

BEST PRACTICES REVIEW

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Table of Contents

Agencies Under Investigation. . .	1
Civilian Oversight	1
Consent Decrees/Memoranda of Understanding	2
Agencies Under Investigation. .	3
Community Policing/Problem Oriented Policing	4
Legal Affairs	5
Mental Illness	5
Racial Profiling	6
Standards/Training	7
Use of Force	8
Conference Reports	10
Interview with Chief Robert Hertman	12
Director's Cut	16
Conferences	21

investigation. Seven other SFPD personnel – the three officers alleged to have fought and four supervisors involved in the subsequent investigation – have also been indicted on charges relating to the incident. The grand jury is reported to have indicted the ranking officers in spite of advice from prosecutors that there was insufficient evidence to support conspiracy charges. Chief Sanders has taken medical leave and the other six indicted ranking SFPD members agreed to step aside without pay after the indictments were announced. Deputy Chief Heather Fong has temporarily assumed day-to-day control of the department. *Los Angeles Times*, March 1 & 4, 2003, & *Associated Press*, March 9, 2003.

Agencies Under Investigation

San Francisco Police Department (“SFPD”) Chief Earl Sanders, Assistant Chief Alex Fagan and Deputy Chief David Robinson have been indicted by a grand jury on charges of conspiracy to obstruct justice. The indictments stem from an alleged fight involving three off-duty SFPD officers, including the assistant chief’s son, and an alleged conspiracy by SFPD managers to impede the subsequent police

Civilian Oversight

Los Angeles County Special Counsel Merrick Bobb and PARC have released the 16th Semiannual Report on the Los Angeles County Sheriff’s Department (“LASD”). The report opens with a review of deputy-involved shootings, between 1997 and 2002, that occurred during or at the conclusion of a foot pursuit. These incidents constituted 22 percent of all shootings during that period. Case studies of dangerous foot pursuits are presented and the argument is made that many foot pursuits expose deputies to undue danger and risk, precipitating deputy-involved shootings.

Two models employed by other agencies – a policy and a training program – are presented as rare examples of promising foot pursuit risk management strategies, and are recommended for adoption by the LASD.

The report then presents the results of an examination of the Personnel Performance Index (“PPI”), the LASD’s early warning system. Acknowledging that the PPI is the “Rolls Royce” of risk management software and procedures, the report criticizes the department for failing to ensure that data inputting occurs in a consistent, complete or timely manner; for failing to educate its personnel about the PPI’s capabilities; and for failing to properly exploit the risk management potential of the PPI. The report also provides a review and analysis of early warning systems in use elsewhere in the country. Innovations and emerging standards are identified, with the suggestion that the LASD stay abreast of the latest advances in this field.

The report examines impact weapon use by LASD personnel, revealing that flashlights are used in almost two thirds of impact weapon strikes. It makes the case that the use of flashlights in lieu of batons presents an undue risk of injury to suspects and a tactically inferior means of self-defense for deputies. Revisions to both training and policy to reduce the rate of flashlight strikes are recommended.

The report concludes with an overview and analysis of the LASD’s “Laser Village” tactical firearms training. The program and its instructors are praised for their capacity to improve deputies’ skills, but it is observed that the current bi-annual provision of this valuable training is insufficient for the maintenance of deputies’ tactical

firearms proficiency. Annual Laser Village training is recommended, along with a number of suggested improvements to the program, including increased attention to bystanders in shooting scenarios and the involvement of Laser Village instructors in the review of actual deputy-involved shootings. The full report is available on-line at www.parc.info

The civilian Pittsburgh Citizen Police Review Board has asked a state court to force the city’s Mayor and Police Chief to order officers to testify at its hearings and to grant those officers immunity from prosecution. Representatives of the board have claimed that it cannot currently do its job due to a police union recommendation that officers refuse to participate in investigations. Attorneys for the city and the police union have argued that the power to grant immunity is discretionary and cannot be ordered, and that immunity from civil claims cannot be granted. *Associated Press*, February 5, 2003.

Consent Decrees/Memoranda of Understanding

The monitor auditing compliance by the City of Steubenville, Ohio, with the 106 tasks set forth by a federal consent decree has released his report for the final quarter of 2002. Steubenville’s police department has been monitored since 1997, and the report recounts the past reluctance by the city to provide the leadership required to achieve full compliance with the consent decree. Recent progress is attributed to the efforts of the department’s interim chief and his staff to improve accountability, supervision and discipline. It is reported

that, as of December 31, 2002, the city had achieved full compliance with 95 tasks. Tasks for which full compliance status has not yet been achieved include those relating to the search and seizure review process, supervisory review of citizen complaints and the appointment of a permanent Chief. The monitor observes that the current tally implies that full compliance is imminent, but cautions that continued attention by the city is required to ensure that the 11 tasks for which full compliance status is pending are complied with within a reasonable period of time. *Auditor's Quarterly Report: Compliance Audit for the City of Steubenville, Ohio Police Department for the Period October 1 – December 31, 2002*

The sixth report of the Independent Monitor assessing compliance by the City of Los Angeles and the Los Angeles Police Department (“LAPD”) with the federal consent decree entered into in June 2001 has been released. The report, which covers the final quarter of 2002, reveals several “areas of concern.” Among these are the data collected in relation to traffic and pedestrian stops conducted between July and November, 2002. The raw data reveal apparent racial disparities, including the more frequent requirement by LAPD officers that black and Hispanic motorists exit their vehicles or submit to a search during a traffic stop. The report urges the city to promptly analyze these data, rather than waiting for the analysis of a contracted external expert. The report also notes that the historical use of force data currently contained in the LAPD’s early warning system is often inaccurate, that the LAPD is struggling to handle non-categorical use of force incidents, that the Audit Division has not

completed its work in a timely fashion, that training inadequacies persist and that gang units are insufficiently supervised. Improvements recognized by the report include better handling of categorical use of force incidents, the attainment of audit quality requirements, better functioning of the Office of the Inspector General and the pro-active manner in which the LAPD released the results of its stop data. The full report is available on-line at <http://www.kröllworldwide.com/lapd/>

The Office of the Independent Monitor (“OIM”) responsible for monitoring compliance by the District of Columbia and the Metropolitan Police Department (“MPD”) with the Memorandum of Agreement they entered into with the Department of Justice in June, 2001, has released its third quarterly report. Covering the final quarter of 2002, the report recognizes “significant” compliance activity by the MPD, noting that this activity did not always result in success. MPD’s efforts in implementing use of force policies are acknowledged, along with a failure to properly distribute those policies that “marred” their implementation. MPD firearms handling training is assessed as “impressive” and use of force investigations are described as being mainly of high quality. Stating that use of force policy and related training was a major focus for the OIM, the report describes an initial training process that was “seriously flawed.” This deficiency is blamed upon a failure by the MPD to appropriately train its trainers. The report also notes, however, that the MPD took action to remedy this problem as soon as it was brought to its attention. The full report is available on-line at <http://www.policemonitor.org/030130.pdf>

The City of Oakland, California has settled a federal civil rights lawsuit alleging that a group of rogue Oakland Police Department (“OPD”) officers known as “The Riders” kidnapped, assaulted and falsified evidence against city residents. The settlement consists of a \$10.9 million payment to the plaintiffs and the institution of a series of reforms designed to regulate the performance of OPD officers. The implementation of the agreed reforms will be overseen for a period of at least five years by an independent monitor who will report to a federal judge. The police department has estimated that the reform process will cost \$10 million. Among the measures stipulated by the settlement are the requirement for officers to make a record of every stop they perform; the movement of the internal affairs department from police headquarters to an office at city hall; the establishment of a 24-hour, toll-free complaint hotline; the use of “stings” against officers who generate multiple complaints; a supervisor’s in-person response to all arrests involving felonies, drug possession, resisting arrest or the use of force by an officer; and the creation of a computerized early warning system. San Francisco Chronicle, February 19, 2003 & Los Angeles Times, February 20, 2003.

Community Policing/Problem Oriented Policing

The Seattle City Council has adopted a policy that prohibits police officers from inquiring about the immigration status of people they contact. The policy is intended to reassure immigrants who might otherwise be wary of seeking police services. It requires that, except

where required by law, officers must not “engage in activities designed to ascertain the immigration status of any person.” The prohibition does not apply when an officer reasonably suspects that a person has been previously deported and has committed a felony. The Seattle Police Department already operated under an internal directive that barred officers from stopping people or checking identification merely to establish immigration status. Seattle Times, January 28, 2003.

In an effort to develop a better understanding of the language, culture, values and practices of Portland, Oregon’s Latino community, Mark Kroeker, Chief of the Portland Police Bureau (“PPB”), accompanied by seven officers and a sergeant, recently traveled to Mexico. Each of the officers stayed with a host family in Oaxaca and took classes in language and culture, as well as touring the region and meeting with community groups, government officials and police. Before visiting Mexico, each PPB participant had completed a Spanish language course. The Oregonian, January 29, 2003.

Dean Esserman, the recently-appointed Chief of the Providence, Rhode Island, Police Department (“PPD”), plans to decentralize the PPD within the next six months by assigning officers to neighborhood sub-stations, providing residents and business owners with officers’ pager and telephone numbers, and making commanders accountable to local communities. The specifics of the plan are being developed. Esserman has developed and announced his plans to expand community policing in schools. The department’s school squad currently consists of ten officers who rotate among

almost 60 public schools. Under the plan, each school will be assigned a full-time officer. Principals will choose which officer is to be stationed at their school. *Providence Journal*, February 5, 2003.

London's Metropolitan Police is asking its officers to voluntarily submit information on their sexual orientations and ethnic origins for a force database. The information will be employed to establish specialist pools of officers who will be used to win the confidence of minority communities when police are called upon to investigate homophobic or racially-motivated crimes, or crimes involving victims or witnesses from minority communities. The database will also record details of officers with special language skills, "life skills" or unusual hobbies. Appropriately skilled officers identified from the database will be called upon to participate in hostage negotiations, intelligence gathering and murder investigations. Information contained in the database will be confidential and accessible only to senior officers. *The Independent*, February 20, 2003.

Legal Affairs

A \$25-million lawsuit has been filed against the Detroit Police Department on behalf of a woman whose son was killed when her vehicle was struck by a patrol car involved in the pursuit of a stolen vehicle. An internal investigation found that a supervisor had ordered the termination of the pursuit before the crash occurred. Ten officers ignored that order. All ten have been suspended without pay and face a Chief's hearing. *CNN.com*, January 31, 2003.

Mental Illness

The Criminal Justice/Mental Health Consensus Project – a two-year undertaking coordinated by the Council of State Governments – has published the *Consensus Project Report*, which provides a guide for criminal justice practitioners concerned with improving their response to people suffering from mental illness. Noting that those communities that have succeeded in such a goal have typically done so through cooperation between criminal justice providers and the mental health system, the report offers a series of recommendations intended to aid in the identification and framing of effective practices and programs. Law enforcement-specific policy recommendations include the requirement for dispatchers to assess whether mental illness is a factor in calls for service, a requirement for officers to determine whether mental illness is a factor in incidents they attend, the development of protocols to enable officers to implement appropriate responses when dealing with mentally ill people, documentation of contacts with mentally ill people to improve accountability, and collaboration between law enforcement and mental health partners to reduce subsequent contacts between law enforcement and those who are mentally ill. The full report and further information about the project is available on-line at <http://consensusproject.org/>

Racial Profiling

The California Highway Patrol (“CHP”) has settled a class-action lawsuit alleging racial profiling by agreeing to adopt a series of policy reforms, including an extension through 2006 of the CHP’s current moratorium on consent searches, the collection of comprehensive traffic-stop data (including race of driver, reason for stop, whether search was conducted, legal basis for search and result of search) and the creation of a “racial profiling” complaint category. The new policies must be “prominently placed in all relevant CHP policy and training manuals.” The settlement of the suit brought by the American Civil Liberties Union (“ACLU”) requires the creation of an auditor position. The auditor, who will report directly to the CHP Commissioner, will review and analyze CHP traffic-stop data, evaluate citizens’ complaints and provide input on training in data collection. According to ACLU lawyers, the CHP is the first law enforcement agency in the country to prohibit consent searches as a formal policy. The CHP Commissioner has said that this prohibition has not hindered his agency’s ability to identify drug traffickers. A copy of the settlement is available on-line at <http://www.aclunc.org/police/030227-rodriguez.pdf> *Los Angeles Times*, February 28, 2003 & *Associated Press*, February 27, 2003.

According to Michael R. Smith and Geoffrey P. Alpert, authors of “Searching for Direction: Courts, Social Science, and the Adjudication of Racial Profiling Claims,” methodological and analytical weaknesses in current racial profiling research present difficulties for

those seeking to identify or remedy the practice. Noting that these weaknesses are inherent in most social science work about racial profiling, in spite of racial profiling’s status as a significant legal and social issue, the authors summarize and evaluate existing work relating to issues such as benchmarking, baselines and data collection. The authors suggest a methodological and analytical framework they claim provides a sound basis for the conduct of racial profiling research. Included in their suggestions are the use of systematic observations for the collection of baseline data on the racial composition of the driving and traffic violator population, and the verification of samples of stop records by means such as checking racial designations against digitized pictures from driver’s license records. *Justice Quarterly*, Volume 19, No.4, December 2002.

The Nevada Attorney General’s office has released the results of a one-year study of traffic stops by Nevadan law enforcement. The study, performed by Richard C. McCorkle of the University of Nevada, Las Vegas, followed the passage of state legislation requiring that the state’s Attorney General determine the extent and nature of racial profiling by the Nevada Highway Patrol and other law enforcement agencies operating in counties with populations of 100,000 or more. Officers were required to record a series of details for all traffic stops conducted during 2002, including the violation forming the basis of the stop, the race of the driver and whether a search was conducted. Data garnered from the 400,000 stop records submitted were compared to census-derived baselines. The results of the study revealed that the number of stops

involving black and Hispanic drivers exceeded their representation in the population, that most stops involved males, and that whites were more likely to be stopped for non-moving violations (e.g., expired registration) than were blacks or Hispanics. The study also found racial disparities in relation to the action taken during traffic stops, revealing that, compared to whites and Asians, blacks and Hispanics were more likely to be handcuffed, more likely to be detained for longer periods of time, more likely to be searched, and less likely to be found in possession of contraband. Noting the lack of consensus as to what constitutes an appropriate benchmark, the report cautions that the disparities it reveals should not be taken as “proof” that Nevadan law enforcement officers are engaging in racial profiling. The full report is available on-line at <http://ag.state.nv.us/hottopics/AB500/ab500.htm>

Standards/Training

A report by the International Association of Chiefs of Police/National Law Enforcement Policy Center identifies lead poisoning as a serious problem for frequent shooters of leaded ammunition. Noting the potential for exposure to lead compounds resulting from regular shooting for purposes of instruction, practice or requalification, the report suggests a number of ways to minimize the risk of lead poisoning. For individual officers, these include blowing the nose, changing clothing and footwear, washing after shooting, and being alert to symptoms of poisoning. Recommendations for agencies include the posting of signs forbidding food,

drinks and cosmetics from firing ranges; the requirement that personnel exposed to lead wash before eating, drinking or smoking; the provision of plastic bags for personnel to transport their contaminated clothes, and of heavy paper for personnel using kneeling or prone shooting positions; and the requirement that high-exposure personnel have semi-annual blood tests. *Policy Review*, International Association of Chiefs of Police/National Law Enforcement Policy Center, Volume 14, No. 2, Summer/Fall 2002.

The Broward County Sheriff’s Office (“BSO”) has announced that it will start videotaping the interviews of individuals suspected of major felonies. The move follows press allegations that BSO detectives engaged in illegal interrogations and coercive questioning, and a Florida Department of Law Enforcement investigation that cleared detectives alleged to have beaten confessions from two teenagers suspected of murdering a deputy in 1990. Until now, the BSO has generally only recorded a suspect’s confession, and not the interview that preceded it. A number of Florida police departments, including Miramar, Coral Springs and Fort Lauderdale, already have policies requiring the taping of full interviews in major felony investigations. *Miami Herald*, February 11, 2003.

The Clark County, Oregon Sheriff’s Office (“CCSO”) is considering providing all its deputies with gun lockboxes and making their use mandatory for the off-duty storage of service-issued weapons. The issue of off-duty weapon security came under scrutiny after a deputy’s 10-year-old daughter was killed, allegedly by her 13-

year-old brother, with a CCSO-issued pistol. *The Oregonian*, January 30, 2003.

The Commissioner of London's Metropolitan Police has called for childcare facilities to be installed at all major police stations as a means of attracting more women into the police service. He also suggested having "family rooms" in lodgings for recruits undergoing academy training. Women currently constitute 17 percent of the Metropolitan Police's 27,750 officers. The Commissioner told a conference of senior women police officers that women should fill at least 30 percent of positions, opining that a focus on race had distracted police recruiters from gender considerations. *The Independent*, February 4, 2003.

The Portland Police Bureau ("PPB") has established a team to develop a plan for the improvement of the bureau's culture. Each team member will interview co-workers in order to establish what cultural problems exist within the bureau, and to gather ideas for how those problems could be addressed. The formation of the team follows the results of a 2002 employee survey in which "workplace culture" and "fairness" received low ratings, as well as recent stress-related disability claims and lawsuits from officers claiming they have been mistreated by fellow bureau members. The PPB has also distributed posters displaying the message "We all deserve a respectful place to work" and reminding officers that inappropriate workplace behavior, such as harassment, demeaning statements or intimidation, will not be tolerated. *The Oregonian*, February 5, 2003.

Use of Force

The Police Complaints Authority – an agency that provides civilian oversight of police forces in England and Wales – has released a report reviewing police-involved shootings from 1998 to 2001. The report reveals that officers fired an average of 2.3 rounds per shooting incident, and 1.9 rounds per incident in which the suspect was fatally wounded by police gunfire. It also states that almost half of all people shot by police officers were intoxicated and that almost half may have had mental health problems. Expert analyses of shooting incidents are provided, along with 48 recommendations for the minimization of future police-involved shootings and the improvement of post-incident support for bereaved families. The report's recommendations cover a range of topics, including command structures, tactics, occupational culture, record-keeping, training, less-lethal alternatives, mental health issues and the conduct of post-shooting investigations. A detailed form for recording police firearm discharges is provided. The full report is available on-line at http://www.pca.gov.uk/news/docs/pca_fi_rearms_report_2003.pdf

The Portland Police Bureau ("PPB") has announced that it will ask the city's Mayor to approve the purchase of 40 Taser M-26 devices. The PPB recently completed a six-month field test of the M-26 – a device that delivers an incapacitating 26-watt electrical charge via two metal probes attached to the ends of wires that can be deployed at a range of up to 21 feet. Each person against whom the device was used was taken to hospital for evaluation. None of

those people received any injury from the M-26, according to the PPB. The PPB intends to distribute the devices to patrol officers who, after completing eight hours of training, will carry them in a holster on the non-firearm side of their equipment belt. The PPB Training Division, which evaluated the M-26, has drafted a directive for the use of the device that places it on the same level as OC spray on the bureau's force options chart. *The Oregonian*, January 31, 2003.

The Director of the California State University Hayward Department of Public Safety, Janeith Glenn-Davis, has told residents of Fairview, California, that an internal investigation will be conducted into an incident in which a campus police officer used a 9mm handgun in an attempt to kill a stray cow that had wandered from university grounds. Rounds from the officer's weapon did not kill the animal, which reportedly continued to wander around a residential neighborhood with blood pouring from its nose. *Oakland Tribune*, February 7, 2003.

The Richmond, California, Police Department ("RPD") has drafted a new Operations Manual that would change the rules governing its officers' use of force. The manual's contents are currently being considered by Richmond's Police Commission, a panel of citizens that investigates claims of police misconduct. Among the proposed changes is the replacement of existing rules banning RPD officers from shooting from moving vehicles or using warning shots with the "general discouragement" of such tactics. It is also proposed that the current directive that officers use only the "minimum" necessary degree of force be abandoned

in favor of a "reasonable" standard. Richmond's City Attorney has claimed that the existing rules, which impose restrictions beyond the legal standard, could expose the city to additional civil liability. *Contra Costa Times*, February 9, 2003.

In "Characteristics Associated with the Prevalence and Severity of Force Used by the Police," authors Joel H. Garner, Christopher D. Maxwell and Cedrick G. Heraux use officer-reported data from over 7,500 adult custody arrests in six jurisdictions to study the influence of a range of variables on how officers use force. The arrest characteristics considered by the authors relate to location, offense, police approach, officer and suspect. Among the findings of the study were that locations associated with criminal activities were associated with a higher prevalence of force, that force is more prevalent for officer-initiated contacts than for dispatched incidents, that more force will be used if the officer has approached an incident using lights and sirens, that officers use more force against suspects reputed to carry weapons, and that officers are much more likely to use force against suspects who act in an antagonistic manner. The study found that force is used in less than one in six adult custody arrests, and that that force is predominantly of a low degree of severity. The authors suggest that future police training and policy-making take account of systematic evidence of how officers use force. *Justice Quarterly*, Volume 19, No. 4, December 2002.

Conference Reports

Racial Profiling Conference

Oakland Police Department Captain Ron Davis hosted a racial profiling forum on February 13 in Oakland, California. The forum was attended by representatives from civil rights groups, community organizations, academic researchers, policymakers, police associations, and law enforcement agencies. Its sessions, summarized below, covered: an overview of racial profiling and best practices, data analysis methodology, data collection technologies, and the role of the task force.

Overview and Best Practices

- More than 2,000 departments have engaged in some form of data collection and analysis.
- Data collection has yielded beneficial insights that can help departments maximize their resources, improve deployment strategies, and identify potentially problematic officers.
- The term “bias-based policing” is recommended instead of “racial profiling” since it accounts for a broad range of profiling, such as actions taken based on nationality, ethnicity, gender, race, and sexual orientation.

Recommended Policy Components

- A definition of bias-based policing.
- Description of what values the act of bias-based profiling violates.
- A prohibition of bias-based profiling and any activity that results in such an action.
- Development of a citizen complaint policy.
- Outline of the audit/inspection process.
- Outline of disciplinary procedures.
- Statement that the policy must/will be

enforced.

Data Analysis Methodology

- Certain variables that are not found on a data collection form need to be accounted for during the analysis process.
- The role of the researcher is to explain racial disparities. The role of the law enforcement agency is to justify the disparities, if justifiable.
- Agencies may want to hire researchers whose strength is statistical analysis rather than criminal justice.

Data Collection Technologies

- The reliability and efficiency of the data collection and analysis processes are closely tied to the technology used.
- The increasing affordability of mobile Web access and personal data assistants is expected to lead to more effective data collection.
- Commonly-used technologies currently include handwritten forms, CAD systems and Scantron forms.

Task Force

- The importance of a “task force,” a body composed of stakeholders (including groups such as youth organizations) interested in playing a decision-making role in the data collection and analysis process, is gaining recognition.
- Task forces have produced greater community involvement and improved relations with law enforcement agencies.
- Training is recommended for stakeholders.

Oakland’s Task Force

Key aspects of the Oakland model include:

- All stakeholders had expertise and shared in decision-making.

- The department participated as an equal stakeholder.
- If a decision was reached without a consensus, the dissenting party could publicly state its preferred alternative.
- The task force held forums that were open to the community as a means of informing and involving the public.

Unresolved Issues

- The methods agencies can utilize to ensure data integrity.
- Whether the officer's name should be included on the data form.

Early Warning System conference

University of Nebraska Professor Samuel Walker sponsored an early warning systems conference on February 10 that was hosted by the Phoenix Police Department. The conference was attended by policing experts, academics, and representatives from the Tampa, Phoenix, and Miami-Dade Police Departments, the Pittsburgh Police Bureau and the Los Angeles County Sheriff's Department – all agencies that use or have created “model” early warning systems. Participants discussed the role of early warning systems in risk management and current challenges associated with the systems' development and use.

Each of the five “model” systems discussed were designed in-house (some with the assistance of outside vendors). Two distinct differences emerged, however. First, the systems followed one of two design paradigms: either stand-alone relational databases or “gateway” systems. Three of the five systems – Los Angeles County's, Miami-Dade's and Tampa's – follow the first, relational database paradigm, containing a wealth

of risk-related information specially-designed for use in the early warning system. The other two systems – Phoenix's and Pittsburgh's – follow the “gateway” model, allowing users to access and integrate information already captured by the department in pre-existing databases.

The second difference pertained to the overall goal of the early warning system. The Los Angeles/Tampa/Miami-Dade systems were primarily focused on identifying potentially high-risk officers by tracking what the conference group termed “classic” categories of risk, such as complaints, uses of force, and internal affairs investigations. On the other hand, the Pittsburgh/Phoenix systems are used as overall performance assessment tools in addition to their early warning functions. For example, they track the number and type of officer contacts, citations and arrests.

Performance Indicators

Considerable similarities were found between the performance indicators used by attending agencies. These included use of force incidents, citizen complaints, litigation and claims. The Pittsburgh Police Bureau's PARS and Phoenix Police Department's PAS collect the widest range of indicators – 17 and 24, respectively – including traffic data, officer-involved traffic accidents, field interrogations, vehicle pursuits, overtime, sick time, off-duty work, injuries on duty, arrests, internal audit results, warrantless searches and seizures, criminal investigations and discretionary criminal charges (such as resisting an officer). The PAS model collects several unique indicators, including attendance at high-stress incidents and assaults against an officer.

Thresholds

Most agencies represented at the conference use strict numerical thresholds, such as three complaints or uses of force within a six-month period or one officer-involved shooting per year, to alert supervisors to potentially problematic behavior. The Phoenix Police Department assigns “points” to the performance indicators and, once an officer reaches a point threshold, the system will alert his or her supervisor. Thus, an officer who may not meet the threshold for any individual indicator may still be identified for review. The Pittsburgh Bureau of Police uses a standard deviation calculation that compares officers to their peers working similar shifts and units. Officers whose performance strays one or more standard deviations from the mean established by their peers will be identified for review.

Uses

The Pittsburgh and Phoenix representatives claimed that the overall performance assessment function of their systems serve to reduce rank-and-file fears that the systems would be used for punitive purposes. Officers identified as proactive or highly productive may be commended. Some participants suggested that the broader approach used by Phoenix and Pittsburgh may represent the next frontier in early warning systems.

Another emerging trend involves the use of the systems to identify unit or station level trends. The information produced by such analysis can be used to modify existing policies, procedures and training.

Documenting Success

The conference’s law enforcement participants all expressed the belief that early warning systems can improve an agency’s ability to identify problem areas, manage risk and improve officers’ careers. Several had assessed their rates of risk incidents, such as citizen complaints or use of force incidents, before and after the implementation of their systems. The Pittsburgh Police Bureau found that citizen complaints and traffic accidents both decreased. Others shared anecdotes of officers’ careers that had been saved by departmental intervention.

Problems

Several participants voiced the concern that their systems are currently underutilized. Some were concerned with a backlog of data entry, which delays the review and intervention process. The most widely expressed concern, however, was that adequate training and resources are not provided to equip supervisors for mandatory intervention counseling, leaving many ill-prepared for this critical task.

Interview

The Town of Wallkill, New York, a bedroom community with a population of approximately 25,000, is located about 75 miles northwest of Manhattan. The Town of Wallkill Police Department (TWPD), an agency with an authorized strength of just 28 officers, drew national attention in January 2001 when an investigation by the Attorney General of New York resulted in the filing of a civil rights lawsuit in the United States District Court for the Southern District of New York. The suit alleged that the TWPD was engaging in unconstitutional

policing practices that included the sexual harassment of female motorists, the intimidation of Wallkill's Police Commission members, and retaliation against employees of a local newspaper following its publication of critical stories. The lawsuit also alleged that those responsible for the management of the TWPD had failed to supervise or discipline officers involved in misconduct.

A month after the Attorney General filed suit, the Town of Wallkill agreed to enter into a Consent Decree. The Consent Decree required that the TWPD implement a series of reforms under the supervision of the federal court and an independent monitor, including implementation of an early warning system. "Early warning systems" are information management systems designed to track the performance of officers and/or units and identify emerging trends.

Robert Hertman, a highly-experienced former Captain with the New York City Police Department, was appointed Chief of the TWPD in February 2002. PARC recently spoke with Chief Hertman about the department's early warning system.

PARC: *What kind of early warning system does the TWPD use?*

RH: The department's early warning system is not an all-in-one commercial software package. Our system is put together using information gleaned from a software program entitled Impact. Impact provides all of the officers' pedigree information such as name, date of appointment, date of promotion, civilian complaints, discipline, sick record, emergency excusals, summons

and arrest activity, and it also provides the gender and race of all motorists who are stopped by the officer. In addition, our department utilizes forward-facing video cameras in all of our automobiles, and each sergeant is required to perform a monthly inspection of at least one tape. If the officer was the subject of any reviews during the quarter, that fact would also be incorporated into the report.

PARC: *What is the role of the early warning system in the management of TWPD personnel?*

RH: I meet with the governing body of the town, the Town Board, and present the early warning system report on the entire department to them. Together, the elected officials and I have been able to identify officers who require early intervention services. This enables town officials to have insight into potentially problematic trends in the department. The system has provided my sergeants and me with the necessary tools to address potentially problematic officers within the department.

PARC: *What are the criteria, thresholds and review periods that the TWPD early warning system uses to identify potential problems with an officer's performance?*

RH: Every member of the department is reviewed on a quarterly basis. All the aforementioned information is scrutinized by the governing body of the town and me. Together we examine whether members are using appropriate methods and legal standards. We have devised strategies to reduce further complaints, including strengthening training, supervision and counseling. Our department policy dictates that

members who are involved in two or more substantiated or unsubstantiated complaints within the preceding four months, or three or more such complaints within the preceding two years, are to be referred for early intervention services.

PARC: *What happens once an officer's performance has been identified by the early warning system as problematic?*

RH: It depends upon the type of performance or trend which is identified. For example, officers who are identified as having complaints relating to discourtesy have been mandated to attend remedial training in how to deal with police-citizen contacts; officers who have been identified as having ethics-type complaints have been mandated to attend remedial training in police ethics; officers who have been identified as having complaints involving domestic issues have been referred to counseling; and officers who have been identified as taking excessive emergency excusals, or as being tardy, or having unacceptable sickness records have been counseled at the department level.

PARC: *Has the early warning system enabled the TWPD to identify any problems that would otherwise have gone unnoticed?*

RH: Most definitely. By using the threshold of two or more substantiated or *unsubstantiated* complaints within the preceding four months, or three or more within the preceding two years, the department has been able to identify officers who have received multiple complaints, which, although unsubstantiated, have been very similar

in nature. Without the early warning system, officers who had received two such unsubstantiated complaints might have gone unnoticed.

PARC: *What impacts has the operation of the early warning system had on the relationships between TWPD officers and supervisors, and between the TWPD and the community?*

RH: Supervisors have been forced to address potentially problematic officers who they are responsible for, either through increased supervision or additional training. This has helped them become better supervisors. Since the early warning system was explained to union officials prior to its implementation, the rank and file have accepted it. On the whole the early warning system has let the relationship between supervisors and subordinates become more defined. And certain members of the department who have been identified by the early warning system as being potentially problematic have received appropriate early intervention services which have made them into better officers and has helped reduce similar complaints from the community. In turn, the community has responded in a positive manner to a noticeable improvement within the department.

PARC: *What are the financial implications of implementing and maintaining an early warning system?*

RH: For a department this size it costs approximately \$8,000 a year to implement and maintain an early warning system. Considering what you get in return for your money, it's well worth the investment.

PARC: *There are a number of early warning software systems available. What should a smaller department consider when selecting a system?*

RH: Any department that is considering initiating an early warning system should definitely consult with other departments that have already implemented one. Consulting with departments which are similar in size and budget and have similar needs will ensure getting a system that meets the department's needs. I have, with the help of PARC, enlisted the advice of several police chiefs who had already implemented such systems. I found their help to be invaluable.

PARC: *What role has the early warning system played in ensuring that the specific misconduct issues identified prior to the TWPDP entering into the consent decree do not reoccur?*

RH: Our early warning system has incorporated a monthly review of the forward-facing video cameras in the department's automobiles. The early warning system will reveal that an officer's videotapes have not been reviewed over a period of time. Once this is discovered, I can instruct a supervisor to review one of the officer's videotapes. In addition, the early warning system discloses the race and gender of all motorists stopped by each officer. In light of the New York Attorney General's complaint, which included gender-based profiling, both of these indicators help ensure that problematic behavior does not occur, or if it does, allows it to be addressed.

PARC: *Have your views on early warning systems changed since the TWPDP's system went into operation?*

RH: Initially, from an administrative standpoint, implementing the early warning system was a rather time-consuming task. Coupled with this department's limited resources, it was somewhat frustrating on the technical front. Now that the system is fully functional, it has proven itself to be an invaluable tool for the police administrator to identify and address potential problematic behavior on the part of officers in the department. That's the only change. I come from a department that had many types of monitoring systems, so I'm familiar with systems like this. The frustration came only from the technical standpoint. Now that it is implemented it is, without doubt, an invaluable tool for the department.

Director's Cut

A column by PARC Director, Merrick Bobb

This month's column continues our discussion of early warning systems and the concerns that law enforcement officers have about them. Officers fear that information stored in the computer can unfairly come back to haunt them many years later, long after the misconduct that gave rise to the computer entry has ceased. A related fear is that patently false or baseless complaints will subsequently be held against them. These fears cannot and should not be dismissed lightly. It requires a deft touch to balance the needs of management for all relevant information bearing upon employee performance with employees' desire to put problems behind them. Our discussion here has to do with fashioning fair rules for administrating an early warning system.

The issue often revolves around the retention of citizen's complaints. In particular, some officers and police unions are troubled that early warning systems can become the repository of every citizen's complaint – true or untrue, serious or trivial, well-intentioned or vindictive – asserted throughout an officer's entire career. Officers fear that what happened in the past will never go away, or else will leap up unexpectedly with a poisonous bite. Records of minor criminal convictions are routinely expunged in various states after the violator has paid the penalty and not incurred further charges. Why, then, they argue, should cops have blemishes on their records for life? In particular, why should unresolved and unfounded citizen's complaints be kept at all?

A few months ago in this column, we explained why it is important that even unfounded and unresolved complaints be retained: They may disclose patterns that do not show up when only founded complaints are viewed in isolation. The example we gave

came from a review we had done of a series of citizen's complaints against an officer who was repeatedly alleged to have used gratuitous force. In each instance, the allegation was considered in isolation and the citizen's complaint was held to be unfounded or unresolved. Use of the early warning system, however, disclosed a *pattern* in the complaints. In each instance, the force alleged was a karate kick to the complainant's upper chest or shoulders. Given that the officer was known to be a martial arts enthusiast, the pattern of similar allegations was clearly significant and should be considered in evaluating a subsequent similar allegation. The pattern should influence the evaluation of the credibility of the complaint, increasing the likelihood that the next citizen's complaint of similar misuse of force will be held founded.

Another example has recently come to our attention. A police department in the South, when reviewing a string of unresolved or unfounded complaints against a particular officer, noted that the officer was alleged to have told each of the suspects subjected to excessive force that "there is a new Sheriff in town." The pattern – the *modus operandi*, if you will – would not have become apparent if the unresolved and unfounded complaints had been purged. Accordingly, we continue to believe that retention of such complaints for these purposes is required for any effective early warning system.

Thus, data with respect to all citizen's complaints – founded, unfounded, unresolved, or exonerated – should be maintained indefinitely. Nonetheless, reasonable limitations should be considered concerning how the data is used. Simply put, the less reliable the data, the less reliance should be placed on it. One example would be a clearly baseless complaints evidencing mental disturbance on the part of the complainant:

“Officer Smith is conspiring with extraterrestrials to beam messages directly to my brain.” Another example would be repetitive complaints from a known crank complainant, none of whose complaints, after fair investigation, have proven to have a basis in fact. Obviously, complaints of these kinds are useless and give a false picture. They should be given short shrift. But that does not mean that short shrift should necessarily be given to every unfounded or unresolved complaint. Among the purposes for which unfounded or unresolved complaints should be considered without limitation are risk management, identification of potentially problem officers or patterns, resolution of current complaints in light of a similar pattern in previous complaints, and non-punitive interventions to address and correct problems.

For promotion and assignment purposes, founded complaints obviously carry much more weight than unfounded or unresolved complaints. Nonetheless, there may also be a role for unresolved or unfounded complaints in close cases. Consider, for example, two finalists for a coveted position: one has no citizen’s complaints at all; the other has five unresolved complaints. It would be grossly unfair to reject the candidate who had the unresolved complaints merely on that basis. On the other hand, it would be imprudent not to check out the unresolved complaints to see if they disclosed a pattern or raised concerns about the candidate’s prior behavior.

Even regarding founded complaints, there are important distinctions to be made. A founded complaint of serious misconduct should have greater consequences than one of minor misconduct. A pattern of founded minor complaints should have greater consequences than an isolated instance of minor misconduct. Without attempting to define “major” and “minor” in great detail, we suggest that major misconduct includes

adverse findings about an employee's honesty, integrity, susceptibility to corruption, truthfulness, commission of a crime, practice of discrimination or harassment against protected groups, adherence to civil and constitutional rights, misuse of significant force, and severe discourtesy.

Minor misconduct would encompass the rest: among other things, rudeness, sloppiness in personal appearance, occasional misuse of profanity or vulgarity with the public, minor traffic accidents, and the like. Absent a pattern or a showing of incorrigibility, minor misconduct should be given little weight or disregarded, as appropriate, in instances such as making personnel decisions about advancement or assignment to special positions.

Major misconduct, on the other hand, should be automatically disqualifying for promotion, special assignments, coveted positions, and the like for a specified minimum period. For an additional time thereafter, and in the absence of additional major misconduct or patterns of minor misconduct, major misconduct might create a presumption of disqualification. After the specified minimum period, and in the absence of additional major misconduct or patterns of minor misconduct, there might be a presumption that the now-dated instance of major misconduct should be disregarded. This does not mean, however, that officers must be retained in a position where they continue to pose an undue risk of misconduct. Those making assignments during the period of automatic disqualification should consider taking the officers out of situations where the risk of repeat misconduct is high, at least for a while. The police department should also use this time to give remedial training or counseling, if appropriate. A rude officer will have less of an opportunity to be so if for a while he is not assigned to a

position requiring him to deal with the public. Similarly, an officer who misuses force might be taken for a while out of a patrol car where she has to deal with an endless series of encounters with suspects. After a reasonable period of time, the offending officers, more often than not, should be reassigned to positions where they can be tested in the field to see if they can demonstrate that they have successfully modified their behavior.

To conclude, the problem is not keeping data in an early warning system indefinitely. Rather, the problem is fashioning appropriately sensitive and fair rules for its use. We have tried to suggest ways in which it is both fair and logical to use even unresolved and unfounded complaints. We have suggested some limitations even on the use of old founded complaints. Rather than purging data or not allowing it to be recorded in the first place, it makes more sense to fashion reasonable rules for its use that meet both the employee's and management's needs.

Conferences

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.

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

March 26-28, 2003 – Institute for Law Enforcement Administration Contemporary Issues in Police Administration, to be held in Dallas, Texas. More information is available at www.theilea.org/index.html

April 9-11, 2003 – Police Executive Research Forum Annual Meeting, to be held in Washington DC. More information available at www.policeforum.org/conference.html

April 22-26, 2003 – National Center for Women in Policing 8th Annual Leadership Conference, to be held in Los Angeles, California. More information is available at www.womenandpolicing.org/conference.asp

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

June 16-18, 2003 – U.S. Department of Justice Office of Community Oriented Policing Services 2nd Annual National Community Policing Conference: Working Together for Safer Communities, to be held in Washington DC. More information is available at <http://www.cops.usdoj.gov/Default.asp?Item=787>

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/

July 11-17, 2003 – National Organization of Black Law Enforcement Executives Annual Training Conference and Exhibition, to be held in Tulsa, Oklahoma. More information is available at www.noblenatl.org

July 31-August 3, 2003 – National Association of Women Law Enforcement Executives 8th Annual Conference, Tempe, Arizona. More information is available at www.nawlee.com/conference.html

September 21-24, 2003 – National Association for Civilian Oversight of Law Enforcement 9th Annual Conference, Los Angeles, California. More information is available at www.nacole.org

October 21-25, 2003 – International Association of Chiefs of Police Annual Conference to be held in Philadelphia, PA. More information available at <http://theiacp02.expoexchange.com/>

October 23, 2003 – Police Executive Research Forum Town Hall Meeting, to be held in conjunction with the 2003 IACP conference in Philadelphia, PA. More information available at www.policeforum.org/conference.html

November 22-24 – Police Executive Research Forum Problem-Oriented Policing (POP) Conference, to be held in San Diego, CA. More information available at www.policeforum.org/conference.html

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