



Hon. Judge Michael Simon  
US District Court (District of Oregon)  
1000 SW Third Av  
Portland, OR 97204

In the matter of United States of America v. City of Portland  
Case Number: 3:12-cv-02265-SI

## **Testimony of Portland Copwatch on US DOJ/City of Portland Settlement for the Status Conference to be held August 24, 2021**

August 23, 2021

Judge Simon

Once again Portland Copwatch offers its comments on the status of the Settlement Agreement between the US Department of Justice and the City of Portland. These comments are on behalf of our organization, not the Albina Ministerial Alliance Coalition for Justice and Police Reform, despite my membership on the steering committee of that group. Most of these comments reflect information we sent the Court on August 10 analyzing the Compliance Officer's Q1 2021 Report.

While we recognize the DOJ is the ultimate arbiter of whether the City has met its obligations under this Agreement, we urge your Honor to recognize what PCW has said all along: the City is not as interested in meeting the spirit of the Agreement as it is merely checking the boxes to try to get out from under it. A prime example is that the City stopped gathering the data needed for the COCL and DOJ to assess compliance because they apparently thought their one full year of meeting the metrics had been achieved. Those two entities charged with assessing the City's progress have told the community explicitly that they are not looking at whether or not the police have stopped killing people in mental health crisis (which has actually gotten worse), but only that systems are in place to help the Bureau be a self-improving organization. But if those systems are only functional because the DOJ is watching, this nine-year long experiment has been a waste of everyone's time.

The Court has probably seen how the City tried to shift the blame for the 6000 plus uses of force at least year's social justice protests onto the federal agents who arrived and also used violence against mostly peaceful demonstrators. The City is not willing to take responsibility. The COCL described how the City Attorney addressed a judge's order about the difference between passive resistance and active aggression by protestors— seemingly dismissive of the judge, rather than taking to heart the underlying message of how to meet constitutional standards.

The previous report by the COCL found that about eight paragraphs were out of compliance. The lack of follow up to last year's protest violence led them to label eight more paragraphs in partial compliance, and then they added the lack of staff support for the Portland Committee on Community Engaged Policing to that list. The failure rate has doubled.\*-1 Clearly things are either not getting better or going in the wrong direction.

Now the City has a chance to remedy these issues based on the nine points outlined by the DOJ. We are aware of your Honor's support for the use of Body Worn Cameras, first on that list. We want to go on record with the policies we outlined in 2015 to ensure those cameras are used for the reason promised— police accountability. We have sent our 15-point proposal to the Court.\*-2 We particularly want to call attention to our demand that officers not be allowed to review footage before writing their reports. Without this provision, there is no adherence to the principles of *Graham v. Connor*, where officers are supposed to decide whether to use force based on what they know at the time, not 20/20 hindsight. We believe that if the Portland Police Association wins the right to review the footage prior to writing reports during their now-secret contract negotiations, the City should not get the cameras.

We also remind the Court of our concerns about the cameras being used as surveillance tools, in violation of ORS 181A.250, the statute that was cited when a court ordered the City to stop livestreaming protest actions. We have also challenged the DOJ's assertion that body cams will pay for themselves, since they are estimated to cost \$1.2 million a year, and currently the City pays out an average of \$675,000 a year for police related lawsuits.\*-3 This is not to mention that most of those incidents would likely occur regardless of whether officers wore body cameras or not.

If body cameras are really about police accountability, they should be used mostly or solely for accountability purposes and not to prosecute community members. Far too many people already end up incarcerated due to the biases of the system, we don't need to hand the Portland Police a tool to make matters worse.

We previously cited Bureau's Annual Reports as a bellwether for how well the PPB is meeting the spirit of the Agreement. There was some improvement this year—the Report was drafted by the end of June and published in August. However, while there was an announcement sent out about the Precinct presentations, it was buried in an August 4 email labeled as a “reminder” about PCCEP meetings. A week prior, the original email said nothing about the Annual Report. We only realized the hearings were happening when the Council agenda was published on August 13— four days before the first meeting and five days before the Council hearing. Only one Precinct meeting was completed before the Council hearing. How can the Bureau let Council know what the community said if those meetings have not happened yet? This was also a problem last year. Finally on this topic, the City Council, under Mayor Wheeler's leadership, has stopped taking public input on Reports, even though City Code allows them to do so at the discretion of the presiding officer.\*-4 We urge the Court to ask the City if part of the problem of community trust in police is lack of transparency, why does the City continue to refuse to hear from the public?

In our analysis of the COCL Report we also noted that they have given the Bureau a passing grade for delivering training, even though the Compliance Officer and DOJ said that training on Crowd Control had to be done during Q1. At this point it is not even clear that training will be delivered in this, Quarter 3 of 2021. The COCL's past rating of full compliance was based in part on the City delivering training which was delayed due to COVID.

Another frustration is the way the City posts information about officer accountability. In the past, the “Independent” Police Review would put out an Annual Report detailing complaints from the previous calendar year. Now, they use an online “dashboard” which is constantly updated. Between the time we wrote our analysis of IPR's Annual Report in June\*-5 and today's hearing, IPR data now show that one officer was found out of policy for Use of Force in 2020, a number that had previously been zero. In a year with over 6000 uses of force, with at least one leading to the indictment of an officer, the fact that only one violation of policy was found is astounding. At the North Precinct presentation, Chief Lovell said he thought half a dozen officers had been found out of policy. If that is true, those data should be reflected in either the 2020 or 2021 IPR statistics, but so far there is only one Sustained Force allegation.\*-6

With regard to the incoming new oversight system voted into the City Charter in November, we are glad that the COCL and DOJ are asking the City to come up with a viable transition plan. We have already seen the oversight system switch over once before in 2001 and a lot of institutional knowledge was lost. We are hoping that one thing that comes out of the DOJ's request as part of their nine point plan on this topic is that the Agreement will be modified to make it clear that (a) the oversight body can investigate and hear appeals on deadly force cases, (b) the civilians reviewing cases do not have to defer to the police's findings, and (c) the new system does not have to conform to exactly what is described in the Agreement so long as it performs the same functions with the same or greater authority. We have heard verbal promises that a stronger system doesn't violate the Agreement, but would like to see it in writing.

The COCL has begun questioning the Bureau's stop data, which continue to show a disproportionate number of Black drivers and pedestrians are stopped and searched by police. About 20% of those stopped in cars or on foot by police are African American in a city that is 6% Black. The same scrutiny needs to be applied to the Use of Force data, which have shown that 25-30% of people subjected to force are Black. We note here that there are no demographic data for those subjected to Force at the protests last year, but given that they were about the murder of George Floyd, it's likely they were also disproportionately African American. The data on those being prosecuted by the District Attorney for actions at the protests show a similar disparity to Portland's stop data.\*-7

Also, in terms of transparency, it is alarming that the Training Division denied the Compliance Officer the right to view online trainings, despite the Agreement giving them full access to whatever they need to assess compliance. This brings to mind the COCL's comment that technology won't fix the problems with holding officers accountable, but it will take institutional will.

The COCL and DOJ also call out the Police Review Board, the body that holds hearings out of the public eye with only one or two community members on Boards of 5-7 people. They noted that cases were inadequately investigated or resulted in findings that were inconsistent with Bureau policy. PCW has long advocated for an overhaul of the PRB and hope that the new oversight system will fix these longstanding issues of transparency.

Paragraphs 101 and 110 consist of the criteria for the Enhanced Crisis Intervention Team and the Behavioral Health Response Team, and state that officers should not "have been subject to disciplinary action based upon use of force or mistreatment of people with mental illness." Copwatch thought this meant that improper force OR mistreating people with mental illness would disqualify officers from these specialty teams. When we asked the COCL whether officers had been flagged, since nearly every cop in Portland was involved in the violent response to protests last year, they indicated that "of people with mental illness" modifies "use of force." This makes no sense either from a policy or a grammatical standpoint ("use of force of people with mental illness"?). This implies that unless the officers thought protestors were living with a mental illness, force complaints would NOT be reported to the Behavioral Health Unit (BHU).

Here are some other issues that show the Bureau is not making progress on the Agreement:

—The "force to custody" ratio, which used to always be at about 3%, is now up to 6.2%.

—Officers turned off their cameras during online trainings so it was not clear whether they were actually paying attention.

—At least one Supervisor did not report an officer's Use of Force for investigation by IPR because they felt force had not been used.

—Several complaints that involved possible officer misconduct were handed off as "referrals," including a question of officer courtesy, an officer rudely telling someone they could not record them, and use of profanity made worse by not providing a business card.

—Even though the Agreement gives the authority for the Citizen Review Committee to request and receive follow up investigations within 10 days, a case they sent back in October was promised to be updated to them in August. However, the CRC chair did not to relay the information provided by IPR, so now the public will hear the outcome 11 months later.

—The COCL has taken the position that because the City is not the primary entity in charge of mental health care, they can only do so much to fulfill the obligations of Section Five. However, the COCL also keeps saying they are not qualified to assess the status of paragraph 90, which calls for care agencies to have committees to address the links between police and the mental health system. They also continue to say that the Unity Center qualifies as the walk-in/drop-off center called for in paragraph 89, even though it really doesn't have a viable walk-in component.

The Court should know that the BHU Advisory Committee finally held two public outreach meetings, in March and June. However, neither forum was used for input into policy issues, and most of the comments at the first meeting were people wondering why the regular Committee meetings are not open to the public.

The COCL reports that in March, the Mayor approved the PCCEP's recommendation for the City to send a letter of remorse to families of those killed by police. We hope that the families of Robert Delgado, killed in April, and Michael Townsend, killed in June, received such letters. Both men were in mental health crisis, keeping the statistic consistent that more officer deadly force incidents have involved people in crisis since the DOJ Agreement began than in the years prior.

In conclusion, we are deeply concerned that after a year of uprisings for racial justice and police accountability, the Police Bureau seems not to understand that they as an institution are part of the problem. They have made statements in public about the horror they felt watching a Minneapolis officer kill George Floyd by slow motion asphyxiation. But they don't acknowledge the local incidents which outraged the community such as the beating death of James Chasse, or the shootings of Kendra James, Keaton Otis, Aaron Campbell, Quanice Hayes, Terrell Johnson, or many others. The truth is that police taking the lives of people in the community should shock the conscience of us all each time it happens. The City seems to be waiting for the DOJ to go away so they can go back to business as usual. That is not how the Portland Police will build trust in the community, nor will it lead to holding officers accountable. We hope the judge will hold all the parties to this Agreement to the spirit of the promised changes.

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\*1- See our scorecard of compliance at <http://www.portlandcopwatch.org/sampleDOJscorecard0721.pdf>

\*2- and they can be found at <http://www.portlandcopwatch.org/bodycams.html>

\*3-<http://portlandcopwatch.org/top25settlements21.html>

\*4-City Code Section 3.02.040 (G) (5) at <https://www.portland.gov/code/3/02/040>

\*5- see PCW's analysis of the IPR annual report at: [http://www.portlandcopwatch.org/ipr\\_2020\\_analysis.html](http://www.portlandcopwatch.org/ipr_2020_analysis.html)

\*6- Screen captures of IPR dashboard (taken 8/19/21):  
[http://www.portlandcopwatch.org/ipr\\_sustained\\_force\\_20-21.jpg](http://www.portlandcopwatch.org/ipr_sustained_force_20-21.jpg)

\*7-<https://www.mcda.us/index.php/protest-cases> showing 16% of those charged are African American