

POLICE PRACTICES REVIEW

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CIVILIAN OVERSIGHT

Review Board Criticizes NYPD Strip Searches

In a review of cases since January 2002, the New York City Civilian Complaint Review Board (CCRB) concluded that officers had conducted strip searches in violation of New York City Police Department (NYPD) procedures. According to the CCRB, "actions and statements" of involved officers "reflect a misunderstanding of the department's own search policies." In its letter to NYPD Police Commissioner Raymond Kelly, the CCRB wrote that in most of the reviewed cases, officers and supervisors "told CCRB investigators that they or their commands routinely conducted the type of searches the board found violated the [NYPD] Patrol Guide." The NYPD Patrol Guide outlines three types of searches: a field search when a suspect is first apprehended; a police facility search at a department building; and a strip search. The first two are mandatory for all suspects apprehended and brought to a facility, but only the third—the more intrusive strip search—authorizes removal of an individual's undergarments or primary clothes such as pants and shirts. According to NYPD guidelines, a strip search "requires that the arresting officer have reasonable suspicion that the arrested individual is concealing weapons, contraband or evidence that may not be discovered through the search at a police facility." After reviewing ten cases that involved strip searches, the CCRB found that "in none of the cases did officers articulate the reasonable suspicion required to conduct a strip search based upon the factors enumerated by the Patrol Guide." This led the CCRB to conclude that officers "do not appreciate the difference between a police facility search and a strip search." In some instances, the individuals strip-searched had simply been transported to a police station in the same vehicle as a different person arrested on suspicion of possessing narcotics; officers justified such strip searches on the

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grounds that narcotics could have been passed to those individuals during the ride. The CCRB recommended that the NYPD enhance relevant search procedure training programs for cadets and newly-promoted supervisors. The CCRB letter, recommendations, and addenda can be accessed online at <http://www.nyc.gov/html/ccrb/pdf/stripsearchletter.pdf>. *New York Times*, May 13, 2004.

Fewer Complaints Filed against Sacramento PD

The total number of complaints alleging police misconduct filed with Sacramento's Office of Police Accountability (OPA) has declined each year since the office opened four years ago, according to the OPA's latest report. The OPA is an independent office under the auspices of the Sacramento City Manager that works to improve police-community relations through receiving, monitoring, and investigating misconduct complaints. Its fourth annual report showed total complaints have dropped from 291 in 2000 to 159 in 2003. The five most common types of complaints received directly or referred to the OPA by Sacramento Police Department Internal Affairs during 2003 alleged excessive use of force (45), poor service (34), discourtesy (22), improper tactics (14), and discrimination (13). Force complaints were up from 33 the previous year and 39 in 2001, but they were still below the high of 65 in 2000. Officers with five or fewer years of policing service were the subjects of 36 (80 percent) of the 45 force complaints; such newer officers have been the subject of the largest number of all complaints for the last four years. OPA's director noted that African Americans filed the highest percentage of total complaints, or 38 percent. The racial breakdowns of officers in the department and officers with complaints filed against them were "closely similar, suggesting that no one particular race has received an inordinate number of complaints," according to the report. Based on citizen inquiries and complaints, the OPA made various recommendations, urging the police department to "clarify its policy on the video taping of citizens at demonstrations or events where there is the possibility/probability of mass arrests;" and to review how the city's curfew ordinance is publicized at area schools and to the general public. The OPA report can be accessed online at http://www.cityofsacramento.org/cityman/pdf/2003_OPA_Annual_Report.pdf. *Sacramento Bee*, May 11, 2004.

PRESIDENT'S PERSPECTIVE

By Merrick Bobb

On June 23, 2004, members of Los Angeles Police Department (LAPD), following an automobile pursuit that ended at approximately 6 a.m., began a short foot chase of the fleeing suspect, Stanley Miller, an African American, and quickly arrested him. Two television news helicopters

hovering above caught the incident on tape, and, within minutes, southern Californians were watching the conclusion of the foot chase and observing one of the pursuing LAPD patrol officers apparently kicking the suspect and then landing 11 blows on him with his flashlight. Almost immediately, commentators likened the incident to the Rodney King beating in 1991 and wondered aloud whether the LAPD had learned anything in the interim. Is the June 23 LAPD encounter with Stanley Miller a replay of Rodney King? Yes, if it ultimately turns out to be a willful, albeit apparently less injurious, use of excessive force by the LAPD following a pursuit of an African-American male. In many crucial respects however, the answer may well turn out to be no.

Whatever its outcome, and in sharp contrast to the past LAPD investigations sternly criticized by the Christopher Commission and the Department of Justice, the ongoing LAPD internal investigation has been structured to maximize the chances of a fair, credible, and reasonable result. The early indications are that key Christopher Commission recommendations and consent decree provisions have been incorporated in a substantial overhaul of internal LAPD investigative procedures:

- In the past, administrative investigations to determine if an LAPD officer should be disciplined or fired took a backseat to a criminal investigation. Too often, administrative investigations went nowhere once the DA declined to prosecute. Now, the administrative and criminal investigations are on simultaneous parallel tracks. New rules minimize the risk that the administrative investigation will contaminate the criminal one. At the same time, these rules maximize the potential for discipline if warranted. We should see far fewer cases where discipline should have been imposed but was not because the administrative investigation was not completed in time. Likewise, there should be many fewer cases where, as in the past, the DA's criminal investigation was compromised by an ill-timed and badly executed interview of the subject officer by the LAPD.
- In past years, the LAPD often permitted police officers to confer among themselves before they were interviewed by Internal Affairs, leading, at times, to massaged or concocted stories. Now, at least in the Stanley Miller investigation, the involved officers were separated approximately 40 minutes after the arrest and kept out of each others' presence until after they were interviewed by the LAPD's Internal Affairs, now called the Professional Standards Bureau. Although the 40-minute delay has been subject to some second-guessing, and as good as it would have been if the sequestration had occurred earlier, it is not clear yet whether there was an undue delay in separating the officers at the scene. At the same time, the officers' right to consult union representatives and lawyers appear not to have been compromised. The LAPD speedily completed interviews of the involved officers within the first 12 hours or so following the incident.
- Before, the LAPD's search for and interviews of civilian eyewitnesses were, at times, truncated and haphazard. Here, there have been at least four neighborhood canvases to locate witnesses, including a joint neighborhood canvas with LAPD and FBI investigators.
- Previously, the LAPD, on several occasions, stiff-armed attempts by the Inspector General to participate meaningfully in an ongoing LAPD investigation. In contrast, the current Inspector General, Andre Birotte, was fully briefed and on the scene within hours of the incident. The LAPD has affirmatively encouraged the IG to fully participate in all meetings and briefings concerning the investigation. The current case provides an excellent opportunity for the IG to become a full-fledged player, acting as a guarantor of the investigation's integrity while retaining the right to conduct his own interviews or commence an independent inquiry if he believes the LAPD has gotten off track.

continued on next page

In sum, while no one can guarantee at this stage that the LAPD's investigation of the Stanley Miller incident will be fair, credible and thorough, preliminary indications are promising. The decisions about whether to prosecute criminally and whether an administrative board of rights will hear this case are many months in the future and hinge on factors outside the control of the LAPD. In contrast, the LAPD has the power to control and deliver a fair, complete, competent investigation. Chief Bratton's LAPD has implemented reformed investigative protocols which appear to hew closely to both the letter of the consent decree and the spirit of the Christopher Commission. Meeting those standards would be a different outcome from Rodney King and is a key test for the new LAPD.

CONSENT DECREES/ MEMORANDA OF AGREEMENT

DC Monitor Issues New Report

The Office of the Independent Monitor (OIM) for the Metropolitan Police Department (MPD) released its eighth quarterly report on MPD compliance with its 2001 agreement with the U.S. Justice Department. With the report, the OIM completed its second year tracking progress on provisions in the Memorandum of Agreement (MOA), which covers areas such as use of force policy; incident documentation, investigation, and review; review of misconduct allegations; development of the Personnel Performance Management System (PPMS); and training.

The OIM expressed concern about development of the Personnel Performance Management System, which when implemented will evaluate officer performance, identify at-risk officers, and promote best practices. The MPD notified the monitor that the department suspended the project when it did not receive expected funding for PPMS development.

Another MOA provision requires the MPD to create a Use of Force Reporting Policy and an incident report form. The rate of incident report completion and filing in relevant cases had improved up to 80 percent by the end of 2003 before dropping to 75 percent in January of this year, 46 percent in February, and 12 percent in March—"the worst month since MPD began providing [Use of Force Incident Report] completion statistics in October 2002." The monitor reported that the reasons for the "dramatic drop" in the completion rate this quarter were not clear, but did observe a "lingering confusion among MPD officers and supervisors with respect to the UFIR [Use of Force Incident Report]," which was first noticed back in the fifth quarter. The monitor commended the department for the thoroughness of its completed

misconduct investigations, which "consistently include the MOA-mandated elements" of incident description, summary, findings, and analysis. The timeliness of investigations, however, concerned the OIM, with 53.7 percent of cases reviewed in the quarter completed within the MOA-required 90 days. The monitor also reported on developments in the use of canines, finding the MPD in compliance with requirements relating to supervisor approval of canine usage. Out of 60 deployments in 2003, approximately 98 percent "either were approved by an appropriate supervisor or were made under exigent circumstances justifying the absence of supervisor approval." The report found, however, that officers frequently fail to note in incident reports when a canine was requested and deployed. The monitor noted that the MPD will soon need to achieve and sustain substantial compliance with the MOA for the remaining two years of the five-year agreement to avoid extending the MOA, and monitoring of it, beyond the planned June 2006 end date. The report can be accessed online at <http://www.policemonitor.org/040513report.pdf>.

Monitor Reports on Oakland (CA) Compliance

The Independent Monitoring Team (IMT) for the Oakland Police Department (OPD) released its third quarterly report on the department's compliance with the "Riders" Settlement Agreement—the result of a federal class-action lawsuit alleging that "systemic failures by the Police Department and City led to widespread civil rights violations by Oakland police officers." The agreement set forth 51 tasks in areas such as officer-supervision, use of force, and training, around which OPD compliance is centered. The report, which covered the time between January 16 and April 15, 2004, noted the OPD has thus far complied, in policy, with 15 of the 18 tasks which have become due. The IMT commended the department for new policy publication; self-identification of improper practices; efforts to reduce "biased-based"

policing; the work of the Management-Level Liaison, who coordinates with the courts and District Attorney to track problem cases; and policing of an April 2004 port protest. During this quarter, the OPD published more compliant policies than it had during the entire previous year, according to the IMT. The department also developed a soon-to-be published, comprehensive technical guide on reducing unjustified racial profiling. Citizen complaints alleging improper street strip searches led the monitor to recommend an immediate “moratorium on pre-arrest ‘strip’ searches... until officers are trained in a policy setting forth the parameters of acceptable body searches.” In addition to such searches, the report expressed concern over the delayed review of firearms discharges, warning that delayed reviews may prevent discipline being imposed on an officer “due to state law prohibiting in most instances the imposition of discipline after one year.” The report recommended strict, brief timelines for firearms discharge reviews, control numbers assigned to officer-involved shootings to track progression of reviews, increased supervisor accountability, and higher levels of Internal Affairs involvement in the review process. Finally, the Settlement Agreement stipulates that OPD must comply with requirements—in policy, training, and actual practice—in order to have the agreement lifted. While the department has achieved policy compliance in 15 of the 18 tasks due, “OPD still has not completed the second step of compliance, training, for any of the policies it has published.” The IMT report can be accessed online at http://www.relmanlaw.com/IMT_Third_Quarterly_Report.pdf.

RACIAL PROFILING

Missouri Report Highlights Disparities

State Attorney General Jay Nixon recently released his office’s fourth annual report on Missouri traffic stops. A state law enacted in 2000, stemming from public concerns about racial profiling, mandates the collection of information such as the age, gender, race, and ethnicity of individuals stopped. The report documents 1,360,814 stops by 616 law enforcement agencies during 2003, which led to 105,821 searches and 74,663 arrests. Nixon reported that “African-Americans and Hispanics are stopped and searched more often than whites, but they are likely to be arrested more often as well.” As in 2002, African

Americans were 40 percent more likely to be stopped than whites; they were also 80 percent more likely to be searched and 77 percent more likely to be arrested. Hispanics were slightly more susceptible than whites to stops but were “roughly twice as likely as whites to be searched” and 82 percent more likely to be arrested. The report also showed that contraband turned up less frequently in searches of African Americans and Hispanics than in those of whites. Whites, Asians, and Native Americans were all underrepresented in traffic stops based on their percentage of the general population. The report cautioned that racial profiling by agencies or individual officers “cannot be proved or disproved by statistics alone,” but that the data “has proven to be a springboard for constructive dialogue between the agencies and the communities they serve.” The report can be accessed online at <http://www.ago.state.mo.us/racialprofiling/racialprofiling.htm>. *St. Louis Post-Dispatch*, May 27, 2004.

STANDARDS & TRAINING

New Orleans PD Focuses on Recruitment

The New Orleans Police Department (NOPD) is rethinking its recruitment and oversight procedures in light of new misconduct allegations against its officers. Since the beginning of 2004, the NOPD reportedly has fired two officers, suspended 30, and arrested eight on charges including extortion and conspiracy to commit armed bank robbery. Faced with this spate of misconduct, as well as the mayor’s call for NOPD expansion by several hundred officers over the next two years, the department is re-thinking recruitment, hoping to calibrate its program to identify questionable applicants. Current recruitment procedures include a background check, a written civil service test, a drug detection exam, and physical and psychological/psychiatric evaluations. NOPD command staff would like to further enhance recruitment to better determine the integrity of officer-trainees. Since some of the recent misconduct cases involved officers with fewer than 10 years’ experience, the NOPD has discussed holding supervisors more accountable for newer officers’ training and failures.

The police department currently tracks complaints against officers and sends those considered at risk of misconduct to the academy for additional training.

The NOPD also performs random integrity checks, creating scenarios in which an officer may be tempted to take property or money. The department's Public Integrity Bureau, NOPD officials noted, did uncover and expose each latest instance of misconduct without help from the federal government. *Times-Picayune*, May 22, June 7, and June 29, 2004; *NOPD.com*.

FORCE MANAGEMENT

Report Praises Custodial Interview Recording

In a new report about recording custodial interrogations, the author argues that the benefits of video or audio recordings are substantial. Thomas P. Sullivan prepared the report for the Northwestern University Law School's Center on Wrongful Convictions. Sullivan and his staff spoke with representatives of 238 law enforcement agencies of varying sizes in 38 states that record—using audio and/or video devices—entire custodial interviews of felony suspects. According to the study, recordings are permanent records that reduce courtroom disputes and motions to dismiss, while at the same time protecting defendants from improper interrogation tactics. The report also stated that recordings free officers to concentrate on suspects rather than on note-taking and could be subsequently reviewed to “observe inconsistencies and evasive conduct which they [the officers] overlooked while the interview was in progress.” Though recording entails equipment and personnel expenses, Sullivan argued there are cost savings and benefits by way of fewer:

- filed claims of officer abuse or perjury;
- motions to suppress statements;
- hearings to establish what happened in custodial interviews;
- false convictions and acquittals; and
- post-conviction claims of false or wrongful confessions

Critics of interview recording, admitted Sullivan, have countered that “taping may chill the candor of suspects,” but the report said most states permit covert recording and that even when aware of recording devices, interviewees focus on questions once the interview is underway. If suspects are still less cooperative or focused, stated the report, police can stop recording and continue with handwritten note-taking. The report recommended agencies record

pre-interrogation questioning, the complete interrogation, and a suspect's final statement in all major felony investigations. The report can be accessed online at <http://www.law.northwestern.edu/depts/clinic/wrongful/documents/SullivanReport.pdf> *Cincinnati Enquirer*, June 13, 2004; *New York Times*, June 13, 2004.

LEGAL AFFAIRS

Supreme Court Rules on Teen Interrogation

In a 5 to 4 ruling, the U.S. Supreme Court ruled in June that police are not required to provide “special treatment for young people under questioning” so long as the youths are not under arrest. The decision reversed a Ninth Circuit Court of Appeals ruling that overturned the second-degree murder conviction of a 17-year old who admitted participating in a shooting and attempted robbery. According to court documents, Paul Soto and Michael Alvarado were attempting to steal a truck when Soto shot and killed the truck's owner, who had resisted; Alvarado helped hide the gun. When officers called Alvarado to the police station for questioning, his parents brought him but were not allowed to sit in the two-hour interrogation, during which he incriminated himself with statements later used to convict him. The Supreme Court said the Ninth Circuit had overturned Alvarado's conviction because “a minor with no criminal record would be more likely to feel coerced by police tactics and conclude he is under arrest than would an experienced adult” and therefore should be read his rights before questioning even if not under arrest. The Supreme Court, however, argued that the interrogation was non-custodial and Alvarado's statements admissible, ruling that the teenager was free to end the questioning because the police “did not threaten him or suggest he would be placed under arrest.” The high court's majority ruled that Miranda warnings need only be given to those being interrogated in custody, not for those questioned out of custody, no matter their young age. It noted that the facts presented in the case “are consistent with an interrogation environment in which a reasonable person would have felt free to terminate the interview and leave.” Writing the minority opinion, Justice Stephen Breyer argued Alvarado was in custody. He questioned whether a reasonable person of Alvarado's age interrogated for two hours and told there is “strong

evidence" against him would "still think he might be free to leave once he recalls that the police officer has just refused to let his parents remain with him during questioning. Would he still think that he, rather than the officer, controls the situation?" The case can be accessed online at <http://www.supremecourtus.gov/opinions/03pdf/02-1684.pdf>. *Associated Press*, June 1, 2004; *New York Times*, June 2, 2004.

Police May Compel a Person to Reveal Identity

The Constitution does not give individuals the right to refuse to reveal their identity when requested by police, the U.S. Supreme Court recently ruled in a 5 to 4 decision. The Court said the Constitution's right to privacy and guarantee against self-incrimination do not conflict with state laws requiring individuals to identify themselves at an officer's request. The

ISSUES IN THE NEWS

Using Flashlights as Impact Weapons

By Django Sibley, Senior Policing Specialist

The much-publicized June 23 incident in which a Los Angeles Police Department officer apparently delivered a kick, followed by multiple strikes with a flashlight, to a suspect at the conclusion of a pursuit has prompted expressions of concern from community leaders, local officials, and the news media. Although most of this concern has related to the possibility that the officer used excessive force, the incident has also prompted some to question whether flashlights should be used as weapons at all.

Regardless of whether the officer involved in this case is ultimately found to have used force justifiably, the question of whether flashlights should be used as impact weapons merits careful consideration. Although such use is commonplace in American law enforcement, officers who use their flashlights as improvised impact weapons may be unduly risking both their own welfare and that of the suspects they seek to control.

The weight and dimensions of an impact weapon are key factors in determining the degree to which the device will prove effective in controlling a resisting or assaultive suspect. These characteristics also play a critical role in determining the degree to which strikes with the weapon are likely to inflict injury. While regular police batons are designed to perform as impact weapons, flashlights typically are not.

In a 2003 report that discussed the use of impact weapons by the Los Angeles County Sheriff's Department (LASD), Special Counsel Merrick Bobb and PARC cited a number of causes for concern relating to flashlights that relate to all law enforcement agencies:

- Strikes with a common design of flashlight present an elevated risk of skull fractures.
- Flashlights have sharp edges that can cut a person.
- Flashlights' weight, length, and shape can make them ineffective as weapons.

It was noted that the LASD regulated the specifications of batons that its personnel could carry in the field. The LASD did not apply similar standards to flashlights, however, even though flashlights represented the department's *de facto* impact weapon of choice.

The report cautioned that the use of "weapons" whose tactical efficacy and potential for inflicting injury was effectively untested and unregulated could not be counted on to protect LASD personnel from assaults, or civilians from undue injury. The report recommended that the LASD require that flashlights be used as weapons only in exceptional circumstances; that flashlight strikes be discouraged through force training; and that deputies be equipped with smaller, lighter flashlights that cannot be used as impact weapons.

To read the full report, see Chapter 3, Special Counsel Merrick Bobb and Staff and Police Assessment Resource Center, *Los Angeles County Sheriff's Department 16th Semiannual Report*, February 2003. The report is available on-line at www.parc.info.

decision stemmed from a Nevada incident, in which rancher Larry Hiibel was arrested in May 2000 after refusing to reveal his name or produce identification to a deputy responding to a report of a man hitting a woman; Hiibel was traveling with his daughter when the deputy questioned him. The deputy arrested him under a Nevada law that allows police to detain criminal suspects for an hour to compel them to reveal their identities. The Court upheld the man's misdemeanor conviction and the state's "stop and identify" statute; it ruled that Hiibel's argument that the deputy violated "the Fifth Amendment's prohibition on self-incrimination fails because disclosure of his name and identity presented no reasonable danger of incrimination." The majority opinion found reasonable suspicion for the deputy's request for identification and noted it had previously recognized an "officer's reasonable suspicion that a person may be involved in criminal activity permits the officer to stop the person for a brief time and take additional steps to investigate further." Justice Paul Stevens dissented, arguing that while police can request citizens to answer questions about crimes, "they have no right to compel them to answer." Police can only request identification from a suspicious person, he added, and therefore the person is, "by definition," a suspect who does not need to possibly incriminate himself. Justice Anthony Kennedy, delivering the majority opinion, stated a person giving his name has not been found to be self-incriminating. "If a case arises where there is a substantial allegation that furnishing identity at the time of a stop would have given the police a link in the chain of evidence needed to convict the individual of a separate offense," he wrote, "the court can then consider whether the Fifth Amendment privilege applies." The case can be accessed online at <http://www.supremecourtus.gov/opinions/03pdf/03-5554.pdf>. *Broadcast News*, June 21, 2004; *Christian Science Monitor*, June 22, 2004.

NEWS BRIEFS

Houston PD Civilians, Jailers Face Layoffs

The City of Houston (TX) is set to lay off 240 civilian jailers as part of a plan to merge Houston jail operations with those of Harris County. Also 105 police department civilian positions are slated to be cut—a layoff that will not include officers but will reassign several hundred of them to the jail. After the

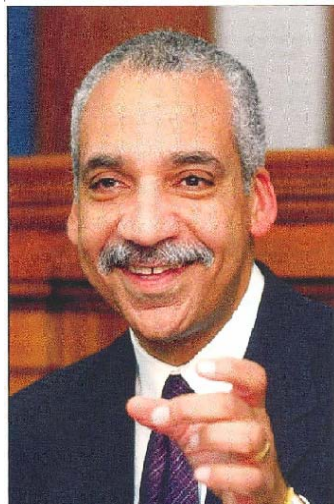
city and county operations merge, the officers will be reassigned out of the jail. Houston Mayor Bill White and Police Chief Harold Hurtt have said the civilian layoffs will save approximately \$10 million, which will prevent officer layoffs and also allow for a planned \$50 million pay raise to officers. The Houston Police Officers' Union expressed reservations about the potential negative impact on service calls and the timely completion of investigations if officers are taken off the streets to replace jailers. For those who are laid off in the merger, 85 positions for which "most jailers qualify" will open in the upcoming fiscal year in airport operations, parking enforcement, and animal control, according to the police department. *Houston Chronicle*, May 19 and June 9, 2004.

Number of Prison and Jail Inmates on the Rise

The total number of incarcerated prison and jail inmates increased 2.9 percent between July 1, 2002 and June 30, 2003, according to the Bureau of Justice Statistics' (BJS) current data. In its recently released report on prison and jail inmates, BJS found that during the same year inmate numbers had increased 1.8 percent in state prisons, 7.1 percent in federal prisons, and 3.9 percent in local jails. State and federal prisoners accounted for 1,380,776 incarcerated persons; jail inmates numbered 691,301. By mid-year 2003, the per capita prison and jail population was 715 inmates per 100,000 U.S. residents. There were 90,700 non-citizens, the report showed, in state or federal custody, up from 88,677 one year earlier. By mid-2003, six in ten jail inmates were racial and ethnic minorities. BJS also found that among the U.S. male population age 25 to 29, "12.8% of blacks were in prison or jail, compared to 3.7% of Hispanics and about 1.6% of whites." Another disparity was the increase in female compared to male inmates in state and federal prisons. Female inmates increased during the year by five percent compared to a 2.7 percent increase for males. While women only accounted for 6.9 percent of state- and federally-incarcerated persons, the yearly growth rate in female inmates since 1995 "has averaged 5.2%, higher than the 3.4% average increase of male inmates." Jail capacity, which was rated at four percent above (or 104 percent) capacity in 1990, showed a drop to 94 percent occupied as of June 30, 2003. The BJS report showed that state prisons were, on average, between one and 17 percent above capacity, while federal facilities were 33 percent above. The full report can be accessed online at <http://www.ojp.usdoj.gov/bjs/pub/pdf/pjim03.pdf>.

INTERVIEW

Heading a team of nine police experts, Saul A. Green is the court-appointed Independent Monitor in Cincinnati (OH). He was selected in December 2002 to monitor Cincinnati's compliance with the Memorandum of Agreement (MOA), between the U.S. Justice Department, City of Cincinnati, and Cincinnati Police Department (CPD), as well as the Collaborative Agreement (CA), involving Cincinnati community members, the Fraternal Order of Police, City, and CPD. The MOA mandates reforms in police department policies, procedures and training whereas the CA's goal is to improve police/community relations. PARC recently spoke with Saul Green about his work in Cincinnati and the particular challenges monitoring compliance with two separate agreements.



PARC: Please briefly describe your professional background and how it led you to become the monitor in Cincinnati.

SG: I've been practicing law in Detroit for a little over 30 years. As part of that practice, I had a couple of stints at the U.S. Attorney's Office in Detroit. Back in the early 70s, I served as an Assistant U.S. Attorney for three years. And then from 1994 to 2001, I was the United States Attorney for the Eastern District of Michigan. That experience as U.S. Attorney, I think, is probably what best prepared me for the role of monitor and probably had a lot to do with my selection. As U.S. Attorney, of course, you're dealing with law enforcement issues constantly, so that gave me background. Second, the Detroit Police Department was going through a "pattern or practice" investigation by the Department of Justice toward the end of my tenure as U.S. Attorney, and that "pattern or practice" investigation was one I had jointly called for and participated in. I think those were aspects of my background that were very important. Another aspect I think was helpful was since the Collaborative

Agreement in Cincinnati called for significant police-community interaction and building of trust. As U.S. Attorney I spent a lot of time here in the Detroit area—advancing idea of partnerships between law enforcement, the community, schools, and businesses trying to come together to deal with public safety issues. I think all of those things had a lot to do with my selection.

PARC: As you started your work in Cincinnati, how were you received by city officials, police leaders, and the community generally?

SG: I think it was a very positive and warm reception. It had two phases to it. I think the first stage was very positive and very warm, and that's because the City of Cincinnati had gone through the trauma of having selected a monitor, and that had not worked out. The previous monitor had only been in place about 30 days, and it was determined he and his team needed to be replaced. So I think the city was very happy to get a replacement. But soon thereafter we began meeting with the parties individually, and you soon came to recognize that as happy as they were to have us there, each of the parties has a very, very different perspective on what the stakes are, and each of the parties was very serious in trying to get across to us their position and what they wanted us to do in order to monitor properly or appropriately in their eyes. So initially, very happy and warm; eventually, very serious about trying to—how could I say it?—lobby us about how to monitor.

PARC: What events or issues led to the Memorandum of Agreement and Collaborative Agreement in Cincinnati?

SG: When you look at Cincinnati historically, it has for decades had very strained relations between the police department and particularly the African American community. If you go back, there have been various commissions that have looked into the issues, there's been a lot of litigation, and then in the year 2000 the ACLU brought a suit on behalf of a gentleman, Bomani Tyehimba [the lead plaintiff in the class-action racial profiling lawsuit that led to the Collaborative Agreement], in which they alleged that African Americans had been treated differently in traffic stops and in other encounters with police. The case was assigned to Judge Susan Dlott, and Judge Dlott decided that as opposed to trying to resolve it through the typical course of litigation, that they

would use an Alternate Dispute Resolution process to bring the parties together, to try to work on these issues perhaps in a more constructive way than results from litigation. The Collaborative was really borne out of that, as I understand it. This, of course, was before the monitor was in place, and so some of this I had to learn historically. So you had representatives from the African American Community, you had the police at the table, and the Fraternal Order of Police—the union—was invited and accepted a place at the table. That really formed the basis for the Collaborative moving forward.

About that same time, you had the shooting in April 2001 of Timothy Thomas that resulted in civil unrest for several days in Cincinnati, and soon thereafter Mayor Luken called for a Department of

Justice investigation. That got the “pattern or practice” investigation going, and these two things were running on parallel and courses and you end up with the DOJ “pattern or practice” investigation resulting in the Memorandum of Agreement, and you have and the collaborative process resulting in the Collaborative Agreement coming to fruition at the same time. So I think, historically, those were the actions, the activities that led to two agreements in Cincinnati.

PARC: *What do the agreements require and how do they differ?*

SG: The Memorandum of Agreement between the city and the police department is somewhat typical of Memoranda of Agreement that are in place in the 10 or 12 localities around the country dealing with police reform resulting from “pattern or practice” investigations. Basically, what they looked at in Cincinnati was use of force issues, training issues, risk management issues, how use of force and other issues were investigated and documented, and citizen oversight. The MOA really calls for a number of policy changes that had to be implemented to deal with those issues, and it calls for training that should be consistent with those policy changes, and then it called

for implementation of those policies. And so when we look at the MOA in that regard; it really deals with issues of professionalism of the police department around these reform issues. The Collaborative Agreement is different in that beyond the issue of what policy, training, and implementation has to be undertaken, it attempts to review, measure and gauge the degree to which these changes have impacted the relationships within the City of Cincinnati—in other words how the police and community relate and react to each other. The other really significant aspect of it is that it calls for Community Problem-Oriented

Policing (CPOP) to be the principle way in which policing is done in Cincinnati. Memoranda of Agreement generally don’t address the manner with which an agency polices. In Cincinnati,

through the Collaborative Agreement, it actually talks about the manner, how it is expected that the Cincinnati Police Department will police in the future.

PARC: *What are the particular challenges you face in monitoring compliance with two agreements in Cincinnati?*

SG: Some of them are practical. One is the fact that you have two agreements. Again, Cincinnati is the only locale where you have an investigation by the Department of Justice resulting in a Memorandum of Agreement and then, on top of it, a second agreement—the Collaborative Agreement. Just the fact that you are monitoring two agreements makes it a little bit more complicated, time-consuming, and resource intensive. Also, the Collaborative Agreement means that you have more parties at the table. Again, typically under a Memorandum of Agreement, you’ve got the city/police department and the Department of Justice at the table. Under the Collaborative Agreement, you’ve got the police department, you’ve got the plaintiffs—meaning the representatives of the African-American community—and you’ve got the union. So you’ve got more parties to deal with. Under the Collaborative Agreement, since you’re not really

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dealing with things as focused and almost clinical as putting a policy in place, training on the policy, and then trying to figure out whether or not it's being implemented, instead you've got a call to all sides to really deal with each other differently, to dialogue differently, to try to establish trust. The Collaborative Agreement calls upon us to try to figure out to what extent that's happening and how to evaluate the extent of change that has resulted from the Parties' participation in these agreements.

PARC: *Are there ways the MOA and CA conflict with each other? How do they complement each other?*

SG: I can't tell you a conflict that exists between the two documents. The use-of-force requirements are almost repeated verbatim in the Collaborative Agreement, and also the call for a citizen's complaint authority—civilian oversight—is very much mirrored in the Collaborative Agreement and doesn't conflict in any way. They complement each other because what you have is the ability to enforce breaches in the Memorandum of Agreement through provisions that are in the Collaborative Agreement. They build on each other, particularly in the area of enforcement.

PARC: *Are there aspects of the CA that you believe should be incorporated into future "pattern or practice" agreements between the Justice Department and law enforcement agencies?*

SG: There may be. I think it is important to note that the Department of Justice is not a party to the Collaborative Agreement. My guess is they see their role in a very clear way, and it is, again, to require the kind of policy, training and operational changes that are typically in Memoranda of Agreement and not to get involved in the kind of evaluative components that are found in the Collaborative Agreement. It would probably only occur if the Department really found that there was value in what's going on in Cincinnati and agreed to start to incorporate some of the CA provisions in MOAs. I think what is important to

understand, and I think that's why success in Cincinnati is important for police reform nationally, for me as Monitor—and as a citizen here in Detroit where there are two Memoranda of Agreement in place—is that it's possible to go through and do everything that a Memorandum of Agreement envisions and still not really impact the trust relationships between a police department and major components of a community. You could still end up not touching issues of trust, not touching issues of mutual accountability and respect, and ultimately I think that's what a lot of these issues related to police reform boil down to.

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PARC: *What strategies did you employ to gain the trust and cooperation of the city and police department?*

SG: We routinely meet with all of the parties. Generally once a month we

have what we call an "All Parties" meeting. This is for the parties to both the Memorandum of Agreement and Collaborative Agreement, where we meet around the table to go through both agreements to talk about where things are hopefully going well but also if there are snafus, things that need to be dealt with and improved upon. And so you have general communication with all of the parties, but I also make it a practice—and they are all well aware of this—to meet with all of the parties at times individually just to talk about the agreements and their performance and where we're going and how we're progressing. I find those meetings as important as the "All Parties" meetings because the fact of the matter is there are things you need to be able to say to the parties to encourage them or to understand their perspectives that need to be said just between a particular party and the Monitor. I have those kinds of meetings with the City—they are often long and very detailed; they can be very emotional. It's a way of understanding their perspective better, it's a way for them to be able to vent directly to me about issues. It's probably one of the most important ways to try to create some form of relationship and understanding of a party's perspective and hopefully building some trust.

PARC: *How did you pick the members of your monitoring team and delegate monitoring responsibilities?*

SG: We constructed the team around the agreements. In other words, we looked very carefully at what the agreements called for and selected people who were experienced in the issues covered by the agreements, such as use of force, or people who could take a look at early warning systems and the associated technology. We knew, for example, that on the Collaborative Agreement side, Cincinnati's decision to use Problem-Oriented Policing as their principle way of accomplishing public safety would mean we would need CPOP experts. Early on I was very fortunate to have and continue to have as a deputy monitor a gentleman named Richard Jerome, whom I knew from the Department of Justice when I was U.S. Attorney. Richard kept very much abreast of policing issues both while he was at Justice and after leaving Justice. So it was a matter of trying to work together to first figure out who were the experts in all of these different areas and then to and figure out who was available and who we thought could work with us in a constructive way. You build a team around the requirements of the agreement or agreements and hope you get the people who not only have the expertise but have the kind of personality and demeanor to work well together. We have an outstanding team.

PARC: *How would you describe your relationship with the Cincinnati Police Department? What strategies have you used to try to establish and maintain a positive working relationship?*

SG: I think the relationship has been productive and generally pretty positive. With the police department, you need to accomplish a couple of things. So much of what occurs during the course of monitoring an agreement or agreements is the need for good, efficient, and trustworthy exchange of information; you need to be able to get documents quickly; you need to be able to have full and unfettered access to

personnel. The City of Cincinnati and the Cincinnati Police Department provided that to us pretty early on. I think they've been very good at that aspect of the relationship. The other aspect of the relationship is that you want a working relationship that is open and candid recognizing there will at times be tension. It's inevitable that if you've got any type of entity, whether it's a law enforcement organization or some form of business, that is required to have someone come in and take a look at your operations, that's not something that is easily swallowed. Recognizing and understanding that, we have tried to be as accommodating as possible in terms of the kinds of demands we've made for information, and we've just simply recognized that there are going to be times when there is tension between our monitoring responsibilities and their policing responsibilities in terms of getting documentation and exchanging

information. You try to work through those times. As I mentioned earlier, we have meetings individually with parties, so we will meet with the Cincinnati Police Department, with a representative

group from the police department around the issues we're looking at. At times I have also met individually with Chief [Thomas] Streicher in an effort to talk about how things are going and hopefully work through difficult issues.

PARC: *Have you worked with the police rank-and-file to explain your role and to get their support for the two agreements' implementation?*

SG: Fortunately, you do have the union at the table as a party, and so reaching out is easier in this context than it might be in those situations where there is a Memorandum of Agreement and you don't have the union as a party. Routinely, they have a representative at all of the monthly "All Parties" meetings. Just like with the police department, just like with the plaintiffs, we do go and talk with the union leadership—members of my team and their executive board, or myself and the union president or the union president and the vice president—in an effort to have

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some exchange of dialogue and to enlist support. There is one-on-one with them in the same way that it occurs with other parties.

PARC: *What has been the impact of the CA on community/police relations and trust? What can monitors do to help build trust between the community and police?*

SG: I've seen some improvement but not enough. We just issued our sixth report on July 1—we have to report every 90 days. In that report, I talked about improvement and progress on the Memorandum of Agreement side but the fact that there's still a lot of work to be done on the Collaborative side. In terms of improvement and progress, one thing that Cincinnati has done, which could prove to be a model for other cities dealing with issues of police-community trust, is they've put in place what they call a "partnering center." It's really a non-profit organization with what are called "outreach workers," who work with the police and communities around problem-solving. They are in the process of going through training right now with various communities, and this training is conducted by the police department and the partnering center outreach workers together introducing Problem-Oriented Policing to communities—community by community. I think it's an excellent concept, and it's something that is starting to have some impact. What I believe hasn't yet been accomplished is real dialogue between the police department and the African American community. There was a recent cable cast on Use of Force sponsored by the National Urban League and the Department of Justice that was attended by Chief Streicher, other CPD members, and members of the African American Community. A forum is planned for August centering around CPOP that all of the Parties will participate in. We need more of this. In most investigations that culminate in a Memorandum of Agreement, they almost always relate to issues between the police department and communities of color. Tension in Cincinnati is still present. I've had discussions with community leaders and political leaders over the last several months, and

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they recognize that there is still work to be done on establishing dialogue between the police department and the African American community about how policing is done on a day-to-day basis and the whole issue of trust and accountability. There has been progress, but there is still room for a lot more.

PARC: *What advice would you offer new monitors in other jurisdictions?*

SG: It's a little hard to advise them because the situation in Cincinnati is so unique. The situation in Cincinnati, based on the existence of a Collaborative Agreement, really instructs the parties and therefore the Monitor to involve the parties beyond policies, training, and implementation of policy changes and says, "Parties, you need to deal with each other in a new way. You need to work on issues of trust and accountability." I think those are issues that lurk in every situation where police reform is taking place. It would be wonderful if the parties in those communities and the monitor could try to work through those kinds of issues and help to improve the relationships in a community. The problem is that under the standard MOA, you don't have representatives of the community, you may not have the union, and therefore you don't have the integral parties to make that happen. I think if change is going to be real, and if change is going to be longstanding, then the parties and the monitor need to talk about the relationships, need to talk about dialogue, need to talk about how you accomplish trust and mutual accountability. I think those are important issues. Whether it can be done in the context of a classic Memorandum of Agreement, I'm just not sure.

CONFERENCES

August 8-15, 2004 – National Black Police Association, 32nd Annual Education and Training Conference, Phoenix, AZ. Online at <http://www.blackpolice.org>

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

August 24-25, 2004 – Police Executive Research Forum, How to Analyze Race Data from Vehicle Stops. Online at <http://www.policeforum.org/> under "Racially Biased Policing".

September 9-11, 2004 – International Conference on Policing and Diversity, New York, NY. Online at <http://johnjay.jjay.cuny.edu/info/calendar/conferences>

September 19-24, 2004 – International Association of Law Enforcement Planners, Annual Training Conference, Chicago, IL. Online at <http://www.ialep.org/>

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

October 17-20, 2004 – National Association for Civilian Oversight of Law Enforcement, 10th Annual Conference, Chicago, IL. Online at <http://www.nacole.org>

October 18-29, 2004 – Americans For Effective Law Enforcement, Police Civil Liability and the Defense of Citizen Misconduct Complaints, Las Vegas, NV. Online at <http://www.aele.org/wkscivil.html>

November 13-17, 2004 – International Association of Chiefs of Police, Annual Conference, Los Angeles, CA. More Information available at <http://iacp.expoexchange.com/>

November 17-20, 2004 – American Society of Criminology, 55th Annual Meeting, Nashville, TN. Online at <http://www.asc41.com/>