



**Testimony of Becky Straus  
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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](http://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,<sup>1</sup> but point out that the COCL lacks any authority to prompt judicial enforcement to correct non-compliance.<sup>2</sup> 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<sup>3</sup>

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.<sup>4</sup> 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,<sup>5</sup> 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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<sup>1</sup> Section X(b)

<sup>2</sup> 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.”

<sup>3</sup> 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](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.

<sup>4</sup> Section III, throughout

<sup>5</sup> 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<sup>6</sup> 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”<sup>7</sup> 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,”<sup>8</sup> 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,<sup>9</sup> Citizen Review Committee-member (“CRC”) participation in Police Review Board (“PRB”) procedures,<sup>10</sup> additional members on the CRC,<sup>11</sup> and an enhanced website to improve communication and transparency for a complainant and other members of the public tracking misconduct cases,<sup>12</sup> 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<sup>13</sup> 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.<sup>14</sup>

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<sup>6</sup> Paragraph 68(a)

<sup>7</sup> “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”

<sup>8</sup> September 12, 2012 DOJ Findings re Investigation of PPB, Page 27

<sup>9</sup> 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).

<sup>10</sup> Paragraph 130(a)

<sup>11</sup> Paragraph 133

<sup>12</sup> Paragraph 137

<sup>13</sup> 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.”

<sup>14</sup> “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,<sup>15</sup> 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.”<sup>16</sup>

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”)<sup>17</sup> 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.”<sup>18</sup> 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

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<sup>15</sup> Paragraph 126

<sup>16</sup> September 12, 2012 DOJ Findings re Investigation of PPB, Page 38

<sup>17</sup> Paragraph 141(a)(ii)

<sup>18</sup> <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.