

BEST PRACTICES REVIEW

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

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Agencies Under Investigation

The members of a panel that will investigate the use of impact projectiles by the Oakland (CA) Police Department (OPD) against anti-war protesters at an April 7 demonstration have been named. They are: Assistant Chief Brian Jordan of the Metropolitan Police Department of the District of Columbia; retired judge LaDoris Hazzard Cordell; and San Francisco-based attorney Dale Minami. The three will donate their time and will report their findings in September. The OPD has claimed that officers used impact projectiles after protesters threw rocks and other objects at them. Demonstrators have disputed that version of events, charging that OPD officers fired projectiles at non-violent protesters. *Oakland Tribune, May 29, 2003.*

Civilian Oversight

The Independent Police Review Division, (IPR), which is part of the Office of the City Auditor in Portland, Oregon, released its first annual report. According to the report, which covers the division’s activities during 2002, the IPR’s mission is “to improve police accountability to the public and to provide the opportunity for fair resolution of complaints against the police.” The report reveals that the complaints most commonly filed with the IPR alleged rude, unprofessional or unjustified conduct by Portland Police Bureau (PPB) officers. Significant developments during the year included the training of Citizen Review Committee members in policing issues; the intake and investigation of complaints by the IPR (an office independent of the PPB); the hiring of professional mediators for complaint resolution; active IPR participation in PPB Internal Affairs investigations; the hiring of PARC to review officer-involved shootings and deaths in custody; and the convening of public meetings to discuss policing issues. The report is available online at: <http://www.ci.portland.or.us/auditor/ipr/reports/index.html>.

The Northern Ireland Policing Board (NIPB) has released its report on 2001 and 2002 – a period that witnessed significant changes in Northern Ireland’s policing apparatus. During the reporting period, the Royal Ulster Constabulary was renamed the Police Service of Northern Ireland (PSNI) and myriad new policies and procedures were

adopted to produce more representative, accountable policing. The topics covered by the report include the development of a PSNI code of ethics, an analysis of complaints against PSNI officers, the establishment of a volunteer monitoring program to check on detainee treatment, a review of recruitment practices, and workplace anti-discrimination efforts. The report is available online at:

http://www.nipolicingboard.org.uk/word_docs/PDFs/NIPB%20Annual%20Report%2002.pdf.

Community Policing/Problem Oriented Policing

A month after announcing the decentralization of the Providence (RI) Police Department – a restructuring designed to make officers more accessible to the city’s communities – Chief Dean Esserman and Mayor David Cicilline have made public the names of the lieutenants who will act as “mini-chiefs” for each of the nine districts from which policing services will be delivered. The chief and the mayor have instructed the lieutenants to meet with the residents living in their districts in order to establish where new police substations should be located and to determine how district officers should be deployed. Mayor Cicilline said that he believed that community groups and non-profit organizations would welcome the location of substations in their buildings free of charge, reducing the cost of the department’s reorganization. Chief Esserman has told residents that they will see more officers in their neighborhoods once the restructuring goes into effect. *Providence Journal, May 6, 2003.*

Police in Atlanta, Georgia are responding to gang- and drug-related violence with an initiative that involves housing officers in high-crime neighborhoods. Under the “Officer on the Block” program, prosecutors file a civil court complaint after an offender

is convicted on drug trafficking charges. The civil complaint seeks to force the homeowner or landlord to forfeit the property used in the trafficking offense. Once forfeited, the home is renovated with the assistance of a local non-profit organization and an officer moves in. The officer lives rent-free in the home for one year, after which time it is sold to a low or moderate-income family. Security systems, such as an alarm and window bars, are added to the property to protect resident officers. The initiative is funded by a federal grant from the Department of Justice. *Crime Control Digest, May 9, 2003, Volume 37, Number 18.*

Consent Decrees/Memoranda of Understanding

The Auditor’s Quarterly Report for the Steubenville (OH) Police Department has been released. The report, which covers the period from January 1 through March 31, 2003, provides an assessment of compliance by Steubenville with the terms of the consent decree it entered into with the U.S. Department of Justice in September 1997. The report describes Steubenville’s progress in complying with each of the 106 tasks contained in the decree, declaring that “full compliance” has been achieved for all but one of the requirements. This compares to a tally of 95 tasks in full compliance and 11 pending at the time of the last audit. The report credits the leadership of Steubenville’s Police Chief for helping the department make significant progress toward compliance, but warns that continued efforts by the chief and city officials will be required if substantial compliance is to be maintained.

The Independent Monitor for the City of Cincinnati and its police department has released his first quarterly report. The Independent Monitor is responsible for evaluating and reporting on the city’s compliance with the Memorandum of

Agreement (MOA) it reached with the U.S. Department of Justice in 2001 and the Collaborative Agreement (CA) between the city, Black United Front, American Civil Liberties Union of Ohio, and Fraternal Order of Police. The report notes that the city is generally out of compliance with both agreements. The report observes that the police department made noteworthy efforts towards implementing MOA-mandated reforms in 2002, but that the pace of progress has slowed more recently. The report describes the failure of the department to amend its use of force policies according to the requirements of the MOA, as well as limited progress in establishing a Mental Health Response Team or a foot pursuit policy. The report also points out that few deadlines have been met in relation to the CA, and that parties to the CA disagree about the meaning of certain provisions and how those provisions should be implemented. The full report is available online at: www.cincinnati-oh.gov/pages/-439-/monitorstatus1.pdf.

The Office of the Independent Monitor, tasked with monitoring compliance by the City of Los Angeles and the Los Angeles Police Department with the 2001 consent decree entered into with the U.S. Justice Department, has released its seventh quarterly report. The report, which covers the first quarter of 2003, reveals several "areas of concern." A continuing concern stems from the raw data collected from traffic and pedestrian stops showing marked disparities between African Americans, Hispanics, and whites. For example, the data showed that African Americans and Hispanics are more than three times as likely to be asked to exit their vehicles compared to white drivers. The monitor stated that the department must analyze the data, as it has pledged to do, to determine whether they indicate a violation of the consent decree's non-discrimination provision. The report notes that there has been improvement in the management of anti-gang units, but cautions that until planned reforms are implemented,

the department remains out of compliance with the decree's anti-gang unit provisions. The report also describes the monitor's concerns with regard to delays in the implementation of the Training Evaluation and Management System II (TEAMS II), the failure to complete several audits required by the decree, and Internal Affairs Group delays in investigating complaints. Finally, the report states that the department has almost reached full compliance with the decree's Categorical Use of Force sections (which provide guidance on topics such as officer-involved shootings, in-custody deaths, and head strikes with batons), as well as noting improvements in the new training exercises. The full report is available online at: http://www.lapdonline.org/pdf_files/boi/7th_quarterly_report_051503.pdf.

The City of Los Angeles has been advised by its own chief legislative analyst that the Los Angeles Police Department is "proceeding very slowly" in achieving compliance with the terms of the 2001 consent decree. The analyst warned that, unless the pace of reform is accelerated, the city may be held under the consent decree beyond the current June 2006 deadline. *Los Angeles Times*, May 13, 2003.

Legal Affairs

The U.S. Supreme Court has ruled that coercive police questioning of a criminal suspect (in the absence of Miranda warnings) does not violate the 5th amendment's protection against self-incrimination if the compelled statement is not used in a criminal case against the suspect. The court also ruled that, in some instances, coercive questioning could be so egregious and unconscionable as to violate the suspect's 14th amendment right to due process. The ruling stemmed from the case of a California farm worker, Oliverio Martinez, who was involuntarily questioned after he was shot by police. Martinez was

never charged with a crime. Justice Clarence Thomas asserted that, “mere coercion does not violate the text of the self-incrimination clause absent use of the compelled statements in a criminal case against the witness.” The case can be accessed at: <http://www.supremecourtus.gov/opinions/02pdf/01-1444.pdf>. *Los Angeles Times*, May 27, 2003; *New York Times*, May 28, 2003.

A U.S. District Court Judge has ordered that 14 recruits who were selected for employment with the Providence (RI) Police Department and subsequently rejected when Chief Dean Esserman assumed command of the agency must be allowed to join the force. The 14 were selected by a process that included their assessment by two police majors. Chief Esserman, along with Providence’s Mayor, expressed concern that the incorporation of these majors’ discretion in the selection process could engender favoritism and subjectivity. After determining that the majors kept no record of how they selected recruits, Chief Esserman had the list of recruits awaiting academy training redrawn based upon the combined scores of their written tests and oral interviews, ignoring the majors’ recommendations. Most of the recruits chosen by the majors did not earn the score required to maintain their place on the list. The court acknowledged that the previous selection process may not have represented a “best practice,” but ruled that the City of Providence had made a promise of employment to the 14 recruits that had to be honored. *Providence Journal*, May 28, 2003.

Racial Profiling

The San Francisco Police Commission has approved an order that prohibits “biased policing” by San Francisco police officers. The Commission’s decision follows the release last fall of an American Civil Liberties Union report claiming that black and Hispanic motorists were more likely to be searched during traffic stops. The new

rule states that officers must be “able to articulate specific facts and circumstances that support reasonable suspicion or probable cause for investigative detentions, traffic stops, arrest, nonconsensual searches and property seizures.” The order also requires that consent searches shall not be undertaken on the basis of generalized descriptions such as race, ethnicity, national origin, sexual orientation or gender identity. www.sfgov.org/site/uploadedfiles/occ/biasdgo.pdf.

Standards/Training

In “Misconduct Among Previously Experienced Officers: Issues in the Recruitment and Hiring of ‘Gypsy Cops,’” author and police chief John Middleton-Hope examines issues surrounding the employment of “previously experienced officers” (PEOs). Middleton-Hope observes that there is a growing trend towards the employment of PEOs, driven by a competitive recruitment market and the emergence of an increasingly mobile workforce, but that little research has been conducted into the phenomenon. The findings of his own research on PEOs in Canada who were subject to “accelerated” training (a shorter period of training than is provided to new employees without prior law enforcement experience) reveal that PEOs can bring behaviors and cultural identities that are at odds with those of the agencies that hire them, and that they generate a disproportionately high number of citizen complaints when compared to inexperienced recruits. Middleton-Hope makes a series of recommendations based upon his findings, urging agencies to: maintain high selection standards even during times when recruitment is difficult; staff recruitment units with the “brightest and best” officers; require PEOs’ former employers to be full and open in their disclosures to prospective employers; and develop a database and certification system that would allow agencies access to

verifiable information with respect to a PEO's past performance. *Saint Louis University Public Law Review, Volume XXII, No. 1, 2003.*

The Chicago Police Department (CPD) has announced the implementation of a new vehicle pursuit policy. The policy, developed after an eighteen-month internal review, requires officers to apply a "balancing test" when deciding whether to pursue, stating that a pursuit is justified only when "the necessity to apprehend the fleeing suspect outweighs the level of inherent danger created by the pursuit." The new policy bans pursuits for non-hazardous traffic offenses and the continuation of pursuits for hazardous traffic offenses or theft where offenders completely disregard stop signs or signals when entering an intersection. It also prohibits pursuits by unmarked vehicles for traffic violations. The policy establishes a Traffic Review Board that will meet monthly to review all pursuits and traffic accidents resulting from pursuits, and will make determinations with respect to officers' compliance with CPD policies and procedures. The CPD is educating its officers about the new policy using roll call training and instructional videos. *Cityofchicago.org, April 24, 2003; Chicago Sun-Times, April 25, 2003.*

Fitness tests for police recruits in England and Wales are to be made easier in a move designed to increase the number of women joining the police service, according to the United Kingdom's Home Office. Under the current system, 50 percent of women applicants fail the test compared to just five percent of men. Authorities believe that modifications to the test will facilitate the hiring of an additional 5,000 women officers per year. The new fitness test will be less demanding of strength and endurance and will require "no more than what is needed to do the job safely and effectively," according to an official. Currently 18 percent of officers in England and Wales are women. *BBC, May 20, 2003.*

In "Effective Management of Mistaken Involvement Stops," Richard J. Rappoport describes a draft training program developed in northern Virginia in response to the challenges arising from stops of innocent civilians by officers who reasonably suspect those civilians' involvement in crimes. The program, known by the acronym "DEAL," was devised following interviews with civilians who had experienced mistaken involvement stops, and is designed to sensitize officers to the perceptions of civilians involved in such encounters. According to the program, officers who realize that they have stopped an innocent civilian should first "De-escalate and defuse" the situation through steps such as the extinguishing of unnecessary flashing lights and the return of long firearms to police vehicles. Officers should then "Explain and empathize" with the civilian, by articulating the circumstances that led to the stop and understanding that the civilian is likely to have been frightened or angered by their experience. The next step advocated by the program is for the officer to tactfully "Apologize" for what the author describes as the "unintended consequences" of the officer's performance of his or her law enforcement duty. The final step of DEAL instructs the officer to "Leave them in control," meaning that the officer should restore a sense of control to the civilian before leaving the scene in order to counteract the feeling of powerlessness and associated trauma that can result from an encounter with the police under "high-risk" circumstances. The author notes that when DEAL conflicts with officer safety, safety should come first. *The Police Chief, May 2003.*

"Police Response to Anonymous Emergency Calls" by Michael L. Ciminelli discusses the Fourth Amendment issues raised by anonymous, emergency calls. The article describes how officers should respond to such calls for police service. A review of relevant court decisions is provided, along

with a series of recommended guidelines for anonymous call response. Ciminelli, who serves as chief of the Domestic Criminal Law Section at the Drug Enforcement Administration, recommends that officers:

- take reasonable steps to identify the caller before taking action;
- take reasonable steps to investigate and corroborate the call before taking action;
- attempt to obtain a valid consent to enter and search in order to establish an independent legal basis for police action;
- accurately document information provided by anonymous callers;
- consider the past history of people and/or places named in anonymous calls, as such histories may corroborate anonymously provided information;
- document conditions found at scenes which may corroborate anonymously provided information; and
- train personnel responsible for receiving emergency calls in techniques for gaining the cooperation of callers and in the collection of important information.

Federal Bureau of Investigation Law Enforcement Bulletin, Volume 72, Number 5, May 2003, available online at: <http://www.fbi.gov/publications/leb/2003/may03leb.pdf>.

The New York City Police Department and the Civilian Complaint Review Board (CCRB) have announced that the police department will adopt a centralized Search Warrant Database. The database will track important aspects of the search warrant process, including the name of the supervising officer, the name of the judge issuing the warrant, the name of the assistant district attorney assigned to the case, details of the location to be searched, building plans, identified hazards for the location, and the outcome of the warrant's execution. The announcement follows a recent

recommendation from the CCRB that a database be developed – a move the CCRB Chairman says will facilitate timely CCRB investigations. *New York City Police Department, Press Release, May 27, 2003.*

Use of Force

The Las Vegas (NV) Metropolitan Police Department has announced changes to its handcuffing policy after a racial profiling study revealed that officers handcuff black motorists during traffic stops at a disproportionately high rate. Prior to the introduction of the amended policy, officers were instructed to use “common sense” when deciding whether to handcuff a citizen. Under the new rules, officers may use handcuffs when:

- the citizen is physically uncooperative;
- the citizen is a physical danger to him/herself or others;
- there is a reasonable possibility that the citizen will flee;
- there is a reasonable possibility that the citizen is armed;
- the stop closely follows a violent crime and the citizen matches the description of the perpetrator; or
- the officer believes a violent crime is about to occur.

The department also announced its intention to equip officers with Tasers as a means of reducing the number of officer-involved shootings, and to introduce additional verbal communications skills training designed to reduce officers' reliance on the use of force. *Las Vegas Review-Journal, May 9, 2003.*

Interview

The Community Relations Service (CRS) of the Department of Justice is mandated to provide assistance to communities in the resolution of conflicts and discriminatory practices based upon race, color or national origin. According to its latest annual report, the CRS dealt with more than 1,223 new

incidents of racial conflict during fiscal year 2002, as well as continuing with activities initiated in earlier years. That report, along with other CRS publications and information, can be accessed on-line at www.usdoj.gov/crs/. PARC recently spoke with CRS Director Sharee Freeman.

PARC: *According to the CRS 2002 report, approximately half of the CRS's cases for that year involved racial conflict over administration of justice and police-community relations. How do you explain the prominence of law enforcement-related issues in the CRS's overall workload?*

Freeman: The police are closest to the community. It is not the city council, not school superintendents, not teachers or principals, but the police who interface with the community on a regular basis. In most minority communities around the country, the police are the only government unit that interfaces with them on an everyday basis. That's where we start. CRS ends up doing work in this area because there are lots of issues – what I would call class issues – related to minority communities that put our work there because we go out when there are perceptions of discrimination or mistreatment based upon race, color or national origin. So what ends up happening in minority communities is that there's a little bit of stereotyping when it comes to police, on both sides. There's mistrust, there's class conflict, there's a situation sometimes where the police do not live in the area where they have their beat. There are allegations of police brutality – verbal, physical or psychological. There are usually allegations by the community of poor police protection, unfairness, harassment or profiling, and all of this can balloon into a riot situation. Our main focus as an agency, one of the key reasons why CRS was put in place, was to make sure that when conflict arises between a community and a structure of government or between two communities, we're there to make sure that it doesn't escalate to a riot situation. So our work is

focused for all these reasons on police-community relationships – issues such as excessive use of force, police shootings – events that can touch off riotous situations. If you look at events that have touched off riots in the past, they are usually things that have happened in the community related to a police scenario. Our work is often preventative in those communities, to calm communities that perceive that they have been wronged, as opposed to going there to stop a riot.

PARC: *What do you consider to be the key racial and ethnic conflict-related issues in contemporary American law enforcement?*

Freeman: Excessive use of force, police shootings and racial profiling. Those are the top three issues that you hear of over and over from communities, the media, and in police-related complaints. These are the issues that the CRS deals with most frequently.

PARC: *What services does the CRS offer to law enforcement agencies facing issues related to racial or ethnic conflict?*

Freeman: We do a number of things. We offer mediation, training, conciliation, assistance with the management of protest marches and demonstrations, and technical assistance. We offer a law enforcement mediation course which trains police officers how to mediate conflicts. Often officers will find themselves called back several times to deal with a community situation where the issue is not an emergency, but is two neighbors not getting along or a racial issue taking place, so we teach them mediation skills so they can mediate the conflict between the two neighbors or between the people in the community who are having race-based problems. We teach them the skills so that they don't continually have to come back to the same call over and over again. Law enforcement mediation training is one of the big ticket items we offer: it reduces repeated

calls for assistance, it reduces potential for violence and officer injuries, it reduces the need for physical force, it reduces lock-ups and reports, it improves community relations and it frees officers to respond to other pressing assignments. We also do courses on bias-free policing, on racial profiling, and cultural identity, both for new recruits and for in-service training. We currently have a cultural awareness training program for police that relates to Arabs, Muslims and Sikhs, complemented by a training program for the new-immigrant communities to help them understand policing in America and that the police here may be different from police in their countries of origin.

We also assist with contingency planning for large protest marches and demonstrations, or large special events involving people of color, where the local community takes the position that participants are not welcome and where there is tension between the community and the visitors. We work with the police and the community to assist with the logistics and pre-planning for an event or demonstration. We also work with the people arranging the event so that they understand the permit rules and so that they can route a demonstration to avoid disrupting traffic. We also teach them how to self-marshal their demonstration or event so that they can keep people safe, because when you have a large crowd in the street you have the risk of a riot if something goes haywire or if you have a criminal element coming in. We also work with police when there are Klan rallies, and when there is a Klan rally that is going to have a counter-protest where you are potentially going to have people throwing bottles and rocks at each other or at the police. We work to keep situations calm and we talk to all sides: the police, counter-demonstrators and the Klan, and that usually works. It really helps the police out, and they actually ask for us to come. We're free, we're neutral and we're confidential, so we don't take sides in a dispute. Because we are Feds, local people don't see us as having a side and instead see

us as being there to help them work through a process.

PARC: *What services does the CRS provide to law enforcement oversight entities?*

Freeman: In the past we've offered mediation services when an agency has to go into an oversight scenario. We also offer a training program for civilian review boards. Often, when a city creates a civilian review board, they have ideas about how they're going to go out and reform the police and that they're going to tell those police what they're going to do. But their ideas might not work with factors such as union agreements, officer safety requirements, and other things the community doesn't necessarily know about. So we work with the community, using models we've developed from experience, to educate them about what does or does not work, and what represents best practices. We help them to organize themselves, and to delineate their roles and responsibilities. We don't tell them what to do, but we show them the process and tell them, from our experience, what works.

PARC: *How can interested parties seek CRS assistance when they find themselves involved in racial or ethnic conflict, and under what conditions will the CRS provide that assistance?*

Freeman: I would say "just call us." We are located in ten regional offices around the country, we have four regionally-based field offices and a headquarters office in Washington D.C. Either the police or the community can call us. There are two basic requirements for our involvement. The first requirement is that the issue must be a community issue. We cannot help individuals. The second requirement is that we must have jurisdiction by statute. The statute allows us to deal only with scenarios where discrimination or perceived discrimination, or strife and tension in the

community, is based upon race, color or national origin.

PARC: *What impact does the involvement of CRS “outsiders” have on the outcome of conflicts taking place at a local level between locally-based groups?*

Freeman: We don’t have a dog in the fight, so to speak. We don’t have a stake. We just provide a process for people to mediate their conflicts and disputes and to come up with solutions. A lot of times our involvement allows people to save face: people say, “I don’t want to sit down and talk to that group, but CRS asked me to, so I’ll do it.”

PARC: *Would you describe an example of a law enforcement-related CRS “success” during recent years?*

Freeman: We have a lot of them, and many are described in our 2002 report. One that is ongoing is taking place in Inglewood, California, where there was a videotaped police use of force incident where the person being arrested was shown being slammed onto a car. That videotape played on national television and people were really upset about it. We worked through that issue with law enforcement and community leaders during the protest marches, the first grand jury and the administrative process. And the success there, and I should point out that we still have the trial coming up, is that the community did not erupt into violence. They were able to protest peacefully. That’s something we’re still working on, but we have been successful in that all the prior flashpoints have passed without violence.

In Myrtle Beach, South Carolina, there’s something called Black Bikers’ Weekend that takes place every year, and one year the mayor made the statement that he and the community did not want the black bikers to come there and that they were going to call in the National Guard. CRS was called in instead of the National Guard. We deployed a team and worked with the community, the

police and the bikers. We’ve been down there now for five years, working with everybody to make sure that the event remains incident-free. We’ve helped the police turn that event from one which generated allegations of difficulties with the police to a community policing scenario where both the participants and the police are safe. As the years have passed, the size of the CRS team we need to deploy to Myrtle Beach has been reduced. I see this as an indication of our success.

PARC: *Are there any kinds of racial or ethnic law enforcement-related conflicts that the CRS has found to be intractable?*

Freeman: I would say that cases where the issue looks as if it is about race, but really it is about politics or power, can get stuck. The only way those cases move forward is through a political, voting process. In other cases, we might offer a mediation process but find that people refuse to participate. Sometimes this is because local groups feel they can do a better job than CRS and that they don’t need us there, or they will say they don’t want us involved because they think we are law enforcement.

PARC: *What basic steps should any law enforcement executive take in order to minimize the risk of racial or ethnic conflict occurring in his or her jurisdiction?*

Freeman: I think that the easiest thing to do is to call CRS. We can assess community tension. We have the tools to figure out what’s going on and to report to that law enforcement agency. We would suggest that police executives use our courses for recruits and in-service police training, and that they make themselves accessible to community leaders. And law enforcement agencies should work to maintain or revitalize police-community relationships so that when something happens, the police are not strangers to the community; they’ve already been there, they know the people, they can call them by name, they have met before, so

the police chief doesn't find him or herself reaching out to a community only after an event has occurred. CRS can help police perform that outreach and make those connections with the community.

Director's Cut

A column by PARC Director, Merrick Bobb

This month, I want to share some thoughts about some city attorneys' opposition to police management efforts to implement a risk management strategy. Such a strategy requires candid and detailed analysis of critical incidents soon after their occurrence and before litigation ensues. It has been a fundamental tenet of mine as a monitor and student of risk management in law enforcement that the greater amount of police department critical self-analysis – followed by policy reform, training or re-training, and discipline, where appropriate – the greater the likelihood that litigation exposure for the jurisdiction in question will plummet. My justification in that regard is based not on faith alone but also on facts: In the years that the Los Angeles County Sheriff's Department was rigorously and consciously following that risk management strategy, judgments and settlements in force-related cases dropped from \$17 million in fiscal year 1995-96 to a low of \$2.9 million in fiscal year 2000-01. The total docket of excessive force lawsuits dropped from a high of 381 in fiscal 1992-93 to 102 in fiscal year 2000-01.

The basic building block of this strategy is a timely, multifaceted examination of any critical incident that has the potential to lead to significant litigation, including all hit shootings resulting either in fatalities or serious injuries and all uses of force that lead to death or serious injury. Often, this may involve the creation of a specialized roll-out team – such as Washington D.C.'s Force Investigation Team, the LAPD's Critical Incident Investigation Division, or the Los Angeles Sheriff's Department's IAB Rollout Team – to commence an investigation within moments or hours of a fatality or serious force incident. The investigations are multidimensional, moving beyond the usual determination whether the shooting or use of force had criminal implications to a broader consideration whether the incident was within department policy, whether that policy was appropriate or should be revised, whether the tactics and strategy employed by the officer was consistent with his training, whether the training in the area needs updating or revision, whether the incident is likely to lead to litigation and, if so, whether all relevant evidence, including witness statements from all sworn personnel and civilians, has been appropriately taken, collected, and preserved. The results of that initial investigation are rapidly presented to a shooting and force review board, and determinations are made quickly as to the advisability of a full-scale internal affairs investigation leading to possible discipline. The results may also be formulated as a critical incident or after-action report on the entire event in question,

much like the recent NYPD's candid, self-critical examination of how its officers came to break into Alberta Spruill's apartment in Harlem by mistake, leading to a fatal heart attack. If the incident is particularly controversial, there may even be a blue ribbon, independent investigation of it, such as occurred regarding the LAPD after the Rodney King incident with the Christopher Commission report or after the Rampart scandal with the independent commission report.

This strategy creates lots of paper and, if done right, a heap of candid, critical, no-holds-barred analysis of failings, things that could be done better, lessons learned, and implications for the future—just the sort of thing that causes the city attorney or contract defense counsel to pull their hair out. What if, they worry, all this paper gets discovered by the plaintiff in litigation over the incident? Won't the case therefore be harder, if not impossible, to defend? Doesn't all this analysis add several 00s to any possible settlement? Left to their own devices, therefore, it is depressingly common to see the attorneys advising the police department to act like an ostrich and bury its head in the sand. If the department doesn't know it, the reasoning goes, then the plaintiff can't find out. The whole game becomes one of suppressing development of factual information and critical analysis in order to thwart plaintiff's counsel. Avoid "risk management" is, in essence, what the lawyers are saying – there'll be time enough to learn lessons from the incident *after* the statute has run or *after* the case has been tried or settled. In the interim, advises the lawyer, just say you did nothing wrong and don't generate anything that disputes it. But since the lawyers do need to know the facts and have some analysis in order to judge whether a case is defensible, strategies are devised to keep the department's senior managers like ostriches while at the same time generating the necessary information for the lawyers – as long as the information developed stays firmly under the lawyer's thumb.

It is thus not uncommon to find that personnel within the police department become the paralegals, investigators, and general handmaidens for defense counsel. In order to keep what they might learn under wraps, a couple of key legal stratagems are employed. First, everything developed by the department's own investigation becomes either privileged or attorney work product and thereby either absolutely or conditionally exempt from discovery. It is similarly carefully shielded from police top management, except, perhaps, by way of a shorthand conclusion the lawyer whispers to the police chief along the lines of: "This case is a real dog. We'd better settle it quickly." Second, the city's lawyers represent all or most of the potential defendants or material witnesses within the police department who might have anything to say. Even if separate counsel is arranged, again most often at the city's expense, joint defense agreements and a lawyer's duty of loyalty to the client become obstacles to departmental examination of inappropriate behavior. Not only are the individual officer defendant's statements

legally shielded from discovery by the plaintiff, but they also often wind up being shielded from the police department itself on the theory that it would be disloyal to one client – the individual officer defendant – to pass along adverse information to the lawyer’s other client, the police department or municipality. Some lawyers have gone so far as to claim that they cannot even provide the police department with deposition transcripts or pleadings in the litigation on a similar rationale.

What nerve, one might say; just what you’d expect from a bunch of crafty lawyers. But keep in mind that from the lawyer’s perspective, this all makes sense. For a given lawyer defending the city in a particular lawsuit, it *is* prejudicial to the case, and perhaps ultimately to the lawyer’s future business, if the employee whose conduct is at issue becomes the subject of a thorough internal police investigation and is found guilty of violating policy or other administrative misconduct. The evidence developed thereby, as noted earlier, may become available to the plaintiff in the subsequent lawsuit, thereby increasing the city’s exposure in the particular case and making settlement of it more costly. City attorneys are often judged by their mayors and city councils for their ability to keep settlements and judgments down *in the short run*. For lawyers thus concerned with their individual or office’s track records in litigation and their perceived effectiveness at minimizing judgments and settlements, there is an understandable tendency in these circumstances to want to keep a full and thorough internal police department investigations at bay or on ice so that negative evidence is not developed. If each lawyer defending the city follows essentially the same strategy – and I suggest that is exactly what is happening in city after city across the country – then short-term litigation tactics invariably wind up trumping a long-term risk management strategy.

I submit, however, that what might make sense to a given lawyer defending a specific case does not make sense for the city as a whole in the longer term. In order to limit exposure in the long term, there needs to be *immediate* feedback on critical events. If an internal investigation is put on ice until the litigation is over, the officer in question may either have gotten into more trouble in the interim or the event may have receded so far into the past that a critical examination of it, or discipline for it, may not longer be feasible or meaningful.

To follow a better conceived risk management strategy, however, requires decision makers, including politicians like the mayor and city council, to focus on management of risk in the long run and perhaps in the interim incur some losses. This, in turn, is a difficult pill either for the politicians, the police department, or the city’s lawyers to swallow. It is particularly so since any substantial settlement or judgment seems inevitably to lead to a frenzy of finger pointing. The lawyers blame the police department, saying that but for their own prodigious legal talents

dealing with the poor hand the police department dealt them, the city would have suffered an even larger settlement, or an even more huge adverse verdict. The police department blames the lawyers, saying that they are gutless weasels who'll never take a meritorious case to trial but prefer to cut their risks and attendant prejudice to their future business by settling them out. The politicians take it out on the lawyer – “why didn't you warn us this was going to be such a costly case?” – and on the police department – “what do you mean we've just authorized a million dollar payout and you're telling me the officer in this case was never investigated, much less disciplined? When are you guys going to learn?”

Our answer, as noted in the first paragraph, is that our own experience tells us that when risk is managed responsibly, the amount and cost of litigation drops. Yes, it takes guts all around and an effort of will by the lawyers, the police department, and the politicians to accept possible short term losses for long term gains. In Los Angeles County, those short term greater losses never materialized, and judgments and settlements dropped. But it is still a hard risk to take in a political and societal culture where everything is of the moment; where tomorrow's problem will be someone else's, so why take the heat today? But if done, it will pay off, and in more ways than just dollars.

If self-critical analysis and discipline or revision of policy or retraining after a critical incident is accomplished out in the open with speed, fairness, and integrity, the public perception that the police cannot police themselves will begin to fade. If, on the other hand, a department suppresses bad facts about its officers – either on the department's own initiative or at the instance of its lawyers – fails to investigate, and declines to impose discipline out of fear of giving ammunition to plaintiffs, the reluctance of the police to police themselves only creates stronger incentives to take investigatory and disciplinary power away from the police and repose it in a civilian review board or other outside oversight mechanism. The ability of the police to police themselves, in my view, is a privilege; not a right. Hence, it is better practice, when done carefully and coolly, to buck the lawyer's advice to play ostrich and take care of business when it can be done most effectively.

Conferences

June 16-18, 2003 – Community Oriented Policing Services 2nd Annual National Community Policing Conference: Working Together for Safer Communities, to be held in Washington, D.C. For more information, visit www.cops.usdoj.gov/.

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_html/defaults_s_annualconference.htm.

July 9-12, 2003 – Commission on Accreditation for Law Enforcement Agencies Summer Conference to be held in Detroit, MI. More information is available at: www.calea.org/newweb/ConferenceInfo/Detroit/conferenceinfo.htm.

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 28-30, 2003 – National Institute of Justice 10th Annual Conference on Criminal Justice Research and Evaluation, to be held in Washington, D.C. More information is available at: www.nijpcs.org/RE/RE2003/index.htm.

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

August 11-16, 2003 – Hispanic American Police Command Officers

Association 30th Annual National Training Conference, to be held in Chicago, Illinois. More information is available at: www.hapcoa.org/conference/.

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

September 29-October 1, 2003 – Americans for Effective Law Enforcement Police Civil Liability and the Defense of Citizen Misconduct Complaints seminar, to be held in Las Vegas, Nevada. For more information, visit www.aele.org/wkscivil.html.

October 21-25, 2003 – International Association of Chiefs of Police Annual conference to be held in Philadelphia, Pennsylvania. More information is available at: 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, 2003 – Police Executive Research Forum Problem-Oriented Policing Conference, to be held in San Diego, CA. More information available at: www.policeforum.org/conference.html.

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