

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.

Civilian Oversight

PARC Releases Report on LASD

Special Counsel Merrick Bobb and PARC have released the Seventeenth Semiannual Report on the Los Angeles County Sheriff’s Department (LASD). The report focuses on several aspects of the LASD’s operation of the Los Angeles County jail system—the largest jail system in the United States. An examination of inmate violence and use-of-force trends reveal that rioting in 2000 prompted the LASD to pay close attention to its management strategies, and several apparently successful violence-reduction initiatives were subsequently implemented. However, some of these programs were subsequently withdrawn in response to budgetary pressures and rates of both inmate disturbances and use of force have since increased. The report describes LASD programs to reduce violence and manage the use of force, including policies requiring a supervisory presence in high-risk scenarios, racial and ethnic “balancing” among inmates in housing units, and incident review processes. The report identifies a number of concerns regarding LASD force training. These include recent reductions in training prompted by cuts in state funding, the absence of a requirement for in-service force training, and insufficient regulation of force training

provided at some jail facilities.

The report then addresses one of the LASD’s principal risk management tools: the Facilities Automated Tracking System (FAST). FAST is a relational database that tracks custody-specific, risk-related data, enabling executives to conduct complex analyses of data. The Special Counsel identifies FAST as a model for jail systems throughout the country, but also notes areas in need of improvement in relation to data integrity, software, and the tracking of misconduct complaints.

The third area addressed by the report is the operation of the LASD’s Inmate Reception Center (IRC), as it relates to the over-detention of inmates, erroneous releases, and use of force. IRC serves as the hub through which inmates enter the jail system, are sent to and from court

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appearances, and leave the jails when released or transferred. Over-detentions are shown to have decreased significantly over recent years—a trend attributed to significant changes in the LASD procedures for freeing inmates released by the Superior Court. The current system allows inmates to be released directly from the courthouse, in contrast to the previous system that required inmates to remain in custody until they had been processed for release through IRC. In addition, over-detentions are reviewed so that the recurrence of errors can be avoided, and a Quality Control Tracking system has been implemented. Meanwhile, erroneous releases have occurred infrequently over recent years, and use of force has declined relative to the number of inmates passing through IRC.

The full report is available online at www.parc.info.

OIR Issues Report on LASD

The Office of Independent Review (OIR) has released its second Annual Report on the Los Angeles County Sheriff's Department (LASD). The report provides an overview of misconduct issues facing the LASD, assesses how effectively those issues are being addressed, and describes OIR's involvement in both individual misconduct cases and systemic departmental reforms. OIR found the LASD's handling of serious misconduct allegations, objectivity in conducting Internal Affairs investigations, and consistency and fairness in imposing discipline all to be "typically appropriate." Notable reforms to LASD policy and practice involving OIR include:

- The recall of a brand of handcuffs with relatively sharp edges after they were found to have contributed to wrist injuries sustained by an inmate; they were replaced with a safer alternative.
- The use of a "Performance to Standards" policy to discipline employees who claim that they did not observe, or did not recall, events that occurred immediately around them.
- Modification of force reporting policy to make clear that LASD deputies have a duty to report force incidents involving non-LASD law enforcement officers.
- The production of a training bulletin that sets guidelines for unit-level inquiries into inmate complaints.
- The production of an admonishment document for use by internal investigators dealing with LASD witnesses who decline to participate in interviews regarding potential criminal conduct by other LASD employees.
- The tracking and monitoring by LASD managers of compliance by LASD employees with "employee settlements" which require employees to take specified actions in exchange for modified discipline.

The full report is available online at www.laoir.com/Reports.html.

DC CCRB Report on Disorderly Conduct Arrests

Washington D.C.'s Citizen Complaint Review Board has submitted a report to the Mayor's office, the city council, and Police Chief Charles Ramsey evaluating disorderly conduct arrests made by the Metropolitan Police Department. In 2000 more than 10,600 disorderly conduct arrests were made, accounting for more

than one in five arrests that year. The study was prompted by the board's recent review of citizen complaints related to disorderly conduct arrests. Four of the first nineteen cases reviewed by the board concerned disorderly conduct arrests and each of these complaints was sustained. Of these cases, the board writes, "the officer either did not understand or ignored the law regarding disorderly conduct...and appeared to be retaliating against the citizen for his behavior during the encounter with the officer." The board believes these incidents serve as a "warning sign of a larger problem." After analyzing the disorderly conduct statute and related case law, nationwide and MPD statistics on these types of arrests, and MPD procedure and training on disorderly conduct arrests, the CCRB made the following recommendations:

- The MPD should immediately begin providing additional training to all MPD officers and supervisors regarding the law and procedure related to disorderly conduct arrests.
- The MPD should produce and distribute a videotaped message from the Chief of Police emphasizing the responsibilities of all members of the Department when making disorderly conduct arrests.
- The MPD should analyze a sample of disorderly conduct arrests made by MPD officers to determine if there are systemic problems in the conduct of disorderly arrests.
- The MPD should modify its arrest procedure for disorderly conduct to ensure that all citizens who pay \$25 to resolve their arrest—a procedure known as "collateral forfeiture"—are provided with written notice about the collateral forfeiture process and its consequences

and that they sign an acknowledgement of their choice to pay the \$25 collateral.

- The criminal code pertaining to disturbances of the public peace, particularly disorderly conduct, and rules regarding collateral forfeiture, should be reviewed to determine whether the code and rules should be revised, updated or changed. Specific reforms, such as decriminalizing disorderly conduct and allowing individuals 15 days to decide whether to forfeit collateral or challenge their arrest, should be considered.

The report is available online at http://www.occr.dc.gov/occr/frames.asp?doc=/occr/lib/occr/pdf/disorderly_conduct_policy_recommendation.pdf.

Austin Hires New Police Monitor

Lawyer Ashton Cumberbatch has been appointed as head of the Office of the Police Monitor in Austin, Texas. He is the second Monitor in the agency's three-year history. The office and its seven-member citizen review panel are responsible for studying on-duty, officer-involved shootings and taking residents' complaints. Cumberbatch has been a member of the review panel since the agency's inception.

Among Cumberbatch's first tasks as Monitor will be to review the high-profile June 2003 shooting of Jessie Lee Owens after the case is evaluated by the Austin Police Department's Internal Affairs. A grand jury recently indicted officer Scott Glasgow in the death of Owens, charging him with criminally negligent homicide. Following the indictment, the grand jury took the unusual step of issuing a report criticizing the Austin Police Department's relationship with the city's minority communities and calling

for racial healing. *Austin Chronicle*, November 7, 2003 and *Austin American-Statesman*, November 1 and 14, 2003.

Consent Decrees/Memoranda of Agreement

LAPD Monitor Issues Ninth Report

Independent Monitor Michael Cherkasky recently released his ninth report describing the Los Angeles Police Department's (LAPD) progress in implementing reforms required by its three-year-old Consent Decree. The report, which covers the quarter ending September 30, 2003, reviews 83 Consent Decree requirements and finds that the LAPD successfully met the terms of 33 and was found out of compliance with 39. The Monitor did not make a determination on the 11 remaining sections. The Monitor highlighted several critical deficiencies:

- The department did not meet the requirement of separating both involved and witness officers after an Officer-Involved Shooting (OIS) until they supply a written statement;
- The effectiveness of the Office of the Inspector General was adversely affected by limited resources and the office has been unable to conduct oversight functions on a timely basis.
- The Department's gang unit audits were described as "abysmal." The Bureau Gang Coordinators are responsible for directing the activities of the department's specialized gang units. The Monitor concluded that the Bureau failed to properly audit the gang unit's arrests and detentions, and did not report on missing documents,

incomplete detention log information, and other deficiencies identified.

The Monitor commended the LAPD for the following achievements:

- Officers' work histories are reliably being assessed prior to recommendations being made regarding discipline or non-disciplinary action as a result of Categorical Uses of Force;
- The Department continued to make progress towards its commitment to prevent discriminatory policing. Several interactive problem-solving exercises involving non-biased policing were incorporated into its ongoing training program. In addition, the department successfully continued its training on its non-discrimination policy, and;
- The LAPD has continuously submitted completed administrative investigations of all Categorical Uses of Force to the Office of the Inspector General and the Police Commission in a timely fashion.

The full report can be accessed online at: <http://www.krollworldwide.com/about/library/lapd/>.

Maryland State Police Distribute Brochures on Complaint Procedure

Complying with a key requirement of a racial-profiling settlement, the Maryland State Police have begun distributing brochures explaining the department's complaint process to all motorists who receive traffic tickets and warnings. According to the agency's spokesperson, troopers have already begun to videotape some traffic stops, obtain written consent to search vehicles where there is no probable cause, and collect data about the

race and gender of drivers they stop when not using radar—all terms specified in the consent decree signed six months ago.

The consent decree was the culmination of over a decade of litigation prompted by a suit filed by lawyer Robert Wilkins in 1992, who claimed his car was stopped and searched because he was black. Also as part of the settlement, the department has hired retired Capt. Dennis P. Murphy as the civilian consent decree program manager and Professor Eli Silverman of John Jay College as a consultant on racial-profiling issues. The department has not, as ordered, established a citizen-police advisory committee with the NAACP, but one is expected to be organized in coming weeks. *Baltimore Sun*, November 7, 2003; *Washington Post*, November 8, 2003.

Arkansas State Police Released from Consent Decree

After more than a decade of federal supervision, a judge has ruled that the Arkansas State Police has met and exceeded the requirements of a 1991 Consent Decree requiring that the department place video cameras in 75 percent of its patrol cars. The agency now has cameras in about 90 percent of its 340-car fleet. The decree stemmed from a 1988 lawsuit that accused Arkansas troopers of having developed a “drug courier profile” that targeted Hispanics for traffic stops. *Arkansas Democrat-Gazette*, October 28, 2003; *Baxter Bulletin*, October 28, 2003.

Community Policing/ Problem Oriented Policing

Prince George’s Officers to Begin Community Policing Initiative

The Prince George’s County Police Department recently announced a “community-oriented policing” pilot program that would place 200 officers in neighborhoods in an effort to reduce crime. The officers, tasked with becoming personally acquainted with residents, will be deployed in two very different communities: Palmer Park and Bowie. Palmer Park is a 29-square-mile area with a population of 131,000 that has higher statistics for violent crime than any other district in the county. Bowie has 171,000 people spread over 143 miles where violent crime is rare. If the pilot program reduces crime and produces better community relations in both districts, the program will be instituted county-wide by July. *Washington Post*, November 14, 2003.

Legal Affairs

Illinois State Supreme Court Limits Police Power in Traffic Stops

In two separate cases, the Illinois Supreme Court has ruled that a routine traffic stop does not give police license to conduct a criminal investigation. In the first case, the court reversed a marijuana conviction of a man who was stopped for speeding. While the officer was writing a warning ticket, a second officer arrived with a drug-sniffing dog, who led the officers to \$250,000 worth of marijuana in the trunk.

In a 4 to 3 opinion, Justice Thomas Kilbride wrote, "The police impermissibly broadened the scope of a traffic stop in this case into a drug investigation."

Prosecutors had argued unsuccessfully that, under previous U.S. Supreme Court rulings, use of drug-sniffing dogs at traffic stops does not violate the Fourth Amendment because the dogs do not actually go into the car.

In the second case, the officer discovered an outstanding warrant on a motorist stopped for making an illegal left turn. His car was subsequently searched and a pea-sized rock of cocaine was found. The court, in a 4 to 3 opinion, overturned the charge of drug possession. Justice Charles Freeman, for the majority, wrote, "The warrant check was not supported by a reasonable, articulable suspicion that [the motorist] had committed or was about to commit a crime."

The two decisions are being hailed as victories by opponents of racial profiling. Al Alschuler, a professor of law at the University of Chicago said, "The subtext of all of these traffic-stop cases is race."

"If you give the police the power to do something like call in the drug-sniffing dogs, you know those powers are often going to be used in a discriminatory way."

Meanwhile, Attorney General Lisa Madigan is considering whether to appeal the cases to the U.S. Supreme Court. *Chicago Tribune*, November 21, 2003 and *Chicago Sun-Times*, November 21, 2003.

LAPD to Pay Doctor \$14.2 Million

A Miami surgeon was awarded \$33 million after jurors determined that improper handcuffing by Los Angeles Police Department (LAPD) officers resulted in permanent nerve damage, partially impairing the doctor's ability to perform surgery. The LAPD was ordered to pay \$14.2 million. Budget Rent A Car had placed license plates on the doctor's rental car from a vehicle erroneously reported stolen, which resulted in the police stopping him. The rental car agency will pay the remainder of the award. Dr. Angelo Gousse testified that he complained to officers that the handcuffs were hurting his wrists but that the officers did nothing to alleviate his discomfort. His lawyer argued that the officers did not lock the handcuffs properly, which would have prevented them from becoming tighter as his client moved. Jurors found that the officers did not follow proper procedure and that, had they done so, Dr. Gousse would have been detained for minutes, not more than an hour. The jury award was one of the largest negligence verdicts ever awarded against the LAPD. *Ft. Lauderdale Sun-Sentinel*, November 20, 2003; *Los Angeles Times*, November 20, 2003.

CHP Offers \$1.4 Million Settlement

The family of a high school senior who was killed when her car was broadsided by a California Highway Patrol (CHP) cruiser agreed to a \$1.4 million settlement with the CHP. The girl's father was seeking a chance to meet face-to-face with the CHP Commissioner to persuade him to change CHP chase policies.

A report issued in January by the Ventura County District Attorney's office found that Officer Jack Raughton was driving at 85 mph in a 45-mph zone when he hit

Jessica Mohorko's car. He had made a left turn in pursuit of a motorist suspected of running a red light. The report determined that Raughton had erred in not turning on his emergency lights but ruled that he was not criminally liable for Mohorko's death. Under current CHP policy, Raughton was not required to activate his lights or siren because it was not an "official pursuit." *Los Angeles Times*, November 20, 2003; *Sarasota Herald Tribune*, November 20, 2003.

Ventura Co. Settles Sexual Misconduct Lawsuit Against Deputy

The Ventura County Board of Supervisors settled a lawsuit, for \$162,500, that had been filed against former Deputy Jose Araujo. The lawsuit alleged that the deputy harassed a 22-year-old woman and forced her to have sex with him over a period of months in exchange for not arresting her on drug charges and for driving violations. An internal investigation determined that sex was consensual but that Araujo had "committed a 'level of misconduct' that was 'inappropriate.'" Araujo resigned in the midst of the investigation. Lawyer Alan Wisotsky who represented the Sheriff's Department contended that the woman was never raped. "But was it coercive? Probably," according to Wisotsky. "It's not something she wanted to do." *Los Angeles Times*, November 6, 2003.

Jury Decides in Favor of CHP in Discrimination Case

In a victory for the California Highway Patrol (CHP)—after a decade of litigation—a federal jury decided against plaintiffs who claimed that the CHP discriminated against minorities in assigning jobs and awarding promotions. The same jury did affirm, however, that

retired Lt. Jeff Paige had been the victim of retaliation after he filed the class-action discrimination lawsuit against the CHP in 1994, but it decided against awarding Paige compensation for the retaliation he suffered. In upcoming weeks, the same federal judge will rule on a related claim that CHP policies and practices resulted in fewer promotions for non-whites than whites between August 1992 and January 1994. *Los Angeles Times*, November 4 and 6, 2003.

Racial Profiling

Cincinnati Vehicle Stop Report

Cincinnati's police monitor, Saul Green, recently released the results from a data collection and analysis study of vehicle stops. The study was conducted as part of the Collaborative Agreement between the City, community stakeholders, and the Fraternal Order of Police. Professors from the University of Cincinnati analyzed approximately 7,200 vehicle stops that occurred between July 1, 2001 and December 31, 2001. The researchers established benchmarks by combining U.S. Census Bureau data and direct observations to produce an approximation of miles driven by blacks and miles driven by whites in each of the city's 52 neighborhoods. The researchers examined the data in the context of four hypotheses for explaining disproportionality in vehicle stops:

- White officers' racial bias against African-Americans;
- Bias stemming from the perception of police officers, both black and white, that African-Americans are more likely to be involved in criminal conduct, traffic offenses, or other violations;

- Disproportionate involvement by African-Americans in traffic offenses, criminal conduct, or other violations, bringing them to the attention of the police with greater frequency than whites; and
- Policing strategies relying on vehicle stops to prevent or suppress criminal activity having the effect of increasing disproportionality.

The researchers were careful not to draw any final conclusions, but instead highlighted disparities that warrant further examination. The study revealed that black drivers were stopped more often than whites and noted that moving violations encompassed the majority of stops for both black and white drivers. Fifteen percent of the stops involving black drivers were for vehicle equipment violations—double the percentage of stops for equipment violations among white drivers. The researchers suggested that income disparities between black and white residents result in black residents driving older cars that are more likely to have equipment failures, therefore increasing the likelihood of being stopped. Black drivers were twice as likely to be stopped because the officer suspected criminal activity. However, the percentage of black drivers arrested was higher than the percentage of stops that were based on suspicion of criminal activity. Therefore, researchers suggested, the higher percentage would indicate that a number of the stops of black drivers initially made for traffic violations also resulted in an arrest.

The researchers discovered that officers asked for a consent search of 6.7 percent of black drivers stopped, but only 3.3 percent of white drivers stopped. The researchers suggested that this disparity

may indicate that officers have a higher level of suspicion of black drivers than of white drivers.

Approximately 25 percent of searches of both black and white drivers resulted in a hit, or discovery of contraband. Researchers also noted that this “hit rate” was high in relation to rates found in other studies. The Monitor made several recommendations for future data collection and analysis, including:

- The Police Department should ensure that the data in future studies is current and error-free;
- Auditing mechanisms should be implemented to assert whether contact cards are completed for all stops made by officers, and to verify the data on the contact cards; and
- The City should review the previously collected data and decide whether additional fields are needed.

The full report can be accessed online at: <http://www.gabsnet.com/cincinnati/monitor/>.

National Symposium on Racial Profiling: Summary

Northwestern University’s Center for Public Safety hosted a *National Symposium on Racial Profiling*, November 2 through 5 in Chicago, Illinois. Participants hailed from more than 75 law enforcement agencies, research and advocacy organizations, and universities. Approximately 25 participants presented an array of best practices; discussed challenges associated with the data collection and analysis process, and described potential next steps.

In his keynote address, Dr. David A. Harris advocated behavior-based profiling rather than race-based profiling as an effective crime-fighting tool. In a later panel he discussed new trends including the incorporation of traffic stop data into Early Intervention Systems (EIS), a tracking system designed to assess and manage risk through internal comparisons that enable command staff to identify officers who deviate from their peers. New Jersey State Police Superintendent Joseph Fuentes provided an overview of New Jersey's EIS, referred to as the Management Awareness and Personnel Performance System (M.A.P.P.S), and highlighted four primary uses, including: Performance Assessment (Individual/Group); Policy Development; Leader Identification; and Risk Assessment and Management (Member/Organization).

Nawar Shora, an attorney with the American-Arab Anti-Discrimination Committee, reiterated Harris's point that race-based profiling was an ineffective tool that led to a misuse of resources. He stated that targeting Arabs in an effort to prevent terrorism was a fruitless endeavor, and said that the most recent intelligence suggests that European women are being trained to perform terrorist acts. Mr. Shora's presentation also included an overview of several common misconceptions about the Islamic faith.

A panel composed of representatives from several urban police departments discussed the importance of establishing a local task force composed of command staff, rank-and-file officers, union representatives, and community members to oversee the data collection and analysis process.

Lorie Fridell, Director of Research at the Police Executive Research Forum, directed a day-long session that described the "nuts and bolts" of data analysis. A panel consisting of Geoffrey P. Alpert, Robin Engel, Amy Farrell, David Harris, and John Lamberth discussed the process of establishing reliable data analysis benchmarks and agreed that U.S. Census Bureau data was unreliable as a benchmark. Lamberth discussed the challenges associated with establishing a driving population as a benchmark through observational roadside studies.

The importance of building ties between the police and the community was a common theme expressed among participants. Sacramento (CA) Police Chief Albert Najera and Retired Chicago Police Superintendent Terry Hillard underlined the importance of building and maintaining ties with community leaders. Oakland Police Captain Ron Davis, who is a PARC Senior Advisor, explained that the community's perception of police activities was the "bottom line," and reiterated the importance of including community members in the data collection and analysis process. *PARC Staff Report*.

Use of Force

Portland to Purchase More Tasers

Portland Police Chief Derrick Foxworth wants to purchase 255 Taser guns to allow every precinct officer to carry one while on patrol. The Bureau will initially buy 100 X26E Tasers at a cost of \$1,000 each. The Chief's goal is to have every officer trained to use Tasers within ten months. *The Oregonian*, November 18, 2003.

News Briefs

First Woman Named Detroit PD Chief

Following the resignation of Chief Jerry Oliver, Assistant Police Chief Ella Bully-Cummings was named Interim Chief of the Detroit Police Department; she is the highest-ranking female officer in the department's history. Chief Oliver resigned in the midst of a controversy over his failure to tell airport officials his luggage contained a loaded .25-caliber pistol.

Bully-Cummings became an officer in the Detroit police force at age 19. After achieving the rank of Commander in 1998, she earned a law degree and left the force to go into private practice. In 2002 she returned to the department because she was encouraged by Oliver's commitment to reform.

Detroit Mayor Kwame Kilpatrick has indicated that he will make Bully-Cummings's interim position permanent. *Detroit News*, October 31, 2003; *Detroit Free Press*, November 6, 2003; Detroit Police Department Press Release, November 3, 2003.

LAPD's SIS Under Scrutiny

The Los Angeles Police Department's (LAPD's) Special Investigations Section is under review by LAPD officials following the shooting deaths of two robbery suspects in September. The special unit is tasked with tracking suspects to collect information and evidence, and then apprehending them. Since the unit was formed in 1965, it reportedly has been responsible for the deaths of 36 suspects in 50 gun battles. Reforms under consideration include:

rotating officers through the unit rather than making it a permanent assignment; requiring plainclothes SIS officers to have uniformed backup during armed confrontations; and assessing SIS tactics to ensure they meet the highest standards. *Los Angeles Times*, November 11, 2003.

Review: Tacoma PD's "Troubling Management Issues"

A six-month investigation into incidents involving Tacoma (WA) Police Chief David Brame, who committed suicide after fatally shooting his wife, found no grounds for criminal indictments but cited "abundant evidence of troubling management issues" within the agency. The review was conducted by state and federal officials who were led by Washington's Attorney General. The Washington State Patrol served as the investigating entity.

Although the investigation, requested by the Pierce County Prosecutor, initially focused on potential criminal misconduct, the scope broadened to include "virtually every aspect" of the department. The investigation found examples of "misconduct, poor judgment, and troublesome behavior by top officers, lax accountability, and a failure to have in place critical policies to deal with some of the most sensitive issues facing the department." Among the most egregious discoveries was a pattern of sending criminal allegations against top officials to the internal affairs unit instead of referring them to prosecutors. This includes not only allegations of bribery and fraud committed by prominent Tacoma citizens and officials, but also accusations of rape and domestic violence made against Chief Brame himself. Calling the department "culturally deficient" but not "criminally corrupt,"

Attorney General Christine Gregoire concluded the report by recommending:

- An internal review of all matters uncovered in the Attorney General's investigation, including review of whether promotions were given on the basis of inappropriate sexual activities or relationships;
- Using the State Patrol to conduct the internal review;
- Developing a clear policy on how to determine whether to treat an incident as a criminal or internal matter;
- A payroll review to be conducted by the State Auditor;
- A detailed review of errors made in the hiring and promotion of Brame after a psychologist found him unfit to be hired as an officer; and
- Adoption of protocols and procedures, with community participation, to guide the department when allegations of domestic violence are made against an officer.

Three additional investigations into the department are ongoing and could result in criminal charges being filed.

Meanwhile, the family of Crystal Brame—the chief's estranged wife—has filed a \$75 million lawsuit against the City of Tacoma, alleging that the police department's failure to remove Brame's gun and badge after his wife accused him of domestic abuse led to her death. The letter of criminal referral from the Washington Attorney General to the Pierce County Prosecutor is available online at:

http://www.atg.wa.gov/pubs/brame/criminal_referral.pdf

Seattle Times, November 18, 2003; *Seattle Post-Intelligencer*, November 19, 2003; *Tacoma News Tribune*, November 18 and 19, 2003; State Attorney General Press Release, November 17, 2003.

City Council Offers to Relax Moonlighting Policies for Police

New York City's City Council has proposed legislation that would allow off-duty, uniformed police officers to provide security outside bars and nightclubs. The proposal has the support of rank-and-file officers and bar owners, who would pay for the extra services. Senior police officials oppose the initiative, stating that it violates state law and could result in conflicts of interest for officers. Police department rules currently prohibit officers from working at establishments where serving alcohol is the primary activity, in part because of conflicts of interest which, for example, could arise if a police officer were working for a bar that served underage drinkers. According to Deputy Chief Edwin Young, "Off-duty employment at a bar places the officer in unnecessary danger, exposes the officer to increased corruption hazard and creates the risk of extensive potential liability for the city." The City Council and bar owners feel that the presence of uniformed officers would cut down on fighting and other public disturbances. *New York Times*, November 11, 2003.

LAPD Seeks Funds for Rampart Probe

The blue-ribbon panel charged with conducting an independent investigation of the LAPD's Rampart scandal has been unable to start work because of a lack of funds. Panel chairwoman Connie Rice has estimated that the group will need \$300,000 to complete the investigation. Chief William Bratton and Police Commission President David

Cunningham III are seeking donations from law firms and other private sources. Bratton and Cunningham doubted that any funding would come from the City Council, noting that former LAPD Chief Bernard Parks, who was chief when the Rampart scandal was exposed and who has been critical of Rice's panel, is currently Chairman of the Council's Budget and Finance Committee. *Los Angeles Times*, November 6, 2003.

Interview

PARC recently spoke with Dr. David A. Harris, the Eugene Balk Professor of Law and Values at the University of Toledo College of Law

PARC: *Please describe your background and job title?*

DH: I am a lawyer by training. I practiced law in the Washington D.C. area and practiced in Philadelphia as well. I went into the academic world in 1990 and have been a law professor at the University of Toledo College of Law since then. I continue to do research on racial profiling and the uses of data collection and analysis and partnerships between police departments and communities' vis-à-vis the racial profiling issue.

PARC: *What are you presently working on?*

DH: Right now, I am engaged in writing a new book about best practices in policing. Progressive practices have been adopted in policing over the past ten to fifteen years involving accountability, community policing, problem-solving,

leadership changes, and cultural changes in policing. This is the cutting edge of police practices, and so I set out to write a book about it.

I really wanted to tell the stories of the many police departments and police officers who are doing things to make streets safer while they build connections with the people they serve, without sacrificing civil rights.

As I began to travel around the country and put this book together, I discovered that there was another story here. The post-911 era poses incredibly difficult challenges to state and local policing. What I began to hear was that the actions of the Department of Justice (DOJ) were such that they were interfering, and actually sometimes destroying, some of these new avenues for creating better policing. As I talked to state and local police officers I found that the things that the DOJ was asking them to do, and the direction in which the DOJ was pushing and guiding them, were actually counterproductive in terms of crime fighting. This has really become the main story of the book—that at this very minute that policing is really poised to go into a new era based on these new best practices, the federal government is doing things in the name of the war on terror that threaten to destroy this whole movement.

PARC: *You are considered a leading expert on the topic of racial profiling. How did*

you initially become interested in the issue and do you plan to continue to research the topic?

DH: I can trace it back as far as my being in my law practice, because I saw the

results in court everyday. I was a prosecutor and then a defense lawyer in a mostly white community. Yet the courts were full of people of color and oftentimes their offenses were uncovered as a result of traffic stops. Once I was in the academic world I started writing about how search and seizure rules which were neutral on the surface, had a different kind of impact on minority communities than the law would have you believe. Then in the middle 90's the Supreme Court decided a case in which it basically said it is okay to use traffic stops as a pretext as long as you are not doing it on a racial basis. The Fourth Amendment, "the Search and Seizure Amendment," has nothing to say about it. That is when I really began to talk and write about the topic consistently. In 1996, I began to work with Congressman John Conyers, and helped him write the first piece of legislation about the issue. That is when the issue really began to take on a kind of national visibility and I have been working on it very hard ever since.

I am now broadening what I do because I really see the racial profiling issue being part of a larger mosaic of issues around police accountability and addressing potential bias in the delivery of police services. It is also an opportunity for improving a lot of what police officers do. It is an opportunity for police departments to build relationships with communities where you have not had them before or to reconstruct those that you had. You can rebuild the trust that your department needs to have in the community.

PARC: *In 2001 you published, "Profiles in Injustice," a book that details the repercussions that racial profiling has on communities of color and highlights the U.S.*

Customs Service as a department that made commendable shifts in policies and practice.

Can you describe what steps the Customs Service took to reduce the likelihood of engaging in racial profiling?

DH: I'll pick out a few because there were many. When racial profiling by Customs came to light, Ray Kelly had just become the Customs Commissioner. He testified in Congress and said this is going to stop! The things that he did are good lessons for any law enforcement agency. Number one, he put real supervision in place. Prior to Ray Kelly's reform, any front-line Customs agent at an international airport could decide that you were suspicious, and were to get searched. That agent need not have articulated any basis for that decision.

The first thing that Ray Kelly did was he said if an agent is going to do this, the agent must have a fact-based reason. Second, the agent must articulate the reason to a supervisor, who must give permission. That brings the supervisor into the process of decision-making, and it improved the quality of the decision-making.

The other thing Ray Kelly did was retrain everybody in new criteria for doing a search. In other words it used to be that there was 100-plus number of factors that you could look at if somebody was suspicious. Those who have seen the old training documents tell me that the race or ethnicity of the person was a factor to be considered. Ray Kelly required agents to base their suspicions on five or six dimensions of behavior. In other words the message was, "we are going to watch for suspicious behavior—behaviors that actually indicate that somebody might be

a drug-smuggler—and focus on that.”

Kelly also had Customs collect data on searches that he saw everyday, so his people knew their performance was going to be tracked. The results of this were really pretty stunning. Within two years they brought the number of searches down to something like a third of what they had been. Number two, their rate of successful searches went up from roughly six percent to thirteen, fourteen, fifteen percent. So they became more than 20 percent more successful doing one-third the number of searches. What’s more, the hit rates have evened out across racial and ethnic groups. They had been uneven before, with blacks being searched much more often, especially black women, and they have had less success with those same people.

If I recommend anything when I talk about this to police agencies, I often talk about the Customs Service. The mission is not the same as Customs, but the Customs experience is still a good lesson. Good, strong policy that indicates what officers are supposed to be doing helps guide their discretion. Number two, you have supervisors involved at some level. Maybe it is reviewing things afterwards, as they do in Pittsburgh and some other places. Number three, you give them good training in the real criteria that make people suspicious. You do those things and you’ll get better results to and you will have fewer angry people who complain.

PARC: *Do you know of any departments that have successfully followed through with the data collection and analysis process and subsequently altered policies, training, and methodologies as a result?*

DH: There are now hundreds of departments that have engaged in this, some of them due to their states having laws that require it. Others have elected to go ahead and grab the bull by the horns and address the issue on their own terms, and I really commend that.

When we initially started to press the issue we asked for data collection because there simply was no data in an area where numbers could tell an important story. It was supposed to be a first step, a necessary step, but just the first step in a process, and I think the mistake that has sometimes been made is when departments say, “we will put this data thing together, we will get some numbers, will get them out, give everyone our take on it and that’s that.” That is the mistake because the process is about using the data to educate yourselves about what is happening on the streets with your officers, and it is about accountability. The process should include putting together a task force or some similar group with the constituencies that are affected by this. So as you begin the effort you should be talking to the leadership of your NAACP branch and ACLU, and your community groups, the police commanders and the people that are going to have to implement this, and also the rank-and-file officers, especially union. Everybody should be at the table helping get this process designed correctly, and talking to each other about what this issue means, what they plan to get out of it and why people feel the way they do. This should be an opportunity to educate each other. As you go forward, you move into training your police officers both at the academy and with members of the public by doing outreach and/or workshops. Here is what a police officer expects of you, a member of the

public, when the lights go on; here is how a police officer can keep these situations from escalating. If you regard data collection as not an end to itself, but the beginning of a process in which there is a steady building of connections to the community, of interactions with the community, the possibilities for getting dividends out of this just start with getting data. It often turns out that in communities that are successful, getting the numbers turns out to be the least of it.

PARC: *Are there any anti-racial profiling policies or systems that you would advocate as models?*

DH: In Pittsburgh, it is worth thinking about their Early Warning System. They have folded their data collection on traffic stops, arrests, and searches into their EWS, which is a pretty interesting approach, one that is advocated by Sam Walker of the University of Nebraska. It makes this data of an integrated whole. The police department can look at the possibility that somebody is using traffic stops or searches in a biased way as just one aspect of overall police conduct issues. What it doesn't do, is tell you whether the department as a whole has a problem. For that you would still need to collect benchmarked data. As far as a policy or statute, I would tell people to look at the Missouri state statute. That statute requires every police department in the state to collect data on an ongoing basis, not just for six months or a year. All departments must have a written policy against the use of racial profiling. They all must have training and do other things, and if they don't the Attorney General of the state can recommend that their state funds be forfeited.

As far as an individual policy on profiling, I see a lot of policies in which police departments say something like, "we will not be stopping cars or pedestrians or doing searches based solely on race." The problem is "solely," and it really goes back to how you define profiling. I don't define it that way. There is always something more involved besides race. Racial profiling is about using race as one factor among others in deciding whom to stop, search, question, and in deciding who is suspicious, because when race becomes a factor it can often overwhelm all of the others.

PARC: *In the last five years numerous law enforcement agencies engaged in the practice of data collection and analysis. Initially such efforts were commended, but now it seems that some departments are grappling with what to make of the statistics and how to institute reforms. Can you describe why departments are struggling and what solutions have emerged?*

DH: Benchmarking is the preeminent issue with regard to data analysis, and it is good that we are having this discussion and that the departments are becoming aware that benchmarking is all-important. Here is a simple way to put it: you might know who your officers are stopping, giving tickets to, or searching, but the only way you know whether that number is at all unusual, is by asking, "compared to what?" If X number of the people officers stop are black, we don't know anything without figures for comparison. This is called "the benchmark," or the denominator. How you pick the denominator, what denominators or benchmarks are appropriate, will really determine whether your data collection efforts end up yielding anything that is

useful for you. The number one problem is that people compare the percentage of such and such a minority stopped, ticketed, or searched with the percentage of that minority in the city's population. In other words, they use Census population as the benchmark. That is wrong and it does not yield anything useful. The reason it is wrong is because the number of people stopped are people that are drawn from the population of drivers, the people passing through an area. The percentage of different types of people in the driving population shifts over time during a day and during a week. The Census population of that same area is likely to be quite different from the driving population. The Census population is a static measure of who lives in the area. People who drive through an area may be very different than the people who live there.

If you want real benchmarking data, use John Lamberth's method, which has been statistically validated. Lamberth's observers are at high traffic intersections, at selected spots, where they will observe a lot of traffic go by. He posts them in periods of an hour and two hours, trains them well, randomizes the observation periods around the clock and the days of the week and after five or six weeks he has a very good picture of who drives in that area. There are other possibilities being worked on besides observation. One team of social scientists down in Florida is trying to use vehicle accident data as a way of describing who is on the roads. It is being developed now, and has not been fully tested. Another team from Northeastern University, Jack McDevitt, Amy Farrell, and Deborah Ramirez, are using a different model to benchmark based on estimates of pushing and pulling economic magnets, which is very

sophisticated stuff in terms of looking at a neighborhoods' economic pull. These are all ways to model the driving population and that is what benchmarking is about.

PARC: *As you mentioned, there has been a lot of discussion about tracking officers' traffic stop patterns by entering those data into Early Warning Systems or Early Intervention Systems. Can you describe the pros, cons, and challenges associated with this process?*

DH: The Pittsburgh system is really state of the art in EWS. They track somewhere between 15 and 20 pieces of data for each police officer: everything from traffic stops and searches, to vehicle accidents, sick days, and court appearances missed. It includes all kinds of information about what officers do from day to day that would give a supervisor important clues as to whether there is an issue with an officer that needs attention. The profiling data is part of that system. The upside of this is that you eliminate the benchmarking problem. What you are doing is making peer-to-peer comparisons. You are saying that officers A, B, C, and D are all on the same beat, they have the same assignments, they have the same shifts. When they go out, who do they stop? What do their traffic stops and searches look like? You can compare them to each other and if one or two people within this group stand out with 50, 60, 70, or 80 percent more searches of blacks than everybody else, then that person should draw your attention. So this completely contextualizes your data. You don't need to wonder what to compare. You are comparing apples to apples. The downside is that it tells you nothing about the department as a whole. You are not getting a picture of what the department is

doing. You do not have any overall picture. The ideal system would combine the two approaches.

PARC: *Do you believe that racial profiling will continue to be a major issue for law enforcement agencies and communities of color in the next decade? What issues do you see emerging in the field? What challenges?*

DH: After 9-11 so many issues just disappeared from the national radar screen all together. This one of course did not, but it radically changed shape. Some people who would have willingly conceded before 9-11 that racial profiling was bad, and are now saying, "hey that just might be ok, as long as we are talking about Arabs and as long as it's in airports." So there was a great swing in public opinion of mind and I am not talking just about police officers. I am talking about the entire public, and I am including the population of people who were often stung by this in the past: African-Americans, Latinos, etc. Within law enforcement, what I am seeing sometimes as I talk to police officers is "the heat's off of us now, we don't have to worry about this." I think that is unfortunate because it is going to continue to be an issue whether law enforcement chooses to recognize it and do something about it or not. It has been and was an issue for a long time before the media discovered it, and the smart thing to do while the heat is off, is to get ahead of it. Because what is important is that this practice creates mistrust and seeps into the fabric of what ties police departments to their communities. It corrodes the connections that are so important if we are going to have policing

that serves communities. We are long past the point at which police could think, "leave the policing to the professional." That was the way of 30 years ago. We know that approach doesn't work as a long-term solution. People get alienated. The community is not part of the process, and the situation becomes us versus them. You don't get the best police work when you put law enforcement at odds with the very people it is supposed to serve. So as I look into the future racial profiling will continue to be a major issue, but what is going to be important is whether police departments choose to recognize that, and understand that this is an opportunity to gain things. They can gain the trust of their community, they can build connections, they can build relationships and all of those things will make the job easier. It will help them catch bad guys, and help them serve their communities better in a way that is not adversarial. The challenge ahead is to keep that foremost in mind and see it as an opportunity.

PARC: *What is the title of your upcoming book and when will it be released?*

DH: The title is "Top Cops." It will be published by the New Press in early 2005.

Conferences

March 8-10, 2004, – Americans for Effective Law Enforcement (AELE), Critical Incident Response Workshop, Las Vegas, NV. Online at: <http://www.aele.org/Seminars.html>

March 17-20, 2004, – Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), Spring Conference, Pasadena, CA. Online at: <http://www.calea.org/newweb/ConferenceInfo/Pasadena/conferenceinfo.htm>

April 21-23, 2004 – Police Executive Research Forum, Annual Meeting, San Antonio, TX. Online at: <http://www.policeforum.org/>

June 16-18, 2004-Office of Community Oriented Policing Services (COPS), Second Annual National Community Policing Conference, Washington D.C. Online at: <http://www.cops.usdoj.gov>

June 26-30, 2004 – National Sheriff's Association, Annual Conference and Exhibition, Seattle, WA. Online at: <http://www.sheriffs.org/>

July 10-15, 2004 – National Organization of Black Law Enforcement Executives, 28th Annual Training Conference and Exhibition, Dallas, TX. Online at: <http://www.noblenatl.org/>

August 19-22, 2004 – National Association of Women Law Enforcement Executives, 9th

Annual Conference, Arlington, VA. Online at: <http://www.nawlee.com/>

October 14-16, 2004 – National Latino Peace Officers Association, 31st Annual Training Institute and Convention, Miami, FL. Online at: <http://www.nlpoa.com/>

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