

**BEST PRACTICES REVIEW**

With the generous support of the Ford Foundation, **PARC** supports and assists those responsible for the oversight of police departments – law enforcement executives, monitors, civil officials, and government agencies – to advance effective, respectful, and publicly accountable policing.

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reforming the department’s policies and practices on use of force, holding cell conditions, and arrest and witness detention. Chief Oliver stated the department is in the process of adopting DOJ’s recommendations. DOJ, however, declined to indicate whether the reforms announced by Detroit officials would be sufficient to avoid a consent decree and a monitor for the department. Among the steps taken by the department is its first revision of its policy manual in 29 years. Improvements in meals and condition of the detention cells that Chief Oliver characterized as having been “disgusting and frankly embarrassing” have been made. *The Detroit News and Detroit Free Press, November 20, 2002.*

**Agencies Under Investigation**

Detroit Mayor Kwame Kilpatrick and Police Chief Jerry Oliver have announced steps to work with the Department of Justice (“DOJ”) in reforming the Police Department’s practices relating to use of force, detention of prisoners, arrests of witnesses, discipline and training. DOJ initiated a pattern or practice investigation into the department in 2000, following allegations of excessive force and mistreatment of prisoners. Earlier in 2002, DOJ drafted three technical assistance letters containing more than 150 recommendations for

The Department of Justice has opened a “pattern or practice” investigation into the Onondaga County, New York Sheriff’s Department following allegations of bias toward black deputies. Nineteen deputies allege that they have been discriminated against in hiring and promotions and subjected to racial epithets. In 2000, the deputies filed a complaint with the United States Equal Employment Opportunity Commission, which forwarded the complaint to DOJ’s Civil Rights Division. The Sheriff denied the allegations and cited past promotions of black deputies and civil service rules which govern the promotion procedure. *Crime Control Digest, November 22, 2002.*

UCLA Professors Wellford Wilms and Alex Norman and USC Professor Warren Schmidt have released the results of an eight-year study of the Los Angeles Police Department (“LAPD”) titled, “To Protect and To Serve...and To Listen” based upon interviews and surveys of LAPD personnel. The researchers found that more than 90 percent of LAPD officers entered policing for altruistic reasons and that two thirds believed that police need to utilize aggressive tactics to thwart crime. Views on misconduct varied depending on the severity of the act. Most officers did not consider accepting free coffee as serious misconduct (86%), but did consider responding angrily to a citizen serious (86%). Most agreed that punching a handcuffed prisoner (93%) and stealing a pocketknife (99%) was serious. Officers would report misconduct of their fellow officers depending on their own beliefs of the severity of the act.

The majority of officers believed their captains were good leaders with high integrity and open to new ideas. However, the researchers noted significantly lower ratings of the captains during the latter part of the study, particularly 1999-2000, perhaps due to increased workloads and citizen complaints. A large portion of the study focused on officers’ attitudes toward the complaint and disciplinary system, which they view as punitive, unfair and an obstacle to job performance. Many expressed frustration with the alleged lack of support from supervisors regarding unsubstantiated “frivolous” complaints. Sixty percent of officers feared punishment for making an honest mistake. Another finding was that a majority of officers perceive that their

discretion in performing work functions has been curtailed. The majority of LAPD officers understand and endorse community policing.

The authors recommended increased involvement of area captains and the rank-and-file union decision-making to improve job morale and organizational values. They also suggested that the agency renew its commitment to community policing to mend troubled relations. Lastly, Wilms, Norman and Schmidt recommend that the LAPD revise its current complaint system to give less weight to minor complaints and utilize mediation to a greater degree. The full report can be accessed electronically at <http://www.gseis.ucla.edu/academics/research/lapd.html>.

### Civilian Oversight

The New York City Civilian Complaint Review Board (“CCRB”) released its semiannual report for the first half of 2002. While complaints against New York Police Department (“NYPD”) officers had decreased significantly in the prior six-month reporting period – which included the September 11 attack on the World Trade Center, resulting in the CCRB being closed for six weeks – they rebounded in the current reporting period to almost the same level as in the first half of 2001. Analyzing an 18-month period, the CCRB substantiated ten percent of “full” investigations. The allegations most frequently substantiated were use of discourteous words (15%), improper frisks or searches (14%), use of unnecessary physical force (13%), refusal to provide name or shield number (9%), and improper questioning or stops

(7%). When the CCRB finds an allegation to be substantiated, it refers the matter to the NYPD for discipline. While the NYPD imposed discipline in only 63 percent of 1998 referrals, the imposition of discipline had increased to 75 percent for 2000 referrals. Misconduct against young black males is disproportionately high for both complaints and substantiated conduct. CCRB's mediation program grew substantially in the first six months of 2002, with reportedly high levels of satisfaction from both police and complainants. Additionally, the CCRB undertook a study examining reasons given for complaint withdrawals. The full report is available on-line at <http://www.nyc.gov/html/ccrb/html/report.html>.

A New Orleans mayoral task force that had been set up to study the creation of a civilian complaint review board instead recommended that the city hire an independent monitor to oversee investigations of alleged police misconduct. The City Council will hold hearings on the idea early this year. If adopted, the monitor would scrutinize internal police investigations, department policies and complaint patterns, and would issue public reports and recommendations. The task force also recommended that the city appoint an ombudsman to assist complainants and use mediation as a means to resolve minor complaint allegations. Additionally, it recommended that the police department provide written reasons for complaints that it rejects. The 20-member task force was appointed in the wake of the fatal shooting of an unarmed teenager. *New Orleans Times-Picayune*, December 3, 2002.

### Community Policing/Problem Oriented Policing

The Minneapolis Police Department has agreed to participate in a mediation panel, led by a Justice Department mediator and consisting of community representatives, police officials, City Council officials and the mayor's staff, to try to improve police-community relations. The effort arose out of concerns over several controversial police shootings of African and African-American residents. The mediation panel was scheduled to begin meeting weekly for three months in December, but the process has been delayed by disputes concerning the selection of the community representatives. The goal of the mediation is to generate a signed agreement concerning specific actions to be taken by the police department. In neighboring St. Paul, the police department entered into a mediation-produced agreement with the NAACP in 2001, following concerns about bias-based policing. Representatives from the NAACP and the St. Paul Police Department signed a document that modified the department's consent search policy and required officers to provide business cards to persons who request them. *Minneapolis Star Tribune*, December 9 and 20, 2002.

Durham, North Carolina Mayor Bill Bell proposed a plan to address the rising level of murders of Hispanics in the city. Through an outreach program, Bell hopes to reduce Hispanics' vulnerability to victimization, promote understanding of community problems and better integrate them into the larger community. Part of the program consists of assigning a bilingual officer to

Hispanic neighborhoods, sending the mobile command unit to the neighborhoods on a weekly basis and mandating officers to attend three hours of cultural sensitivity training. *Law Enforcement News, October 31, 2002.*

### Consent Decrees/Memoranda of Understanding

Following agreement by the parties, Federal District Court Judge Susan Dlott appointed Saul Green, a former U.S. Attorney in Detroit, as the new monitor of the Cincinnati Police Department. Green and a team from PSComm will be overseeing a Memorandum of Agreement between Cincinnati and the U.S. Department of Justice, as well a Collaborative Agreement that settled a suit by the Black United Front and the ACLU against the City and the Fraternal Order of Police. The team's responsibilities include reviewing and recommending training and use-of-force policy changes, building stronger community-police relations, and modifying the citizen complaint procedure. Green, who is currently in the private practice of law, replaces former monitor Dr. Alan Kalmanoff, who resigned amid a billing controversy. The new monitoring team's compensation will be reviewed by the court, rather than the city, as was the case with Kalmanoff. *Channel 5 Cincinnati, December 17, 2002; Cincinnati Post, December 18, 2002.*

California Attorney General Bill Lockyer and monitor Joseph Brann praised the Riverside Police Department for improved training and supervision, and creation of an early identification

system for tracking potential problem officers. Lockyer instigated a two-year investigation into the department's policies and practices following a 1998 fatal shooting of a young African-American woman found asleep in her car. The investigation concluded that the department had a pattern of civil rights abuses, including inadequate training, poor supervision, inadequate civilian complaint procedures; and poor use of performance review measures. Those findings resulted in a consent decree which mandated policy and procedural changes within the department. Pursuant to those requirements, the department has enhanced its cultural diversity training program for officers and leadership training for supervisors, installed cameras to record roll call activities, installed a computerized early warning system to track officer performance, outfitted officers with tape recorders to monitor citizen contacts, and purchased a variety of non-lethal weapons. *Los Angeles Times, December 26, 2002.*

### Racial Profiling

The New Jersey State Assembly passed a bill that would make racial profiling a state crime, with mandatory prison terms for government employees who engage in discriminatory behavior. The bill also authorizes the appointment of an independent prosecutor to enforce its provisions. The bill now goes to the Senate which has passed a bill modeled on the federal civil rights statute. *Philadelphia Inquirer, December 13, 2002.*

Wilmington, North Carolina City Manager Sterling Cheatham has asked

the Department of Justice to conduct a civil rights investigation into the Wilmington Police Department. The request stems from the arrest for driving while impaired charges of Mayor Katherine Bell Moore, who has made a number of allegations of bias and racially disparate treatment against the department. A breath test of the Mayor showed the presence of no alcohol, and the District Attorney dismissed the charge. One of the officers who arrested Moore was dismissed and the other was demoted for violating policies and procedures. A spokeswoman for the Department of Justice confirmed that the Civil Rights Division had received the request. She said that the Special Litigation Section would review the request and would determine whether to conduct a preliminary investigation. City Manager Cheatham also suggested the possibility of retaining the International Association of Chiefs of Police to examine the Police Department's policies and procedures. *Wilmington Star, December 15, 2002.*

### Standards/Training

“Police Civil Liability for Inappropriate Response to Domestic Assault Victims” by Brenda Sims Blackwell and Michael Vaughn discusses the potential liability that inadequate response to domestic violence situations poses to police agencies. Focusing on the Fourteenth Amendment’s Equal Protection clause, the authors cite several United States Supreme Court cases that found a denial of equal protection where police treated people differently because of gender. Because domestic violence primarily victimizes women, police can violate the right to equal protection if they treat that

crime differently than other similar crimes. The authors also cited a number of rulings upholding liability in which a department’s failure to respond to repeated calls for assistance was held to demonstrate discriminatory treatment of domestic violence victims. Police agencies also place themselves at risk of liability by treating 911 domestic violence calls as a low priority. In addition, officers could respond to an incident believing that the complainant’s gender implied that the incident involved domestic violence when, in fact, it did not—conduct that would also create potential liability. *546 Journal of Criminal Justice 1 (2002).*

*Police Chief’s* “Employee Early Warning Systems: Helping Supervisors Protect Citizens, Officers and Agencies,” by Lori Rhyons and David Brewster discusses how the Phoenix Police Department uses its Personnel Assessment System (“PAS”) to both manage potential risk to the department and monitor overall officer performance. PAS serves as a general employee assessment tool, capable of both alerting supervisors to potentially problematic officer behavior and performance worthy of positive recognition. For instance, a supervisor may be investigating a complaint about bias-based policing by looking at arrest statistics. In doing so, the supervisor may find that the officer in question does have a high level of arrests, but the officer’s conviction rate is higher than his/her peers. The Phoenix Police Department believes that PAS will help supervisors to identify these quality officers, as well as those that may exhibit undesirable behavior.

Phoenix developed PAS using a collaborative working group composed

of police managers, Professional Standards Bureau staff, employee groups, the city attorney's office and technical staff. PAS collects and collates information on: awards and commendations; overtime and sick use; uses of force and other critical incidents; pursuits; arrests; discipline; industrial injuries and exposures; police-involved accidents; citations; officer-involved shootings; and training. When the system alerts a supervisor that an individual officer has exceeded a pre-determined threshold, the information is forwarded to a review committee consisting of police managers, union representatives, peers and a mental health professional. The review committee then decides upon appropriate non-disciplinary corrective action, including policy revision, individual or department-wide training, individual counseling or a transfer.

The authors argue that employee and collective bargaining unit buy-in is critical for the success of an early warning system, an obstacle that the Phoenix department eliminated by involving these entities in the development and functioning of the system. Also critical to the success of a system is open and thorough communication between supervisors and individual officers regarding concerns and expectations. The authors argue that an early warning system can aid in saving an agency unnecessary legal expenses, prevent future misconduct or risk to the department, and retain employees whose behavior may put them at risk for disciplinary actions or job dissatisfaction in the future. *The Police Chief, November 2002.*

Robert Cane studies in "The Social Ecology of Police Misconduct" whether differences in social ecological conditions in various socially disorganized New York Police Department ("NYPD") precincts is a predictor of police misconduct. Socially disorganized communities that are characterized by high levels of police-citizen conflict resulting from over-deployment of police and the absence of adequate social networks to address community concerns may foster conditions conducive to police misconduct. Drawing upon research studies exploring environmental explanations for social deviance, Cane presents three hypotheses: structural disadvantage within certain geographical areas will increase police misconduct; population mobility is a possible indicator of police misconduct; and increases in minority representation may produce higher levels of police misconduct.

Cane's longitudinal study examined police misconduct, defined as, "legal and illegal misconduct and corruption, violence, miscellaneous crimes, administrative misconduct and drug use in which officers misused their official position against the communities in which they serve," in New York City police precincts from 1975 through 1996. Cane concluded that, at both the precinct and division level, population mobility and structural disadvantages appear to be predictors of police misconduct. Further, he noted a correlation between an increase of Latino residents and increased levels of police misconduct. No such relationship appeared in communities that witnessed an influx of African Americans. Police misconduct appears to vary across

precincts and time. However, the greatest amount of variation occurs within an individual precinct, rather than across precincts. Lastly, the author suggests that police managers be cognizant of the correlation between social disorganization and misconduct when planning supervisor-to-officer ratios. 40 *Criminology* 867 (2002).

A new study examined the effects of three- and four-day work weeks at the Los Angeles Police Department ("LAPD"). Emergency response times have slowed and arrests have declined by 7 percent. Sick time and overtime have decreased by 11 percent and 20 percent, respectively. The change from a traditional schedule to three- and four-day weeks was introduced during Chief Bernard Parks' term to reduce sick time and overtime while increasing morale. While LAPD officials have claimed that a number of factors, including a shortage of officers, can explain the decreases in arrests and response times, they have indicated that the department would not oppose modifying the current work schedule. *Associated Press, December 10, 2002.*

Following a Police Commission finding that 60 percent of all LAPD pursuits involved minor offenses, Chief William Bratton has proposed changes to the department's pursuit policy. The proposal would prohibit officers from pursuing individuals for minor traffic infractions or crimes and require them to weigh the potential risks to the community in continuing a chase. In addition, supervisors would take a more active role in determining when to call off a pursuit in progress. LAPD would primarily rely upon helicopters, rather than patrol cars, to track suspects. The

proposed changes came following a series of controversial pursuits, several of which maimed and killed small children. Vehicle pursuits have risen 36 percent since 1995, ranking LAPD the highest among large metropolitan jurisdictions. In 2000-2001, Los Angeles spent \$1.32 million in liability claims resulting from pursuits. The Los Angeles Sheriff's Department's pursuit policy requires officers to contact the watch commander for a briefing on their speed, location and the suspect's infraction. The watch commander then determines whether or not to pursue the suspect. A pursuit may be terminated if it poses a serious danger to the public or the officer. Helicopters are usually used to track the suspect. *Los Angeles Times, December 17, 2002.*

A preliminary study released by the International Association of Chiefs of Police ("IACP") found that Florida police officers with only a high school diploma are disproportionately the subjects of disciplinary action. Officers with merely a high school diploma comprise approximately three quarters of those disciplined, although they represent only half of Florida law enforcement personnel. Further, these officers also received a disproportionate amount of serious discipline such as revocation or voluntary relinquishment of certification. The IACP intends to further study the effect of education on law enforcement activities nationwide. *Law Enforcement News, October 31, 2002.*

The New York Police Department may replace their Point Blank Body Armor bulletproof vests following tests that displayed a 5 percent failure rate. Point Blank agreed to replace more than one

quarter of the vests, but NYPD officials state that the department plans to use other vendors. *New York Post*, December 4, 2002.

The Indiana State Police plan to install video cameras in some patrol cars, a move that some experts believe will protect the department from false complaints, provide direct evidence during litigation alleging officer misconduct and promote police accountability. The department has not determined who will have access to the cameras' operating systems, following community concerns that officers may turn off the camera during questionable incidents. The majority of video cameras installed in police cars nationwide are automatically activated after sirens or lights are turned on. The tape thus may not show the reason that an officer conducted a traffic stop – often a point of contention during litigation. *Indianapolis Star*, December 6, 2002.

Los Angeles Mayor James Hahn and Police Chief William Bratton announced a plan that includes free fitness training and an academy mentor program to increase the number of women on the police force to at least 25 percent. Women make up 50 percent of the population of Los Angeles, but only 19 percent of the LAPD. Officials believe the program will increase officer retention and job satisfaction, enhance morale, encourage leadership, professionalism and teamwork, while improving the assimilation of women into the force. *Torrance Daily Breeze*, December 17, 2002.

Seekonk, Massachusetts, approved a domestic abuse policy setting forth police department response to domestic

violence allegations against officers. The policy mandates that officers charged with domestic violence be arrested and the relevant information forwarded to the police chief. The department must confiscate the officer's badge, weapon and identification, and off-duty weapons. A specialized domestic violence officer must report to the scene and provide guidance to the victim. *National Center for Women and Policing News*, December 20, 2002.

### Use of Force

Civil rights activists in Louisville, supported by Michigan Congressman John Conyers, are asking the Department of Justice to conduct an investigation into the fatal shooting in December of a handcuffed black man and several other alleged excessive force cases involving Louisville police officers. Police say that the handcuffed black man was threatening them with a box cutter. The death of the man incited protests in Louisville. Conyers also announced that he plans to introduce a police accountability bill. The bill is intended to hold police accountable for in-custody injuries and deaths and will focus on better training in non-lethal weaponry, creation of civilian review boards and improved police training in dealing with persons under the influence. *Louisville Courier-Journal*, December 16, 2002.

“Police Use of Force: Examining the Relationship between Calls for Service and the Balance of Police Force and Suspect Resistance” by John MacDonald, Patrick Manz, Geoffrey Alpert and Roger Dunham examines the relationship between types of calls for service and the use of force. The authors

also sought to determine the relationship between escalation of force by the officer and the resistance encountered by the officer. The study used 1996-98 data from the Miami-Dade Police Department. The types of calls were divided into the following categories: violent crime, administrative, property offense, domestic/disturbance, traffic, and other. The authors found that officers used the highest level of force in property crimes even though suspects displayed the lowest level of resistance. Officers used the least amount of force in domestic disturbance calls, while violent crime suspects employed the highest level of resistance. Suspects were found to use a higher level of force than officers for all types of calls other than property crimes and domestic violence. *545 Journal of Criminal Justice 1 (2002)*.

The medical examiner's office in Hennepin County has determined that the death of a man during a struggle with Minneapolis police officers was a homicide. At least one police officer used a neck hold, believed to be a lateral vascular neck restraint. It is uncertain whether the man who had a history of high blood pressure with advanced coronary artery disease died solely from the neck compression. Forensic pathologists have identified death as a risk of using such a hold on a struggling suspect. When using a lateral vascular restraint, an officer applies pressure to the neck to limit the blood flow to the brain, which may result in unconsciousness. Experts say that it takes approximately five pounds of pressure to restrict the blood flow, and only about five to ten seconds for someone to lose consciousness. During the altercation with the man, officers

struggled for four minutes to subdue him. Minneapolis officers are trained in the lateral vascular neck restraint, but are required to closely monitor the person until released to medical personnel. Some law enforcement agencies and police experts have cautioned against the use of lateral vascular neck restraints, claiming they pose too great a risk. Others claim that the tactic is effective when done correctly, but note that applying the tactic is more difficult when the individual is struggling. In addition, when used on persons with high blood pressure or heart disease, the tactic can be deadly. *Minneapolis Star Tribune, December 11, 2002*.

"To Bite or Not To Bite: Canine Apprehensions in a Large, Suburban Police Department" by Edward Hickey and Peter Hoffman examines canine-related data from 1993 through 1998 from the Montgomery County Police Department. The department had a "find and bite" policy which required officers to announce their affiliation and their intention to release a canine on resisting suspects. Of the 15,031 canine deployments in the six-year period, 1,179 resulted in apprehensions. Of those apprehended, 14 percent were bitten, 9 percent received medical attention and 5 percent received hospital treatment. The bite ratio was 1.3 times higher for white suspects than minorities. Canine officers sustained nine injuries, with a rate of .76. The authors recommend that police managers utilize canine deployment and bite statistics to determine whether to amend canine tactics or deployment procedures and to allay community concerns following a publicized injury caused by a canine apprehension. *547 Journal of Criminal Justice 1 (2002)*.

The FBI released its annual report on police officer fatalities and in 2001. The September 11 terrorist attacks produced 72 deaths, the highest number of officer fatalities on one day in U.S. history. Seventy other police officers were feloniously slain in 2001, a 37 percent increase from 2000. The report concluded that officers are most likely to be shot to death with a handgun, more likely to be killed at night and on Friday and least likely on Sunday. The South has the highest concentration of officer fatalities. Approximately two-thirds of police assailants had prior criminal records or arrests. Twenty-four officers were killed during an attempted arrest and 14 were slain while answering disturbance calls. Slightly more than half of officers killed by guns were wearing protective body armor. Seventy-eight officers died in accidents, 64 involving cars or motorcycles. There were nearly 57,000 assaults on officers during the performance of their duties, resulting in 16,000 injuries. The full report can be accessed electronically at <http://www.fbi.gov/ucr/killed/2001leoka.pdf>.

**AELE Workshop on Police Civil Liability and the Defense of Misconduct Complaints**

*PARC staff member Django Sibley summarizes the recommendations made at what he found to be an interesting and useful workshop.*

Americans for Effective Law Enforcement (AELE) held a workshop entitled "Police Civil Liability and the Defense of Citizen Misconduct Complaints" in November 2002 in Las Vegas. The workshop provided a

focused examination of the critical liability issues facing American law enforcement agencies. Presenters suggested numerous steps agencies can take in order to reduce their exposure to civil liability, particularly with respect to the use of force, vehicle pursuits and the receipt and investigation of citizen complaints. The presenters' recommendations included the following:

**Force**

- Use of the TARP (total appendage restraint procedure) does not, in itself, cause asphyxia. However, any person who has struggled violently while being so restrained should be examined by a medical professional.
- To minimize risk of asphyxiation, no restraint technique that involves the application of pressure to a subject's back or chest should be taught or used.
- Use-of-force continua should not be included in force policies as they may hinder officers' decision-making and can confuse juries.
- Officers should be trained to seek immediate medical attention for subjects who suffer an abnormal reaction to OC spray exposure.
- Square bean-bag rounds may cause serious, penetrative injuries and should not be used.
- A number of accidental shootings have occurred when officers have mistaken their sidearms for Taser electronic restraint devices. Departments should follow the manufacturer's guidelines that are designed to preclude such mistakes.

**Pursuits**

- Pursuits of motorcycles should be forbidden in all but extreme cases

due to the high risk of injury or death.

- Agencies should not impose blanket bans against firing at moving vehicles (in extreme circumstances use of a firearm may be necessary to avoid a risk of serious physical injury).
- The PIT (Precision Intervention Technique) should not be used against vehicles traveling in excess of 35 mph.
- Vehicles traveling in the wrong direction on divided highways should be pursued only under extreme circumstances.

### **Citizen complaints**

- A complaint policy that requires the receipt of *all* complaints leaves no room for misinterpretation.
- Complaints should be received from any and all sources and in any form.
- The use of “Public Service Report” forms, which can be used for any kind of citizen comment on police performance, including praise, can encourage officers to provide necessary paperwork to citizens wishing to complain.
- Complaints should be welcomed by agencies as a means to engage in critical self-evaluation.
- Complaint investigations should not be abandoned simply because the complaint has been withdrawn or the complainant cannot be contacted.

### **Interview**

In June 2001 the Metropolitan Police Department (“MPD”), District of Columbia and U.S. Department of Justice (“DOJ”) entered into a

Memorandum of Agreement (“MOA”). In April 2002 former DOJ Inspector General Michael Bromwich was selected to lead the monitoring team formed to review and report on the implementation of and compliance with the requirements set forth in the MOA. The agreement includes reforms of the MPD in areas such as use of force, handling internal investigations of the use of force, investigating allegations of misconduct against officers, creating an early warning system, and training. PARC recently spoke with Mr. Bromwich about his approach to the monitoring role and his first eight months as monitor.

***PARC:** How do you view the role of the monitor?*

**MB:** I think it is extremely important to be clear about the limits and the scope of the monitor’s position from the outset. Under the Memorandum of Agreement that defines our monitorship, we are required to monitor compliance with each and every aspect of the Memorandum of Agreement. The breadth of that responsibility is limited by the specific provision in our MOA that we are not to supplant the roles of any of the other agencies of the DC government, including the Metropolitan Police Department and any other city agencies.

We have been very mindful of the fact that our activities must be limited to monitoring rather than moving into anything that resembles having an operational role. We found that among the chief concerns that the MPD had at the beginning of our activities – and I am sure that this is true in virtually every context in which there is a monitor over a law enforcement agency – is that we

would view ourselves as having an operational role. Specifically, the MPD was concerned that we would actually conduct investigations and that we would become kind of a shadow police department in certain ways. Therefore we had to be very clear, in what we said and what we did, about the limits of our role. Our role is to monitor implementation of the MOA rather than assume an active, operational role. We had to be very clear about articulating that to the police department and in reinforcing it to ourselves.

***PARC:** Have any circumstances arisen when you have decided that it is appropriate to provide suggestions in an effort to assist the department to comply with a requirement?*

**MB:** Yes, such occasions have arisen, and we have made such suggestions. I think we have been fortunate in having developed an open and good relationship with the MPD from the outset, which has facilitated our making such suggestions. In a variety of circumstances, for example in the training area and in ensuring the completeness of record-keeping for use of force investigations, we have offered what is described in the MOA as technical assistance, but are in fact simply suggestions or advice. Sometimes that is done on-site by the policing experts who are working as part of our team. Sometimes it is done more formally in our quarterly reports or during in-person meetings that we have. Because of the constructive and open relationship we enjoy with the MPD, the reaction to our suggestions has generally been extremely positive.

***PARC:** Can you describe how the team divides responsibilities?*

**MB:** Yes. Within my law firm, Fried, Frank, Harris, Shriver and Jacobson, three lawyers other than myself have played significant roles in the monitoring process. The senior lawyer who has been centrally involved in the monitoring assignment is Jonathan Aronie, who is very much involved in our day-to-day dealings with the MPD and has played a central role in organizing and coordinating our monitoring activities. In addition, two other associates – Jacqueline Stephens and Melissa Lamb – have been involved in a variety of monitoring projects. We have the international accounting firm of PricewaterhouseCoopers and we have used them primarily to help us select samples of investigations and cases that we want to review and examine. They will also be very involved in helping us with the computerized personnel database that the department is required to develop as part of the MOA.

Our three policing experts have played central and critical roles in our monitoring activities. Our experts are Dennis Nowicki, who is the former chief of the Charlotte-Mecklenburg Police Department; Mitchell Brown, who is the former chief of the Raleigh, North Carolina Police Department; and Ron Davis, who is an active-duty captain with the Oakland, California Police Department. We have used all three of these policing experts extensively in monitoring specific aspects of what the MPD has been doing to implement the MOA. For example, in last quarter of 2002, they extensively monitored training programs that were developed to implement the MPD's newly revised use-of-force policies. They have also reviewed a large number of use-of-force investigations conducted by the

investigative teams designated by the police department to review use of force. The three policing experts have conducted a wide range of monitoring assignments for us, and I have found having them to be a huge advantage for us in monitoring the agreement appropriately. The three experts have worked extremely well together in a coordinated fashion, and have given us the latitude to monitor a wide range of activities.

**PARC:** *Could you summarize the most important aspects of the MOA regarding use of force?*

**MB:** That's difficult to summarize because the MOA is a long and complex document that addresses a wide range of issues that the Department of Justice has deemed to be critical to developing appropriate use-of-force policies. Very briefly, the MOA requires specific new policies in the areas of firearm use, canine use, OC spray use, and so forth. In addition, there is a broad range of requirements in the MOA relating to investigating use-of-force incidents, training members of the department on the new policies, and developing a computerized system to track use-of-force incidents.

The new general orders embodying these use-of-force policies were developed in final form during the late summer of 2002 and were finally ready to be released in early October. New in-service training and other kinds of training on the new use-of-force policies are currently being implemented. That is what the MPD has been devoting a lot of its energies to over the last six months or so, and because these new policies are so central to the MOA, we have been

devoting a lot of time and attention to the implementation of these policies in recent months as well.

**PARC:** *Many of the use-of-force requirements include specific guidelines concerning firearms, OC spray and the deployment of canines? Do these guidelines differ considerably from present policies?*

**MB:** There are some significant differences. It has taken a lot of work to ensure that the substance of the policies has been changed in ways that are consistent with the requirements of the MOA and consistent with cutting-edge best police practices.

**PARC:** *During the course of the monitoring process, if the department comes into apparent compliance, does that satisfy a requirement indefinitely, or does it need to be revisited?*

**MB:** It depends on the requirement. For example, the department was required to come up with new use-of-force orders and then implement them. The development of the use-of-force orders is complete and therefore satisfies the requirement to develop such orders in the first instance. By comparison, the process of implementing them will be a continuing process that will go on for the life of the agreement. Much of our monitoring activity will be designed to ensure that the approved policies are implemented properly. The process of implementing these policies will in fact never end – not even at the point when the MOA expires.

**PARC:** *How can law enforcement agencies learn from consent decrees?*

**MB:** By focusing on the substance of what the decrees – or the voluntary memoranda of agreement – are trying to accomplish rather than on the events that may have led to the requirements that are being imposed. It is critical that a law enforcement agency has a constructive attitude towards the decree and wants to achieve its objectives. The agency must believe in a fundamental sense that moving the agency forward along the lines set forth in the decree will benefit the department and is consistent with good policing. I think that has been the case with the MPD.

I think one of the advantages that the MPD has is a chief who believes in the objectives that underlie the MOA and believes that they are consistent with best policing practices. He believes that the objectives of the MOA push his department in the direction that I think he was already moving towards and it also provides a further impetus to move in that direction. I think that if you have a department that doesn't have that kind of support from the top, and doesn't recognize that the terms of the MOA are perfectly consistent with high-quality policing – and indeed most everything is completely consistent with high-level policing and promotes top-level policing – it makes it very difficult for an arrangement like the one we have with the MPD to work well.

In addition to top-level support, the law enforcement agency needs to have people strategically situated in the organization to mobilize the support of the department to make sure that the objectives of the MOA are implemented. In our experience with the District of Columbia, we have had top-level support from Chief Ramsey and other members

of his command staff. In addition, the people we deal with who are responsible for implementing the MOA on a day-to-day basis really do support the objectives of the agreement and are working very hard to make sure the department complies with the MOA terms. Even with this kind of support, satisfying all the elements of a consent decree – or an MOA – is not a simple or easy matter and requires sustained commitment from the entire agency for a long period of time until all of the new policies, practices, and procedures become a way of life in the agency.

***PARC:** Have you experienced any personal challenges since you do not have a direct background in policing?*

**MB:** I have a substantial background in law enforcement – seven years as a federal prosecutor and five years heading a federal law enforcement agency. But my experience was at the federal level – the 180 federal criminal investigators who worked for me at the Justice Department when I served as Inspector General did very different kinds of work than the officers of the MPD. Before this assignment, I did not have the kind of detailed working knowledge of local law enforcement that you can get only when you work in local law enforcement. I have found it interesting and illuminating to see how a local law enforcement agency works, how it mobilizes to make significant institutional change, and how its day-to-day rhythms, preoccupations and concerns differ from those of federal agencies, which have very different responsibilities.

***PARC:** Can you provide an overview of what the MOA requirements are for the*

*Use-of-Force Review Board?*

**MB:** Yes, the MOA requires the Use-of-Force Review Board to conduct timely reviews of MPD use-of-force investigations. The MOA requires the MPD to develop various policies relating to the operation of the Review Board, including authorizing it to recommend discipline of MPD officers for violations of MPD's policies and training. More generally, the MOA establishes the Review Board as the entity designed to ensure quality control for all use-of-force investigations, including the authority to recommend investigative protocols and standards for all force investigations. The MOA requires the Review Board to conduct annual reviews of all use-of-force cases for the purpose of recommending remedial steps to address any systemic deficiencies it has found.

**PARC:** *What lessons have you learned in your first nine months on the job? Have there been any surprises?*

**MB:** The first nine months of the assignment have confirmed the importance of establishing a good rapport with the department from the outset. I think we have been able to do that through being transparent about what we are doing – there is no mystery or secrets about what we do, how we are doing it and why we are doing it. In the beginning of the process when we were talking with the MPD about how we would run our operation, we stressed the openness of the process that we hoped would characterize the monitorship. I think that we have lived up to that pledge to be transparent.

Our hope was to avoid surprises and so far I think we have been pretty successful at avoiding any major surprises. That's at least as much the result of luck as of design. It is also a tribute to the MPD's efforts in seeking to satisfy the requirements of the MOA. Although there may be surprises in the future, I think the fact that we have built a solid base of trust during this initial period will put us in a good position to handle them appropriately.

**PARC:** *Do you see a dichotomy between your public reports and your participation in the behind-the-scenes process?*

**MB:** No, I think that it turns out that people do focus on the public reports, and I think that everyone tends to orient themselves to what is going to be in the public reports. But I have found that our relationship with all parties, particularly the MPD, has been a very open and constructive one. I think that we communicate clearly with each other. As an example, in mid-December, we held end-of-the-year meetings, both with the representatives from the MPD compliance monitoring team and the Department of Justice, just to talk generally about how things are going. We discussed what they would like us to do that is differently from what we have done previously and what they have liked about our approach with the monitoring to date. I think this illustrates the kind of relationship we have tried to develop during the beginning phases of our monitorship. We communicate with one another and are very solicitous of what the other parties are thinking and what their needs are.

**Director's Cut**

A column by PARC Director, Merrick Bobb

Effective and respectful policing moved forward in 2002, albeit on occasionally choppy water, but surprisingly was not met with gale force storms, as some had predicted at the beginning of last year. Among the feared after-effects of September 11 was that the national push for police reform and professionalism – launched in post-Rodney King southern California in the early 1990's and then picked up and moved forward by the U.S. Department of Justice under its Section 14141 pattern or practice authority obtained in the mid-1990's – would be stalled by perceptions that police misconduct was of lesser concern or beside the point in an era of greater insecurity about public safety. Similarly, 2002 began with concerns about the vigor and commitment of the Department of Justice in Washington to Section 14141 enforcement and to the work of DOJ's Special Litigation Section. Finally, some observers wondered whether the hardest, most dug-in cases, such as the LAPD and the Cincinnati PD, could successfully be dealt with.

Happily, 2003 begins with a greater sense of hope than did 2002, largely because 2002 turned out to be a good year after all. Important work advanced police reform, gaining and holding new ground. Meaningful and responsible oversight of the police by civilian institutions expanded. Some communities across America opted for a civilian review model. Several new civilian review boards came into being in 2002. Other communities opted for monitor models, including, for example, Austin, Texas. Monitor models were recommended by blue ribbon commissions in other cities, including New Orleans. Monitors produced lucid and impressive reports, as, for example, Michael

Cherkasky's reports on the LAPD. Meaningful, thoughtful monitoring got underway in DC.

In 2002, PARC convened the first-ever conference of monitors and the monitored, and helped advance the discussion between police chiefs, monitors, and federal and state authorities. The Department of Justice under Attorney General Reno had begun an effort to forge a national consensus as to best practices between police professionals and all others vitally interested in respectful and effective policing. PARC, through its conferences, publications, and the rendering of advice and counsel, aims to continue that national conversation to reach consensus on best practices. The current Assistant Attorney General in charge of civil rights, Ralph Boyd, gave the keynote address at PARC's conference, signaling the current administration's commitment to respectful and effective police work. The conference of monitors and the monitored, and work to be done in its wake, will broaden the emerging consensus and create a deeper and more nuanced understanding of the issues.

In 2002, the Department of Justice initiated some carefully chosen new investigations, including Schenectady, Providence, and Miami, and brought some old investigations to a close, achieving meaningful results in settlement agreements in Cincinnati and Buffalo. DOJ gave clear, unvarnished direction to Detroit in three separate, bold technical assistance letters, and held firm and steady where it counted in LA and DC. In Pittsburgh, the first city to fall under a federal consent decree following a Section 14141 investigation, meaningful reform of the Pittsburgh Police Bureau, achieved under Chief McNeilly and monitored by Jim Ginger, resulted in a stipulated

order in 2002 in which the Police Bureau was found in substantial compliance, thereby obviating further need for the lion's share of the consent decree provisions.

New leadership in 2002 within several key police departments augurs well for progressive policing. At long last, the LAPD has as its head a smart, seasoned, energetic chief determined to turn an uninspired, underperforming, and dispirited police force into an active, effective, more open organization capable of clean, constitutional, yet rigorous crime-fighting and crime-solving. It was recently announced that John Timoney, another sterling chief who moved the Philadelphia PD considerably down the road to effective and more respectful policing, will take over one of the nation's sorest trouble spots, the Miami PD. Detroit's new chief, Jerry Oliver, has shown no hesitation to vigorously rock the boat when necessary. Providence, Rhode Island – a city awash in a sea of municipal difficulty even as it experienced a renaissance of sorts – has a progressive, new mayor who has announced his pick of Dean Esserman, who will be an able and progressive new chief for that city, just as he proved to be for Stamford, Connecticut. As a federally-appointed monitor, Esserman, working closely with Chief Robert Hertman, has helped turn the Wallkill NY Police Department around and is bringing it into compliance with a federally-ordered consent decree in a case brought by New York Attorney General Eliot Spitzer.

During 2002, the civil rights and civil liberties communities pushed forward with initiatives to enlighten Americans in general and law enforcement in particular how to avoid temptations to rely excessively on stereotypes, profiling, and overbroad generalizing while combating genuine public safety and public security risks. Similarly, and hearteningly, the legitimate and necessary focus on combating terror did not diminish

the outrage and deep concern generated by incidents of apparent excessive force directed by the police at minorities, as demonstrated by the public and media response to the videotaped beating of a young African-American last summer in Inglewood, California.

Given what happened in 2002, our expectations and hopes for 2003, then, are correspondingly high. It is not too much to ask that we see solid evidence of a turnaround in chronically troubled departments like the LAPD and the Detroit PD. The conditions are right, we hope, for speedier, accelerated progress in departments like the DC MPD. Like the NYPD and the LAPD, the Miami PD and the Providence PD will be in very capable hands, and DOJ's job in those two places will be made easier. The excellent selection of Saul Green to monitor the Cincinnati settlements is likewise an extremely positive development.

We look to DOJ's Civil Rights Division to actively assist and enable troubled jurisdictions to come to grips and solve problems of excessive force and discriminatory policing, to initiate new investigations where needed and necessary, and to use its enforcement authority in a duly cautious but nonetheless credible and determined way. Within the last few days, the Civil Rights Division signaled that it continues to move in the right direction by its promotion of Steven Rosenbaum from Chief of the Special Litigation Section to Counsel to the Assistant Attorney General for Civil Rights. Rosenbaum's move to the front office will give him added responsibility and influence regarding the Special Litigation Section, among other areas which will now come under his purview. Steve's careful, thoughtful, and balanced approach – deftly using both carrot and stick; never compromising civil rights while at the same time never insisting that law enforcement do the impossible or the impracticable; showing compassion and concern for

the safety and well-being of the police as well as those with whom the police interact – has won him respect and praise from both Democratic and Republican administrations and their appointees at DOJ. His promotion underscores the cumulation over many years of that respect, and we look forward to thoughtful, careful, and resolute development and expansion of Section 14141's goals and methods with his joining Assistant Attorney General Ralph Boyd and others at the top of the Civil Rights Division.

As for ourselves, we hope that in 2003, PARC will assist in broadening the emerging national consensus on best practices and will help create and elaborate uniform national standards for testing, measuring, and comparing police performance. In particular, we look forward to a national conversation and ultimately a consensus about how to assess and measure a law enforcement agency's internal mechanisms for identifying and dealing with the risk of possible police misconduct, including mechanisms to assure that the entire chain of command has well-defined responsibilities for discovering and dealing effectively with that risk. We anticipate that PARC will have the pleasure of working with agencies and personnel from across law enforcement and civilian oversight, including police departments, cities, police commissions and review boards, inspectors general, monitors, police chiefs, the civil rights and civil liberties communities, and others vitally concerned in bringing about effective and respectful policing.

**Conferences**

**January 29-31, 2003 – U.S. Department of Justice, Office of Community Oriented Policing Services** “A Community Oriented Approach to School Safety: What Works.” Conference to be held in Nashville, Tennessee. More information is available at [www.communitypolicing.org/meeting/index.cfm?fuseaction=info&meetingid=17](http://www.communitypolicing.org/meeting/index.cfm?fuseaction=info&meetingid=17).

**March 17-19, 2003 – Americans for Effective Law Enforcement** “Discipline and Internal Investigations for Law Enforcement, Corrections and the Fire Service,” to be held in San Francisco, California. More information is available at [www.aele.org/wksdisc.html](http://www.aele.org/wksdisc.html).

**March 19-22, 2003 – Commission on Accreditation for Law Enforcement Agencies** Spring conference “Maximizing Excellence” to be held in Orlando, Florida. More information is available at [www.calea.org/newweb/ConferenceInfo/Orlando/conferenceinfo.htm](http://www.calea.org/newweb/ConferenceInfo/Orlando/conferenceinfo.htm).

**April 28-30, 2003 – Americans for Effective Law Enforcement** Critical Incident Response: Management and Liability Seminar, to be held in Las Vegas, Nevada. More information is available at [www.aele.org/wkscrit.html](http://www.aele.org/wkscrit.html).

**June 21-25, 2003 – National Sheriffs’ Association** Annual conference and exhibition, to be held in Nashville, Tennessee. More information is available at [www.sheriffs.org/defaults/defaults\\_s\\_annualconference.htm](http://www.sheriffs.org/defaults/defaults_s_annualconference.htm).

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