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Compliance Officer Merges Assessment/Outcomes Reports, Calls Out PPB Force But Continues Limited Critique "Not Enough" is the Theme

an analysis by Portland Copwatch, November 1, 2017

The latest draft report from the Compliance Officer who analyzes the progress of the US Department of Justice (DOJ) Settlement Agreement with the Portland Police makes up a little ground from its spring reports but continues to let the Bureau off the hook in many areas.
<http://www.cocl-coab.org/library/Reports-memos/draft-compliance-and-outcome-assessment-report>
A lot has been made about the Compliance Officer/Community Liaison (COCL) calling for more de-escalation training. Portland Copwatch (PCW) echoes this welcome critique—which has been growing stronger over the last year and a half and which PCW has noted numerous times is the result of using one word (de-escalation) to mean two different things (lowering force already being used AND calming a situation down without force). In spring 2017, PCW called out the COCL for coming down hard on demonstrators. In contrast, the current draft points out several incidents where the COCL thinks officers used excessive force at protests. However, the COCL also has moved an astonishing 21 new paragraphs from "Partial Compliance" to "Substantial Compliance," despite the overall theme PCW notes: that there is not enough information to provide such a rating, the Bureau is not doing enough to meet its stated goals, or the COCL is not going far enough in its critique. The new report adds to an already confusing process by combining both the Compliance Assessment and Outcomes reports into one document. In the new format, they removed important guidelines for readers such as the substance of individual paragraphs being rated for compliance, and clear separations when they move from one subject to another. There's no mention that the City was found out of compliance for its community engagement component— primarily the mismanaged Community Oversight Advisory Board (COAB)— at the status conference with Judge Simon last year. To follow PCW's analysis, find page numbers in [brackets] and paragraph numbers in (parentheses).

MENTAL HEALTH AND OTHER UNFINISHED BUSINESS

Overall, the COCL reviews just 97 of the 135 non-definition paragraphs, and has now rated 49 in partial compliance and 48 in "Substantial" compliance. One example of why this is troubling: paragraph 88 which calls on the City and Portland Police Bureau (PPB) to partner with mental health services can only be found in compliance, the COCL says, when all the paragraphs relating to mental health services (Section V) are in compliance. PCW would argue they are not, yet the rating on paragraph 88 jumped from "Not Assessed" to "Substantial" between the last report and now. The main logic behind this is that the Unity Center opened as a "walk-in" facility for people in crisis in February, and also as a "drop-off" center in May. At that point, the PPB revised its policies around mental health custodies. However, the COCL has said many times (including in various places in this report) that a few months of data is not enough to find the Bureau in compliance, yet here they give a full affirmation to the Bureau after just five months with a brand-new facility. This is even more frustrating as it is not even mentioned that the PPB refuses to enter this psychiatric facility without their weapons (*Portland Mercury*, May 24), something that led to the tragic death of José Santos Mejía Poot in 2001.

Another "upgrade" was given to the City for going from minimal to partial compliance with the paragraph calling for the Chief, Mayor and other city officials to meet with the COAB twice a year (152). However, the COAB was disbanded at the end of January, and even though Mayor Ted Wheeler came to what turned out to be their last meeting, it was the first such meeting in two years. Since the COAB still has not been replaced (and likely will not be until sometime in 2018), there is no way the City can come close to meeting the demands of paragraph 152.

Along those lines, one clear concept in the Agreement is to use data to determine how the PPB needs to respond to mental health crisis calls. A "Mental Health Mask" that was only introduced in 2016 (reminder: the Agreement was signed by the City in 2012 and went into full effect in 2014) was discontinued due to concerns from the District Attorney that the data were subject to discovery in court. So now the Bureau is using a Mental Health "Template." The COCL shrugs off the fact that they are now starting over with a new system and dataset, saying the PPB can't control the legal concerns [p. 81] (105). The report says the Template is not going to be able to capture all incidents involving mental health issues, and proposes several ways to try broadening what will be captured. The COCL was only able to review two months of data from the Template and compared the old figure of 70% of calls receiving attention from Enhanced Crisis Intervention Team (ECIT) officers to the new figure of 85%, even though the reports

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that provide those numbers have different criteria for having been written. [pp. 78-81] Side note: The COCL confusingly says the question of whether an ECIT officer was present at an encounter is "subjective" [p. 81].

FORCE: DE-ESCALATION AND TASERS

The DOJ described a pattern and practice of excessive force by the PPB in its 2012 findings, which led to the Agreement. As noted above, the COCL hones in on the PPB's poor definition of "de-escalation." PCW has suggested to call lowering force after it has been used "mitigation of force" rather than "de-escalation." Moreover, the COCL states that "using threats to gain compliance in an unsafe situation may be effective, but it is not de-escalation." [p. 19] (67a). An example they give is an officer saying "you need to [effing] stop or you may be shot" and the supervisor agreeing that was de-escalation. The COCL has acknowledged in this report that several protestors were roughed up inappropriately by Portland officers, a change from the alarmist way protestors were used in the last Outcomes report. They write that at one protest, police told a woman who was taken down to the ground to put her hands behind her back and got cooperation— the COCL found that "cannot reasonably be categorized as de-escalation techniques based on any accepted definition" [pp. 20-21]. Another person who is described as "verbally dissenting" with the police while video recording at a protest got pepper sprayed and pushed down the stairs by an officers (this is apparently at the City Hall protest on October 12, 2016). The officers said they did not realize the stairs were there until they used force. The COCL notes how police cause a person to "fly backward into others" and down the stairs, cautioning them to use less force and less than the maximum allowed by law. [pp. 23-26] (67d) At another protest, an officer came around a stopped bus and performed a takedown on a woman who was slowly walking away, which the COCL says seems out of policy based on the video of the incident. The officer said they had probable cause for disorderly conduct and interfering with public transportation-- which the COCL pointed out are "low severity" crimes. The officer excused the force by saying that in other instances people had jumped on his back— but didn't articulate a threat at the time of this use of force. On the other hand, in finding that there were "no deficiencies" in getting medical care to persons subjected to force [p. 59] (84-a-iii), the COCL doesn't acknowledge that police prevented medics from attending to those pepper sprayed on October 12, for example.

The COCL adds that in two incidents involving Tasers, officers could not justify all the uses of the electro-shock devices, as required by policy (and the Agreement). Both times, officers seem to have "accidentally" set off the device. PCW believes one of these cases was of Matt Klug, who was tased six times and whose case went to City Council, where they found insufficient evidence to hold the officer accountable. In one case the supervisor found three deployments to be (a) in policy and (b) consistent with the DOJ, which the COCL dryly notes they "don't believe either of these statements are true." [pp. 26-27]

OVERSIGHT, OR LACK THEREOF

Another major focus of the Agreement is to improve the accountability system. Portland's civilian oversight agency, the "Independent" Police Review (IPR), is still unable to compel officers to testify without the assistance of the Bureau's Internal Affairs Division (IA), a fact that is not mentioned anywhere in the report. While it is true, as the COCL notes, that IPR has been conducting more of its own investigations into police misconduct, the report tiptoes around the fact that most people who have been mistreated by police do not trust a system where police investigate other police. Therefore the cheerleading by the COCL that IA and IPR are planning to do joint training and have joint policies ignores the basic premise for why civilian oversight is needed. To meet the Agreement's demand to eliminate duplication of effort, IPR has decided to stop interviewing civilian witnesses before sending cases to IA for investigation. [pp. 109-111] (128). A better idea would be to increase staffing at IPR so they can do more investigations, and/or tell IA that if they feel IPR's interview with witnesses needs follow-up, have IPR continue speaking with the civilians involved. PCW has never understood why IA goes back to re-interview the witnesses IPR already talked to. Side note: The last outcomes report had statistics on complaints and the findings related to the allegations in them, those data are not included this time.

The COCL also seems to think that the changes made to the IPR ordinance in August make the IPR's investigations more "meaningful" because they (and Internal Affairs) will now be proposing findings when they present their investigations to supervisors. The step where supervisors were making those findings was one area causing delay, and PCW does not dispute it is probably better to have the findings come from the investigating agency. However, once again, the COCL ignores the community's reasons for wanting civilian oversight, as they point to more investigators being hired at IA as a "definitive step" toward better investigations. [pp. 106-108] (121 & 123)

The Agreement also led the Bureau to create a system where a supervisor (usually a Sergeant) has to go to the scene of any Use of Force and conduct an investigation, then write up a report. From the beginning, PCW has called for

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civilian investigators to perform this function, for fear that questions of misconduct would be minimized by the officers' immediate supervisors. The new report proves this concern was well-founded, saying there were several cases where commanders thought there may have been excessive force, but did not forward the concerns to Professional Standards Division (PSD)/IA because they felt the findings of the Sergeant's After Action Report would not change with more investigation. [pp. 113-115] (129) The COCL "did not disagree" with that assessment, so its only suggestion is to train supervisors better— rather than seeking more rigorous, external review.

Another part of the oversight system is the Citizen Review Committee (CRC), which hears appeals of misconduct complaint investigations. Though a major change has been proposed to the Agreement that will remove the current 21-day timeline for CRC to hear appeals, and to exclude the appeals process from the overall investigative timeline of 180 days (proposed modified 121), the COCL does not mention this anywhere. The report does reveal, however, that CRC is not being called in to Police Review Board hearings (internal to the Bureau) as required by the Agreement and City Code. The COCL says some cases CRC is supposed to be hearing are not reflected in IPR and PPB policies, and implies not all cases are in City Code [pp. 113-115] (131-132). However, a review of 3.20.140(C)(2) shows CRC is supposed to have one member rotate on for a variety of Force cases as called for in the Agreement.

One other goal of the Agreement is to promote transparency in the system, including the oversight system. However, in terms of the outcomes of misconduct investigations, the COCL seems to give the City a free pass to interpret the law in the most narrow way possible, saying they are OK with only revealing discipline in cases of high ranking officers and those of a serious nature on a "case by case basis." [pp. 117-119] (138 & 140) The state law guiding release of such information has an exemption for when it is in the public interest, which PCW has long argued is always the case when dealing with officers' mistreatment of community members.

FORCE: DATA, RACE AND OTHER ISSUES

As part of the transparency issue, the Bureau is supposed to be posting data about Use of Force on a quarterly basis, and presenting them to the Training Advisory Council (TAC). The presentations have been intermittent and incomplete. The COCL notes that in February 2017, the "Force Inspector" said force was used in 1.2% of all custodies when the real number was 3% [pp. 50-51] (87) More troubling, the COCL reports that the Force Data will be moved from being reported quarterly to being placed on a "portal" on the website on an ongoing basis. PCW had to ask the COCL at their October 16 town hall whether this meant the Use of Force Data or the separate Force Audit analyses that look at completeness of officers' reports (it is the Force Data) and whether quarterly and annual reports will cease (apparently, they will not). So while this was yet another development that happened without public input (this move was not discussed at the TAC), it seems the live addition of new uses of Force, with the ability to look for demographic, geographic and precinct data might be useful for accountability purposes.

Other alarming notes about PPB use of force:

—This year, the PPB has shot six people, three of whom are African American, and two of whom are the only two people who died. The COCL does not examine this trend at all, nor the fact that 30% of force is used against African Americans in a city that is 6% black, nor do they note that the COAB's required input into racial profiling data and the 2009 Racial Profiling plan has gone completely unaddressed (146d & 148).

—For the two deadly force incidents the COCL reviewed, the officers declined to give voluntary on-scene statements. [pp. 111-113](127)

—While the Force Inspector meets with supervisors to look at deficiencies in Force reporting, they do not examine why force might be used differently by different officers/units, nor is the supervisor required to do anything once the trends are identified [pp. 44-47] (76).

—The Bureau has not yet put out an annual report on its auditing of the Force reports. [also pp. 44-47] (76)

—The Employee Information System (EIS) flags officers who meet certain thresholds of force, such as using force three times in a certain time period, which the COCL and DOJ said is not adequate to find poorly performing officers. Because they have met the requirements of the Agreement, the PPB has "rejected" the idea of expanding the thresholds. [p. 104] (118-119) The COCL suggests maybe looking at the top 15% of force used in a single unit and compare them against one another, using the Gang Enforcement Team (GET) as an example. Since the GET has a high over-representation of stops of black people, not comparing them to other units lets them off the hook if they generally use more force. This is how units like LA's Ramparts get out of control.

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—Regarding those thresholds, after some are triggered, 67-80% do not get referred to supervisors for review. [p. 104] (118-119)

—Even though the COCL pushes the Bureau to immediately disqualify officers found to have used excessive force within five years from being a trainer, they say it is all right for them to use a "common sense" standard about making exceptions to that rule. [pp. 56-57] (83) That is unacceptable, since "common sense" has no across the board definition assuring consistency of application.

The report acknowledges that the City went back and forth on the concept of compelling officer testimony after deadly force incidents. They note how the City removed the "48-hour rule" from the Portland Police Association (PPA) contract in 2016, started compelling statements, backed off when the DA feared it could give officers immunity, then rewrote the deadly force policy (with the DOJ and COCL) to wait until the end of a criminal investigation to compel an involved officer to talk to IA. This is despite the requirement of the Agreement to conduct concurrent administrative and criminal investigations (122). The narrative then states how City Council "revisited" the issue in August and re-set the policy to require compelled interviews, ignoring that the change of heart came after great outcry from the community (and local newspapers). A new bit of information: As of the time the report was drafted, the DOJ had not approved of the City's revised policy.

COMMUNITY INVOLVEMENT

With regard to the replacement for the COAB, the report discusses the proposed Portland Committee for Community Engaged Policing (PCCEP), which it shows was developed behind closed doors with inadequate community input. The report cites meetings among the City, DOJ, PPA and Albina Ministerial Alliance Coalition for Justice and Police Reform (AMAC) from January to March, but that the City and DOJ met on their own after that, presenting the AMAC with the PCCEP proposal one week before a single mediation session in mid-July. This led to many changes when the plan came to Council, with the whole system not yet signed off on by Judge Simon. [pp. 120-123] (141-152) For their part, the COCL seems to think it is a positive development that there will be more City "control" of the new board, that there will be a requirement for members to go to citizen's academy and on ridealongs, that they will engage in "lessons learned" from the implosion of the COAB (it does not say who will be deciding what those lessons are), and that not all meetings are required to be public (which is controversial among community members who think all the board's meetings should be open).

One of the purposes of the COAB (and PCCEP if it ever gets formed) is to create a Community Engagement and Outreach plan. Ironically, the PPB has created a "community engagement unit" with no input from the community [pp. 126-127] (141-152) The COCL reports on the Bureau's own engagement activities including "coffee with a cop," getting rid of the "gang" lists (which is admittedly a positive step), and that the PPB finally started putting out "red-line" versions of its policies for public review, making it clearer what changes they are making. However, the COCL seems to ignore that those "red-line" versions are published when the community has only 15 days to make comments, rather than in the initial 30-day comment period when only the existing policy is posted. One other activity the COCL highlights: Bureau members have been attending performances of the play "Hands Up" which examines the perspective of people of color when they are, in their perception, wrongfully stopped by police. Officers report finding the experience transformative. Rather than leaving it at that, the PPB is insisting on "copsplaining" to communities of color, and are collaborating on doing officer monologues featuring their points of view. The COCL says they are "not trying to diminish others' perspective by pushing their own," which highlights the bias of the Chicago-based academic team not understanding that the police already control the narrative in our society.

OTHER TIDBITS

In one of the few places where the report has detailed data, the COCL suggests that the EIS could be used to look at other kinds of complaints than force. They include tables showing how often complaints about Satisfactory Courtesy (14-20%), Performance (2-19%), Conduct (4-16%), and Laws/Rules (5-10%) are filed at each precinct. It seems, though, that to make their point— and to inform the community thoroughly— the tables should also have included the number of force complaints from each precinct. [pp. 101-103] (117) Side note: The COCL says that even if the EIS ever identifies a unit that uses a disproportionate amount of force, there are no criteria to flag such a unit and no intervention plan in place. Also, one reason an officer who is flagged by EIS for possible supervisory review gets let off the hook is the category "employee not subject to evaluation." [pp. 97-100] (116c)

A few other items the COCL called for or pointed out that are worthy of note:

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—Regarding ways to find officers who may not get flagged for repeated use of force, they suggest looking at how often an officer charges someone with resisting arrest when force is used. [pp. 97-100] (116c) PCW thinks this is an excellent idea and based on the very real syndrome where officers believe a person has "failed the attitude test."

—One reason it was difficult to recruit officers for the Crisis Intervention Team in the past is they did not want to be transporting people in crisis without extra pay or prestige. [pp. 81-86] (99)

—When the Bureau Of Emergency Communications (BOEC) received its training on mental health crisis: (a) one presenter was given two hours to talk about clinical states but only used 30 minutes of her time; (b) a peer panel only included one person with lived experience, and they had never called 911 (the COCL understatedly says having more than one person on the panel "could be" useful), (c) the family members that spoke to the police were actually people who work with families, and they were apparently not from Multnomah County. [pp. 92-95] (114) Ironically, the COCL from Chicago calls for the PPB to use local people in the training.

—During a session after a training when officers were supposed to be filling out feedback surveys some officers talked out loud and laughed with one another, which the COCL found disruptive; PPB said they corrected this issue. [p. 54] (80)

BONUS INFO

In the voluminous Appendices to the report, much other illuminating information can be found, including:

—Details of force incidents in which officers were found out of policy, though all the findings had to do with administrative issues and not excessive force. For example, an officer who conducted a takedown failed to request backup [Appendix III-2, p. 13]. Another officer unholstered a Taser while their gun was still in their other hand [Appendix III-2, p. 16]. Unfortunately, the details are only found in the Q1 2017 report (Appendix III-2), with no details on out-of-policy incidents in Q4 2016 (Appendix III-1), and only vague references to the reasons for the findings in Q2 2017 (Appendix III-3).

—De-identified data on officers and their frequency of using specific kinds of force, including one officer who used force 19 times in the first two quarters of 2017 (Appendix III-7).

—The full text of Agreement-related Standard Operating Procedures, which unlike the Bureau's policies ("Directives") are not posted on line, thus rarely seen by the public. (Appendix VI-2: ECIT procedures; Appendix VI-12: Behavioral Health Response Team procedures; Appendix VII-3: EIS Alert processing).

CONCLUSION

While there are many, many more examples of there not being enough data for the COCL to analyze, the Bureau not meeting expectations, or the COCL failing to form a meaningful critique, PCW has included the above examples as a starting point. The combined report weighs in at over 130 pages and a longer analysis may yet be forthcoming. The Bureau is so... bureaucratic that terms which may have been used in earlier reports, but are not part of the agreement (or the abbreviations list) still cause confusion even to a group like PCW which follows the subject closely. Examples include the Behavioral Health Coordination Team/BHCT which apparently is a PPB-run effort [pp. 7 and 78] and the ECIT Adivsory Council [p. 79]. PCW is separately sending the COCL team items from the report including typos, poorly worded sentences, missing information (such as two references to "page x" that were never filled in) and other such administrative concerns. This analysis would not be complete without reiterating that the Behavioral Health Unit Advisory Council (BHUAC), which does not allow the general public into its meetings, is once again let off the hook as the COCL found their publishing of minutes and feedback loop with the Bureau to be satisfactory, even though in the last report they asked the BHUAC to meet in public on an occasional basis. In fact, they claim the BHUAC is and "avenue for gathering the input of community partners in delivering services." [pp. 73-44] (88) With the lack of focus on race, tendency to side with the power structure rather than the community they serve, and ongoing misunderstandings of Portland's nuances,* the COCL team is only somewhat helpful in the struggle to improve how the police behave in Portland.

*-As part of our critique of Sergeants coming to the scene of force incidents to conduct investigations, PCW pointed out that Sergeants and line Officers are all in the same bargaining unit— the PPA. The COCL said, in October 2017, nearly three years after being hired, that he did not know that.