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CIVILIAN OVERSIGHT

PARC Recommends Oversight Changes in Milwaukee

PARC released a report evaluating police oversight in Milwaukee, entitled "Promoting Police Accountability in Milwaukee: Strengthening the Fire and Police Commission." The City of Milwaukee commissioned PARC and Richard Jerome, PC, to conduct the assessment and to make recommendations for improvement.

The Fire and Police Commission (FPC), which was established in 1885 and is the oldest police commission in the country, has not been effective. Many community members view the Commission as weak and unproductive, while many officers perceive it as harsh and unfair. Beyond those complaints, PARC also found "many structural problems that undermine the good-faith efforts of the Commissioners and staff to effectively conduct police oversight." Among PARC's significant findings were that:

- the FPC's citizen complaints process is badly broken and the Commission underutilizes its policy review powers;
- the FPC's time-consuming responsibilities for recruiting, testing, hiring and promoting Milwaukee Police Department (MPD) personnel detract from its ability to focus on police accountability and policy issues;
- the FPC has had insufficient contact with and input from the community;
- the decision several years ago to make the FPC part of the Department of Employee Relations has diminished the FPC's independence and stature, while budget cuts have undermined efforts to conduct effective oversight;



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- archaic statutory provisions and other problems lead to undue delays in hearing the appeals of officers subject to serious discipline; and,
- allowing officers fired by the Chief to continue being paid while their appeal is pending with the FPC, even if they have been indicted for criminal charges, is inappropriate – no other police department has this provision.

The report recommends a “fundamental overhaul” of the FPC. PARC called for the creation of an Independent Monitor, appointed as the chief FPC staff position, tasked with reviewing the MPD’s citizen complaint and internal investigations to ensure thoroughness, fairness, and credible results. PARC also called for the bolstering of the FPC’s policy and research staff to allow the FPC to effectively and proactively exercise its policy responsibilities. The

Monitor would also carry out audits of internally-generated MPD investigations of misconduct and of serious uses of force, including officer-involved shootings. PARC recommended increased FPC community outreach, a streamlined disciplinary appeals process, an end to pay for terminated officers, an expansion of the number of Commissioners to seven, and improved training for those Commissioners. PARC also recommended that the status of reform implementation be assessed in three years. The full report can be accessed online at www.parc.info.

The *Milwaukee Journal Sentinel* reported that Milwaukee Mayor Tom Barrett’s 2007 budget includes the funds necessary to implement PARC and Richard Jerome’s recommendations. September 26, 2006.

Rampart Review Panel Issues Report

The Blue Ribbon Rampart Review Panel, requested by the Los Angeles Police Commission and Chief William Bratton and headed by civil-rights attorney Constance L. Rice, recently issued its report. “Rampart Revisited: The Search for Real Reform Seven Years Later,” assessed the progress of the Los Angeles Police Department (LAPD) and the City in fixing institutional failures. Those failures were revealed as a result of the Rampart corruption scandal in which a convicted former LAPD Rampart anti-gang CRASH (Community Resources Against Street Hoodlums) officer Rafael Perez alleged that he and dozens of fellow officers routinely physically abused and framed suspects, fabricated probable cause, and committed perjury in court, all with impunity. One result of the scandal was that the City and LAPD entered into a consent decree with the U.S. Justice Department requiring major LAPD reforms.

The panel’s report, the fifth examination of the scandal, includes scores of conclusions and dozens of recommendations. Its overarching theme is that policing in Los Angeles needs to undergo a paradigm shift away from “proactive/suppression” policing and toward creative problem solving and community work to reduce crime. Based on interviews with scores of retired and current LAPD officers, most reforms now being implemented are useful, “but they will be insufficient to lock in current successes, prevent another CRASH crisis, resolve the LAPD’s long-standing problems or begin to close the public-



With the generous support of the Ford Foundation, PARC, in cooperation with monitors, law enforcement executives, civic and government officials, and other interested constituencies, aims to strengthen police oversight so as to advance effective, respectful, and publicly accountable policing.

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police trust gap in high-crime areas.” According to the panel, a significant number of commanders, officers, leaders of the rank and file interviewed believe that a “complete overhaul of the City’s deficient ‘thin blue line’ public safety model” is required. The Rampart Division under new leadership is credited for taking a “community-savvy” approach that established trust while reducing crime, but the report also notes that other areas where crime levels are high have not altered their public safety approach or closed the public-police trust gap (a gap identified by the McCone Commission forty years ago).

The report’s recommendations include the following: the LAPD should receive increased resources; the LAPD should move from proactive/suppression policing to “high road policing” as implemented in the Rampart Division; the City should find a way to address “distressed hotspot” communities with high crime and high tensions between the public and police; residents of high crime communities should take responsibility and receive funding to counter cultures of violence; federal court enforcement of the consent decree should continue to focus on “real reform” to remedy underlying causes of the CRASH crisis; the Police Commission should expand the independence and resources of the Office of the Inspector General; the current Board of Rights (administrative hearings) system should be replaced; an independent commission should conduct an integrity audit of the Los Angeles criminal justice system; and any new corruption scandal should be investigated by an independent multi-agency force. The report also provides findings and recommendations aimed at prosecutorial agencies. Selected comments from current and former LAPD officers and command staff are featured in one of the report’s appendices. The full report, executive summary, and appendices can be accessed online at: www.lapdonline.org/assets/pdf/Rampart_Reconsidered-Full_Report.pdf
www.lapdonline.org/assets/pdf/rampart_reconsidered_executive_summary.pdf
http://www.lapdonline.org/assets/pdf/rampart_appendices_final.pdf.

DC Complaints Board Submits Recommendations

The Washington DC Police Complaints Board (PCB), which oversees the Office of Police

Complaints (OPC), recently submitted three recommendations relating to the creation of a Crisis Intervention Team (CIT), the distribution of business cards for officers, and the establishment of protocols concerning officer treatment of people with disabilities who use service animals.

In a recommendation to the mayor, city council, and police chief, the PCB proposed that a CIT be created to improve police responses to individuals experiencing mental health crises. The goal of the CIT would be to make available, at all times in all parts of the city, officers with the training and expertise to de-escalate tensions arising from such crises and to connect individuals in need with appropriate treatment. The report and recommendations submitted in support of the proposal noted that Metropolitan Police Department (MPD) officers respond to roughly 35,000 service calls annually that involve people with mental illness. The report notes that incidents escalate because officers either do not recognize symptoms of mental illness or lack the skills to de-escalate the situation, leading to confrontations and arrests.

The PCB recommends a CIT approach because it would bring together the MPD, mental health service providers and consumers, and advocates for people who suffer from mental illness. According to Philip Eure, the OPC’s executive director, an effective CIT would “decrease police misconduct that stems from inappropriate responses to people with mental illness, reduce arrests in these cases, and bring down the number of police officer and citizen injuries associated with mental health crises.” The report provides 14 “action steps” to ensure prompt and successful implementation of a CIT program for the MPD.

In another recommendation, the PCB suggested that MPD officers carry business cards to facilitate officers’ attempts to identify themselves. The First Amendment Rights and Police Standards Act of 2004 requires that officers display their nameplates and badges while in uniform. It also gives the OPC authority to handle complaints from members of the public who claim an officer failed to identify him or herself. MPD general orders also require that an officer identify himself or herself if asked. The OPC has received complaints about officer non-compliance and thus recommended that officers carry and distribute business cards when they are asked for identification.

The OPC pointed out that another benefit of business cards would be to facilitate community policing because residents can keep the cards and will know that they can ask the officer questions in the future, provide information, or report crimes.

The PCB also recommended the creation of a departmental general order and related training that addresses the treatment of disabled persons using service animals. The PCB cautions that officers could violate the Americans with Disabilities Act (ADA) absent appropriate policies and training. The PCB's recommendation notes the department's obligation not to discriminate against persons with disabilities who rely on service animals, the rights of persons who use service animals to use public accommodations, and the need for immediate and professional response to attacks on service animals by other animals. The PCB recommends the issuance of a general order that provides information to officers on handling requests for service that involve service animals, a specific section on service animals in training on disabilities and ADA compliance, and a roll-call training lesson for all officers on this topic.

All three recommendations can be accessed online at: www.policecomplaints.dc.gov

Boise Ombudsman Issues Report on Shooting Case

Boise's Community Ombudsman, Pierce Murphy, released a report on the December 2004 fatal shooting by a Boise police officer of 16-year-old Matthew Jones. Murphy conducted an in-depth investigation of the incident in which Jones was shot and killed by a Boise Police Department officer. Jones' father had called the police, telling the dispatcher that his son was drunk or on drugs and becoming very violent. He also told the dispatcher that his son had possession of a rifle that was not loaded, but that was equipped with a bayonet. The officer arrived at the scene and within seconds after emerging from his vehicle had shot Jones four times. Murphy found that the evidence supported the officer's account that Jones struck him with the bayonet, but Murphy also found that the officer failed to warn Jones before shooting him.

After weighing the evidence, Murphy found that the officer was justified in using deadly force but that he

violated departmental policy by not forming a comprehensive tactical plan before getting out of his car in the Jones family driveway. Murphy recommended the creation of a Crisis Intervention Team for the department, comprised of officers specially trained to deal with individuals experiencing mental health or drug-related crises. He also urged improved investigative practices for officer-involved shootings. The full report can be accessed online at: http://www.boiseombudsman.org/Inv%20Reports/2006%20Inv%20Reports/04_0232%20Public%20Report.pdf

City of Eugene Hires Its First Police Auditor

The Eugene (OR) City Council hired the city's first police auditor on August 25, 2006. Cristina Beamud, who had served as legal adviser to the Cambridge (MA) Police Department and as a police officer, will report directly to the City Council. Voters approved a change to the City Charter in November 2005, authorizing the City Council to create a civilian review board and to hire an auditor. The push for improved oversight stemmed in part from sex-crime convictions of two former police officers and allegations of racial profiling by the police. The Council also clarified that the auditor, rather than the City Manager, would have the power to hire, fire, and supervise her future staff. *Eugene Register-Guard*, August 16 and 26, 2006.

Boston Mayor Set to Appoint Police Oversight Panel

Boston Mayor Thomas Menino has announced the creation of a Civilian Review and Mediation Board that will be tasked with oversight of the Boston Police Department. The three Board appointees will have powers to examine internal police investigations of alleged police misconduct and to direct investigators to re-interview witnesses or take other steps to make the investigation more thorough; if they still have concerns about the quality of the investigation, they can then request that the police commissioner intervene. The Board will review all allegations of serious misconduct that the Internal Affairs (IA) Division dismisses. The Board will accept and review citizens' appeals of IA decisions. The new procedures also include the use of voluntary mediation to resolve less serious complaints. The Board members

will not have the power to conduct their own investigations or issue subpoenas. They will serve as paid, part-time ombudsmen, and their work will remain largely confidential, though they will submit annual reports to the mayor that will be made public.

The Stern Commission, which had investigated the death outside Fenway Park of Victoria Snelgrove after she was shot by police with a pepper ball projectile in 2004, recommended the creation of a standing, outside review entity. Mayor Menino had resisted the recommendation but then agreed to the current Board's format. According to Menino, "[T]his is an important step in the process of people having faith in the review of complaints that go to the department." The leader of a civil rights organization quoted in the press said that he would have preferred that the Board be granted subpoena power and that it make reports to the public more often than once a year. *Boston Globe*, August 25, 2006.

Minneapolis Considers Changes for Its Review Agency

Minneapolis officials are debating reform proposals that seek to improve the operations and impact of the Civilian Police Review Authority (CRA), the agency tasked with investigating citizen complaints of Minneapolis Police Department (MPD) officer misconduct. Since the CRA's creation in its present form in 2003, its scope and effectiveness have been subjects of concern for the police and residents. The city's Department of Civil Rights issued a report in February 2006, in part in response to MPD assertions that CRA investigations were deficient. According to the February 2006 report, the MPD disregarded some CRA findings even though, by ordinance, the Chief is mandated to take disciplinary actions based on the CRA's findings.

A Civilian Review Authority Working Group was created to focus on the problems described in the Department of Civil Rights report, as well as other issues of concern. Made up of City Council members, Department of Civil Rights staff, Mayoral office representatives, and police and officer union representatives, the Working Group issued its report in August assessing the CRA and possible ways to improve its operations and its coordination with the MPD. Among the issues examined were how to improve the way complaints are handled by the CRA

and the Internal Affairs Unit; how to identify problematic behavior early; and how best to train officers on police accountability issues. The Working Group is also considering ordinance changes relating to complaint dismissals, the CRA's scope of authority, disciplinary decisions, and subpoena power.

The full reports on the CRA can be accessed online at: http://www.ci.minneapolis.mn.us/cra/docs/CRAReport_2006.pdf
http://www.ci.minneapolis.mn.us/cra/docs/CRA_WorkingGroupReport.pdf

Report Evaluates Police Oversight in Albuquerque

In a report evaluating the police oversight system in Albuquerque, the third such report issued since 1997, consultants MGT of America, Inc. made scores of recommendations to the city's Independent Review Office and Officer (IRO), Police Oversight Commission (POC), and the Albuquerque Police Department (APD).

The Independent Review Officer got positive reviews in the report, with MGT reporting that "it was clear from discussions with officers, supervisors, the Albuquerque Police Officers Association president, IA (Internal Affairs) commander and POC members that the IRO and his investigators have earned a reputation for being competent in their work." The report notes that this is a significant change from previous assessments of the review officer.

Among the report's findings and recommendations, the audit found that more officers against whom complaints had been sustained were being disciplined than in previous years (in 2004 and 2005, 98 percent of sustained complaints led to officer discipline, compared to just 58 percent in 2002). The report also commended the Chief for reinstating the Critical Incident Review Board that had been disbanded due to disagreements about its scope. The IRO and Internal Affairs were commended for enhancing the mediation program and were urged to expand the program and expedite the process. The report also recommends that: the period during which complainants can file appeals if they are dissatisfied with the outcome should be extended from 10 business days to 30 calendar days; the IRO be permitted to hire more investigators; the APD do

IN FOCUS



*Author of Crossing the Threshold:
Female Officers and
Police-Perpetrated Violence*

PARC: *How is police-perpetrated domestic violence different from domestic violence generally? How widespread is it?*

DW: Police officers who batter have many of the same characteristics and use many of the same tactics that civilian batterers do. In addition, they have an arsenal of professional tactics and techniques that they use to control their intimate partners. Domestic violence is not limited to physical violence, and police officers are trained to gain and maintain control of others using a variety of techniques that range from their presence and verbal commands all the way up to physical force. When a police officer does use physical force, it's often in the form of pain compliance techniques that leave no visible bruises or injuries. Without any evidence, it's an issue of credibility. Sadly enough, there is still a widespread belief that women lie about physical and sexual abuse. I'm referring to men as batterers here because in my experience, after hearing from thousands of women and perhaps half a dozen men, men are the perpetrators in the vast majority of cases. As far as how widespread this problem is, most research so far shows that domestic violence by police does occur at a higher rate than it does in the general population.

PARC: *In your view, have most police departments attempted — or been successful in those attempts — to address this problem?*

DW: There has been a push to adapt policy in this area in the last ten years because of the 1996 change in the gun law [referring to the Lautenberg Amendment to the Gun Control Act of 1968, which among other things, made it a federal offense for anyone convicted of a misdemeanor domestic violence crime to possess firearms or ammunition, with no exception for law enforcement officers]. But several years after this push began, a survey of 100 large police agencies was conducted by Kim Lonsway for the National Center for Women and Policing. Of the 78 agencies that responded, only 29 percent had policies, and some of those policies were minimal. On the other hand, I have seen some departments with good, comprehensive policies.

PARC: *Do you see any particular trends either in the nature of this type of abuse or in the way law enforcement agencies have responded over the past decade?*

DW: Officers who batter are employing a lot of preemptive tactics. I hear more and more stories of officers who call 9-1-1 claiming to be the victims of abuse. Perhaps most disturbingly, I've seen an onslaught of cases where the women are being arrested and then the batterer takes that opportunity to get the kids.

PARC: *If you had to name a few things that law enforcement agencies or others should do to curtail the problem of police-perpetrated domestic violence, what would those be?*

continued on next page

DW: Screening and background checks should be designed to reveal a history of abusive relationships. The systems they use to track complaints of domestic violence, sexual harassment, and sexual assault, whether sustained or not, need improvement. Patterns are not identified because many departments periodically purge officers' personnel files. There needs to be a significant change in the way department personnel receive and respond to reports that includes taking women's reports seriously and not presuming that the allegations are false. Simultaneously, they need to be more skeptical when males allege they are victims. In the end, only when departments and other officers refuse to collude with the abusive officer by remaining silent and covering for him will we see real change.

PARC: *What do you think of the recently authorized law enforcement training funding under the Crystal Judson provision of the Violence Against Women Act of 2005?*

DW: Funding for training on officer-involved domestic violence has been available under VAWA and from other Justice Department programs for years now, though agencies may have overlooked it. This provision, named after the slain wife of Tacoma (WA) Police Chief David Brame, may raise awareness that funding to put in place officer-involved domestic violence protocols and training is available under VAWA.

For more than twenty years, Diane Wetendorf has been an advocate, trainer, and consultant specializing in police-perpetrated domestic violence. She provides technical assistance to advocates and law enforcement and is currently a consultant to the Battered Women's Justice Project. She has written several articles on this topic and is the author of a new book entitled, "Crossing the Threshold: Female Officers and Police-Perpetrated Violence," which is available at www.abuseofpower.info (ISBN: 978-1-933556-48-2).

more to explain the role of civilian oversight to its officers; and officers and their supervisors should do a better job of reporting uses of force.

The report concludes that the "city has come a long way toward having a truly outstanding civilian police oversight program....[T]he leadership exhibited by the IRO and the newly appointed Chief of Police and their willingness to collaborate on police oversight issues is a remarkable change that has occurred in the past year." The full report can be accessed online at: <http://www.cabq.gov/iro/pdf/AlbuquerquePDReport2.pdf> *Albuquerque Tribune*, July 18, 2006, *Albuquerque Journal*, July 19, 2006.

NYC's CCRB Reports Record Number of Complaints

In its 2005 annual status report, the New York City Civilian Complaint Review Board (CCRB), which investigates misconduct complaints against New York Police Department (NYPD) officers, reported a record

high 6,796 complaints received last year. This total represents an increase of 10 percent over the previous record number of complaints set in 2004. As in its 2004 annual status report, the CCRB points to the 311 telephone system as a significant factor in rising overall complaint totals since 2001 and specifically with the proportion of complaints filed over the telephone.

The CCRB measures agency productivity by several factors including the total number of closed cases, the rate at which final decisions are reached, total number of open cases remaining, and the average time to complete investigations. The total number of cases closed by the CCRB in 2005 was up 12 percent from 2004 to 6,518, which includes 2,679 full investigations. The average time to close a case in 2005 was 195 days, while the average time to close a full investigation was 294 days, an increase of 14 days from 2004.

Of the total number of complaints received in 2005, the CCRB received 81 relating to police-public contacts during the 2004 Republican National Convention, of which 63 were determined to be within the agency's

jurisdiction. The 63 complaints included 148 allegations, 51 percent of which claimed officers abused their authority; 35 percent charged excessive force; and 11 percent alleged discourtesy and offensive language. A special panel was created to review convention-related complaints. Of the 63 convention-related complaints, one case was resolved through mediation, while a full investigation was conducted in 44 others. Eighteen complaints were closed because the complainant or victim could not be located or did not pursue the complaint further. The results of the 44 investigated cases are as follows: seven complaints were closed because the involved officer(s) could not be identified, two were closed because the involved officers were no longer members of the NYPD, one or more allegations were substantiated in three cases, and all allegations in 32 complaints were found not to be proven, being classified primarily as unfounded, exonerated, or unsubstantiated. The average time to complete convention-related investigations was 418 days.

Acknowledging the particular difficulties with these cases, the CCRB reported that “as with previous complaints involving large-scale events with large numbers of officers and civilians interacting, many more interviews are required to conduct a thorough investigation; tracking down the numerous witnesses to these events was time-consuming. Furthermore, it can be difficult identifying officers when there are a number of officers assigned to the same location from various precincts, as was the case at many of the events that led to convention-related complaints.”

In May, the CCRB issued a recommendation regarding policing demonstrations. Citing examples of deputy chiefs giving unclear or inconsistent orders to demonstrators, the CCRB called on the NYPD to improve or reinforce training so that deputy chiefs and others “issue orders in a manner that civilians can hear and understand and with which they can comply.” The full report can be accessed online at: <http://www.nyc.gov/html/ccrb/pdf/ccrbann2005.pdf> The recommendation regarding policing demonstrations can be accessed online at: http://www.nyc.gov/html/ccrb/pdf/rncrecomm2006_05_09.pdf

San Jose Police Auditor Issues Annual Report

In its 2005 annual report, the San Jose Independent Police Auditor (IPA) provides information on citizen complaints and its audits of Internal Affairs investigations. During the year, a total of 429 complaints were filed, representing an increase over the preceding two years but within the average range over the past five years. The IPA said that it had concerns about a significant increase in complaints classified as “inquiries” numbering 203 in 2005, up from 118 in 2004, because there is minimal or no investigation, officers’ names are not documented, and the cases are not tracked for disciplinary or other purposes. IPA conducted an audit of 187 cases classified as inquiries in 2005 and found that 84 of them should have been investigated and retained in the officers’ records.

The IPA found an increase in use of unnecessary force complaints, with 70 such complaints, up from 62 in 2004 and 49 in 2003. The report also looked at subject officer demographics and found that officers with two to four years of experience continue to be named in the highest number of complaints when compared to their representation in the department – they make up 11 percent of all officers and 21 percent of officers named in complaints. The statistical review also looked at complainant demographics and found that Hispanic complainants filed the greatest number of complaints and that Hispanic and African-American complainants filed complaints at a higher rate than their representation in the San Jose community.

The report includes two recommendations focused on shooting at moving vehicles and adequate backup in potentially violent situations. The IPA called on the San Jose Police Department (SJPD) to expand its policy regarding shooting at moving vehicles by emphasizing that officers should move out of the way of the vehicle, when possible. The IPA recommends that an officer should only be permitted to shoot at a moving vehicle if he or she is unable to move out of the way of the vehicle and the officer has an objectively reasonable belief that it is necessary to defend the life of the officer or another person. In the second recommendation, the IPA calls on the SJPD to continue to train officers to wait for backup, when practical, in situations where there are objective indicators that the situation could escalate to violence. That recommendation was based

on the IPA's review of two shootings in circumstances where an officer approached a suspect alone despite indications that the situation could become violent.

The report also provides an update regarding two mid-year recommendations it made regarding Taser use by SJPD officers and improved access for IPA to homicide reports. The City Council adopted both recommendations and the SJPD established new Taser use guidelines that have been disseminated to all officers and become part of the department's training curriculum. The full report can be accessed online at: <http://www.sanjoseca.gov/ipa/reports/05ye.pdf>

CONSENT DECREES/ MEMORANDA OF AGREEMENT

DC Monitor Releases 17th Quarterly Report

The Office of the Independent Monitor (OIM) has released its seventeenth quarterly report assessing District of Columbia and Metropolitan Police Department (MPD) compliance with the 2001 Memorandum of Agreement (MOA) reached with the U.S. Department of Justice. The MOA requires reforms in use-of-force, firearms, OC spray, and canine policies; use of force documentation, investigation, and review; misconduct complaint intake; personnel management; and community outreach.

With this report, the OIM entered its fifth year of monitoring City and MPD compliance with the MOA. In the report, Independent Monitor Michael R. Bromwich described significant progress, including: revision and approval of 16 policies relating to use of force and officer performance; an almost complete revision of the department's firearms and use-of-force training programs; MPD investigations that are generally thorough and of high quality; and an Office of Police Complaints (OPC) that employs well-trained, professional investigators and conducts quality investigations in response to civilian complaints. According to the Monitor, "...MPD and the City have come a remarkably long way during the last five years."

During the reporting quarter, the Independent Monitor focused on: officer attendance at mandatory

in-service training; the Quality Assurance Unit's (QAU) continuing audit of use-of-force reporting; the quality of investigations performed by the Force Investigation Team (FIT) of serious and deadly uses of force; Internal Affairs Division's compliance with the MOU between MPD and OPC; progress in developing and deploying the Personnel Performance Management System (PPMS); and implementation of the Field Training Officer program.

Regarding the areas of focus, the Independent Monitor found that in-service training attendance appeared acceptable, but the MPD's system for tracking that training and identifying those who have failed to complete it remained deficient. The Monitor found that the audit to review use-of-force reporting revealed that only about a third of the arrestee injury/illness reports that indicated the need for a use-of-force report to be submitted had been completed. In reviewing FIT investigations, the Monitor determined that the MPD is very close to achieving substantial compliance with respect to the quality of those investigations. Although there was some slippage, the Monitor found that the timeliness, completeness, and sufficiency of non-FIT use-of-force and misconduct investigations continued to show significant improvements during recent quarters.

In previous reports, the Monitor had identified shortcomings in how the MPD responds to OPC requests; this report indicates that efforts are being made to improve the department's tracking and response to OPC requests. One of the biggest struggles for the City and MPD has been the implementation of the PPMS, but in this report the Monitor notes progress that would allow the MPD to deploy an MOA-compliant system to the entire department. Finally, in reviewing the FTO program, the Monitor noted continued shortcomings in the selection, coordination, standardization, and recordkeeping of the program.

The QAU conducted an audit to determine MPD compliance with the MOA's requirements regarding the receipt of complaints. The department fared quite well in some respects: in the "walk-in" scenario at MPD district headquarters, district substations and the special Operations division headquarters for all three daily tours of duty, nearly 94 percent of units were in compliance with the requirement that officers identify themselves if asked and with the provision

that the officer not require the complainant's identity, while roughly 90 percent of units complied with the requirement that the officer provide an ID number when asked. A much lower percentage of units, 30 percent, complied with the requirement that the officer explain the complaint process. The audit's "on-street" scenario was conducted in all districts for day and evening tours of duty. In the "on-street" scenario, roughly 90 percent of units were in compliance related to not discouraging a complaint and providing name and ID when asked but only 40 percent of units explained the complaint process and there was 0 percent compliance when it came to having complaint process information in their patrol cars.

The Monitor notes that in recognition of the progress the City and MPD have made, and to allow the parties to focus on the most troublesome areas of the MOA, the Monitor began discussions with the parties about placing in "inactive monitoring" status those areas where there has been sustained substantial compliance. The full report can be accessed online at: <http://www.policemonitor.org/060731report.pdf>

Cincinnati Monitor Issues Report; Scope of MOA is Amended

The Independent Monitor for the City of Cincinnati and Cincinnati Police Department compliance with the 2002 Memorandum of Agreement (MOA) and Collaborative Agreement (CA) issued its fourteenth quarterly report covering the period from January 1 through April 30, 2006, as well as additional recent activities through August 30. The MOA, reached with the U.S. Department of Justice, mandates reforms in use of force, the citizen complaint process, training, and risk management. The CA – among the City, Fraternal Order of Police and private plaintiffs – requires implementation of Community Problem Oriented Policing (CPOP), bias-free policing, and creation of the Citizen Complaint Authority to review complaints and investigate certain uses of force.

According to the Monitor, "the four years of the Agreement have seen tremendous changes in police reform in Cincinnati, in terms of the CPD's policies, use of force reporting and investigation, and the handling of citizen complaints." It praises the department for: creating and expanding a Mental Health Response Team; its compliance with foot pursuit policy provisions; incident documentation and

investigation; a citizen complaint process that is now "open and accessible;" and training requirements of the MOA that were being met. The Monitor notes that Cincinnati officers' use of force had changed significantly during the four monitored years with a decrease in serious uses of force involving batons, physical strikes, takedowns, and chemical sprays, with the substitution of the Taser for those other uses of force.

The Monitor emphasizes, however, that there are significant aspects of the Agreement that have not been accomplished, particularly a shift to CPOP as the principal strategy for addressing crime and disorder in the city. The Monitor found that improvements were needed in relation to the use of the Employee Tracking Solution (ETS) system because those data are not being used for risk management at the level required by the MOA.

The MOA is scheduled to end in April 2007 and the CA in August 2007. On July 25, 2006, the U.S. Justice Department and the City entered into a joint amendment to the MOA. The amendment terminates those MOA provisions for which the Monitor has found the City in substantial compliance for two years or more. Termination of the identified provisions will allow the DOJ, the City, and the Monitor to focus efforts and resources on the MOA provisions for which the CPD and the City have yet to reach and sustain substantial compliance for two years. As a result of the amendment, the Monitor will soon issue a special report that identifies the provisions where there has been substantial compliance for two years and therefore will be terminated.

The Monitor also notes that the effect of the amendment will allow for greater resources and effort to be expended on the CA by the Collaborative Partners. The Monitor points out that the CA needs additional attention because with less than 12 months left before its scheduled termination there are still a significant number of provisions where parties are not in compliance and steps need to be taken to ensure that gains made under the CA continue after it ends. The full report can be accessed online at: <http://www.gabsnet.com/cincinnati/14thReport.pdf> The joint amendment to the MOA can be accessed online at <http://www.usdoj.gov/crt/split/documents/>

[cincinnati_pd_amend_agree_7-25-06.pdf](#); *Cincinnati Post*, July 27, 2006.

Oakland Monitoring Team Issues Status Report

Oakland's Independent Monitoring Team (IMT) has issued its eighth status report describing the City and Police Department's progress in complying with the January 2003 negotiated settlement agreement. The agreement was entered into by the City of Oakland and Oakland Police Department (OPD) to resolve police misconduct allegations raised by private parties in a civil lawsuit.

The IMT assessed the department's progress on each of the 51 settlement agreement tasks. During this period, the team also conducted actual practice compliance reviews of six tasks: documentation of Pitchess responses; performance reviews; OPD/District Attorney Liaison Commander; vehicle stops, field investigations, and detentions; citizens signing police forms; and performance appraisals. Of those tasks, the OPD is in actual practice compliance with Pitchess and citizens signing police forms, as well as with significant portions of vehicle stops, field investigations, and detentions and performance appraisals.

The IMT also reviewed every officer-involved shooting directed at a person from July 2003 through November 2005, a total of 16 shootings, and provided an 85-page report with its findings, including an analysis of each shooting along with global observations and recommendations. The IMT emphasized that shooting investigations needed to include an administrative review as well as a criminal investigation, noting that the questions asked of involved officers and witnesses were not helpful for a well-informed administrative review. The IMT also found that in all of the incidents reviewed, files were disorganized and incomplete, and follow-up with officers regarding counseling and other post-shooting requirements was lacking. The OPD was receptive to the IMT's recommendations and agreed to have IAD roll out on all shootings to begin its investigation.

The report highlights OPD accomplishments and areas of concern. The IMT commended the OPD for taking "aggressive ownership" of the Agreement's reforms. "OPD's recognition that the SA [Settlement

Agreement] can be used as an opportunity rather than viewed simply as a burden is an encouraging sign that OPD will be able to achieve SA compliance and, more importantly, sustain many positive changes long after compliance is attained."

The IMT also notes that its concerns voiced in previous reports about slow development of use-of-force policies have been addressed and that training on the policies has moved forward. The IMT found that in developing the new use-of-force policies, OPD commanders "exhibited impressive thoughtfulness and seriousness of purpose...with reasoned arguments based upon their own experiences and research."

As for areas of concern, the IMT highlighted problems related to the timeliness of internal investigations, in spite of IAD efforts. The IMT notes that officer discipline notification deadlines are being missed and that the OPD has not been able to impose discipline as a result. Until the backlog is dealt with, the department will not be able to comply with deadlines established in the department's relevant general order. The IMT notes that investigations are starting more quickly, but deadline lapses continue.

In summary, the IMT reported that all 51 SA tasks became due during the previous reporting period. The current report shows that 48 tasks were complete regarding policy compliance; 41 of those tasks require training and 38 of the 41 have achieved training compliance. As for actual practice compliance, the third component required to achieve full compliance, a total of eight SA requirements are in compliance.

NJ Moving Toward End of Consent Decree

New Jersey Governor Jon Corzine has announced the creation of a 21-member panel tasked with recommending whether to support termination of the 1999 consent decree the State of New Jersey entered into with the U.S. Justice Department concerning racial profiling by the New Jersey State Police. The panel will make recommendations: to ensure racial profiling does not occur and is not tolerated if the consent decree is terminated; to determine whether the state should retain outside auditors or consultants to continue to examine data and video recordings of vehicle stops; and on how the programs developed by the State Police can assist other law enforcement agencies throughout the state. The Advisory

Committee on Police Standards will evaluate monitoring reports and take testimony from the State Police, monitors, experts, and citizens to review progress. The panel's final report is to be issued by the end of December.

In their June 2006 report, the court-appointed Independent Monitors responsible for assessing compliance with the decree reported that "after six years of monitoring, including the review of video tapes of more than a thousand motor vehicle stops, the monitors have determined that the State is in substantial compliance with the requirements of the consent decree." The Monitors report that although four of the 99 tasks (deemed important rather than critical by the Monitors, and eventually attained) were not in compliance as of the report issued in December 2004, that the state was in substantial compliance with the consent decree's requirements at that time and has remained in compliance for more than the required two years. The Monitors note that the state police have "far exceeded the written requirements of the consent decree" and that the agency has implemented training, supervisory, information systems, and internal investigative processes that are a solid foundation for moving the organization forward. Moreover, the Monitors reported that they were convinced that the changes implemented over the last six years had been accepted by the members of the New Jersey State Police and have been institutionalized in practice and policy.

The governor's executive order creating the panel can be accessed online at: <http://www.state.nj.us/acps/exec/>. The latest report by the Independent Monitors can be accessed online at: <http://www.nj.gov/lps/monitors-report-14.pdf>. *Daily Record* (Morristown, NJ), August 24, 2006; *New York Times*, August 27, 2006.

Just Released

Ronald Weitzer and Steven A. Tuch,
*"Race and Policing in America:
 Conflict and Reform,"*
 Cambridge University Press:
 New York and London: 2006
 (ISBN: 13:9780521616911)

LEGAL AFFAIRS

Ruling Blocks Public Access to Officer Records

California's Supreme Court has ruled that police officers may keep their personnel records secret when they appeal disciplinary action in civil service proceedings – all but eliminating public scrutiny of allegations of law enforcement misconduct. The case stems from the *San Diego Union-Tribune* seeking records of the proceeding under the state Public Records Act after a San Diego sheriff's deputy's disciplinary hearing was closed at the deputy's request. The 6-to-1 majority opinion stated that the Records Act cannot be used to get documents otherwise shielded by police privacy laws. The majority opinion stated that personnel records are confidential and can only be made public in limited circumstances. As a result, the public may not have access to discipline records filed during administrative appeals, including the names of officers who have been terminated, unless the officers waive their rights to privacy.

The majority opinion stated that privacy rights are important in "protecting complainants and witnesses against recrimination or retaliation, protecting peace officers from publication of frivolous or unwarranted charges, and maintaining confidence in law enforcement agencies by avoiding premature disclosure of groundless claims of police misconduct." In the dissenting opinion, Justice Kathryn Werdegar wrote, "the majority overvalues the deputy's interest in privacy, undervalues the public's interest in disclosure, and ultimately fails to implement the Legislature's careful balance of the competing concerns in this area."

Police union officials hailed the ruling while members of the media and watchdog organizations deplored it. Some analysts expressed concern that the ruling would shut down public access to information about officers who come before civil service commissions, civilian review boards, and other panels that hear police discipline cases. "We have pretty much of a secret police force in this state," said the general counsel of the California Newspaper Publishers Association, who said the ruling could extend to disclosing names of

officers involved in shootings. Duke Law School professor Erwin Chemerinsky, who filed a friend of the court brief, said the ruling was a “stunning loss for the public and the right to know.... This is just a tremendous loss in the ability to check up on what police officers are doing.” The attorney who represented the San Diego police and sheriff’s deputies association in the case agreed that the ruling will make it difficult, if not impossible, for the public to learn about officers who have committed misconduct, saying about the media, “you are going to have to go back to your sources, you know, people who talk out of turn, which you guys do a good job of.” *Copley Press, Inc. v. Superior Court of San Diego County (County of San Diego, et al., real parties in interest)*, S128603, August 31, 2006. The opinion can be accessed online at: <http://www.courtinfo.ca.gov/opinions/documents/S128603.PDF>. *San Diego Union-Tribune*, September 1, 2006; *Los Angeles Times*, September 1, 2006.

- the PPD, under the leadership of Chief Bernard Melekian, has embraced community policing and committed itself to reducing crime as well as improving police-community relations;
- there is strong support in the PPD for functions associated with community policing;
- Pasadena residents as a whole reported high rates of satisfaction with their contacts with police and have positive perceptions of police effectiveness;
- 87 percent of respondents reported that they felt at least somewhat safe when walking their neighborhoods at night, though the feeling of safety differed by neighborhood;
- the majority of Pasadena residents believe that the police are effective in performing their duties; and,
- a higher proportion of members of minority communities, compared to Anglo communities, believed Pasadena police officers engaged in racial profiling or abuse of authority, with more than half of responding African-Americans saying that profiling and related stops without good reason was at least a minor problem.

RESEARCH

Survey Examines Police-Community Relations

The Police Assessment Resource Center and the Vera Institute of Justice researched mutual perceptions of police officers and residents about police service in Pasadena CA. The study, “Assessing Police-Community Relations in Pasadena, CA,” surveyed a sample of 1,500 residents and 171 of the 241 sworn personnel in the Pasadena Police Department (PPD). It is one of the first published studies that contemporaneously surveyed a community’s thoughts and opinions about its police department as well as the views of police officers about themselves and their relationship to the community. It is also one of the first to interrelate and compare the two sets of survey results.

The results show that while police officers and residents hold high opinions of the police department and of community-police relations generally, minority communities perceive police misconduct to be more of a problem than white residents. The report’s major findings include that:

The report recommends, among other things, expanding an innovative police-community mediation and dialogue program, strengthening lines of communication between the police and minorities, and involving more police officers in community policing initiatives. In response to the report, Chief Melekian said that the department would do a better job of reaching out to minority communities. The full report can be accessed online at: www.parc.info. *Pasadena Star-News*, August 28, 2006.

Justice Department Reports on Citizen Complaints

The U.S. Justice Department’s Bureau of Justice Statistics has released a report, “Citizen Complaints about Police Use of Force,” with findings based on data collected in the Law Enforcement Management and Administrative Statistics survey. The report shows that large law enforcement agencies (representing 5 percent of agencies and 59 percent of the nation’s sworn officers) received 26,556 citizen complaints alleging police use of excessive force during 2002. During the same year, 2,036 complaints of use of excessive force

lodged against officers in the largest law enforcement agencies were sustained. The sustain rate in agencies authorizing collective bargaining for officers was about half that in agencies not authorizing collective bargaining. According to the report, 82 percent of large municipal police agencies had an internal affairs or equivalent special unit in 2003. Among agencies with an internal affairs or similar unit, there was an overall higher rate of citizen complaints.

The survey found that 19 percent of local police departments with at least 100 full-time sworn officers had a citizen oversight office or agency within their jurisdiction to review use-of-force complaints against their officers. Among those citizen review agencies, one in four had independent investigative authority with subpoena power. Among all police agencies having a citizen review office in their jurisdiction, the rate of complaints per 100 officers was significantly higher than those not having a citizen review office and the overall percentage of complaints sustained was lower in jurisdictions having a citizen review office.

The report cautions that the limitations of these citizen complaint data should be understood because of differences in the way different agencies receive, process, and report. Similarly, a citizen's willingness to file a complaint may be influenced by citizen and agency characteristics, among other factors. The full report can be accessed online at: <http://www.ojp.usdoj.gov/bjs/abstract/ccpuf.htm>

NEWS BRIEFS

ACLU Reports on Surveillance in California

In July, the ACLU of Northern California released a report, "The State of Surveillance: Government Monitoring of Political Activity in Northern and Central California," that describes surveillance of political activists by a variety of government officials, including local police agencies. The report describes surveillance carried out by the Oakland Police Department, Fresno County Sheriff's Department, California State University, Fresno, campus police, Contra Costa County Sheriff's Department, Santa Cruz Police Department, San Francisco Police Department, and Sacramento Police Department.

The ACLU noted that California's constitutional right to privacy prohibits law enforcement from monitoring

or compiling information on individuals or organizations engaged in activity protected by the First Amendment unless there is reasonable suspicion of a crime.

The group recommends that the California Attorney General issue specific guidelines to local law enforcement and actively encourage their adoption; that the state adopt legislation that regulates surveillance by the national guard, state terrorism threat assessment center and the state's Office of Homeland Security to protect privacy and free expression; that the legislature require local police and sheriff's departments to regularly report on their policies and related activities; and that local law enforcement agencies adopt strong policies to restrict surveillance of individuals and organizations participating in lawful protest activities. The report concludes with best practices guidelines relating to First Amendment activities. The full report can be accessed online at: http://www.aclunc.org/issues/government_surveillance/asset_upload_file714_3255.pdf

Charges Filed in London Police Subway Shooting

The Crown Prosecution Service in London announced in July that they would not charge any individual officers in the subway shooting of Jean Charles de Menezes. A senior official did say, however, that de Menezes death was the "cumulative result" of police errors. As a result, the office of the Metropolitan Police Commissioner would be charged with failing to protect the health and safety of de Menezes. If convicted, the office would face a fine with no limit set by law. In September the Metropolitan Police entered a plea of "not guilty" to the charge of not protecting de Menezes.

De Menezes was shot and killed by two officers on July 22, 2005, 15 days after scores of people were killed in suicide bomb attacks on three subway lines and a bus. The day before he was killed, a second wave of would-be bombers tried and failed to detonate bombs. De Menezes was killed by two officers who fired seven shots after de Menezes was followed into the Stockwell Underground Station because he was misidentified as a terrorist. Once he took a seat on a subway train, officers rushed the car, pinned his hands to his side, and shot him point-blank in the head. Police initially

said he was a terrorist fleeing officers but eventually acknowledged that he had done nothing wrong.

De Menezes's family expressed dismay over the prosecutor's decision and human rights activists decried secrecy surrounding the shooting investigation and the absence of a complete public account of what took place. *New York Times*, July 18, 2006; *The Guardian*, September 20, 2006.

INTERVIEW

The Office of the Inspector General is the California agency charged with providing independent oversight of the state's correctional system. On September 8, 2006, PARC interviewed Matthew Cate, Inspector General; David Shaw, Chief Assistant Inspector General, Bureau of Independent Review; and Jennifer Shaffer, Special Assistant Inspector General, Bureau of Independent Review, in our Los Angeles office.



PARC: *Could you say something about your background before you became Inspector General?*

Cate: I went to law school and worked as a private attorney in a Sacramento law firm. I then went to work for the D.A.'s office and then the Attorney General's office where I eventually supervised a team of appellate and trial prosecutors and developed a niche practice of prosecuting crimes committed by police officers and public officials. I worked on the investigations of [former Insurance Commissioner] Charles Quackenbush and of the Oracle contractors during the Davis administration. I was appointed to be the Inspector General in March of 2004.

Shaw: I was an Army officer and also a reserve police officer. I went to law school and then went to work for the Sacramento County D.A.'s office where I was a deputy on a felony team and on the Sex Assault and Child Abuse Team and later supervised the Career Criminal Prosecution Unit. I was also cross-designated as Special Assistant U.S. Attorney for the Eastern District of California. I left the D.A.'s

office for the California Assembly to become the Chief Counsel for the Public Safety Committee. I then became the Chief Deputy and later the Executive Director of the Governor's Office of Criminal Justice Planning. I later transferred to the California Victim Compensation and Government Claims Board and ran both the state Victims of Crime Program and the state Restitution Collection Program. I came to work for Matt in the Inspector General's Office about 26 months ago to start the Bureau of Independent Review [BIR].

Shaffer: I became Special Assistant Inspector General, Bureau of Independent Review, in June. I previously served as Assistant Secretary for the California Department of Corrections and Rehabilitation, where I was responsible for the Office of Victim and Survivor Services. I also formerly served as staff counsel and deputy executive officer for the Victim Compensation and Government Claims Board and worked in the state legislature as staff counsel to the Assembly Committee on Public Safety.

PARC: *Would you say a little about the origins of the Office of the Inspector General and the Bureau of Independent Review and how the Office of the Inspector General's mission has evolved?*

Cate: The office started in the mid-1990s and flourished for a few years until about 2002; at its height it had about 115 employees, but then through budget constraints it was slashed to 20 employees within about a year. The governor announced that he was considering taking the office off-line altogether and making it a part of the Department of Corrections, thus destroying the separate Office of the Inspector General [OIG] function and creating a hue and cry in the legislature. He changed his mind and that's when I was appointed, in March of 2004. When I walked in there were eight or ten people who did substantive work there and four or five administrative staff left. We started doing the work, primarily audits, and we spent a lot of man hours tearing a prison down and building it back up and looking at its core functions to determine whether it was actually doing what it was supposed to do according to the prison's own regulations. Then we did investigations that often paralleled the investigations being done by internal affairs.

When *Madrid* [*Madrid v. Tilton*, in which the judge ruled that Pelican Bay prison officials “permitted and condoned” excessive force and that internal affairs investigations were “counterfeit”) happened and the court was looking for a way to provide oversight of the Internal Affairs office, the idea came up to use something akin to what Michael Genacco was doing in L.A. County with the Office of Independent Review [OIR]. We decided to create a whole new bureau called the Bureau of Independent Review to provide that real-time oversight. Starting basically from scratch, I hired Dave and we both met with Mike [Genacco] several times and learned what they did and talked about the resources needed to do the same thing for 35,000 state prison officers instead of the roughly 10,000 in the L.A. County Sheriff’s Department. It became a question of trying to adapt that model to our circumstances. We decided to create a headquarters branch and three different regions.

From the outset, we wanted to create a team approach with members who complemented each other with their backgrounds so we really have tried to focus on finding someone with civil rights background, whether through a public defender’s office or through a U.S. attorney or something like that, and then someone with a criminal background and someone with an employment background, and we put all of those pieces together so they can round table their important cases. I think we’ve been pretty successful – in some offices it’s been easier than in others to recruit those kinds of folks – you really need to find someone who is willing to, in some cases take a pay cut to do this kind of work. That said, there are people who are excited to be involved in corrections taking its first baby steps towards transparency, and public scrutiny of their internal affairs process and officer discipline system.

PARC: *Was there opposition to the Bureau of Independent Review’s creation?*

Cate: Nobody vocalized any opposition. One might expect that the correctional peace officers’ union might have some concerns over the creation of an

entity whose goal it was to bring transparency to the officer discipline process but at that time the federal court was mandating it, the governor was fully behind it, and the legislature was behind it and so nobody jumped up and down about it publicly. I met with Mike Jimenez, president of the CCPOA, and explained what we were doing and his viewpoint was that, to the extent you can make internal affairs investigations more timely and professional, we’re in favor of that and to the extent that you can make the result less political and more reliable, we’re in favor of that. My comment back was that I agree, those are our goals, but you should know that to the extent your constituents have been used to having 50 percent of these IA cases lost on the basis of time constraints, our goal is to make those days end. On the whole I think we haven’t had vocal opposition.

It’s been a “wait and see” attitude with IA, with some regions more resistant to us providing oversight than others. The Northern office, for a variety of reasons, because it was close

to the flagpole in Sacramento, people there met our people immediately, and they were very receptive. Central was a little more difficult but it’s working fairly well and the Southern office even to this day is still adjusting to our being there providing oversight, again, for a variety of reasons, including that we haven’t had as many attorneys in the South as we’ve had in other places.

PARC: *How does that discomfort or lack of getting used to you manifest itself?*

Shaw: It’s almost an office-by-office thing where we’ve seen various manifestations of discomfort. In one particular region, Southern, there was a lot of late notice – though at first there was no notice at all. We would find out through mere happenstance that a *Skelly* hearing [an informal proceeding in which a disciplined employee has an opportunity to respond to an uninvolved manager before discipline becomes effective] was going on or they were negotiating a case down from say a dismissal to a letter of reprimand. Then it became and occasionally continues a bit today to be a call saying,

“We decided to create a whole new bureau called the Bureau of Independent Review to provide that real-time oversight.”

-- Inspector General Matthew Cate

"I'm on my way now to Calipatria [in the southeast corner of the state] to do that *Skelly* hearing, are you willing to join me?" and my person is in Santa Barbara or something. But largely, 18 months into this, we're starting to get notice at least a day or two before. Late notice hurts us the most since the attorneys can't be in two places at once.

Cate: I think another problem we had from the start was that there was some distrust about the OIG as a whole because we had investigated California Department of Corrections and Rehabilitation [CDCR] IA officers for misconduct. They didn't recognize right away that we were separating into two different bureaus with BIR about oversight and cooperation versus the other side of my shop, which still investigates misconduct by all kinds of managers in CDCR. Very early in our process we investigated an "in charge" in the Southern office and he was terminated as a result. I think that helped get the Southern office off to a rocky start because IA doesn't always distinguish between the two sides of the shop.

Shaw: The supervising agent was a very popular guy and it was viewed by his staff that it was the IG who got him fired and there is a bit of lingering hostility to this day over that event. One thing that has really changed the dynamic is that OIA [the Office of Internal Affairs] and the department's attorneys are starting to realize what a resource we can be. If you want to talk to an experienced prosecutor or a defense attorney about how your criminal case might go, we have the expertise to rely upon. That is not always the same for the vertical advocates [the attorneys assigned by the CDCR to take the investigation that's done by IA and follow through to the discipline, if any]. It's a strange dynamic with internal affairs in that a great number of their agents came from the correctional setting so they haven't testified in court before and they haven't had to put together criminal cases, but our folks, having worked in D.A. and public defender's offices have that expertise. Once IA and the department realize

there is value in this consulting with us and that it isn't just a requirement, they come along.

PARC: *Have you noticed trends in the quality of IA investigations or in the kind of discipline resulting from those investigations over time?*

Shaw: At least in the BIR-monitored cases, the investigations are getting better. The agents who have worked with us know what we expect and they'll come in mid-stream and talk to us about cases. They'll say, "hey, I think I'm done with witness interviews, what do you think?" We know the cases just as well as they do, so we would know if there are other inmates or staff members who were witnesses and who could also be interviewed and we debate back and forth. Ultimately, it's the department's call whether they're going to do

additional interviews or other investigative work and they have to balance their resources accordingly. However, they also know that we'll be evaluating the case all the way through.

Cate: Nobody wants to be referred to in a

paragraph in our public reports saying that the investigation was incomplete because the agent failed to talk to an important witness after being requested to do so by the BIR.

PARC: *At the conclusion of your work, do you make a recommendation as to disposition, founded or unfounded, etc., and if founded, do you make a recommendation as to proposed discipline?*

Shaw: We will make recommendations all the way along, and we'll discuss with the hiring authority as well as the vertical advocate as to where this conduct falls on the disciplinary matrix. Is this a letter of instruction or is it a termination or somewhere in the middle? Through every process we will be attempting to assist the department's process but again, it's ultimately the department's call. We will gauge each stage and whether or not we believe it was complete, thorough, timely,

"Nobody wants to be referred to in a paragraph in our public reports saying that the investigation was incomplete because the agent failed to talk to an important witness after being requested to do so by the BIR."

-- Inspector General Matthew Cate

whether the discipline was appropriate, and so on. In the public report, we don't name names, consistent with our statute. We do, however, write a confidential report that goes to the department that says a particular agent or attorney did the following things of concern. We also brief the federal court when there appears to be an individual or systemic problem, and then the court turns to the heads of the departments to ask why this happened and what the department is going to do to fix it? But before that would happen, we work with the department to get the investigations back on track and then the court probably won't hear about the outcome until after the fact.

Cate: We decided early on that we would basically trade the power to demand compliance with our decisions for independence, so realistically the department can thumb its nose at us if it wants, but the price they pay is in the public reports.

PARC: *Do you track your batting average, so to speak, over the course of the investigations you've been involved in? Are there any trends as far as greater congruence with what you suggest and what the department does? Are there variations between the three regional offices as far as acceptance of your recommendations?*

Shaw: Yes. We created with the department a central intake process because problems start at the beginnings of cases. The idea was to see every case that may require investigation, and we'll decide right then and there if this case is going to be one that BIR monitors. We may not monitor some cases initially but if something happens down the line we can still pick it up for monitoring. If a case comes in and it involves the "code of silence" or a conspiracy or what have you, we'll say at that point in time that it's a BIR-monitored case. Immediately, their staff records that it's a monitored case, as does BIR, and it's sent electronically to the senior agent so they know that this new case is coming their way. Within a certain number of days, the agent

who gets that case and the attorneys at BIR will need to talk about it. Because of all of those procedures and the incremental things that happen, we're getting a much better product from start to finish. We don't always agree on things; we may request that they do additional investigation and they may believe that it's unnecessary, but they know we'll report somewhere down the line that they didn't follow our advice. In the end, if it only comes down to a disagreement about punishment, for example; if the investigation was good, we'll report that there was a disagreement about the degree of punishment administered, but that it was a good process otherwise.

As for regions, across the board, in the vast majority of cases, we're agreeing with the department but we

may still need to argue the fine points along the way. If we reach a point of discord and it's a significant one, we or the department can temporarily stop the entire process; it's called an executive review. When we invoke executive review and if it's at the attorney/agent level, they go to the agent's

supervisor; if that doesn't resolve it and it goes up to the special agent in charge, it will be staffed by a BIR senior attorney; if it isn't resolved there, it comes up to my level and we'll deal with it with the department at the executive level. I haven't had to do that on very many occasions; it usually happens at the punishment stage, especially when the BIR supports more serious discipline. I've had executive reviews where the department doesn't agree with us and they go forward with their intended disposition regardless of our concerns. In any event, in the vast majority of cases we're in agreement, probably 85 percent.

PARC: *Of the 85 percent, can you estimate how many go on to a further appeal or ultimately wind up in court and what the department's advocates' batting average is when they're challenged?*

"We decided early on that we would basically trade the power to demand compliance with our decisions for independence, so realistically the department can thumb its nose at us if it wants, but the price they pay is in the public reports."

-- Inspector General Matthew Cate

Shaw: We haven't done those studies. The other side of the OIG [Bureau of Audits and Investigations (BAI)] did a study several years ago looking at the quality of investigations and that's where they found approximately 45 percent of investigations went beyond the statute of limitations — in fact that was one of the things that led to the creation of the BIR. We've knocked that percentage down drastically. The last time it was reported by the department the percentage of cases blown by time constraints was very low but I think it's creeping back up a little bit and probably is in the 10 to 20 percent range, overall, but on BIR-monitored cases it's extremely low.

PARC: *What percent of that 85 percent is appealed?*

Shaw: A significant portion but I don't really track that. One factor that has fostered more appeals than should have occurred is that Vertical Advocates and Employee Relations Officers have not traditionally sought agreements to not appeal as part of settlement negotiations. Thus the employee gets a reduced level of discipline to settle the case but the department still ends up having to defend the case on appeal at the State Personnel Board.

PARC: *What is the quality of the advocacy once you pull the case together and have an investigation and a result?*

Shaw: I'm about to comment on that for the first time. In our last semiannual report we didn't have enough experience with the vertical advocacy project because they were just starting up. Their staff have shown a little resistance with our being there, looking over their shoulders — it's not a natural thing for them. Ideally in their process, they would get involved about the time that we do so they know about the case and they can help guide it. However, their current staffing levels now don't allow for that ideal level of involvement.

The advocacy and involvement of some lawyers has not always been good. Some are better than others,

but across the board they could be better. Again, there's a big staffing issue, they're carrying way too many cases and their supervisors aren't really supervising because they're carrying cases as well. They recently got authority to hire 28 new attorneys and they're going to start trying to hire them soon. We have great hopes for them once they are fully staffed and trained.

Cate: Our subjective, general view is that some advocates are better than others and that on the whole they could improve. Once we get sufficient numbers of cases to examine, we will be in a position to track and to have more specific assessments of their performance.

PARC: *Do you and/or internal affairs maintain early warning or early intervention tracking systems?*

Shaw: That does not exist currently with the CDCR. We've talked about this many times and we see it as a critical component. The L.A. County Sheriff's Department has that kind of process, as do many other departments, as a key risk management tool. OIA has talked about creating that kind of database [early warning system] but they haven't as of yet.

Cate: I can't understand why the CDCR wouldn't set this up, other than their view that the technology hurdle is immense because they have so many infrastructure issues with their IT.

Shaw: It's something that we're starting to pick up on anecdotally by being in central intake and we and/or the IA staff realize that they've seen a particular employee's name come through central intake before. We get weekly case lists of the employees being investigated and we'll check to see if there has been prior discipline or prior cases. It's more anecdotal than proactively identifying someone with a lot of complaints, for example, to see what's wrong and to avoid liability problems. The state desperately needs this. Similarly, we've really been asking for a no-rehire list. Traditionally what has happened in corrections is that an officer

*"OIA has talked about creating that kind of database [early warning system] but they haven't as of yet."
-- BIR Chief Assistant Inspector General David Shaw*

who is about to be fired resigns. They reapply a year or two later and suddenly they're working for the department again and then we see them in central intake again as the subject of a complaint.

PARC: *Aren't there background check requirements, disciplinary histories, etc.?*

Shaw: They are supposed to be checked to see whether they've been fired or if they resigned under investigation. Apparently, it doesn't work the way it was intended because the department continues to rehire former employees that had resigned to avoid being disciplined or terminated.

PARC: *Have you tried to advocate that as an additional condition of resignation under investigation that they not work for the state of California for a period of time or ever?*

Shaw: The problem is that the State can't stop an employee from resigning. When someone is truly caught in misconduct, sometimes you can get them to sign a promise not to come back, but it isn't really enforceable. What we need is a mechanism — that no-rehire list — connected to a central database that makes it clear you can't come back to work and furthermore you are not allowed on the grounds of another institution even as a contract employee. What we have seen several times is when an employee hasn't yet been charged with disciplinary offenses but they know it's coming, they'll transfer to an institution in the farthest part of the state. For example, we recently monitored a case where an officer was involved in unnecessary use of force incident and was facing significant discipline. He transferred to another institution, severely injured someone there and received first offender discipline when he probably should have been terminated. We need to stop that practice. This is really a serious issue for the department.

"Apparently, it doesn't work the way it was intended because the department continues to rehire former employees that had resigned to avoid being disciplined or terminated."

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PARC: *Are you familiar with another BIR-like setup overseeing other states' correctional departments?*

Cate: We're unaware of any.

PARC: *Inspector General Cate, how can you be removed?*

Cate: I have a six-year term and I can only be fired for cause; the rest of the OIG staff are "at will" employees.

PARC: *Would you describe the OIG's audit and investigations functions?*

Cate: One of the benefits of the creation of the BIR is that the IG's office does not otherwise have to monitor IA investigations so the rest of the OIG is limited to investigations involving IA high-level executives, IA agents, or retaliation cases. The usual practice is that a complaint comes in and we refer it to internal affairs. If it meets the *Madrid* criteria, BIR will oversee IA to ensure that that complaint is handled appropriately, which means that my investigative staff can focus on retaliation cases, administrators (basically wardens and above), and misconduct by IA officers.

We also have our audit function. We're mandated by state law to audit every institution every four years. We don't need to be in compliance with that law until 2009, thankfully, because we are still staffing up and it takes a lot of man hours to conduct the audits. We also do special reviews, which are basically audits of statewide systemic issues. Part of the Bureau of Audits and Investigations' mandate is warden-vetting. The warden used to be appointed by the governor and confirmed by the senate, but there was concern that that was too political so now we've adopted a process similar to judges where the warden candidate is sent to the OIG by the governor's office, we vet that candidate through a rigorous process, we find the candidate qualified or unqualified, and we submit a confidential report to the governor's office. If we find him or her qualified, the governor is free to

appoint him or her. If we find him or her unqualified, the governor may appoint him or her, but our finding will be made public.

PARC: *Is it on the BIR or BAI side for reviews of the performance of medical personnel?*

Shaw: That is an open question. The *Madrid* case did not deal with the delivery of health care but there are situations, like inmate deaths, where staff misconduct is written all over it and we've reported on a number of those cases and a number are in progress now. With the appointment of the receiver in health care, we're waiting to see what part of this we're going to have. We and IA may be a little under-prepared where there are medical malpractice issues where we'll need outside medical assistance or to hire staff with relevant backgrounds. We're in a state of flux now.

PARC: *Do you examine civil litigation?*

Shaw: That was something that we've discussed from the start and it was our intention to examine civil litigation. We just haven't had the resources to do it, but we are interested in pursuing this kind of review. We do take referrals, if you will, so if an inmate writes to the special master or the federal judge, they will refer those materials to us.

PARC: *What kind of outreach do you do to let inmates, wards, and others know how to file complaints? How do you get complaints directly and indirectly?*

Cate: I forgot to mention that part of the Bureau of Audits and Investigations. That intake unit gets about 4,000 letters a year from inmates, inmates' families, and occasionally whistleblowers within the department. We have a team of people who read every letter and respond. We'll investigate certain complaints and refer some complaints to the relevant institution. If there is an allegation of officer misconduct, we'll do a limited inquiry to see what happened to that case. In some of those situations,

that's resulted in BAI opening a file and then transferring it to BIR to make sure that IA is taking a look at it and it's going through the central intake process with IA. Occasionally we'll get involved in investigating retaliation or major misconduct.

PARC: *What has your experience been regarding the credibility of inmate complaints?*

Shaw: It's all across the board. There have been times when I perceive inmate information that I believe to be absolutely credible with just enough points to tie in with peripheral information we might have. On the other hand, we've been worked by inmates who say different things to different people about what happened. Sometimes there's an urgent request to move and there turns out to be

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little validity.

I've noticed that there are times when IA thinks something happened they'll cite certain witnesses as authorities and discount information that doesn't fit into their scenario. I will give IA credit for talking to the inmates, and in the tapes I've listened to, they do it in a respectful way with complainants and inmate witnesses.

Cate: I think that's where you'll see the most credibility. If there's an incident that happened and there are witnesses, you'll often see consistent inmate testimony regarding the facts of that event. On the other hand, I find that lifer, long-term inmates are really sophisticated on how to use the system to get transferred or obtain privileges that they want and can't otherwise get. On the whole, there's a wide variety.

PARC: *Have you seen instances of where an inmate who has reported misconduct by an officer has been the subject of retaliation?*

Shaw: We're told that inmates have been retaliated against. Some of that goes to the sophistication of the inmate. If they want something, they'll make a complaint against someone and claim their life is

in danger and seek to move to a particular facility closer to where their family lives.

Cate: I often hear from inmates that they get low levels of retaliation. For example, their cells are searched more often than other inmates' cells or when that's done their belongings are trashed during a cell search or that they're written up for minor violations that aren't usually written up. I hear about that often and they're difficult to investigate and prove.

Shaw: Or things like their 602s [complaint forms] are never turned in. There has been a steady hum of that during my time at BIR with inmates saying, "I've complained six times, here are copies." We've seen situations where the inmate's counsel has all of the copies and the institution has a fraction of them.

Cate: As you know there have been big cases that have gone to prosecution involving officers who allegedly had put inmates considered problematic in cells with predatory inmates. Those kinds of allegations are really well-documented, but we hear far more often about the low level retaliatory acts, behavior that doesn't necessarily cause physical harm.

Shaw: One related thing that we're told at BIR, and same for IA, is that many inmates don't want anything to do with any investigation into alleged misconduct. They might admit they were present, but say they didn't see anything. I would say 50 percent of the inmates that witness things refuse to talk, saying they have to live there and don't want any trouble with the officers.

PARC: *Have you noticed trends in the types of allegations that people are making over time?*

Shaw: It's low-level things. Officers who are involved in physical confrontations with inmates that lead to complaints often acknowledge they did what they're accused of but say the inmate had it

coming. Something like an inmate saying he was taken out of his cell and beaten are infrequent.

In our intake units we might get a rash of medical complaints whether because those issues are in the news or there's a real problem – hard to know for sure why the complaints go up and down in waves.

PARC: *Do you find any evidence that severe overcrowding in California prisons generates more tension or more stress on the correctional officers and on the inmates leading to more incidents occurring than you might otherwise anticipate?*

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Cate: I was just at Calipatria and Ironwood state prisons and they both experience a shortage of officers because of their locations and it's difficult to recruit and officers transfer out so they have 20 to 25 percent vacancy rates in their officer ranks as a result. Meanwhile, the inmates are being placed on day room floors or triple-bunked in gymnasiums. Staff will say that they're working two or three overtime shifts a week and the inmates are more difficult to supervise. In some parts of California that's 115 degrees a day, in Calipatria the warden shuts the yard if it gets above 108 degrees. All of those inmates are back in their cells and there are swamp coolers in facilities, not air conditioning, so everyone is a little more short-tempered. I don't have empirical evidence that says that if you get to 205 percent of capacity that violence goes up X percent – all I really have is anecdotal evidence that inmates complain and officers talk about all of the overtime and difficulty of effectively supervising that number of inmates. There are fewer jobs for inmates, fewer educational opportunities, and it's generally agreed that inmates who have productive things to do are less likely to be gratuitously violent because they're busy and have an outlet for their energy.

PARC: *Do you see the code of silence among correctional officers or other CDCR officials as an obstacle to better accountability for misconduct? How do you think CDCR leaders should address it?*

Shaw: It was one of the findings in the *Madrid* case. Normally our cases involve more than one officer so there is potentially a conspiracy of silence in almost everything we monitor. We will take a case for monitoring alleging code of silence or a conspiracy even if the alleged misconduct may have not been very serious but we believe the officers aren't telling the truth. We try to follow those cases through. We've taken the view, as has the department, that an employee can perhaps do the wrong thing in a given situation and still keep his or her job but if you lie about it, chances are really good that you're going to get fired. We support that view and it is enforced in the disciplinary matrix.

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Cate: As you know, there is a code of silence in almost all professions. No one wants to tell on someone that they work with or are friends with – although they say lawyers are the exception. It seems like the department is doing the right thing by trying to emphasize that it's mandatory to report the use of force, it's mandatory to tell the truth and the whole truth on a report. You still hear, from time to time, anecdotally, where officers are shunned after they've given a report on another officer, there will be off-color things said about them under people's breath, or the room goes quiet when they walk in. The consistent application of the rule is important because you must report what you see in a truthful and complete fashion. If it's mandatory and you know you'll be fired if you don't, then people will do it and there will be less of a culture of covering for each other because you have no choice and it's not your fault – your job is on the line and you have to follow the rules.

PARC: *How would you characterize your relationship with the California Correctional Peace Officers Association [CCPOA]?*

Cate: What we see is that we try to talk on a fairly consistent basis, a couple of times a year, to sit down and see how it's going, to share complaints and to identify what is going well. On one hand, they like

the fact that they have someone to come to and say "x, y, and z is going on, you guys ought to look into it" and, on the other hand, they've got an obligation to their constituents and members to try to keep us out of some aspects of their business. In my meetings with them they feel free to voice areas where they feel we aren't doing the right thing, where they think we ought to be more aggressive, especially when it comes to more aggressiveness in investigating CDCR administration. They'll tell us if they think we might be portraying their members in an unnecessarily poor light and so we'll

talk back and forth about those instances and try to make sure we have our facts straight. It hasn't been all or nothing – it hasn't been a glowing brotherhood of arm-in-arm walking together and it hasn't been a war where they think we're just out to get them.

PARC: *Have they become more sophisticated in selecting who they're going to defend to the hilt and who they're simply going to see gets a fair shake?*

Shaw: I think they provide pretty zealous representation of everyone, regardless of the conduct. I also think that they're realists and they will tell employees when they are probably not going to prevail and need to make a deal early. In terms of our relationship with them, it's been fairly professional between BIR and the various unions. At times we may clash a little, but we see their attorneys and their reps on a frequent basis when we go to *Skellys* and other hearings. I think in general, we treat each other professionally and recognize the unique part each of us plays in the system.

PARC: *Would you say something about particular concerns affecting women prisoners?*

Shaffer: I would say their concerns in general are a little bit different. One rule for everyone doesn't necessarily apply well with female inmates. There are a lot of medical concerns, maternity issues,

visitation – it’s pretty well known that female inmates by and large have far fewer visitors and they don’t have that support network that men in prison often have. They are concerned about clothing that they’re issued because they have far fewer dollars coming in from family or others who write them off, so without money coming in they want the best of the goods distributed because they can’t buy canteen goods generally.

Cate: When I met with female inmates during the warden vetting process in one of the institutions, they told me that the thing they like best about their warden was that she treated them like women inmates, not like male inmates. There’s an understanding that in their view every rule applies slightly differently to them than to male inmates and they want that understood. Education is more important for women prisoners and they enjoy that process.

PARC: *What are particular issues for the Division of Juvenile Justice [DJJ]?*

Shaffer: DJJ is much more centralized. Combined, the DJJ facilities are the size of a small adult prison. We participate in use of force review meetings at headquarters that can involve watching the video of cell extractions and having discussions. I would have to say that they are pretty far behind the adult system in the way that they deal with use of force issues, discipline, and reporting requirements. I think that part of that is because they are on a separate track. They weren’t part of the federal court decision that created BIR initially; they came in later. They’re getting there but they’re further behind.

PARC: *Big picture question – if you could name three things to help improve how prisons operate, what might they be?*

Cate: We need to do something about overcrowding – that’s the number 1 problem. CDCR needs to solve staffing shortages, and that includes both line staff and medical staff. There’s a one-year wait in some places for routine dental care. If you have an abscess, they’ll take care of you, but if you don’t, if

it’s just a cavity, you’re going to wait a long time. You’ll never get a root canal – they’ll fill it or extract it. There are four dental chairs for 6,000 men, some of whom have some of the worst dental histories known to civilization. So they need more doctors, more staff, more programs – education and jobs or vocational programs. If you look at prisons in England, most of those men are employed or in class or doing something productive with their day – I think it makes a world of difference.

*“We need to do something about overcrowding
- that’s the number 1 problem.”*

-- Inspector General Matthew Cate

PARC: *Do you have a five-year plan?*

Cate: We’re talking about that right now. I’d like to initiate a team of investigators focused on fraud because the department has an \$8-billion budget and so many contracts. For the first two and a half years, I’ve really focused our efforts on life and death issues. Those are always going to come first, but eventually I need to look harder at fiscal responsibility – a lot of taxpayers’ dollars are going to this area so I’d like to expand that.

It’s yet to be determined how we’re going to handle medical investigations and what our role will be there, that’s an area that we’ve got to stay attuned to. We’re going to expand our warden vetting process to the division of juvenile justice so now we’re also going to vet the superintendents of juvenile facilities.

Those are the main areas where I’d like to expand.

PARC strives to provide all of its readers with comprehensive information. If you have news you'd like to share with us for inclusion in the PPR or on our website at www.parc.info, please send us an email at information@parc.info.

CALENDAR

October

24, 2006 Office of Community Oriented Policing Services, "Hiring Top Cops: Strategies for Success (Webcast)." Event URL: <http://www.dojconnect.com/index.cfm?page=1.000>

29-November 4 Altus Global Alliance, "Police Station Visitors Week," an international project organized by the Altus Global Alliance during which civilians in countries around the world will visit their police stations in small teams to assess services, using the Police Station Visitors Kit. Online at: http://www.altus.org/altus/global_issues/global_issues.asp?section_id=2&sub_section_id=47&lang=en

November

1-4 American Society of Criminology (ASC), "Democracy, Crime, and Justice," ASC Annual Meeting, Los Angeles, CA. Online at: <http://www.asc41.com/>

8-9 The Performance Institute, 2006 National Summit on Prisoner Reentry, Arlington, VA. Online at: <http://www.performanceweb.org/CENTERS/SP/Events/S238/S238.htm>

27-29 Bureau of Justice Assistance (BJA), "The State of Crime and Justice in America," BJA Regional Conference Series, South Region, Nashville, TN. Online at: <http://www.ncja.org/Content/NavigationMenu/EducationEvents/BJARegionalMeetingSeries/default.htm>

30-December 1 Social Research

Conference, "Punishment: The Record," The New School, New York City, NY.

Online at: <http://www.socres.org/punishment/>

December

6-8 The Performance Institute, "Law Enforcement Recruitment and Retention," Arlington, VA. <http://www.performanceweb.org/CENTERS/LE/Events/L218/L218.htm>

March

13-17, 2007 Academy of Criminal Justice Sciences (ACJS), "The Science of Criminal Justice Sciences," ACJS 44th Annual Meeting, Seattle, WA. Online at: http://www.acjs.org/pubs/167_668_2915.cfm

April

26-28, 2007 Police Executive Research Forum, Annual Meeting, Chicago, IL.

