

10/12 Draft Report

**Endorsed by COAB Voting Members
Add Names of Those Who Want to Be Listed**

**For Presentation to the Honorable District Judge Michael H. Simon
in *United States of America v. City of Portland*,
Case No. 3:12-cv-02265-SI**

on October 25, 2016

Good afternoon Your Honor. My name is add name of presenter. I am one of the 8 remaining voting members on the Community Oversight Advisory Board.

At one of its public meetings last October, a quorum of the full COAB approved the Annual Status Report that was presented to you. However, since the City and the Department of Justice have placed the COAB in recess, this year we have been denied the opportunity to meet and formally approve a report. Although the report we provide today is not an official COAB report, it has been carefully prepared and is endorsed by insert correct number of the remaining 8 COAB voting members. We note that the police advisors to the COAB chose not to participate in the preparation of this report.

Our report will focus on the activities of the COAB, the fate which has befallen us, and our recommendations as to what we believe are necessary

modifications to the Settlement Agreement and how the COAB operates if it has any chance of being successful.

First and foremost, the remaining COAB members remain committed to the reform of the Portland Police Bureau and the elimination of what the DOJ found in 2012 to be the PPB's pattern or practice of using excessive force against those who have or are perceived to have mental illness. Police reform is what brought the COAB together and it is what keeps the remaining members together, especially with the significant obstacles to our success which we have faced during the 1st year and a half of our existence.

A. What the COAB has been doing and what it has tried to accomplish.

Fulfillment of the COAB's extensive duties under the Settlement Agreement has proven to be a daunting task given the very broad areas for reform of the PPB which are called for in the Agreement.

Our duties are to:

- 1. Independently assess implementation of the Agreement;**
- 2. Make recommendations to the DOJ, the City and the COCL;**
- 3. Advise the Chief and the Police Commissioner on strategies to improve community relations;**
- 4. Provide the community with information on the Agreement and its implementation;**

5. Contribute to the development and implementation of a PPB Community Engagement and Outreach Plan; and

6. Receive public comments and concerns.

The reform called for in the Agreement include the very broad areas of:

1. Use of force;

2. Training;

3. Community-Based Mental Health Services;

4. Crisis Intervention;

5. Employee Information System; and

6. Officer Accountability.

To fulfill our duties, we started out having one 3-hour full COAB public meeting a month. By Fall of 2015, we added another 3-hour monthly meeting because of all we were trying to accomplish. Our meetings in the last year have focused on:

1. Informational presentations by the PPB, the COCL, City officials and the community on topics related to the areas for reform called for in the Agreement;

2. The receipt of public comment and concerns; and

3. Deliberation and votes on recommendations for police reform in Portland.

We started out with three subcommittees and an Executive Committee which also meet publicly, typically once but sometimes twice a month for 1 1/2 - 2 hours. Two areas calling for reform under the Settlement Agreement are the Employee Information System and Officer Accountability. Since they were not getting adequate attention, by 2016 we formed the Accountability Subcommittee.

The subcommittees have been the primary “think tanks” for the full COAB. They carefully examine PPB policies, request information from the PPB as needed, research and examine best police practices in other cities, such as Seattle and New Orleans where the DOJ has sued, review previous recommendations which the City’s own outside consultants have given the City, receive public input, and, finally, develop and approve written recommendations for the full COAB to consider. With a few minor exceptions, the subcommittees’ recommendations have been approved by the full COAB.

The full COAB has approved 46 recommendations addressing police reform in Portland. Many of the recommendations are complex, with multiple subparts, and almost all are based upon best police practices which we have found to exist in other cities, including Seattle and New Orleans, or upon previous recommendations the City received from its own outside consultants but did not implement. A full text of those recommendations can be found in the online library at www.cocl-coab.org/library/library-categories/coab-recom-

mendations. An overview of those recommendations is attached to this report and also is summarized in the written version of the report I am giving.

Date of Full COAB Approval	Recommendations (typically with several subparts)	Response, if any, by DOJ and/or City
6/11/2015	4 recommendations related to PPB Directive 850.20, Police Response to Mental Health Crisis	7/1/2015 - DOJ letter to City explaining role the COAB's recommendations played in provisional approval of PPB's promulgated directive - attached
8/16/2015	6 recommendations related to PPB Directive 1010.10, Post Deadly Force Procedures, including a recommendation to eliminate the 48-hour rule	None, although the apparently the City has renegotiated the contracts with the two police unions and the 48-hour rule is being eliminated
9/10/2015	6 recommendations related to PPB Directive 1500.00, Training	None
10/8/2015	9 recommendations related to PPB Directive 344.05, Bias-Based Policing/Racial Profiling Prohibited	None
12/10/2015	4 recommendations with many subparts related to PPB Directive 1010.00, Use of Force	None
1/28/2016	6 recommendations with many subparts related to PPB Directive 1010.00, Use of Force; 1 of those 6 recommendations also related to PPB Directive 1010.10, Post Deadly Force Procedures	None

Date of Full COAB Approval	Recommendations (typically with several subparts)	Response, if any, by DOJ and/or City
1/28/2016	1 recommendation related to PPB Directive 1030.00, Baton Use	None
2/11/2016	1 recommendation related to Directive 1050.00, Less Lethal Weapons and Munitions	None
2/11/2016	1 recommendation related to PPB Directive 1051.00, Electronic Control Weapon System	None
3/10/2016	1 recommendation related to PPB Directive 1090.00, Special Weapon Use	None
3/10/2016	1 recommendation related to PPB Directive 630.15, Foot Pursuits	None
3/10/2016	1 recommendation related to PPB Directive 870.20, Custody and Transportation of Subjects	None
3/24/2016	1 recommendation related to PPB Directive 315.30, Satisfactory Performance	None
3/24/2016	1 recommendation related to PPB Directive 1010.00, Use of Force, to minimize incidents of bystander endangerment	None
3/24/2016	1 recommendation related to PPB Directive 1010.00, Use of Force, and PPB training principles to eliminate the "21-foot rule"	None
3/24/2016	1 recommendation related to PPB Directive 630.50, Emergency Medical Aid	None

Date of Full COAB Approval	Recommendations (typically with several subparts)	Response, if any, by DOJ and/or City
3/24/2016	1 recommendation related to PPB Directive 870.20, Custody and Transportation of Subjects	None

Of those 46 recommendations:

4 address the way in which the police should respond to those in a mental health crisis;

6 address training;

7 address police accountability issues, including elimination of the 48-hour rule;

17 address use of force, including implementation of a new stand alone, comprehensive policy requiring the use of de-escalation techniques to avoid or reduce the use of force; and

9 address bias-free policing, including implementation of a new bias-free policing policy and specific measures which should be taken to end racial profiling by the police in Portland.

Unfortunately, we must report that our extensive recommendations for police reform have been for the most part ignored. The COAB has received no direct response from either the DOJ or the City to any of our specific recommendations other than to say they have been received. We did learn from a DOJ letter to the PPB in July of this year that it took into account our recom-

mendations on police response to those in a mental health crisis in giving provisional approval to the PPB's amended policy regarding that area. We have also learned and are pleased to report that the City is considering the elimination of the 48-hour rule, although it is doing so without addressing the much broader reforms we will be recommending to the City's "byzantine," the DOJ's word, police accountability system. Beyond that, all we have heard is that the DOJ is busy and their bureaucracy slows things down.

In addition, a number of other recommendations have been approved by our subcommittees and are ready for full COAB consideration, the most significant of which is the attached set of 46 comprehensive accountability recommendations to vastly improve community oversight and police accountability in Portland. Unfortunately, the consideration of these recommendations by the full COAB has been delayed by the City not filling the COAB's 7 vacancies and the COAB being placed in recess.

We have also spent extensive time at the subcommittee and full COAB level developing and making recommendations to improve the COCL's compliance assessment reports. Our primary focus has been a criticism of the COCL for stating the PPB was in partial compliance with the Settlement Agreement in some areas when we did not believe the evidence supported such a rating. As an example, when the COCL presented its draft Compliance Report to the COAB for the 3rd and 4th quarters of 2015, the COAB reviewed

the draft and suggested that 14 ratings of "partial compliance" were too high and asked the COCL to review those specific ratings. The COAB suggested that the appropriate ratings should be "non-compliance but initial steps taken" or "not yet assessed". In their final report, the COCL did not make a single change to the ratings in those 14 paragraphs (#s 69, 70, 72, 76, 81, 82, 96, 109, 116, 119, 120, 130, 131, and 152) and dismissed the COAB's inquiry by saying they thought their judgement was correct.

We have also spent extensive time trying to fulfill the COAB's duty to contribute to the development and implementation of the PPB Community Engagement and Outreach Plan. To engage community members we have visited several community centers and held community forums to discuss how the residents wanted police officers to serve their communities. We surveyed over 500 Portland residents with questions about police interactions and their takeaways from those encounters. The chair of the Community Engagement Outreach Plan Subcommittee (or CEOPS) met with police command on a monthly basis while forming strategies for community involvement. In July 2016, CEOPS decided it needed more feedback from youth, homeless and people with mental health issues. The subcommittee also looked at people of color and how they perceived the police and the interactions with PPB. The CEOPS chair also spoke on local radio talking to the Portland community about the Settlement Agreement and sharing information on community in-

volvement.

The COAB has also worked on their own processes, including spending two days in a retreat to further relationships with voting members and police advisors and having another closed meeting to examine members' feelings related to disruption of COAB meetings by some community members and the COCL's and City's reaction and enforced response to the disruption.

In sum, we have been very busy and have worked very hard at trying to fulfill our duties under the Settlement Agreement. Unfortunately, almost all of our recommendations for police reform have been ignored so far. Worse, our recommendations to improve the COCL's too lenient ratings as to whether the PPB has complied with the Settlement Agreement have been rejected outright. This has been very frustrating for COAB members and the community-at-large, leading to serious questions about the DOJ and the City's commitment to police reform in Portland.

B. Necessary changes to the Settlement Agreement and the operation of the COAB.

The COAB has been touted as a model for community oversight and input when the DOJ goes into a city and sues to stop some unconstitutional pattern or practice of police misconduct, usually involving the use of excessive force. Unfortunately, we believe the model has proven unsuccessful in many critical respects and major changes are necessary.

First, I need to explain why only 8 voting members are left on the COAB and the obstacle that presents for our work.

When the COAB was formed, we were told that our responsibilities as volunteers under the Settlement Agreement would require us to spend approximately 10 hours per month. That was a gross underestimate since many of us have spent that much time in a week on COAB work and, for some, even far greater amounts of time depending upon the nature of the work and how time sensitive the completion of the work might be.

Under Paragraph 142 of the Settlement Agreement, the City has the responsibility for ensuring the COAB has 15 voting members through appointments as follows:

1 by each of the City Commissioners;

5 by the Portland Commission on Disability and/or the Human Rights Commission; and

5 by a City organized community-at-large selection committee.

The amount of work and time required of COAB voting members, frustration over the lack of progress with police reform, and problems between the COAB and the COCL has taken a toll also contributing to the very high attrition rate. 13 COAB voting members have resigned or, in one instance, been removed — which is almost 2/3 of the 21 appointed to the COAB during our existence.

From March 30, 2015 thru October 8, 2015, 6 vacancies occurred which the City filled. However, from April 20, 2016 thru July 20, 2016, when 7 more voting COAB members resigned, the City took no steps to fill those vacancies. This violation of the Settlement Agreement by the City has left the COAB with only 8 voting members, which is the minimum necessary for a quorum of the full COAB and the number of “yes” votes necessary to approve recommendations and conduct other COAB business.

Another obstacle we faced arose in June and July of this year when the COCL, who under the Settlement Agreement chairs the COAB, would sometimes not allow us to meet. Other times the COCL set up or tried to set up meetings with the COAB members in one room and the public in another room, creating a barrier between the COAB and the community-at-large and setting up a very harmful “us versus them” situation. As a result of those and other problems with the COCL chairing the COAB, 9 of the remaining 10 COAB members sent an open letter on July 4th, which stated their opposition to the COCL continuing to chair the COAB and asked that the COAB be allowed to select a chair from the its own members. As you have heard, 7 days later the COCL submitted a Petition for Amendments to Settlement Agreement to the DOJ and the City likewise requesting that the COCL no longer chair the COAB.

When the COCL did allow the full COAB to meet later in July, the COAB approved two recommendations:

1. The COAB should be allowed to select its chair from its own membership.

2. The COCL should be replaced, in whole or in part, by a court-appointed monitor with duties and responsibilities similar to the court-appointed monitors in cases brought by the DOJ against other cities such as Seattle and New Orleans.

We do not know of a single board, made up of volunteers or otherwise, who is not allowed to select its chair from its own members and chair itself. The need for the COAB to chair itself is not in dispute. We urge the Court to approve this needed modification to the Settlement Agreement which we anticipate the DOJ and the City will jointly propose.

The need for a court-appointed monitor and modification of the Settlement Agreement to provide for one is paramount. We believe a major flaw in the Settlement Agreement is that the COAB was assigned the responsibility for community oversight but given no authority to actually implement police reform. We are only an advisory body and, as already discussed, it is not clear whether the DOJ and the City are really listening to us or taking us seriously.

When the COAB examined the scope and pace of police reforms implemented in other cities where the DOJ has filed suit, such as Seattle and New

Orleans, we found two things — 1) significant changes in policies such as those involving the use of force were implemented, and 2) those reforms were put in place in a relatively short period of time, usually within a year or so from the time the cases were settled. We believe the primary reason for that is that in every other DOJ pattern or practice case that we are aware of there has been a court-appointed monitor with the expertise and authority to move reform efforts along, usually with the cities involved consenting to the changes. Here, that simply is not happening. We strongly believe a court-appointed monitor is necessary if the City is going to accept the police reforms which the COAB and others in the community are urging.

In addition to those two formal recommendations from the COAB, voting members of the COAB have informally endorsed several other recommendations important to the success of the COAB.

Over objections by some of us, the COCL cancelled the COAB's regularly scheduled meeting set for August 11, 2016, giving us the reason that we did not have a quorum even though there is no requirement of a quorum to meet. Following the cancellation and faced with the likelihood of have more meetings cancelled by the COCL, 6 of the 8 remaining COAB members sent a letter to the DOJ, the City Commissioners, the City Attorney, and the City Auditor, with two recommendations regarding the COAB and the Settlement Agreement:

1. The DOJ should find the City of Portland to be in noncompliance with the Settlement Agreement in each of the following respects:

a. Not filling the 7 voting member vacancies on the COAB.

b. Not clarifying or establishing a process for the selection of alternates to fill community at-large vacancies on the COAB.

c. The Settlement Agreement states “[t]he COAB, shall meet at least twice per year with the Chief, the Police Commissioner, PPB Precinct Commanders, PPB Neighborhood Response Teams, and a representative of the Office of Neighborhood Involvement Crime Prevention to assess and solicit comment on PPB’S activities in regards to community outreach, engagement, and problem-solving policing.” Since none of the required twice annual meetings have been held, we believe the City is in noncompliance with the Settlement Agreement.

2. The contract between the City of Portland and the COCL should be terminated because the COCL’s misconduct in the last two months by repeatedly interfering with the COAB’s ability to conduct public meetings, to meaningfully engage with the community at-large and to carry out its responsibilities as authorized in the Settlement Agreement.

The COAB was not consulted about the 60-day recess imposed on us by the City and the DOJ, which the City expanded to prevent the COAB from

even having access to basic administrative resources normally available to it.

We were and continue to be against the recess.

In response to the recess and other obstacles we have faced, we have developed and the add the correct number us left on the COAB endorse a comprehensive, but not necessarily exhaustive, list of recommendations. Some will require modification of the Settlement Agreement, and some will probably only require action on the part of the DOJ and/or the City.

1. The COAB should be allowed to select its chair from its membership.
2. The COCL should be replaced, in whole or in part, by a court-appointed monitor with duties and responsibilities similar to the court-appointed monitors in cases brought by the DOJ against other cities such as Seattle and New Orleans. This recommendation specifically means that the COAB will continue to exist in its current role and will continue to be the voice of the community. Nothing about this recommendation is intended to reduce the viability of the COAB's role in any way even with a court-appointed monitor in place.

3. The COAB should be independent of the City which now it is not.

Specifically:

- a. Its voting members should not be public officials.
- b. The COAB and its members should not be subject to the public

meetings laws although it would continue to give notice of its meetings, including subcommittee meetings, and hold its meetings in public.

c. The COAB and its members should not be subject to the public records laws.

4. The COAB's 15 voting members should be selected as follows:

a. 1 member to be selected by each of the 5 City Commissioners; and

b. 10 members to be selected from the community-at-large by an independent committee comprised of community members selected by the COAB.

If adopted, this would eliminate the selection of future COAB members by the the Human Rights Commission, Portland Commission on Disability and/or a combination of the two. However, existing COAB members who were appointed by the Human Rights Commission, Portland Commission on Disability and/or a combination of the two should remain on the COAB for at least the remainder of their current terms. Also, all current COAB members should be asked to continue for a year beyond the expiration of their current term.

5. Procedures should be established for the prompt filling of vacancies.

6. The COAB should receive the support of necessary staff and adequate funding including the following:

a. The COAB should have its own staff, independent of the COCL and the City, which would receive direction from the COAB.

b. There should be a person on the COAB staff or otherwise readily available to the COAB, and independent of the COCL and the City, who can conduct research and draft recommendations at the COAB's request on policies, training, accountability, community education and outreach, and other matters deemed important by the COAB.

c. There should be one or more COAB staff members with the necessary experience to be assigned the job of community organizer/builder.

7. The COAB should be given the authority to select and have access to private legal counsel, independent of the City Attorney's Office, to give legal advice to the COAB on matters affecting the operation of the COAB and its responsibilities under the Settlement Agreement.

If adopted, this would modify part of Paragraph 154 of the Settlement Agreement and eliminate the appearance of a conflict of interest created by having a party to the Settlement Agreement, i.e., the City's attorney give legal advice to the COAB. We also believe it would help build community trust in the operation of a truly independent COAB.

8. The COAB should have full and direct access to all PPB and City

staff, employees, facilities, and documents that the COAB reasonably deems necessary to carry out its duties.

This is similar to the access the COCL now has under Paragraph 167 of the Settlement Agreement. Currently, the COCL and/or the PPB are free to deny, and have denied from time to time, the COAB's reasonable requests for such access.

9. The COAB should continue to comment and make recommendations on reports by the COCL and/or the court-appointed monitor, if one is put in place.

10. Pursuant to Paragraph 152 of the Settlement Agreement, the Chief, the Police Commissioner, PPB Precinct Commanders, PPB Neighborhood Response Teams, and a representative of the Office of Neighborhood Involvement Crime Prevention should meet with the COAB within 60 days of when the recess imposed upon the COAB is lifted to assess and solicit comment on PPB's activities in regards to community outreach, engagement, and problem-solving policing.

11. The City's contract with the COCL should be terminated.

The community advisory group that was set up to assist the City in selecting the COCL opposed the City's choice of Rosenbaum & Watson for the

position. Because of the COCL's inappropriate actions in chairing the COAB, we and many in the community do not trust the COCL to be involved with the Settlement Agreement at all. If there is going to be a COCL in the future, we are opposed to Rosenbaum and Watson continuing to fill the position.

12. To the extent the adoption of some of the above recommendations would require a modification to the Settlement Agreement, we recommend that the DOJ and the City agree to do so as soon as possible. Since the modifications to the Settlement Agreement will be significant, we urge Your Honor to conduct a fairness hearing.

In addition, we thank those individuals and organizations in the community who have expressed strong feelings and positions on how the COAB was put together and managed. We urge Your Honor and the parties to give consideration to their input as well as ours.

Summary

To close, we believe the future of the COAB and its role under the Settlement Agreement is at a crossroads. The status quo will not work. We believe the above recommendations from the COAB members and those in the community who endorse them must be adopted.

Thank you.