

# Failure of leadership, lack of accountability, in police contract

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CONTRIBUTING COLUMNIST

Over the past year we have heard a lot about Portland's desperate need to hire more police officers. Due to an absolute lack of transparency, we don't even know whether this is true; and we certainly don't know that low pay is the root cause for recruiting problems.

Readers may indeed be experiencing poor police response. Crime is down: the Police



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Commissioner (our Mayor) is quick to point out that calls for service are up. It's darn difficult to get this bureau manager to post metrics on call response times, and whether the 2011-era practice of cops self-initiating calls has been

reined in. No independent assessment of solve rates to crime is available.

At the 2012 U.S. Department of Justice press conference announcing an agreement had been reached, in *United States v. City of Portland*, to resolve unconstitutional policing, someone asked the assistant attorney general if he was concerned by 'depolicing.' Sometimes called "selective disengagement," or "tactical detachment," it's a work slowdown, almost always in response to civilian directives that police change their practices, and often associated in particular with attempts to end racial profiling. Seattle, which also settled with the DOJ in 2012, discovered it in 2014: "I believe depolicing is an issue," said their City Council Public Safety Chair Bruce Harrell on the news site Crosscut. Unlike secretive Portland, Harrell called police leaders to testify about it at the Council's Public Safety Committee.

Portland City Council has long been incurious about police oversight. This persistent failure led to plea deal provisions requiring better data collection and reporting. Among other offerings, eventual demographic disclosure is intended to provide racial breakdown in use of force and racial profiling. We'll see: Cops remain in charge of gathering the data; oversight remains minimal in regard to veracity of their analysis. The police-centric Community Police Relations Committee and a federally mandated Community Oversight Advisory Board have been granted authority to "consult on enhancements" to police data collection efforts.

In the past year, the city has "recessed" both of these bodies. The city's volunteer Human Rights Commission is only now

being brought out of mothballs, to confine itself to re-organization, and – as with the Citizen Review Committee – it plans to reduce public participation.

All bodies, purportedly designed to gather public testimony on civil rights and policing, are effectively suppressed. It is within this environment that I tried to intervene on the mayor's return to secret negotiations for another expensive, long-term bargaining agreement with the police union.

On Oct. 5, a police union contract proposal emerged from back rooms for open discussion in City Council. I value public processes and community engagement. Community "input" might, for the first time, draw a fact-based accounting, about the very premises behind the police contract. I was troubled when the city clerk set out no sign-in sheets: it's standard practice, precursor to public participation. It became apparent that no public testimony would be heard: When democracy enthusiasts understood their exclusion, uproar followed. Correct observation of parliamentary procedure had to be yelled to the Council. I was (inconvenienced and) shocked as free speech was quelled in earnest: arrests began and the mayor fled from civic engagement. In the midst of an occupation of chambers, word came: Council would re-convene *the following day*.

I was outraged by the mayor's heavy-handed call for excessive police presence at City Hall when I arrived early to convey to commissioners my concerns, both about contract failures and public meeting procedure. Fifteen to 20 armed police officers were present. Their overwhelming presence was intimidating. It didn't stop me, a former state legislator, from seeking out my elected representatives. The police undoubtedly had a chilling effect on free speech, for those who are just now coming into the #BlackLivesMatter conversation.

I was surprised to find all commissioners's offices on lock down, staff fearful that the public sought influence. Commissioner Nick Fish finally emerged: I asked him directly if whether the public would be allowed to participate. He responded, "I'm not the presiding officer and the mayor has decided that only people who are on the list will be able to testify."

"What list?" I asked. In a rush through bedlam to chambers, Fish requested the mayor let me speak, as "invited testimony." I found myself in a dilemma: I detest secret controlled-access police negotiations. How could I speak, without others from our community being able allowed to weigh in, I wondered.

Many came for two days to City Hall, intending to testify, and they were met with

forceful opposition. It no doubt frustrated those who took time from work, school and life pursuits; a trip downtown, at personal cost, was a sacrifice. Paid government workers didn't want to hear them. A public building was locked. Signage directed those who sought to express grievances to the Portland Building. The mayor, architect of subversion, never called for that testimony.

## Contract deficiencies result from secret bargaining

Another data set that's difficult to obtain, is the precise expenditure the City Council committed to legal appeal to fix an arbitration process – embedded in the union contract – that repeatedly returns to duty police officers who had been ordered fired by that body. Never has a Council order of officer termination been upheld in arbitration, and the process has been going on from the turn of the century. Council walked away from an appeal of an initial decisions process; the state legislature never acted on a bill to make such bargaining illegal.

Only broad discussion can lead to restoration of civilian authority: this sneaky, back-room process leaves cops' self-exoneration scheme intact. It also fails to address long-held demands from police accountability activists, for whistle-blower protections, drug testing violent officers, and an effective employee evaluation system, one which is directly tied to officer discipline. Union grievances have continuously hampered bureau management: only a systemic investigation into their cause and concerns can produce contract improvements. There is no need to rush through a contract that does not expire until June of next year.

After years of receiving in-house police accountability contractor reports to do so, by the OIR Group, Council responds to a DOJ call for removal of a "48-hour" rule. (After killing Kendra James in 2003, involved officers used this time period to convene at an Applebee's restaurant and produce a police narrative.) Portland Police are about to be offered an unspecified, "reasonable amount of time" to review body camera video, before giving written report. This "end of the 48-hour rule" is as likely an undefined time extension as not.

Unlike the Oregon Legislature, Council seeks to fuse two, disparate legislative actions in a single conversation. It's a general deficiency that Council continues to embed policy in police bargaining.

Employment can be a stand-alone issue. Whether cops get 48 hours to cook up after-action reports is a distinct and separate matter.

A broader discussion is warranted on the ability of video evidence to change police behavior. Studies indicate behavior change only occurs when cops fear detection and consequences for misconduct. Portland's oversight and accountability structures do not offer that. Language that prohibits even police themselves from randomly reviewing video fails the "sniff test" any corporation or organizational designer would give, in relying on such practice for performance improvement among employees.

Transparency is known to restore public trust in policing. More important than discussion of camera "on-off" switches, is an end to secrecy. Our mayor joined law enforcement lobbyists to make access (even by the press) more difficult for bodycam video than it ever was for dashcams. State legislators must revisit loopholes they put into our open records laws: these are public records, made at public expense, by officers in public performance of their duty. I also remind readers that it was recording of police roll call, by valiant officers, which led to an end of stop-and-frisk practices in New York City. Improved justice delivery requires broad discussion of just what evidence do we want cameras to produce.

We're being encouraged to spend millions of dollars on coaches and rehiring strategies, without having any mechanisms for improving police culture. How do we select who gets merit pay? What performance improvements do we expect?

The federal plea deal set out expectations for community outreach and engagement strategies, specifically improving development of police policy. The city has instead wandered back to secret deals, and springing 70-page documents for quick "input" just prior to passage. We can only hope for judicial intervention. City contractors, the Compliance Officer Community Liaison in Chicago, cannot be counted on to describe the suppression of all government bodies established to solicit community input; they were not on the scene, feeling intense fear as law enforcement dampened testimony by justice advocates opposing their police payout at City Hall. We can only hope the U.S. District Court makes these observations, and that it values justice and plea deal provisions to rule in annual review on Oct. 25, that Council's crude contract with the police union is invalid.

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Dignity



Poverty