and treated disrespectfully, then showing up at a CRC meeting in full-dress uniform to defend his officer.
- EIS system took 10-years to build, and is now supposed to improve the job performance of Portland Police Officers. City managers concede EIS will not be used for discipline.
- After a decade-long fight to get Portland police to provide annual performance evaluations to its employees, it was finally added to the 2014 PPA contract. Unfortunately it also isn't tied to discipline: the lesson the community has learned from this effort is - if a provision is not mandated by a court, it will not happen within Portland Police Bureau unless they feel like it.

### **Service Coordination Teams:**

The SCT was a pet project of the last mayor. It was added to the agreement with no public input or participation. Our understanding of the SCT is that it creates a database of people with frequent interactions with Portland Police and then police pressure community members to plead guilty to crimes so they become eligible for social service supports. This is unfair on so many levels, but it certainly should not have been moved into the BHU without the public weighing in. Will the SCT began offering people with mental health issues these same plea deals? We also don't know how you get your name off this list after the police have targeted you. Moving this pet project into the settlement agreement eliminates the public's ability to question the merits and outcomes of this program. This is not fair to a community desperate for social services.

**In closing, Judge Simon,**

Consult Hardesty appreciates the opportunity to speak here today and want you to know that we have reached out across the country for help in reforming our local police. The response has been overwhelmingly positive as you will see from (EVIDENCE Jah9 list of professionals contacted) with whom we have connected. Diverse professionals are willing and able to help Portland get this right.

I lost a dear friend in October. His name is Fred Bryant. I met him on the worst week of his life. It was the week his son was killed by Portland Police ... less than 2 minutes into a traffic stop. My friend Fred tried to use the self-defeating accountability systems but they failed him. He died in Oct 2013, after suffering a stroke. He spent his last moments on this earth seeking justice for his son. He is in no way the only one who has suffered from police self-exoneration. I submit, your honor, I am here to honor the memory of Fred Bryant, his son Keaton Otis and all community members who have been killed or suffered police violence. The Constitution tells us that this agreement isn't fair, isn't reasonable and isn't adequate.

(EVIDENCE jah 10 *Oregonian* article 3/17/11 Woman feared calling Portland Police)  
Community members now think twice when they need to call 911. No one should have to fear he, she or their loved ones will be killed because they called 911 for assistance. (EVIDENCE jah11 A community & police response to racial profiling) Listening Sessions prove I've been able to bring community and police together in an effective and productive manner to address racial profiling. Through the CCRA we expect to re-convene the community to tackle broader constitutional issues.

We intend to make the work replicable. Our chances of success are higher if you decline the agreement, so that we can begin the work without all the DoJ supports to our current system.

Thank you,