

Van Halen's lesson for police reform

For a big act, each detail is crucial; same goes for Portland's DOJ settlement

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Glam rock bad boys Van Halen included an odd item in their contract rider: a bowl of M&Ms, but no brown ones. A single brown M&M in the bowl, and the band wouldn't play.

As it happens, this was entirely reasonable. Arena rock acts were extraordinarily precise, multi-level performances, where an accident or outage

could ruin a band's reputation — or even electrocute someone. No brown M&Ms — an easily missed item in a lengthy contract — allowed band members to immediately ascertain whether the contract had been

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explicitly followed. If brown M&Ms remained in the candy bowl, every setup, from amps to pyrotechnics, would have to be torn apart, scrutinized and put back together.

The Portland Police Bureau and its watchdogs have an equally complex task in fulfilling their court-imposed reform efforts, and the city's watchdogs should be equally meticulous and demanding.

The current attempt to reform the cops — which until Thursday had former Oregon Supreme Court Chief Justice Paul DeMuniz at the helm — started in response to the 2010 killing of Aaron Campbell by Portland Police Bureau sharpshooter Ron Frashour. Immediately, the Albina Ministerial Alliance began talking about contacting the U.S. Department of Justice, headed by Attorney General Eric Holder, to make a complaint to the Civil Rights Division.

From the beginning of the Obama administration, Holder and Civil Rights Division head Tom Perez (now U.S. labor secretary) routed unusual attention and financial and legal resources to investigate police bureaus nationwide for use-of-force claims.

With Campbell's killing came renewed community alarm about deaths by cop, and then-Mayor Sam Adams was determined to get ahead of the critics and the police union. He welcomed the DOJ to Portland and made the bureau an active partner in the investigation — a role that would later expand to co-authoring the settlement agreement that ended the feds' lawsuit against the city. After a decade of failure to improve City Hall's position with the police union, he wanted his agenda on the front page, not dead bodies — a bummer if there ever was one, and certainly not part of what he saw as Portland's ascendance on the world stage.

Perez's investigation became a federal court action against the city of Portland, and federal attorney Amanda Marshall framed *United States v. City of Portland* as the last

of a three-part legal campaign to reform Oregon's mental health system. The second, a suit with local partners such as Disability Rights Oregon to reduce segregation of the disabled to sheltered workshops, was successful. The third, a threatened suit against the state of Oregon for repeatedly violating the Supreme Court's *Olmstead* decision, has been entirely unsuccessful. Its key result is for the state to double-down by rebuilding a prison for people with mental illness in Salem and building another one in Junction City.

Marshall's strategy employed a self-interested logic: the law is the most expensive and least effective community response to mental illness. There's no indication her campaign did anything but stall or turn back reforms underway; certainly Oregon Medicaid mental health patients have faced increased harm by an unchecked expansion of systemic poverty, medical abandonment, chronic homelessness and criminalization. Surprise: Her lawyers got paid.

Seeing opportunity to gain prominence with the media and the police union, Adams sought a quick end to *United States v. City of Portland*. A settlement agreement was quickly drawn up and, without much community engagement, was floated in the media as a grand solution. It held no individual officers accountable for their actions and gave no mechanism to hold officers accountable in the future. And it contained no encouragement for knowledgeable mental health advocates when federal Judge Michael Simon pronounced it "reasonable, adequate and fair."

But the agreement contained one item, No. 89, a distinct brown M&M, the sole item that might benefit people with mental illness likely to be injured by police. That brown M&M remained in the bowl, unmet, and is still there today, a brown M&M, ready to alert the watchers.

So what is Item 89?

ITEM 89

The United States expects that the local CCOs will establish, by mid-2013, one or more drop-off center(s) for first responders and public walk-in centers for individuals with addictions and/or behavioral health service needs. All such drop-off/walk-in centers should focus care plans on appropriate discharge and community-based treatment options, including assertive community treatment teams, rather than unnecessary hospitalization.

You may have heard that Legacy Health plans to open a psychiatric emergency service in the old Holladay Park Hospital near the Rose Quarter in Northeast Portland. According to current plans, it will be neither a drop-off for first responders nor a public walk-in for people in need. Instead, the plan is to consolidate emergency room

beds currently used for psychiatric "boarding" — supervision and medication — from hospitals around the city to one location. Prospective patients would arrive by ambulance (an added charge to the patient) and need to meet criteria for continued hospitalization. Whether the Legacy psychiatric emergency service adds new beds — or net benefit — is yet to be seen.

The Legacy plan is not a resolution for Item 89, which according the agreement was due to be finished in the summer of 2013 — half a year before the agreement was signed. And to do it right, the city and its partners should be in a dead run to get it done by 2020.

Item 89 is the most complex and difficult item in the settlement agreement, and, we think, the only item that could have saved people like Campbell, James Chasse, Keaton Otis and many others from a brutal, bloody death.

Why? Because Item 89 calls for two — or more — public facilities to be funded, sited, staffed and launched by the care coordinating organization, which is Health Share of Oregon, which is not a signatory to the settlement. According to recent and back-of-an-envelope estimates from local experts, a drop-off could cost \$7 million to \$9 million per year, and a walk-in, just one, could cost \$1 million to \$2 million per year.

But, says Mayor Charlie Hales, the city doesn't know anything about mental illness. This should be done by the care coordinating organization, or the county, or someone who knows how to do it.

We agree. And though the city provides funding for about a dozen mental health programs and projects, it's true, the city doesn't know anything about mental illness. But the city doesn't know anything about fixing potholes either, and somehow those contracts get paid year after year. "I do not know" does not equal "I am not responsible." The city is on the hook for item 89 and should stop wiggling.

In Judge Simon's court in February 2014, DOJ attorney Jonas Geissler reframed Item 89 as "aspirational" and "beyond the current reach of this proposed legal settlement," yet just weeks later, he and his counterpart signed the settlement with Item 89 intact and active.

Aspirational? Who has the power to void an item in *United States v. City of Portland*? No one. Especially not a co-signer to the agreement. And not a court monitor.

Ask the Portland Police Bureau about the status of the settlement, and it points to a color-coded list it's been holding for over a year, claiming dozens — maybe a hundred — of the 190 items have been completed, not mentioning most were done under ex-Chief Mike Reese.

They have been working on items, though, and they may be making progress as good as they say it is. The work of the \$300,000-plus-per-year Chicago-based compliance officer/community liaison, or COCL, will be to ascertain if all items on the settlement agreement are resolved and complete.

And even though the mayor's office

carefully kept away an articulate or assertive court monitor and neutered the all-volunteer Community Oversight Advisory Board, it still has five years. That should be enough time to stop cops from using unnecessary force as a go-to tool in their dealings with people with mental illness.

Unless COCL and COAB eat the brown M&M.

City Hall insiders thought DeMuniz, a former insurance industry lobbyist, would bail out the rancid COCL selection with local bonhomie and reset low expectations. Instead, he shot himself in the foot by setting up shop in the former southeast police precinct — a vibrant warning to people with traumatic history with the police to stay far away. DeMuniz felt comfy embedded with the crime prevention folks and police trainers and expected people with mental illness who had been abused by cops to drop by and chat about it.

Impartiality was a goal of DeMuniz's work with the Chicago-based Rosenbaum Group. But already DeMuniz has yielded much to city control. If you think the office problem is an oversight, note DeMuniz allowed the city to manage the COCL website, Twitter account and Facebook page and provides both support staff and a "mental health specialist" for the COCL.

To balance a bad decision, the city recruited and selected the members of the COAB without engaging the community directly affected by the issue on the table — avoidable use of police force against people with mental illness. None of the selected members are attorneys or experienced at all in reviewing police accountability metrics; their abilities are impeached by lack of experience.

To defend their matrix, City Council gave the bureau millions to hire a squad of data analysts, for collection and pre-chewing of data for COCL and COAB. But how can the defendant — even a hardworking one like the city — be trusted, when even the monitor is inept?

So if we won't know if the items are resolved, or if training is improved, or whether accountability is in place, or how alert their supervision is, if the selected community members are bound to be bamboozled, what's the point of this reform?

Five years of oversight by the federal court is certainly bleak. *United States v. City of Portland* will tie up all useful police reformers until 2020 — beyond the end of the presumable second Hales administration. So until then, whenever a smart aleck gets up with a new idea, they can be dismissed by pointing to the COCL/COAB and saying, "Look! Committees! See? Two of them! You see? We have reform well underway — it's practically in the bag!" (A tight burlap bag with the top sewn shut, but a great bag, a reform-minded bag!)

The brown M&M the COCL and COAB must acknowledge is Item 89. If the drop-off and walk-in centers are not open and running, everything in the agreement must be torn apart, scrutinized and put back together.