

POLICE PRACTICES REVIEW

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CIVILIAN OVERSIGHT

L.A. Rampart Commission Moves Ahead

The Blue Ribbon Rampart Review Panel assigned to evaluate the Los Angeles Police Department's (LAPD) internal investigation of the Rampart corruption scandal was recently formally approved by a City Council committee. Police Chief William J. Bratton called for an independent review to assess whether the LAPD adequately investigated itself after former Officer Rafael Perez alleged widespread misconduct by police officers. While serving as Chief of the LAPD, Bernard Parks, a current City Council member, pledged to produce an "after-action report" presenting the exact "nature and disposition" of each allegation, but before the report could be published the Police Commission decided not to reappoint him to a second term in 2002. Bratton found the unpublished version of the report to be "totally inadequate" and subsequently called for the independent review. Aspects of the Rampart scandal have been investigated by the L.A. County District Attorney's Office, the LAPD's Rampart Board of Inquiry, USC law professor Erwin Chemerinsky for the police union, the Police Commission's independent review panel, and a Los Angeles County Bar Association task force. The new review panel's chairperson, civil rights attorney Constance Rice, said the panel would focus on systemic failures rather than on cases of individual accountability. The panel's budget of \$350,000 was donated primarily by prominent Los Angeles law firms. (*Los Angeles Times*, February 10, 2004; *San Jose Mercury News*, February 10, 2004.) (See the interview on p. 9 for more about the commission and its Chairperson, Constance Rice.)

Report Finds No Abuse of Detox System

A report issued by the Portland (OR) Citizen Review Committee (CRC) and the Independent Police Review Division (IPR) found no systematic evidence that

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

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Portland Police Bureau (PPB) officers were taking sober detainees to the city's detoxification facility, known as the Hooper Center, as a form of punishment. A special committee composed of IPR and CRC personnel was formed after the IPR received complaints alleging that officers wrongly detained individuals and took them to the facility. The committee made several recommendations pertaining to the handling of intoxicated individuals, including encouraging officers to transport inebriated people to their homes, when appropriate. It also urged city officials to increase funding for the Hooper Inebriate Response Service van program, which would allow for additional vans to be purchased or the service hours extended. The full report can be accessed online at <http://www.portlandonline.com/auditor/index.cfm?&c=31287>.

Audit Identifies Problems in the Atlanta PD

A recent year-long audit of the Atlanta Police Department (APD) discovered a consistent pattern of negligent and deliberately faulty record-keeping practices that resulted in suppressed or lost crime reports and altered crime statistics. Chief Richard Pennington asked New York-based Linder & Associates to review a year's worth of reported crimes to determine whether each was properly classified and documented. The audit featured hundreds of interviews and surveys with Atlanta officers and residents. The audit also found many officers were demoralized, distrustful, and passive, often having greater loyalty toward their "second jobs" than to their sworn duties as police officers. Chief Pennington said he would use the information to try to garner support for funds to hire more officers, increase pay, and attain additional equipment. He outlined a number of changes that he hopes to implement, including:

- transferring detectives from headquarters into the six police zones in order to decrease tension between patrol officers and detectives and increase the exchange of information on crime;
- restructuring patrol beats for better coverage and adding ten additional beats;
- increasing the size of the narcotics unit and targeting mid-level and upper-level drug dealers instead of focusing on street sales; and
- doubling the size of the fugitive unit to about 14 officers and working more closely with the

U.S. Marshals Service's new regional fugitive squad.

The report is available online at <http://www.atlantapd.org/index.asp?nav=news&NewsID=65>. (*Atlanta Journal-Constitution*, February 20, 2004; *New York Times*, February 21, 2004.)

CONSENT DECREES/ MEMORANDA OF AGREEMENT

DOJ and Cleveland Reach Agreement

Following a three-year investigation, the U.S. Justice Department will monitor the Cleveland Division of Police (CDP) use-of-force policies and practices for one year. The police department revised policies, procedures, and practices relating to the use of deadly force after the Justice Department identified deficiencies. The agreement describes reforms already implemented by the police department, including:

- a prohibition on firing into moving vehicles unless there is imminent danger to the public and other officers;
- enhanced in-service officer training including the use of true-to-life scenarios drawn from CDP experiences; and
- creation of a shooting review team consisting of a cross-section of CDP officers with specialized training.

The agreement calls for the CDPS to develop procedures for the new use of deadly force investigation team and to submit revised policies relating to discipline, use of force, use of deadly force and investigations for Justice Department review and approval. The Justice Department will also review and approve tactical use-of-force training programs. (*Agreement to Conclude DOJ's Investigation of the Cleveland Division of Police's Use of Deadly Force*, Special Litigation Section, Civil Rights Division, U.S. Department of Justice, February 9, 2004.)

D.C. Report Describes Progress and Concerns

The Office of the Independent Monitor (OIM) recently released its seventh quarterly report describing the District of Columbia and the Metropolitan Police Department's (MPD) compliance with a June 2001 Memorandum of Agreement (MOA) with the Justice

Department. The report covered the period from October through December 2003 and focused on MPD's use of force policy, use of force investigations, citizen complaint processes, disciplinary tracking system, Personnel Performance Management System (PPMS), and Field Training Officer program.

There were a number of new developments during the quarter, including a negotiation between the MPD and the Justice Department eliminating a provision of the agreement that authorized the OIM to direct the MPD to reopen misconduct investigations the OIM identified as incomplete. The OIM commended the MPD for enhancements to the Field Training Officer program and for more thorough use-of-force investigations by the Force Investigation Team. The OIM expressed concerns about several issues, criticizing incomplete Use of Force Incident Reports and the lack of a centralized and formal system for documenting and tracking disciplinary actions. Also during the quarter, the OIM conducted a detailed review of 80 chain of command investigations and concluded that the quality of the investigations was sub par. The OIM reiterated several recommendations issued in previous reports, including that the MPD should:

- establish a policy defining when off-duty officers are required to carry their service pistols in the City;
- continue to revise and finalize the Canine Teams General Order, canine training curriculum, and Canine Operations Manual;
- implement modifications to in-service training involving the proper use of OC Spray; and
- complete revisions to the Administrative Investigations Manual.

The report can be accessed online at <http://www.policemonitor.org/040130.pdf>. (*Office of the Independent Monitor, Seventh Quarterly Report of the Office of the Independent Monitor for the Metropolitan Police Department*, January 30, 2004.)

LAPD Monitor Issues Tenth Report

Independent Monitor Michael Cherkasky recently released his tenth report describing the Los Angeles Police Department's (LAPD) progress in implementing reforms required by the Consent Decree it entered into with the Department of Justice in June 2001. The report, which covers the quarter ending December

31, 2003, reviews 58 Consent Decree requirements and finds that the LAPD successfully complied with 28 of the requirements and failed to achieve compliance with 25. The Monitor declined to make a determination on five of the requirements.

The Monitor cited two primary areas of concern. First, the Monitor found that the Ethics Enforcement Section had failed to adequately audit the complaint intake process. Second, the Monitor expressed concern about the Office of the Inspector General (OIG), stating that the Inspector General's (IG) effectiveness is "compromised by resource constraints, as the IG is not completing his oversight functions on a timely basis." This situation, writes the Monitor, "threatens to undermine the Department's ability to achieve substantial compliance by the end of the third year of the five-year Consent Decree." The Department must achieve substantial compliance by June 2004 and maintain substantial compliance for two years in order to be released from the Consent Decree at the earliest possible date.

The Monitor also made a number of commendations, citing "full compliance" or "significant improvement" in several areas, noting that:

- a marked improvement has been made in the quality and consistency of Non-Categorical Use of Force investigations;
- the Critical Incident Investigative Division's tracking logs are "maintained in an excellent manner;" and
- the Audit Division has submitted two audits fully compliant with Consent Decree requirements — the Gang Unit Work Product Audit and the Motor Vehicle and Pedestrian Stop Data Collection Audit.

The Monitor gave particular recognition to the work of the Audit Division, stating that its successful audits "serve as evidence of [the Division's] emergence as a cornerstone of the Department's reform efforts."

The full report is available online at http://www.krollworldwide.com/library/lapd/LAPD_Q10_Report.pdf.

COMMUNITY POLICING

Bush Budget Reduces COPS Funding

The Bush Administration's proposed fiscal year 2005 budget called for a sharp reduction in funding for the Justice Department's Community Oriented Policing Services (COPS) program. Under the proposal, funding would drop from \$481.9 million to \$97 million. The COPS program is designed to help police departments hire additional police officers and pay for overtime to keep more officers on the streets. (*Houston Chronicle*, February 3, 2004; *Associated Press*, February 2, 2004.)

Program Focuses on Police/Immigrant Relations

The Vera Institute of Justice (www.vera.org) recently initiated a new project designed to build stronger relationships between the police and immigrant populations in New York City. Vera's Planning Department is working with the New York City Police Department (NYPD) and representatives from the city's Arab and African immigrant communities. The groups will participate in a series of directed forums covering subjects such as strategies for improving police-community relations and the community's crime, safety, and policing needs and concerns. The program is designed to allow Vera and the NYPD test the effectiveness of coordinated public education and outreach campaigns. More information can be found online at <http://www.vera.org/policing>. (Vera Institute of Justice, *What's New In Policing*, Winter 2004.)

Police Visibility Improves Public Perceptions

Police Quarterly's December 2003 issue features a series of articles that explore the topic of community policing. In the article, "Police Tactics and Perceptions of Police Legitimacy," the authors studied whether community policing improves citizens' perceptions of the police or whether the improvement coincides with increased police visibility. The authors surveyed 1,347 residents from 41 South Carolina neighborhoods in order to understand the effects of community policing. The authors found that increased police visibility did increase residents' perceptions that police were proactively controlling crime, whereas not seeing the police prompted frustration. Unexpectedly, the authors found that police visibility also increased residents' perceptions that police could be trusted. Lastly, the authors found that positive contacts with

police had little effect on residents' perceptions of the quality of police performance. (James E. Hawdon, John Ryan, and Sean P. Griffin, "Police Tactics and Perceptions of Police Legitimacy," *Police Quarterly*, December 2003.)

RACIAL PROFILING

Texas Profiling Report Ignites Controversy

A Texas racial profiling study revealed that several police departments in the state are stopping and searching black and Latino motorists at a higher rate than Caucasian drivers. The study was conducted by the Steward Research Group and commissioned by the Texas State Conference of NAACP branches, the League of United Latin American Citizens, the American Civil Liberties Union of Texas, and the Texas Criminal Justice Reform Coalition. The study concluded that three out of every four law enforcement agencies pulled over blacks and Latinos at higher rates than whites and six out of seven agencies searched blacks and Latinos at a higher rate. Statewide, African Americans were about 60 percent more likely to be searched after being stopped than whites, and Latinos were 40 percent more likely to be searched. The Houston Police Department exhibited the greatest disparity with black motorists 3.5 times more likely to be searched than white drivers. The study's authors reviewed reports from 413 law enforcement agencies of data collected in 2002. More than 600 agencies did not submit reports to the researchers even though a 2001 state law requires agencies to do so. Several law enforcement agencies in the state questioned the findings of the study. Dwight Steward, the study's primary author, stated that the report was not designed to scrutinize individual departments but rather provide insight into police performance statewide. (*Los Angeles Times*, February 4, 2004; *Houston Chronicle*, February 5, 2004.)

STANDARDS & TRAINING

Indiana PD Opens Professional Standards Office

The Fort Wayne (IN) Police Department has established an Office of Professional Standards (OPS) to oversee department policies. The OPS is responsible for the Office of Internal Affairs, maintaining uniform standards, and assuring departmental continuity. The

OPS staff will be headed by a recently-promoted captain and will include two civilians. (*Fort Wayne News-Sentinel*, February 6, 2004; *Fort Wayne Journal-Gazette*, February 6, 2004.)

Officers Hit with Tasers During Training

In the February 2004 issue of *Police Magazine*, Beaverton (OR) Police Department tactics instructor Michael L. Janin explored the complex issues that law enforcement agencies face when training officers to use Tasers. Janin asserts that because the Taser (which submits electrical pulses into the suspect's body from distances up to 21 feet) has been issued so quickly by so many agencies, there is no consensus on how officers who carry the weapon should be trained. One point of debate pertains to whether or not officers should be exposed to the weapon's effect before being allowed to carry the weapon. Some law enforcement agencies have been hesitant to have their officers endure the shock because of concern that the weapons could render lasting physical effects, though Janin contends research has not supported that assertion. Agencies are also discouraged by legal concerns that some departments encountered when officers were exposed to OC Spray during training. Some officers argue that they did not have to be struck with a baton or shot with their gun to understand the effects of those weapons, and that the Taser is no different.

Departments cited by the author who support Taser exposure suggest other benefits:

- By witnessing exposures in the classroom, officers will have first-hand knowledge of the weapon's effect on a subject.
- Officers will instantly recognize the danger of having the weapon turned on themselves and the need for lethal cover when deploying it.
- Should a suspect grab and aim a Taser at an officer, the officer may be better equipped to decide whether or not to deploy deadly force especially if he or she has no backup.
- The officer could authoritatively testify in court from first-hand knowledge about the Taser's ability to incapacitate.

Janin recommends that each agency be left to decide whether exposure to the Taser effect in training is mandatory or voluntary. (*Police Magazine*, February 2004.)

FORCE MANAGEMENT

AZ Officers Suspended Over Pepper Spray Abuse

A lengthy internal investigation into the alleged misuse of pepper spray on homeless camps by the Prescott (AZ) Police Department (PPD) has led to the suspension of nine officers. The investigation found other policy violations such as the improper use of the agency's computers for viewing pornographic Web sites. The suspensions ranged from 24 to 40 hours, with or without pay, depending upon the violation. The suspended officers were either involved in pepper-spraying unoccupied homeless camps in an effort to deter inhabitants from returning or were aware that it was happening and failed to report it to command staff. (*The Daily Courier (Prescott)*, February 18, 2004; *AZ Central.com*, February 18, 2004.)

LEGAL AFFAIRS

Agents Sentenced in Immigrant Abuse Case

A Houston federal judge sentenced three former immigration agents to prison terms ranging from seven to 41 months for denying medical care to an undocumented immigrant who was paralyzed during an altercation with agents and later died from his injuries.

A federal jury had convicted the three agents on charges of acting with deliberate indifference and failing to get timely medical care for the Mexican citizen, Serafin Olvera. Olvera suffered a broken neck during the March 2001 raid of a house in Bryan (TX) where undocumented workers had been living while working as roofers. After his neck was broken, prosecutors said he became limp and repeatedly asked for medical assistance. While he was lying handcuffed in the agents' van, prosecutors said an agent pepper-sprayed Olvera and said, "Let's mace the (expletive) and see if he'll budge." After the agents kept Olvera in the van for seven hours, they arrived at the Comal County Jail, but the nurse there would not admit Olvera because of the severity of his injuries; he died from his injuries in February 2002. Last week, a San Antonio federal judge approved a \$2.15 million dollar settlement of a lawsuit filed by Olvera's family. (*Houston Chronicle*, February 2, 2004; *San Antonio Express-News*, January 28, 2004.)

NEWS BRIEFS

Vera Institute Issues Global Guide

A team of researchers at the Vera Institute of Justice recently published, "Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector." The guide is intended for an international audience of government officials and program managers interested in improving the delivery of public safety, security, and access to justice. According to the guide, reform of justice systems and objective indicators of that reform are essential to improving life for ordinary people — particularly the world's poorest citizens. The guide details how indicators can be utilized to measure progress in the safety and justice sector in general, as well as within specific state institutions such as law enforcement agencies, prisons, and non-state justice institutions. The guide describes how to construct practical and effective indicators in both data-poor and data-rich environments.

The full guide can be accessed online at http://www.vera.org/publications/publications_5.asp?publication_id=207. (Vera Institute of Justice, *Measuring Progress toward Safety and Justice: A Global Guide to the Design of Performance Indicators across the Justice Sector*, November 2003.)

Boston Names First Woman Police Commissioner

Kathleen M. O'Toole was recently named police commissioner of the Boston Police Department (BPD), becoming the first woman to lead the force. O'Toole promised to revive community policing programs and enhance department morale during her acceptance speech in early February. Her extensive experience both inside and outside of the department were major factors leading to her selection, according to Mayor Thomas M. Menino. O'Toole left the BPD in 1996 after serving for seven years and went on to serve as chief of the Metropolitan District Commission Police, which patrols the Boston metropolitan area, and was a Lieutenant Colonel in the Massachusetts State Police. She is the founder of O'Toole Associates, an international consulting firm that provides services to government and industry clients, specializing in crisis management, organizational change, and public affairs. In 1998, she was chosen to serve on the Independent Commission on Policing in Northern Ireland (The Patten Commission) as part of the peace process. O'Toole will face a number of immediate

challenges in her new post, including stalled contract negotiations stemming from conflicts between police union members and city officials. (*Boston Globe*, February 9, 2004; *Boston Herald*, February 9, 2004.)

Charges Dropped Against Former Inglewood Officer

Los Angeles County prosecutors announced that they would not pursue a third assault trial for former Inglewood Police Officer Jeremy Morse for a July 2002 videotaped arrest of 16-year-old Donovan Jackson. Morse's two trials in Superior Court on "assault under color of authority" charges ended with hung juries. Morse, a white officer, was shown on videotape pushing a handcuffed Jackson onto a patrol car's trunk and striking him in the face. Prosecutors argued that Jackson was unconscious and posed no threat to the

officers. Defense attorneys contended that Morse's actions followed a long physical struggle that was not videotaped. Many residents in Inglewood questioned the racial composition of the second jury, which featured two black jurors in a city where nearly 50 percent of the population is African American. According to Jackson's attorney, civil lawsuits relating to the videotaped incident have been filed against Morse, the City of Inglewood, and Los Angeles County. (*CNN*, February 6, 2004; *Los Angeles Times*, February 6, 2004.)

Justice Department Investigates V.I. Police
Investigators from the Special Litigation Section of the U.S. Justice Department reportedly have plans to initiate an inquiry into the Virgin Islands Police Department's use of deadly force. An investigative series in the *Virgin Islands Daily News* alleged 20 years

ISSUES IN THE NEWS

Shooting at Moving Vehicles

By Django Sibley

"As [the suspect] continued backing, [Officers A & B] fired numerous rounds from their service pistols, attempting to stop the backward movement of the suspect's car. The suspect's car continued in reverse and collided with the front of [Officers C & D's] car with enough force to cause the driver's door to slam shut. [Officer C] moved back to avoid the door from hitting him and heard shots being fired, which he believed were being discharged by [the suspect] from inside the car." --Excerpt from "Officer Involved Shooting of Robbery Suspect," Los Angeles Police Department Press Release, February 24, 2004

In a recent, well-publicized incident, Los Angeles Police Department officers fired their handguns at a robbery suspect as he backed his car towards a police cruiser. Within hours, LAPD Chief William J. Bratton said that the shooting had invigorated a review of his department's policy governing shooting at moving vehicles. That policy currently reads: "Firing at or from moving vehicles is generally prohibited. Experience shows that such action is rarely effective and is extremely hazardous to innocent persons."

Defining the conditions under which officers should use gunfire against moving vehicles is a complex task and one that has led departments around the country to develop a broad spectrum of policy solutions. The complexity of the task stems from the need to consider and balance an array of risks that can arise in officer versus vehicle scenarios, along with questions as to the reliability of firearms as a means of bringing vehicles to a halt.

In 2003, PARC reviewed 32 officer-involved shootings that occurred between 1997 and 2000 in Portland, Oregon. This review, conducted on behalf of Portland's City Auditor, included four cases in which officers had fired at moving vehicles. For the period under review, the Portland Police Bureau (PPB) operated with a policy that allowed officers broad discretion in determining whether to fire in such incidents.

continued on next page

Officers' gunfire failed to stop the vehicles at which it was directed in each of the four PPB cases PARC examined. In one of those cases, an officer was returning fire after being shot by a person inside a vehicle. In the remaining three, officers reported that they fired to counter the threat of being struck by the moving vehicle itself. In each case in this latter category, officers ultimately avoided being struck by moving out of the vehicles' paths.

The PPB vehicle shooting cases reviewed by PARC served to underline the widely-acknowledged fact that gunfire is often ineffective as a means of stopping moving vehicles. When faced by an oncoming vehicle, officers simply cannot risk relying upon their firearms to eliminate the threat that they will be struck. Rather, they should seek to avoid – or, in a worst-case scenario, remove themselves from – the vehicle's path.

Alongside the risk that an officer could be struck by a vehicle, PARC considered a range of other potential risk factors before recommending changes to the PPB's policy. These included the risk that a vehicle will continue out of control once the driver has been incapacitated; the risk that rounds will unpredictably deflect or ricochet as they strike a vehicle; and the risk of serious harm to vehicle occupants whose individual behavior may not warrant the use of deadly force.

PARC recommended that the PPB revise its policy in two respects. Firstly, that a preface be added to warn that shooting at moving vehicles is dangerous and generally ineffective. Secondly, that specific guidelines be provided, such as:

- Officers shall fire at moving vehicles only when no other means of avoiding or eliminating the danger it presents are available at the time.
- Officers shall not place themselves in the path of a moving vehicle.
- Officers shall take account of risks to vehicular and pedestrian traffic, and to any other bystanders, before deciding whether to fire at a moving vehicle.

The substantial risks generated by the use of gunfire against moving vehicles, in combination with the likelihood that such gunfire will fail to achieve its goal, oblige police managers to ensure that officers resort to firing only in the most extreme and exceptional circumstances. Any agency that falls short of this high standard may be failing to optimally protect both its officers and the community it serves.

Django Sibley is a Senior Policing Specialist at PARC.

The Portland Police Bureau: Officer-Involved Shootings and In-Custody Deaths is available online at www.parc.info.

of illegal uses of deadly force by Virgin Island police officers. According to reports, the Justice Department investigators are assessing whether officers' use of deadly force constitutes a "pattern or practice" that violates the civil rights of the U.S. territory's residents. The police department could be required to make reforms that pertain to the way it hires, trains, equips,

supervises, and disciplines officers. (*Virgin Islands Daily News*, February 14, 2004.)

HI Police Commission Finalizes Recommendations

The Hawaii County Police Commission in Hilo finalized recommendations for increased oversight by the Commission of the Hawaii County Police Department, as union officials announced their

concerns over the new proposals. The Commission made recommendations regarding the receipt and investigation of public complaints, as well as access to internal files and information about the disposition of complaint investigations and related disciplinary actions. Police union officials objected to the Commission's recommendation that it be allowed access to copies of an accused officer's personnel files and all Internal Affairs investigative reports including those relating to other incidents of alleged misconduct. (West Hawaii Today, February 22, 2004.)

INTERVIEW

PARC recently spoke with Constance Rice, a civil rights attorney who has litigated major cases involving police misconduct, employment discrimination and fair public resource allocation. Rice is Co-Director of the Advancement Project and chairperson of the Blue Ribbon Rampart Review Panel.



PARC: Please describe your background and your current work.

CONSTANCE RICE: Well, I'm a civil rights lawyer. I've been practicing for twenty years, and my cases and my docket are about using litigation and other skills to promote big policy changes in public institutions like police departments, schools, transportation agencies and so forth. It's big policy transformation law, or Robin Hood law, as some of my opponents like to call it. We focus on making the big institutions in this region work.

PARC: Can you describe how you started the Advancement Project?

CR: We created the Advancement Project when my law partners Molly Munger, Steve English, Penda Hair in the Washington office, and I left the NAACP Legal Defense Fund. We left the Legal Defense Fund because there needed to be an organization that was newer that could take on tougher issues that would be inappropriate for the Defense Fund to take on. We

wanted to get involved in electoral politics, doing initiatives as well as litigation. Sort of a more shock-proof advance guard. We call it a project because we do not want it to become another institution. We needed something that was more nimble, more flexible and that could go where the more traditional organizations could not go politically.

PARC: Do you do research and education work as well as litigation?

CR: I call it a policy legal action group or an "action tank." We do whatever it takes to get a problem solved. Sometimes it's litigation, sometimes it's an election; those are the two extremes that we do through the law firm. Other times it's marshalling the think tank to write papers and analysis and giving them legs by writing legislation or starting an education campaign or doing an initiative that doesn't involve a candidate, the softer side of electoral strategies.

So in policing, for example, you have a permanent dilemma. How do you get modern big city police departments to police in a constitutional and humane way, given that most inner city police strategies are strategies of containment? Containment of communities that have no village and containment of communities that have no institutions, schools, or anything else that work. We send our cops in there as the "thin blue line" and we contain crime and violence. That's how we use our police.

PARC: You have brought a number of lawsuits against the LAPD. Can you describe them?

CR: We've done a lot of use of force, abuse of force lawsuits, everything from the canine litigation to the *Thomas** litigation against the Los Angeles County Sheriff's Department. We've done a lot of abuse of force lawsuits, but our cases are not aimed primarily at getting a client money damages, they're mainly aimed at policy change. What I've learned over 15

* Filed in September 1990, *Thomas v. County of Los Angeles* was a class-action lawsuit alleging that officers from the LASD's Lynwood Station had perpetrated dozens of acts of brutality — from shootings to beatings of handcuffed suspects — against minorities within a three-month period. The case settled in December 1995, with Los Angeles County agreeing to pay \$7.5 million in damages and attorneys' fees; set aside an additional \$1.5 million for cultural diversity training; and fully implement a long-planned LASD "early warning system" by March 1997.

years of doing these cases was that if you represent cops, you can make more progress obtaining injunctive relief requiring policy changes. I started a “Serpico”^{*} practice 12 years ago, and now I represent nothing but cops. The good cops.

Our cases mainly follow the consent decrees that force the police departments to: number one, acknowledge they’ve got a serious problem; number two, bring in outside experts to help them get policies that will bring their behavior into constitutional limits; and number three, try to create a cultural change and an attitudinal change.

I have to say that after 15 years — and of course I came late to this game where you’ve got a lot of players in L.A. who have been at this much longer than I have — we are at a point in L.A. County with both the Sheriff and the Chief of Police at the Los Angeles Police Department where I’d never thought we’d get.

PARC: In what respect?

CR: Well, especially with LAPD in this respect: LAPD is one of the most insular organizations I’ve ever seen. It’s one of the best police departments in the country in that they value intelligence; they value academic achievement; they value professional demeanor. But they’ve taken those good values and because of the isolation and xenophobia and the bunker-mentality, a sort of siege mentality, they’ve taken a military-style of policing too far. It produces not just a bunker mentality but an attitude that everybody is an enemy, including the Mayor, the Police Commission, and certainly people like me who sue them. They basically don’t believe that there’s anything wrong with them, so they were basically incapable of raising questions about their own behavior; they were incapable of self-examination of self-transformation, and they would just go from riot to riot with their behavior triggering riots. Finally, after the Rampart corrupt cop scandal where we had basically a gangster cop corruption

^{*} Frank Serpico was an NYPD undercover officer who, in the early 1970s, exposed widespread corruption in the department.

problem in the CRASH unit (the gang suppression unit), the LAPD said, “Well maybe we need to take a look at ourselves.” From that point forward, there’s been a remarkable change in terms of the department’s openness and in terms of its receptivity to outsiders, including to the new chief, [William] Bratton.

PARC: Do you think that kind of change was forced on the department because of the scandal?

CR: It was forced in a number of ways. You had 35 years of highly successful lawsuits, but the problem with the lawsuits was that the department just counted them as a cost of doing business. They didn’t particularly care that the city paid out \$20 million or \$30 million a year in damages. There was never anything wrong. They were not the problem. It was

liberal judges; it was activist lawyers; it was citizens who didn’t know how to obey. It was all kinds of things, even to the point where it was the structure of black people’s necks when we challenged the

chokehold — there was something “wrong” with black people’s physiology. It was never their tactics or LAPD’s problem. They couldn’t be wrong because they were the gold standard. So you had decade in and decade out of the City Council writing checks and not exercising oversight or demanding change.

But, as I said to one *Washington Post* reporter, when the last City Council and the Police Commission refused to reappoint the last chief [Bernard Parks], that was the first time that I ever saw civilian control really asserted against this department in a way that stuck. This *Post* reporter asked me, “What’s the significance of the refusal to reappoint this chief?” and I said, “It’s a watershed, this is a defining moment in the 70-year struggle to exert civilian control over this police department which has never accepted civilian control. This is a watershed and what it means is the end of LAPD as empire and the end of LAPD’s chief of police as Caesar.”

PARC: If there is not something like Rampart to precipitate changing the culture of a department that has a violent reputation, how would one go about making those sorts of changes?

CR: You have to take it case by case and it is orchestrated. It's almost like you have several flanks in front. There's a legislative front. There were a number of charter changes that included police reforms including putting a limit on the number of years the police chief can serve, for example. In the wake of the Rodney King debacle, voters enacted two charter amendments that established the Office of the Inspector General and some other controls on the police. You can make changes in the law, to change how evidence can be used against officers who are suspected of abuse and on and on. You've got the whole legislative flank. Then you have the litigation flank which takes on abuse of force and conditions of policing.

What's interesting is that even the cops who call themselves the angry white guys (at least that's how they introduce themselves to me, "I'm the angry white guy that you need to be afraid of") once they saw we were challenging the unfair conditions that cops operated under — and not just for women cops and not just for minority cops or what I call my Serpicos — even those cops who were hostile to us began to see we were actually learning the barriers and obstacles and difficulties they face as cops. Through the litigation it wasn't just us showing them they had a problem, it was also the lawyers learning what the cops face. Over time we began to advocate on behalf of things they wanted, like a fair disciplinary system.

They were surprised when we attacked the disciplinary system as arbitrary, capricious, disproportionately harsh on rank and file, and disproportionately lenient on the brass. They were surprised when we took up the rank and file's side over the unfair assignments and procedures, the unfair promotional criteria, and the unfair training procedures. We argued for better communication systems; we said that they didn't have enough money; we said that they didn't have enough officers. So when they began to see that we were actually learning what they faced and making some of the same arguments that they were making, we became strategic allies on some issues. When Rampart broke,

CONFERENCES

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

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

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

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

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

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

August 19-22, 2004 – National Association of Women Law Enforcement Executives, 9th Annual Conference, Arlington, VA. Online at <http://www.nawlee.com/>

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

November 13-18, 2004 – International Association of Chiefs of Police, Annual Conference, Los Angeles, CA. More Information available at <http://iacp.expoexchange.com/>

we had already become allies on issues of shared concern, and that alliance held up in the wake of Rampart.

In the wake of the Rampart scandal, for the first time, I got a call from the union leadership who represent the old guard—they still revere Daryl Gates, for example. We will never agree on that, one of the many things we disagree on, but it didn't stop them from picking up the phone and saying, "Look, we know we have treated you badly in the past; you have no reason to meet with us, but we need your help." That's when all these civil rights lawyers came together with the union leadership and did a report analysis on all the questions that failed to be asked and answered during the Rampart investigation. From Rampart forward we've had even stronger unlikely alliances with people we used to depose and put on the stand and people who would see us as enemies.

So what does all this say? What it says for the first time in LAPD's history you have a very strong chief [William Bratton] who is extremely serious about change. He has no connection to the past LAPD culture and in fact came out of the Justice Department consent decree regimen that was imposed on LAPD in the wake of Rampart. So you have for the first time the refusal to reappoint a chief who came up through the ranks. They brought in a complete outsider with the ego and moxie and guts to change LAPD and take it on and for the first time the LAPD is facing change as not an option but as a mandate. Remarkable things are happening and one of them is that we now have a new panel to review the Rampart investigation.

We're at a point in the LAPD that I never thought we'd see. You have the new police chief and the leadership of the Police Protective League, the police union, the sort of old guard union, both asking someone like me to head up the Rampart review. That would never have happened even in the twilight zone, even ten years ago. On the other side [at the Los Angeles County Sheriff's Department], you have a remarkable leader in Sheriff Lee Baca. Sheriff Baca is 30 years ahead of his time. He really is an extraordinary police leader, he's just way ahead of his time.

So we're at a unique moment of opportunity with Bratton-Baca and with where the departments have

been pushed by the lawsuits, by the legislative changes, by the political advocacy, by the grassroots flank—you've had a lot of grassroots groups protesting mistreatment by the police—and the leadership in the political realm. You've had a few political leaders who've been willing to take on the police but not many because the police drive the politics of the region. They're very powerful. They're powerful disproportionately to their position politically. I mean, LAPD runs politics in this county. No politician can afford to take them on.

PARC: What is needed for an effective discipline system?

CR: There is a range of tools that can be used in discipline. First of all, you've got to have a coherent structure, and you have to have as the mission of discipline the control of outlaw cops, in other words, cops who are really outside the bounds of everything. But more importantly you've got to have discipline as a system that doesn't just punish but that teaches and that is fair. Now there are a number of different models and it depends on the culture of the police department which model works best, but if you don't have a basic structure where the discipline system is transparent and can be examined — at a minimum — by outsiders, what you find is you get these Star Chamber systems. So, for example, LAPD discipline hasn't been about advancing good training and hasn't been about containing bad cops.

When it's not about these things, discipline becomes a political control system and a system of breaking down the rank and file to the will of the command staff. It becomes a way of sheltering cops who are considered favored, and instead of punishing wrongdoing, they actually thwart the discipline system to protect the image of the department. It's not to find out what happened, it's not to discipline outlaw cops, it's not to punish wrongdoing, and it's not to teach to prevent the next mistake. It gets perverted to a crush and control system that is really politically motivated to protect the image of the department. That's what we had with LAPD. They're slowly starting to look at their system and saying, okay, this has got completely twisted, we need to change it. They're trying to explore new models.

With LAPD, I really think you have to have a lot of outsiders involved. The department has been inwardly thwarted for too long and it's gotten twisted

in a way that's frightening when you peel the layers of the onion and you get down to looking at the decisions they managed to make, which are astounding. Astoundingly bad, for everybody: the city, the department, and the officers involved. I think that they've now begun to examine the role of internal affairs, which was really a handmaiden to a lot of cover-up in my opinion, to try to turn it into a functioning bureau that really does try to go after the bad cops—the few bad cops that there are—and to be fair to the good cops.

They need to have levels of response that are appropriate. In other words, you don't apply the death penalty to a cop who makes an honest mistake, and you don't go after tiny infractions as a way of creating an inquisitorial atmosphere where cops are cowering in fear of their superiors. If you want a thinking, responsive culture where cops are rewarded for creativity and rewarded for trying to do the right thing in creative ways, then you have to get rid of that Spanish Inquisition discipline system and that's what LAPD is in the business right now of doing.

With LAPD one thing you learn from the academy on is that “we discipline our own, we take care of our own, no outsiders.” So the whole system gets twisted around the axle of keeping outsiders out and they never deal with the people inside. It's all about keeping outsiders out and protecting their image and their power and autonomy. Now what you have is experiments and a new chief from outside. You also have Deputy Chief [Michael] Berkow [Professional Standards Bureau] who is trying to completely revamp the internal affairs model. Part of what our panel will do in writing the last chapter of the Rampart scandal is to take a look at what's going on there to see whether it goes far enough, but I think you have to separate the criminal investigations from the internal infraction investigations.

PARC: *What do you think of the Office of the Inspector General?*

CR: Right now the Inspector General is kind of in-between what a traditional Inspector General does and what an ombudsperson does. Because the current LAPD Inspector General cannot decide what to investigate and has to get permission to do investigations, it's inherently conflicted and limited. I understand that they were trying to reach some

compromises, but there needs to be a serious examination as to whether the Inspector General as currently configured under the current work rules can really serve the conflicting missions. Right now, if you have an Inspector General whose prime directive is to try to become an early warning system and to create a safe, anonymous place where cops can come and say, “Houston, we've got a problem” then you can't saddle that Inspector General with the conflicting mission of also having to report any officer who comes to him. You need to sort the missions out. You may need an ombudsperson where there's a safe haven and where there's a wall and the whole purpose of that body is to get an early warning system so that you can investigate whether there is serious wrongdoing brewing. You could have stopped the Rampart scandal from getting to where it got, had you had that kind of role. So there has to be a clarification, just as there needs to be a clarification of the roles of the city attorney in defending both the police department and the city.

PARC: *What should be the role and guiding principles of a big city police department?*

CR: Well, I think it should focus on violent crime, but I also think—and I've told both Bratton and Baca this—L.A. is really a first-rate, third-world city, and its geography and a number of its other attributes make it very difficult to police. But police, because they're so politically powerful, have got to be more than simply protectors against violence and violent crime, they have to actually be the political drivers to get prevention services, and they have to be the political leadership that expands the vision of policing from simply stopping and preventing crime to one where you stop the drivers of crime. That means demanding that all the social services, that all of the corrections services, that all of the jailing system and that all the public institutions be looked at through law enforcement and security lenses. The vision of policing has to be expanded to be attached at the hip to these other institutions, other systems. Right now the cops are used as a “thin blue line,” and they're not going to be able to sustain that. The cities are too big; they're too varied; there are not enough cops. They can't be both social workers and cops, but if there are not social workers then we end up making our cops the last refuge, and they end up being social workers when they have no training. So it's in the police

sector's interest to force these other sectors to perform at a higher level.

I think that both Bratton and Baca have this enlarged, more enlightened and socially aggressive vision of policing and they're both, for example, getting out there and talking about medical care and illiteracy and homeless services so that they're not left with just locking up mentally ill and homeless people and young kids who nobody but the Grape Street Crips are raising. That's how the vision has to expand and change and they've got to define policing in a way that wins public support, and I don't mean the rich folks who they're traditionally attuned to serving. They have to earn the hearts and minds of the poor communities where right now they're seen as an occupying force that's both hostile and detrimental. Both of these police leaders get that, they get that.

Do I agree with everything they're doing? No. Do I think that changes they have made at the top have hit the sergeants' desks at the 77th and Southeast stations? No. You're not going to see the changes hit the street for a long time because the only thing harder than corporate transformation in police departments is corporate transformation in military institutions and engineering institutions. It just takes decades. Look how long it has taken the military to get integrated and they've made that a top priority for fifty years. So I don't have any illusions that these changes at the top are producing changes on the street—that's not the case. But if leadership at the top and the leadership at the middle and the leadership of the rank and file don't change, there's no hope of making the stuff that I'm talking about into reality.

One of the key things I had to learn was that if you translate the changes that you want into things that cops want, they'll do it. But if you come at them with "civil rights" stuff, they won't do it. They'll see it as outside interference. If you force the changes that you want into packaging and changes that benefit cops and then they see that it's in their interest to change, nothing changes faster than what cops want to

change. They'll turn it around in 60 days. I've seen it.

PARC: *Can you give an example?*

CR: The canine case. When we started that case they [LASD] were absolutely insulted. They were the world's gold standard. Their dogs were the best dogs in the world. Everything they did was right, they trained dogs all over the country. Our contention was that they had a canine unit that was running amuck; that they had no training standards; that they were siccing the dogs on all kinds of kids who weren't even committing canine-eligible crimes, and that there was a total misdeployment and misuse of force in using these dogs. So, who was right?

Well, what was interesting was that for fifteen years you had hundreds of cases brought mainly by one or two law firms in this city—it was a whole specialty—and what was surprising to us as civil rights lawyers

"We would watch the officer handler come in....The juries were in love with Lassie and Rin Tin Tin. We called it the 'Rin Tin Tin effect.' They would not convict, even though it was quite clear it was an abuse of force."

was that going into some of those trials it was clear that the dog had mauled a kid, it was clear that the kid had posed no danger to justify that kind of use of force, and it was clear that hospitalization rates and so forth were just

off the charts—they were just so high as to be unbelievable. Yet the juries would not render a verdict in favor of the plaintiff who had been bitten. We would watch the officer handler come in with Rin Tin Tin, throw the ball up into the air, the dog would catch the ball and then sit in the chair. The juries were in love with Lassie and Rin Tin Tin. We called it the "Rin Tin Tin effect." They would not convict, even though it was quite clear it was an abuse of force. So, we had these little budding ax murderers and gang members as clients, and I said we're clearly not making any progress here, after 10 years of losing these cases, we need to reshape.

To make a long story short, what we did was created a statistical case. It took three and a half years of discovery, but we got a canine database. We found out from their own data that this team of 16 handlers had a 47 percent hospitalization rate as opposed to a

one percent hospitalization rate for the rest of the force. In other words, 16 handlers were putting more people in the hospital than the whole 8,000-man force. It was just absurd. We found out with deployment data that they were actually deploying the dogs in areas where canine crimes [i.e., serious felonies, typically involving a firearm] were not being committed, and we found MDT transcripts where they called black and brown kids dog biscuits. We had them psychologically profiled and four were found sado-masochistic and on and on. We found our theory of a unit run amuck was actually the right theory. When we showed them, with their own data, what they were doing and that it was bad policing and contrary to all good training and proper use of dogs, they said “all right, we’ll change.” They decided they wanted to change. The bite rate before we filed the case was 80 percent. Eight out of every ten times they used those dogs someone got bit—total abuse of force— and six months after they put their program of change in the bite rate was below 10 percent. They changed their training from “find and bite” to “find, circle and bark.” The dogs that couldn’t be retrained were retired with their handlers. The handlers who tested psychologically inappropriate were retired as well. They completely turned that unit around because we made it in their interest to, and they saw that it was better policing to change. We got them more resources and we brought them experts and we increased their budget. We gave them a lot of incentive, but when they wanted to change they turned 180 degrees in the other direction.

So that was the case that taught me to represent cops, not traditional victims of police abuse. It taught me when you translate what you want into cops’ interest, and you learn what they need, you can often get them to behave more constitutionally.

PARC: *You’re heading a new panel to review the Rampart investigation, but I understand there have been difficulties getting it up and running.*

CR: Well, it’s just now coming to a vote; we haven’t even been operationalized. It’s been a battle, but I think the city is finally coming around to approving it and it should be approved in the next two weeks. [Editor’s Note: On February 11, 2004, the Los Angeles City Council voted to authorize the Blue Ribbon Rampart Review Panel.]

PARC: *Is the City Council going to provide funding?*

CR: There will be no public funding. It will be all private funding. I don’t have that much to say about it now because we haven’t gotten rolling yet, but the idea behind it was that Bratton came in and he wanted the final after-action report and he couldn’t get it. When he saw what had been written he realized not only could he not get a coherent final analysis of the biggest scandal in the department’s history, but a number of things have happened since the scandal supposedly ended and that included the failure of the Rampart grand jury; it included a number of questions about what happened to whistleblowers; it included wanting to know why there wasn’t any critical analysis of what internal affairs role was and on and on. He had about fifteen issues that he couldn’t get cleared up and he said “If we [the LAPD] do it ourselves, we’ll never be believed.” So he called me and he said he needed me to head this up and I told him “no” and I told the Commission “no” three more times and finally they said they had to have someone who was viewed as a total outsider and an aggressive critic to do this work. That’s when I called Merrick Bobb [PARC’s President] and I called the Police Protective League, and I called a whole bunch of judges and cops and I said, “Give me some more reasons to say ‘no’ to this.” Everybody said, no, there needs to be a final analysis that maps the failure of the investigation and that maps all of these unanswered questions and why they couldn’t be answered. So that’s what we’ll be doing but more importantly, rather than just doing an autopsy on systemic failure we’re also going to give the chief and the city an investigation protocol for the next time something like this happens so all the different jurisdictions don’t trip over one another like they did last time. Most importantly, we’ll assess for Bratton and the department whether they got down to the bone with the diagnosis and whether the changes that they’re making really will do the best job of reducing the likelihood that they’ll have another scandal of this magnitude.

PARC: *Is there anything that you would like to add?*

CR: One of the things that has made a big difference in addition to the grassroots, legislative, court cases, those other fronts, you know those charter changes and so forth and it goes hand in hand with the litigators and the sort of Serpicos who are just now sort of getting organized, the whistleblowers are just

now getting organized into a political force. There have also been two other fronts. One is the media, which can be both positive and negative; they're glorifying vigilante cops right now on TV, but the media have also been a spotlight on policing abuses using the videotaped incidents. The other is the sort of independent police reform entities that have been very important. When those reports come out, you know, when Merrick [Bobb] and Gennaco [Michael Gennaco, Office of the Independent Review, LASD] weigh in, it's like an expert bar.

PARC: *Would you include the reports that come out of consent decrees or memoranda of agreement?*

CR: Yes. There are the court monitors as well as the civic monitors like Gennaco and Merrick and so forth. It's sort of like a permanent civilian oversight and they're starting to merge with the police apparatus for their own internal oversight. They're a very important catalyst just like the lawsuits are, for forcing police departments to realize business as usual can't go on. They're not just writing and talking about it but actually getting in there and forcing police departments to respond to what they analyze and forcing police departments to open up so that they can be examined and then be given report cards.