



U.S. Department of Justice

Civil Rights Division

JCP:LLC:RJG:BDB
DJ 207-61-1

Special Litigation Section - PHB
950 Pennsylvania Ave, NW
Washington DC 20530

February 26, 2016

Via email

Ellen Osoinach, Deputy City Attorney
Office of the City Attorney
1221 SW 4th Avenue, Ste 430
Portland, OR 97204

RE: In-Service Training, *United States v. City of Portland*, 3:12-cv-02265-SI

Dear Ms. Osoinach:

We write to provide the City and the Portland Police Bureau (“PPB”) with technical assistance for compliance with the training provisions of the Settlement Agreement contained in Paragraphs 78 through 87 of that Agreement.¹ This guidance is based on our joint observations of the PPB’s in-service training with our police practices consultant and the Compliance Officer Community Liaison (“COCL”). The training lasted one week and was part of the annual in-service training that all current PPB officers attended on a rotating basis in 2015. We thank PPB and the City for making the training sessions open to our observations, and for frank, open dialogue with Chief Larry O’Dea, Assistant Chief Mike Krebs, and Lieutenant Jeff Bell during our on-site visit.

The Training Facility

The City has provided superior training facilities to PPB. We applaud this effort. As COCL observed, and we agree, the training facility is impressive. The existing structure was gutted inside and designed to meet the needs of the PPB training academy. For action scenarios, the academy has a scenario village comprised of six real-size buildings, including two businesses, apartments, and a single-family home with an attic and garage. Both sides of the block have buildings, allowing for surveillance from across the street, alleys, etc. Outside the training academy building, there are roads and cars that allow officers to practice the pursuit techniques. The building has classrooms, gymnasiums, and two indoor ranges, used for firearms practice and qualification.

¹ This letter is not intended to serve as a compliance assessment at this point in time. We will, however, rely on our observations of PPB’s in-service among other data in our forthcoming two-year compliance assessment.

We understand that some COAB members or community members have expressed reservations about entry into PPB facilities. Also, we observe that from the exterior the training facility is non-descript and that the facility is located remotely. The confluence of these characteristics serves to obscure from the public the good work that occurs within the walls of PPB's superior training facility.

We encourage PPB to make the training facility open to public observation when appropriate and safe. In part, PPB can help bridge the gap between the PPB and the public at large by demonstrating PPB's dedication to training and making transparent what happens inside the training academy.

It is our understanding that all persons, including our own observers and all PPB officers up to and including the Chief, are subject to pat-down search when entering the "safe areas" of the facility, e.g., scenario rooms. This is a necessary safety precaution. Even public observers, therefore, should be aware of this necessity and plan accordingly.

Us vs. Them

As an overarching concern, we observed at several points PPB instructors reinforced a sense of PPB being on the opposite side of the public whom they police and serve. We do not attribute this us-vs.-them mentality to any malicious motivation. Rather, we note the continued need for a shift in the mindset of instruction, i.e., PPB is comprised of the community, not separate from it. For example, the legal update portion that we witnessed included many references to the City's defenses to civil claims filed against the City for PPB conduct. PPB could better have addressed these as teachable events both in the application of current policy and the impact on the community.

Before finalizing its next round of training, we recommend that PPB re-evaluate all its training materials to eliminate the us-vs.-them mentality. For example, PPB should minimize uses of military imagery, e.g., the photos used in active-shooter training, which unwittingly reinforces the "us" perception. Additionally, we suggest that PPB seek significantly greater inclusion of community volunteers in its 2016 in-service training. PPB should include varied community volunteers and people with lived experience in many of its scenarios. Moreover, PPB instructors spent significant time using stories from its officers' or prosecutors' perspective to convey material. Likewise, PPB could use community members' perspectives to convey experiences with law enforcement to bridge the gap between PPB and the community.

Training Evaluations

Settlement Agreement paragraph 80 requires that PPB implement data collection and analysis regarding the effectiveness of training. Specifically, these data must include student satisfaction, learning, and application. PPB previously has asserted that it is applying the Kirkpatrick model for data collection, analysis, and improvement of training. However, we did not witness the necessary data collection to feed into this model.

For the observed in-service training, PPB did not use written, individually identifiable, competency-based quizzes of policy or tactics.² For one class, PPB instructors gave an eight-question use-of-force policy quiz. However, the quizzes were anonymous. Theoretically, PPB could use the results to evaluate instructors, but not students. Similarly, PPB distributed an anonymous survey of the entire training. Strangely, though, this anonymous survey points out that it could be subject to a public records request. That admonition seems intended to discourage criticism. Such comments are not typical or appropriate for this type of survey research. For some practicum instruction, PPB required that all class members successfully complete certain exercises, e.g., firearm qualification. For other exercises, however, PPB did not include any mechanisms or measures to assure or measure students' understanding or competence. For example, PPB did not check whether most students properly applied tourniquets and therefore did not determine whether students learned the material. In previous reports, the COCL has recommended a more rigorous evaluation plan for training. We reiterate the importance of data collection and analysis of training.

Policy Integration

PPB successfully wove policy/law (e.g. dealing with persons in mental health crisis, de-escalation) into the technical skills training in many places (e.g. in the defensive tactics training). However, this was not always the case. Significantly, in Taser training, the classroom instruction breezed through an abridged version of the policy. The instructor noted that students had heard the Taser policy in the recorded legal training. However, that instructor and the slides used in the prior legal instruction did not provide important exclusions on Taser use or other elements of the policy. The Taser classroom instruction should have fully integrated the policy.

Police training tends to be compartmentalized: e.g. now we have a law class, now we have a use of force class, now we will learn tactical skills, etc. Scenario training (which PPB did well, see below) tends to be the only place tactics, law and policy come together. By including law/policy in technical skills training, you can re-enforce law/policy issues, creating a “muscle memory” for the policy when officers need to use the technical skills on the street. PPB should explore additional places in training where these can be brought together. As much as possible, technical skills should be trained in the context of the policy governing those skills.

Tactical Emergency Casualty Care - Tourniquet

Commendably, PPB provided all of its sworn members with Tactical Emergency Casualty Care (“TECC”) training during the 2015 in-service.³ Specifically, this training focused

² PPB has not implemented comprehensive training evaluations to its in-service. LT Bell indicated PPB is introducing this element to recruit training, first.

³ For the final week of training, the instructor who normally teaches this class, a member of Portland Fire and Rescue and a combat veteran, was unavailable. PPB used a video recording of him teaching. Although a live instructor is preferred, it was a reasonable compromise and the PPB instructors in the room helped keep the class engaged by pausing, commenting, and explaining.

on the use of particular tourniquets purchased by the PPB and which officers may elect to carry. These particular tourniquets are comprised of a nylon strap, hoop-and-loop connector, and a plastic latch that officers wind to tighten and constrict blood flow. PPB's instructors reported members having *saved several lives, including civilians*, through the recent use of these tourniquets in Portland. PPB should widely publicize this good work.

Even with the reported lifesaving results of PPB's TECC use, there was room for improvement in the training, specifically:

- Policy Integration:
 - PPB offered a cursory review of Policy 620.50, the duty to render emergency medical aid. However, the instructor merely commented “nothing new” and did not even give enough time for the class to read the policy projected on a screen. PPB made no mention of giving medical aid to an offender (e.g., an offender who has been shot by a member) as required by Settlement Agreement 84(a)(iii). Likewise, we witnessed traffic stop scenarios that did not address this need as discussed herein. We recommend integrating the policy in the training, in addition to ensuring that training comports with the explicit requirements of the Settlement Agreement.
- Decreasing the us-vs.-them mindset
 - Instructors noted that members may use the tourniquet on both department members and civilians. However, PPB could have better emphasized this point by using a scenario with civilian volunteers or members dressed as civilians. Officers performed all practice applications on themselves or their partners.
 - COCL also noted an issue with the lowlight partner rescue scenario: Officers paired up, and the rescuers went into a different room. The rescue officer had to come into the darkened room, find his/her partner, and discover and treat the wound. As it played out, if a rescue officer found a different injured person, the officer moved on without rendering aid. This has the effect of training officers to not render aid unless the subject is their partner/police.
 - PPB used numerous military combat photos. Given that the TECC tourniquet technology originated with military applications, these combat photos may be more readily available. However, PPB should endeavor to de-militarize its references wherever possible.
- Assessing effectiveness of training
 - Instructors conducted a verbal group “quiz” after class and also did a quick verbal survey asking whether the officers felt they had learned the material and whether they were confident in their ability to use the techniques. This did not produce the data necessary for the Settlement Agreement, i.e., individual officer learning, instructor assessment, and efficacy. Nor could a verbal group quiz produce reliable data. Students are unlikely to admit to a lack of understanding when with their peers.
 - Instructors asked members to send them a note/email when they use TECC skills. PPB could better assess efficacy of training by more formal recordkeeping of TECC applications (especially when PPB members render aid to community members).

Force policy

PPB will necessarily have to revise its 2016 force policy training to comport with PPB's revised force policies, on which the COAB is currently working. As PPB revises its force policy training, it should include certain changes from the training that we observed under the current policy:

- PPB instructs officers that the Ninth Circuit Court of Appeals uses the terms “immediate” and “imminent” interchangeably, yet the PPB went to great length to attempt to distinguish these terms. This was counterproductive. Not only was the lesson unclear, it tried to instruct on a meaningless distinction.
- PPB provided officers with a Use of Force “hard card” that officers can carry with them. The instructor noted that the card itself is already out-of-date. DOJ found the card confusing. COCL found the card should be presented in a summary fashion, rather than block text.
- At one point, the instructor expressed a desire to hurry through a few points because it was just review. Reinforcing policy is as important as reinforcing technical skills.
- The “assessment” form after the use-of-force training was a fill-in-the-blank test, but officers were not required to identify themselves. This may serve as an assessment of the instructor, but not a test of the students.

Firearms

PPB dedicated significant resources and time from its 40-hour in-service training block to firearms training, but that training needs more focus on policy understanding, integration, and decision making skills. PPB had skilled firearms instructors and a well equipped firing range for its firearms instruction and qualification.⁴ Firearm training began with a brief discussion about the law and policy. COCL and DOJ believe PPB should have dedicated more time here to thoroughly reinforce the law and policy on deadly force and opportunities to de-escalate. PPB provided no explanation during the range training regarding why one would shoot in certain combinations of fire (e.g. 3 rounds, 2 rounds), nor when to stop shooting, nor the reason for choosing certain rounds (e.g., bird shot vs. buck shot), nor when one may need to transition to a lower level of force. PPB could and should re-enforce the concepts of de-escalation and rendering aid to a subject during the firearms training, rather than focusing solely on technical skills. As much as possible, PPB should train on technical skills in the context of the policy governing those skills.

⁴ On the date of review by DOJ and COCL, the usual primary firearms instructor had an emergency that called him away. Two other instructors, who reportedly had not taught the firearms course before, stepped in. Lieutenant Bell indicated his belief that the usual instructor includes policy and law into the range skills training.

Scenario Training

PPB scenario training demonstrated a high point in the week's in-service training, but would still benefit from greater policy integration and community inclusion, where appropriate. Scenario training is an effective means of applying skills and policy in a controlled environment. Any civilian volunteers would have to comport themselves with this requirement.

Traffic Stop/Deadly Force Scenario

One of the scenarios we observed included the following: Officers stop a car for a traffic violation, subject jumps out of the car, officers order the subject back into the vehicle, subject reaches back into car, comes out pointing a gun, and officers fire, striking the subject, who goes down and lies motionless. Officers continue to stay behind vehicles for cover, guns drawn, awaiting arrival of supervisors who have a ballistic shield. With the shield, officers move in and ensure the subject is disarmed. Some officers conducting the scenario requested that an ambulance stage nearby.

Both COCL and DOJ expressed to PPB concern about the long delay in the scenario before officers moved in on the subject after officers shot him. It appeared officers had neutralized the threat. In the scenario, police may have justifiably shot the person. However, there appeared to be an unreasonable delay in rendering aid while officers waited behind the cars, guns pointed at a motionless "victim." COCL and DOJ discussed this scenario with Chief O'Dea. Chief O'Dea informed us that this response, i.e., awaiting a supervisor to respond with a tactical shield, is an improvement over PPB's prior practice. Previously, this scenario would have required a SWAT callout (possibly a 45-minute response), because only SWAT had ballistic shields and PPB policy was to not approach a motionless offender without protection if the subject's firearm was still within his/her reach. PPB made a commitment to address concerns with rendering aid in a timely fashion. Thus, supervisors now carry shields in their vehicles, drastically cutting the response time. While that financial and operational commitment is laudable, the policy that drove it is a concern and may not be in compliance with the Settlement Agreement's requirement to render aid after a use of force. *See* Settlement Agreement Paragraph 84(a)(iii).

Officer safety is a key concern. But, awaiting the shield did not completely mitigate the risk that the officer would have had by rendering aid immediately. COCL and DOJ's police practices consultant noted that the response with the shield did little to protect the officers from the perceived threat of the apparently unconscious victim because the shield was not protecting all of the officers. In other words, even after waiting for the shield, some of the officers were as exposed as they would have been if they immediately rendered aid. PPB should reassess how to timely render aid to a subject against whom force is used and better integrate the policy requirement in future scenarios.

Indoor/Crisis Response Scenarios

PPB did a very good job of integrating classroom instruction and skills exercises in conducting multiple crisis response scenarios in its scenario village. PPB began with classroom

review of the totality of the circumstances for use-of-force decisions, de-escalation and disengagement with a plan for follow-up. Officers divided into smaller groups for scenarios, performing roles appropriate to their rank as much as possible. One scenario involved an intoxicated, suicidal, armed subject in a house with his brother. Once the non-suicidal brother is safely out of the house, officers have to decide whether disengagement is the best course of action and, having decided it is, how best to accomplish this. Another scenario involved talking a person in crisis out of a confined space. The observed officers took their time and completed the scenarios successfully. The training integrated aspects of Settlement Agreement paragraph 84(a)(i), (ii), and (iv) in both the classroom prep and the roll play. However, paragraph 84(i) requires officer training on ethical decision making and peer intervention, which PPB's training did not address. PPB could utilize scenarios that have officers arriving as backup for role-playing officers who are already on-scene (and are behaving in a manner that requires peer intervention) to fulfill this requirement.

Tactics/Rapid Use of Force Decisions

In these rapid-fire scenarios, an officer stands inside a curtained box and a role player enters, forcing a quick decision on what, if any, force to use. The scenarios were: (1) man charging with a knife, (2) man stating he likes fighting police as he aggressively starts closing in on the officer; if the officer uses pepper spray it doesn't work on the subject and the officer needs to switch to the Taser; and (3) man rushes up to the officer and turns out to be a police officer chasing someone.

The only "non threat" was a fellow police officer, not a civilian. That portrayal, in the absence of a civilian non-threat reinforced the us-vs.-them mindset. Changing or adding the "no threat/no force" scenario so that it is a community member rather than a police officer would be an effective way to combat that mindset. Force situations sometimes arise from non-cooperative, non-compliant subjects, so training scenarios should also give attention to the communication skills and social proficiencies necessary to persuade individuals to comply with their requests and to prevent the escalation of conflict. COCL opines that procedural justice training would also help in these situations.

Defensive Tactics

PPB did a much better job at integrating policy and law issues at this practical exercise of defensive tactics in the academy's mat rooms. For instance, instructors:

- explained officers' use of force as an exercise of government power;
- noted which tactics trigger the force reporting requirement;
- wove into their discussion non-escalation and de-escalation (e.g., if the subject is cooperative, don't use these tactics—just handcuff him/her);
- discussed the issue of officer precipitation of force (e.g., if you reach in a person's car with a knife to cut the seatbelt because the person won't unhook his seatbelt, you have introduced the knife into the scenario, so if the subject now tries to take your knife, are you really justified in shooting, or should you have just not reached in with the knife in the first place?).

Homicide Case Presentation

PPB presented a lengthy, interesting narrative of a homicide investigation and prosecution, but it consumed valuable training time for little effect. PPB should better allocate its valuable training time.

Electronic Control Weapons

PPB emphasized technical proficiency of ECW applications, but poorly integrated policy and critical decision making. Classroom training on ECW policy was rushed and referred to a prior legal training presentation, which, itself, was incomplete. Instruction needed clearer discussion of issuing warnings prior to deploying an ECW, including the fact that people in mental health crisis may need to be given more time to respond to commands. PPB did not present the full list of exclusions when officers should not use an ECW. Instruction completely omitted mention of the risk of a subject falling after ECW application. There was also no discussion of probe removal or policy requirements for rendering aid for probe removal. COCL observed trainers emphasizing the need to go from “call-to-call” over the need to spend time speaking to subjects in crisis. Training should discuss the applicability of the crisis intervention policy and the Settlement Agreement mandate to call upon specialized units, such as ECIT officers, when the situation permits. PPB has the necessary ECW trainers and could better execute ECW training. Given the specific DOJ finding regarding multiple applications of ECWs, and the recent court finding that an officer had used excessive force in her application of an ECW, PPB should emphasize the importance of ECW training and limitations on its use.

Conclusion

Our observation of PPB’s in-service training revealed PPB’s dedication to ongoing training of officers and many high points, e.g., lives saved with TECC and a focus on safe resolution of crisis events. However, the observed in-service could be improved by eliminating the us-vs.-them mindset and incorporating more thorough policy and decision making integration in the skills proficiency exercises. As COCL noted, improvement of communication skills through in-service training would also assist in PPB’s efforts to minimize force.

Please let us know if you have any questions regarding this technical assistance. We look forward to continuing to work with PPB on the ongoing implementation of our Settlement Agreement.

Sincerely,

BILLY J. WILLIAMS
United States Attorney
District of Oregon

/s/ Laura Coon
Laura Coon
Special Counsel

/s/ Jared Hager
JARED HAGER
Assistant U.S. Attorney

/s/ Jonas Geissler
R. JONAS GEISSLER
Senior Trial Attorney
BRIAN BUEHLER
Trial Attorney

cc: Dennis Rosenbaum, Ph.D.
Amy Watson, Ph.D.
Kathleen Sadaat
Tom Christoff
Ashlee Albies, Esq.
Shauna Curphey, Esq.
Anil Karia, Esq.
via email