

POLICE PRACTICES REVIEW

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CIVILIAN OVERSIGHT

Report Issued on Philadelphia PD Shootings

The City of Philadelphia's Integrity and Accountability Office (IAO), which monitors the Philadelphia Police Department (PPD) and works cooperatively with the Police Commissioner, has released a comprehensive study on PPD officer-involved shootings between 1998 and 2003. The IAO is an independent auditor of PPD policies, practices, and operations as they relate to detection and control of officer misconduct, excessive use of force, and corruption. The report's purpose, said outgoing IAO Director Ellen Green-Ceisler, "is to assess whether the use of deadly force by Philadelphia police officers is governed, in all respects, by the highest standards" by analyzing the PPD's existing policies and practices to ensure that such force is used and reviewed appropriately.

Green-Ceisler noted that 596 shooting incidents involving 759 officers occurred during the six years reviewed. Of the total shooting incidents, 285 incidents involved officers intentionally shooting at one or more persons. The IAO undertook an analysis of 278 intentional shootings (excluding seven cases involving officer suicides or incomplete investigations) and found that a suspect was armed in 73 percent of the cases and that in such cases, 92 percent of the suspects had firearms. "On average," said the report, "only 18 [percent] of the rounds fired by officers actually struck their intended targets." Green-Ceisler recommended the PPD establish ongoing and intensive scenario-based tactical training on firearms at least annually in order for officers "to develop and maintain the skills necessary to remain concentrated and deliberate during highly stressful situations." The Department does not currently have the personnel, facilities, or resources to conduct the in-service firearms training necessary to prepare its officers for policing in an urban environment, said the report.

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In 53 of 72 shootings at unarmed suspects, officers shot at vehicles in which suspects were attempting to flee—a violation of PPD policy prohibiting such discharges unless the suspect in the car is threatening an officer with something other than the moving vehicle.

According to the IAO:

- recording of officers' departmental violations, in the context of officer-involved shootings, is "sporadic;"
- investigations could be improved by requiring witness interviews be video- or audio-taped and by toughening supervisory oversight of all officer and witness interviews to ensure thoroughness, quality, and impartiality; and
- almost half of all intentional shootings followed or happened during foot pursuits, leading the IAO to recommend that the PPD immediately create policies on foot pursuits and the chase tactic known as "partner splitting."

The IAO Director also said that until recently the Department focused investigations "primarily on whether officers were justified in firing their weapon at the moment they pulled the trigger," instead of on the tactics and strategy used by an officer leading up to a shooting. She recommended that the Department's Firearms Discharge Review Board be expanded to allow analysis of deadly force incidents "to ascertain training, tactical, policy, supervision, risk management, disciplinary, and other considerations." The full report will soon be accessible online at www.phila.gov/pac.

Virgin Islands Governor Vetoes Review Board

In early March, U.S. Virgin Islands Governor Charles Turnbull line-item vetoed the provisions of the 2004 Omnibus Justice legislation that would have created a civilian panel to review and investigate allegations of serious police misconduct. The proposal for the nine-member review board had been approved in a version of the bill passed by the U.S. Virgin Islands legislature last fall. Allegations that would have fallen under the board's purview included excessive or deadly force, bribery, and discrimination, said the *Virgin Islands Daily News*. As PARC reported in the October 2004 *Police Practices Review*, the review board—the Virgin Islands Law Enforcement Review Commission—was to have been authorized to

subpoena witnesses and documents for hearings and to make recommendations to the Virgin Islands Justice Department and the police commissioner. The Review Commission would not have had the power to impose discipline. According to the *Daily News*, Governor Turnbull vetoed the Commission because he said it would infringe on the powers and duties of the Virgin Islands Superior Court and Justice Department, though the Governor was also reported as having said he supports civilian review for the 475-member police department. *Virgin Islands Daily News*, March 7, 2005; *Associated Press*, March 8, 2005.

CONSENT DECREES/ MEMORANDA OF AGREEMENT

Steubenville Released from Consent Decree

Following the latest report on the City of Steubenville's (OH) compliance with its 1997 federal consent decree, the City successfully petitioned the Court and was released from the decree. The Steubenville consent decree was only the second under federal powers contained in 1994 legislation authorizing the U.S. Justice Department to pursue civil actions to eliminate a "pattern or practice" of conduct by law enforcement officers that violates individuals' rights; the first decree was put in place in Pittsburgh (PA).

In his twenty-eighth and final quarterly report on Steubenville's compliance, covering the period between October 1 and December, 2004, court-appointed auditor Charles D. Reynolds had announced that the City had remained in substantial compliance with the decree's provisions for two years, after having first been found in substantial compliance in March 2003. "Two years having lapsed," said Reynolds, "the City may now petition the Court to dismiss the Decree." The Steubenville Police Department (SPD) was required to adopt "generally accepted policing practices," an effort Reynolds said was undertaken seriously with a change in SPD leadership in 2001.

In the final compliance report, the Auditor reviewed SPD pursuit, use-of-force, stop, and search/seizure reports over the course of three months and found officers' actions in compliance with the decree, legal, and policy requirements. In previous audit periods,

SPD officers appeared to rely on motor vehicle or local ordinance violations, rather than reasonable suspicion or probable cause, as the basis for stops that led to searches; furthermore, search and seizure reports gave "incorrect, unclear, or insufficient justification for searches." These issues were addressed in search and seizure training for all SPD supervisors and officers, according to the report.

The SPD's internal affairs unit was commended for its "extraordinary effort" since its inception to implement and administer the required procedures developed for the citizen complaint process to meet decree standards. The original staff of the unit, which accepts all citizen complaints and investigates misconduct investigations, "operationally implemented the required procedures without support from senior police management, and in fact, despite significant resistance," said Reynolds. The City, he said, has since provided sufficient resources for the internal affairs unit to perform its functions.

Though the City and SPD are in substantial compliance, the Auditor said compliance with officer supervision requirements has been problematic since the decree's inception. He said SPD Chief William A. McCafferty has made changes to improve accountability and supervisory training for investigating alleged misconduct and meting out discipline. "Nevertheless," Reynolds noted, "the Chief and the City are still confronted with the tendency of labor arbitrators to mitigate the seriousness of police misconduct, disregard Decree requirements placed on the City and the SPD leadership, and to trivialize sound personnel practices when making their decisions, which are not subject to appeal..." "This is a problem that will not be resolved by the Chief or the City in the foreseeable future," he concluded. *Auditor's Quarterly Report: Compliance Audit for the Steubenville, Ohio, Police Department*, October 1 – December 31, 2004. *Associated Press*, March 9, 2005.

Monitor Notes LAPD Early Warning Concerns

The Independent Monitor for the City of Los Angeles and Los Angeles Police Department (LAPD) released its fourteenth quarterly report on City and LAPD compliance with their June 2001 consent decree with the U.S. Justice Department. During the quarter ending December 31, 2004, the Monitor examined 47 decree paragraphs or sub-paragraphs and found

ACADEMIC RESEARCH

“Reducing Gun Violence: Operation Ceasefire in Los Angeles” by George E. Tita, K. Jack Riley, Greg Ridgeway, and Peter W. Greenwood, is an evaluation of the implementation and effectiveness of Operation Ceasefire, a National Institute of Justice (NIJ) program designed to reduce firearm-related violence in Los Angeles, California. The research report, published in February 2005 as part of NIJ’s series of reports on curtailing gun violence, is based on the study “Reducing Gun Violence: Results from an Intervention in East Los Angeles” by George E. Tita, K. Jack Riley, Greg Ridgeway, Clifford Grammich, Allan Abrahamse, and Peter W. Greenwood.

Operation Ceasefire in Los Angeles was a multi-agency effort to reduce violent crime (homicide, attempted homicide, robbery, assault, kidnapping), as well as gang and gun crimes. Gang crime is “gang member-committed violent crime and terror threats, firearm discharges, vandalism, and graffiti” and gun crime is defined as “any violent or gang crime that involves the use of a firearm.” There were nineteen different members of the working group involved with the program including researchers, representatives of criminal justice agencies, and community organization leaders. The design of the program was largely based on Boston’s Operation Ceasefire but adapted to the unique nature of gangs as well as the distinctive political and geographical environment in Los Angeles.

The program had two components: enforcement levers and retailing. Enforcement levers were a range of sanctions applied or enforced against gang members. Saturation patrol and strict enforcement of probation and parole, public housing and property code, and child support laws are examples of levers used in Los Angeles. These sanctions were used to hold all gang members accountable for the actions of any one gang member. Retailing is defined as forewarning gang members that violent crime would have consequences and offering prevention services such as job training, substance abuse treatment, tattoo removal, and others as incentive to turn away from crime.

To measure the effectiveness of the program, researchers compared crime rates in the six months leading up to the program to crime rates in the six months after. Crime rates were also compared to parts of Los Angeles that did not implement the program to make sure that crime was not declining throughout the region during the time period included in the study. The four months immediately following the start of the program were called the suppression phase and the next two months after that were called the deterrence phase. The suppression phase was the time when all parts of the program were applied whereas during the deterrence phase the program components were only partially applied.

The authors found that retailing did not have an effect on reducing violent, gang, or gun crime. Enforcement levers, however, did dramatically reduce violent crime. The effect was greatest during the suppression phase but did continue into the deterrence phase, suggesting that long term reduction of violent crime was possible. The full research report can be found at <http://www.ncjrs.org/pdffiles1/nij/192378.pdf>. The original study can be found at <http://www.rand.org/publications/MR/MR1764/MR1764.pdf>.

the City and LAPD in compliance with 29. The Monitor withheld a determination on four and judged the rest not in compliance. The decree addresses areas such as use-of-force and incident documentation, Department self-auditing, gang-unit supervision, use of confidential informants, and risk and personnel management.

The slow progress of the Training Evaluation & Management System II (TEAMS II)—the LAPD’s decree-required early warning system—continued to concern the Monitor. The system’s purpose is to promote professionalism and best policing practices, while also identifying at-risk behavior in order to correct it promptly. The Department has been developing four component database systems for

TEAMS II, but delays have impeded progress on the final product, “exacerbated by the fact that delays in the rollout of one of these databases may directly cause delays in the rollout of another.” Until TEAMS II is operational, the LAPD is required to use existing databases, records, and information to make personnel decisions. Even if the system “was completed according to its current timeline,” said the quarterly report, “the Monitor will not be able to determine whether its implementation is substantially compliant with the requirements of the Consent Decree prior to the scheduled expiration of the Monitorship.”

The Monitor also expressed concern with the staffing level at the Department’s Professional Standards Bureau (PSB), which investigates officer-involved cases of unlawful search and seizure, unauthorized use of force, discrimination, dishonesty, and domestic violence. As of the end of the latest quarter, the PSB had 20 staff vacancies. The LAPD’s Office of the Inspector General (OIG) faces similarly inadequate staffing and resources, noted the Monitor, which makes the Office “unable to effectively perform several of its oversight functions,” including the timely review of the Department’s self-audits. “For most of the last three years of the Consent Decree, with few exceptions, the Monitor has found the OIG’s reviews of specified and other audits to be non-compliant with the [decree] requirements,” said the report.

The Monitor once again praised the LAPD’s Audit Division for having now completed 20 “quality” audits. The Division was fully compliant “with the timeliness and qualitative requirements for seven of the audits” reviewed during the quarter, commended the Monitor. In recent quarters, the Monitor relied upon the Division’s efforts by conducting meta-audits of the Audit Division’s own work and findings to assess the LAPD’s compliance with certain consent decree paragraphs. The report also noted that in the previous quarter the Audit Division developed and presented its first Basic Law Enforcement Performance Auditing Course, given on three different occasions to its own personnel as well as those from the OIG. The California Commission on Peace Officer Standards & Training certified the course, which was also presented to the command staff of the Detroit Police Department—currently a party to two federal consent judgments. The full report can be accessed online at www.krollworldwide.com/library/lapd/LAPD_O14_Final_Report_02-15-2005.pdf.

RACIAL PROFILING

Texas Traffic Stop Study Finds Disparities

A study prepared for the Texas Criminal Justice Coalition and the Texas branches of the American Civil Liberties Union, League of United Latin American Citizens, and National Association for the Advancement of Colored People found that two-thirds of Texas law enforcement agencies reported searching Blacks and Latinos at higher rates than Anglos after traffic stops. In *Don’t Mind If I Take a Look, Do Ya? An Examination of Consent Searches and Contraband Hit Rates at Texas Traffic Stops*, police stop and search data from 2003 were collected from 1,060 agencies, creating a dataset that included “several million police-civilian contacts representing the majority of traffic stops in Texas.” Under a 2001 state law, agencies must report annually on the race of those they stop and search. According to the study, the data are the largest set of racial profiling statistics, according to the study, ever collected and reviewed and represent “the first inter-department review of contraband data collected by Texas law enforcement agencies.”

The study said that of those agencies with higher search rates for Blacks and Latinos, seven of ten searched Blacks and nine of ten searched Latinos at least 50 percent more frequently than Anglos, “representing a significant disparity in treatment.” The Dallas Police Department was 2.1 times more likely to search Blacks than to search Anglos and three times more likely to search Latinos than to search Anglos. The Houston Police Department, by comparison, was more than three times more likely to search Blacks and 2.5 times more likely to search Latinos than to search Anglos.

Three out of every five agencies across the state reported performing consent searches (when officers do not have legal authority to search but ask subjects for permission to do so) of Blacks and Latinos at higher rates than Anglos after traffic stops. The study found that half of those agencies were actually “likely to find contraband in the possession of Anglos at higher rates” than in the possession of Blacks; 58 percent were similarly likely to discover contraband at higher rates on Anglos than in the possession of Latinos.

The study’s authors recommended that the Texas Legislature adopt uniform reporting standards to allow

PRESIDENT'S PERSPECTIVE

By Merrick Bobb, President

Review of *Good Cops: the case for preventive policing*, David A. Harris, The New Press, 2005.

Law Professor David Harris, whose previous book, *Profiles In Injustice: Why Racial Profiling Cannot Work*, published in 2002, quickly became an authoritative source on racial profiling, has turned his attention to contemporary policing, once again writing a thoughtful work that will help to set the parameters for debate about where policing should go in the 21st-century. It provides an overarching theory, which Harris calls “preventive policing,” that weaves a coherent whole of previously separate strands of thought about community-based policing, problem-oriented policing, police leadership and cultural change, and police accountability and transparency.

His notion of community-based policing is neatly captured in the catchphrase Professor Harris uses early on in the book—“from two-way radios to two-way dialogues”—to connote a shift from police officers talking to each other to police officers engaged in fruitful conversation with the community, in particular the growing and diverse minority communities in our urban areas. Police relationships with African-American communities, argues Harris, ruptured in the 1960s and, for the most part, remain unrepaired, while relationships with Latinos and Southeast Asian communities have not adequately developed. As Harris sees it, healthy two-way communication is the forerunner to mutual trust. Among the strengths of this book are the myriad examples Harris gives to illustrate his points, thereby grounding his more general statements in well-chosen stories and anecdotes. His discussion of community-based policing is enlivened by examples from Detroit; Seattle; Chicago; Lowell, Massachusetts; and Wichita, Kansas, all centered on affirmative efforts by police departments to establish liaison with groups that tended to be distrustful or uneducated about police practice and procedure.

Take Lowell, Massachusetts, for example. Cambodians make up one-third of all immigrants who have settled in Lowell in recent years. Because of the horrors of the Khmer Rouge period, Cambodians are deeply afraid of authority, leading to tense and frightening confrontations between the Lowell police and Cambodian immigrants, particularly during traffic stops. Cambodian immigrants, when stopped, would jump out of the car, not waiting for the police to come to the car window, assuming that it was sign of respect and obedience to leave the car and come to the policeman. Cambodian immigrants also tended to keep their wallets in their socks for safe keeping from pickpockets. Not surprisingly, it put police officers on edge, to put it mildly, when a driver quickly got out of the car and reached for his ankles, a common hiding place for guns in ankle holsters. Police Chief Ed Davis, in response, formed the Lowell Race Relations Council which took on the task of educating the police about Cambodians and educating the Cambodian immigrants about the police.

Once communication is established and mutual understanding takes hold, constructive and cooperative partnerships between the police and the policed have room to grow. Problem-oriented policing begins with a shift in perspective from reactive, after-the-fact policing to affirmative efforts to prevent crime and ameliorate the conditions under which crime festers. Building upon increased mutual trust, the police can turn to the policed to assist in solving crimes, get tips, and amplify resources. In his chapter on problem solving policing, Professor Harris again cites a number of examples that make for good reading and illustrate his points nicely, particularly his discussion of steps to reduce gun violence in Boston through an ongoing, constructive partnership between the Boston PD and 10 Point Coalition, a group made up principally of African-American ministers.

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Harris then moves to the topic of external accountability, demonstrating that civilian review boards and monitors or auditors are vital to rebuild trust, inculcate internal accountability, and assure transparency. My work as Special Counsel to Los Angeles County is described, and the work of Captain Ron Davis of the Oakland Police Department, a Senior Adviser to PARC, is cited with approval. Harris then emphasizes the role of internal police leadership in changing the culture of the police.

At the end, the reader comes to understand fully what Harris means by preventive policing and how the notion necessarily incorporates elements of community policing, external accountability, internal leadership, and problem-solving policing. Professor Harris's groundbreaking work on racial profiling informs this current book, which will undoubtedly take its place on the bookshelf of thoughtful persons concerned with the police.

The book has but one possible weakness: It tries to do too much. David Harris has interesting things to say about law enforcement under former Attorney General John Ashcroft, and his comments about Ashcroft should be expanded and made the subject of a separate book. Although Harris is clearly using Ashcroft as a foil to emphasize the virtues of preventive policing and to strike a cautionary note about what might occur should preventive policing not take hold, the subject of post-9/11 law enforcement and the Justice Department deserves a book to itself. In this book, Professor Harris, as usual, has provocative and interesting things to say. His advocacy of preventive policing is strong and persuasive, and this book will contribute substantially to an informed dialogue on contemporary policing.

for "a better analysis between and within law enforcement agencies." Twenty-three percent of agencies did not report the data elements required by law, said the study, and some departments did not collect numbers on Native Americans and Asian Americans. The authors additionally recommended the establishment of an independent, neutral repository for agencies' reports and the banning of consent searches, which the authors argued yield racial disparities and are not a good use of law enforcement resources. The study can be accessed online at www.criminaljusticecoalition.org/racial_profiling_report_full.pdf.

FORCE MANAGEMENT

Tucson (AZ) Gets Taser Guns and Policy

The Tucson Police Department (TPD) recently increased its Taser arsenal from five to 52, according to the *Tucson Citizen*. Along with the increase in the Tasers comes a revised use-of-force general order guiding their deployment and usage. In Tucson, Tasers may be used in police encounters with people engaged in "Active Aggression" non-compliance, defined by the TPD as: "Behavior that is a physical assault on an

officer where the offender prepares to strike, strikes, or uses techniques in a manner that may result in injury to the officer."

The policy further states that Tasers may not be used on pregnant women, to gain compliance in order to collect physical evidence, or when conditions are present that would "create an undue hazard to the targeted subject, officers or other persons involved." Additional consideration must be given before using Tasers on handcuffed individuals and on juveniles, says the policy.

TPD officers who carry Tasers must be certified and re-qualify each year through refresher training. A captain in the Department said that the Tasers have yellow markings and must be pulled from their holsters using a cross-draw method in order not to be confused with handguns, according to press reports. Officers are required to call for medical assistance if a subject has received a charge and to notify a supervisor to come to the scene of any Taser use. "After each use or threatened use of the Taser," states the general order, "a Use of Force report shall be completed and forwarded through the chain of command." The TPD's general order can be accessed online at www.ci.tucson.az.us/police. *Tucson Citizen*, February 2, 2005; *Associated Press*, February 2, 2005.

LEGAL AFFAIRS

Court Rules on Prison Segregation Review

The California Department of Corrections' (CDC) unwritten policy of segregating prisoners by race during the time they are housed in shared cells for their initial 60 days in a new CDC facility recently came before the U.S. Supreme Court. According to the Supreme Court, the Department's "asserted rationale for this practice is that it is necessary to prevent violence caused by racial gangs," such as the state's five major prison gangs—the Mexican Mafia, Nuestra Familia, Black Guerilla Family, Aryan Brotherhood, and Nazi Low Riders. Affirming a U.S. District Court decision that the CDC's policy was not clearly unconstitutional, the U.S. Court of Appeals for the Ninth Circuit previously ruled that the policy's constitutionality should be reviewed under the "deferential review standard" put forth in *Turner v. Safley*, 482 U.S. 78. That standard did not require the CDC to justify its policy and is more lenient than that used to evaluate other government policies that involve racial classifications. The Supreme Court granted certiorari to the case to determine which review standard applied.

In *Johnson v. California*, the Court ruled five-to-three that the standard of strict scrutiny should apply, placing the burden on the CDC to prove that its policy is justified. In her majority opinion, Justice Sandra Day O'Connor cited precedent: "We... apply strict scrutiny to *all* racial classifications to 'smoke out' illegitimate uses of race by assuring that [government] is pursuing a goal important enough to warrant use of a highly suspect tool." Justice O'Connor also noted that almost all other states as well as the Federal Bureau of Prisons manage their inmate populations without racial segregation.

At the center of the case was petitioner Garrison Johnson, an African-American inmate in CDC custody since 1987, who filed a complaint in U.S. District Court, alleging that his constitutional rights to equal protection under the Fourteenth Amendment were violated by the CDC practice of assigning cellmates based on race. The U.S. Supreme Court's majority opinion stated that "compliance with the Fourteenth Amendment's ban on racial discrimination is not only consistent with proper prison administration, but also bolsters the legitimacy of the entire criminal justice

system." The Court also said that racial classifications may exacerbate the very problems of violence the CDC's policy seeks to prevent.

The U.S. Supreme Court did not decide whether the policy violates the Constitution; rather, it held that strict scrutiny must be applied, and it remanded the case for either the Ninth Circuit's Court of Appeals or the District Court "to apply it [strict scrutiny] in the first instance." Justice John Paul Stevens dissented, saying the policy was, in fact, unconstitutional. Justice Clarence Thomas, joined by Justice Antonin Scalia, also dissented, but expressed different concerns: "Time and again, even when faced with constitutional rights no less 'fundamental' than the right to be free from state-sponsored racial discrimination," wrote Thomas, "we have deferred to the reasonable judgments of officials experienced in running this Nation's prisons." www.supremecourtus.gov/opinions/04slipopinion.html. *New York Times*, February 24, 2005.

Congress Considers Limiting Consent Decrees

In early March, U.S. Senator Lamar Alexander (R-TN) and U.S. Representative Roy Blunt (R-MO) introduced a bill entitled the "Federal Consent Decree Fairness Act." The Act would "limit the duration of Federal consent decrees to which State and local governments are a party," in addition to making other changes. State and local governments or officials may file motions with the court where a consent decree was first entered, says the bill, in order to modify or vacate the decree:

- after four years, "regardless of whether the consent decree has been modified or reentered during that period;" or
- in civil actions at the expiration of the terms of the highest ranking state or local officials who authorized their jurisdictions' consent in the decree.

With any such filed motion, the Act continues, "the burden of proof shall be on the party who originally filed the civil action to demonstrate that the continued enforcement of a consent decree is necessary to uphold a Federal right." The court would have 90 days to rule on the motion or else the consent decree would have no force from that point until the court issues a ruling. The Act would not affect consent decrees ordering the desegregation of schools and institutions

of higher education or orders to remedy racial discrimination in an action brought under Titles VI and VII of the Civil Rights Act of 1964. The bill can be accessed online at <http://thomas.loc.gov/>. *Chattanooga Times Free Press*, March 14, 2005.

NEWS BRIEFS

Dallas to Settle in Fake-Drug Scandal

The City of Dallas has agreed to pay approximately \$5.6 million to settle lawsuits involving more than a dozen plaintiffs who alleged that they had been arrested in 2001 after police informants planted fake drugs on them. An investigation uncovered a pattern of incidents in which paid informants set up mainly Hispanic immigrants with fake cocaine and methamphetamine, according to the *Houston Chronicle*.

The various settlements cover 16 of the 24 plaintiffs who filed lawsuits claiming they had been wrongly jailed, while several related lawsuits remain unresolved. The *Chronicle* said that the amounts to be paid to each of the 16 individuals ranged from \$120,000 to \$485,000. At the end of 2003, the City named a special prosecutor to conduct an independent investigation of the fake-drug scandal. The investigation found that the arrests happened due to weak oversight of informants and poor supervision in the Dallas Police Department's narcotics division, according to the report. *Dallas Morning News*, February 18 and 19, 2005; *Houston Chronicle*, February 19, 2005.

Police Canines Outfitted for Action

England's Northumbria Police recently began outfitting some of its canines with new cameras to be used during searches. The miniature FIDO camera system, which is attached to a dog's head through a harness, captures images and transmits radio signals, allowing canines "to search buildings and relay the information back to officers," according to the Northumbria Police. The FIDO system replaces older cameras that were larger and more cumbersome for canines to wear.

"Firearms dogs," says Northumbria Police, can be used in situations in which a suspect may be armed or dangerous, thus eliciting a possible police response

with firearms. With the cameras, the dogs can enter a building and transmit information to officers about the premises' layout or a suspect's location. The press release also states that "infra-red lights are incorporated in the camera housing which provides pictures in total darkness." The canine handler views the pictures on a receiver, "while an audio facility allows the handler to listen to any activity in the area of the dog," Northumbria Police said. More information can be accessed online at <http://ww1.northumbria.police.uk>. *The Mirror*, February 23, 2005; *CNN.com*, March 7, 2005.

INTERVIEW

Eve Hill, a leading expert on disability rights, is the Executive Director of the Los Angeles-based Western Law Center for Disability Rights. Ms. Hill, who has directed the Center since 1998, is a past Chair of the California State Bar's Standing Committee on Legal Professionals with Disabilities. She has received numerous awards, including the State Bar's first Diversity Award in 2002 for her work to open the legal profession to individuals with disabilities. She is a visiting associate professor at Loyola Law School and also an adjunct professor at the University of Southern California School of Law. PARC recently spoke with Ms. Hill about her civil rights work and about police interactions with people with disabilities.



PARC: What is the Western Law Center for Disability Rights (WLCDR) and when was it founded?

EH: The Western Law Center is the oldest combined disability and legal advocacy organization in the country. It was founded in 1975 in memory of A. Milton Miller, a California disability rights advocate. We focus on the civil rights of people with disabilities through our Civil Rights Litigation Project, Cancer Legal Resource Center, Learning Rights Project, Disability Mediation Center, and Education and Outreach Project.

We're located on the campus of Loyola Law School where I teach disability rights law, and so we work with a great number of law students, who help us do more work than we otherwise could with just staff. We have a web site with a lot of information about what we do and different kinds of information for people with disabilities as well as for agencies that work with people with disabilities.

PARC: *Prior to becoming the WLCDR's Executive Director, what was your relevant professional background?*

EH: Before joining the Western Law Center, I was a supervisory attorney for five years at the U.S. Department of Justice's Civil Rights Division in Washington, DC. I worked in the Disability Rights Section, investigating cases under the Americans with Disabilities Act (ADA). I developed the Department's ADA mediation program and certified state and local building codes for ADA equivalency.

Before that, I was a litigator for a Washington, DC, law firm and a volunteer mediator for the Washington, DC, Superior Court. For nearly 11 of the 16 years I've been practicing law, I've been in disability rights law. I've also written a legal treatise on disability rights, and I'm now working on a casebook.

PARC: *What does the Center do in the area of policing and persons with disabilities?*

EH: In the past several years, we've been very active in addressing the interactions of the disability community and law enforcement. In response to a number of complaints we received, we brought suit against the Los Angeles Police Department (LAPD) for its failure to provide sign language interpreters for deaf witnesses, victims, and arrestees. We worked very closely with LAPD management to reach a settlement agreement that has substantially improved how officers work with the deaf community. We're currently in litigation with the Los Angeles County

Sheriff's Department (LASD) over similar issues in terms of providing sign language interpreters and also in litigation with the San Bernardino Juvenile Justice System because it fails to accommodate and provide special education services for juveniles with disabilities. However, we don't focus exclusively on suing law enforcement agencies. We've worked with the Los Angeles Commission on Assaults Against Women to help law enforcement officers address women with disabilities, who are more likely to experience domestic and other violence than non-disabled women. And we've also worked with Children's Hospital's University Affiliated Program to help law enforcement figure out how to respond appropriately to persons with disabilities who are victims of domestic and other kinds of violence.

PARC: *What are your main concerns regarding interactions between persons with disabilities and the police? Are there common law enforcement shortcomings in the jurisdictions you've examined?*

"We often run into a lack of communication with individuals who are deaf or hard of hearing.... These failures to communicate lead deaf individuals involved in crimes as victims, witnesses, or participants to be left out of the criminal justice process because police officers don't interview them, don't take their perspectives into account in investigations, and don't allow them to fully participate."

EH: We often run into a lack of communication with individuals who are deaf or hard of hearing. Police should be providing qualified sign language interpreters and other auxiliary aids

like TTYs (text telephones for people with hearing and speech impairments), as well as captioning on videos and televisions for individuals in custody. These failures to communicate lead deaf individuals involved in crimes as victims, witnesses, or participants to be left out of the criminal justice process because police officers don't interview them, don't take their perspectives into account in investigations, and don't allow them to fully participate. Many deaf communities are afraid of the police because of this communication failure. Instead of seeing the police as protectors, they see them as potential victimizers and are unwilling to come forward to report crime or to participate as witnesses. They really feel excluded from the justice process.

Another serious concern is misunderstandings of individuals with mental illness or developmental disabilities. This has been a big issue in Los Angeles, where a few years ago a woman with a mental illness was shot and killed because she was brandishing a screwdriver. If a person is unable to follow directions quickly, police may overreact, resulting in an unnecessary escalation of a situation. In addition, if police don't involve experts on developmental disabilities or mental illnesses in the investigation process, they can fail to take into account the fact that many people with these disabilities are taught to try to please authorities. They may give answers they think the interviewer wants rather than just the facts. They may respond more to try to make the interviewer happy or make the interviewer go away rather than seeing themselves as objective participants in the process.

Another problem we've seen a lot is physical access to police stations. We recently got a call from a wheelchair user who needed to file a complaint but couldn't enter an LASD station. How empowered do you feel to exercise your rights to be protected from crime if you can't actually get in a law enforcement building? We've also encountered accessibility problems that prevented wheelchair users in holding cells from being able to bathe and use toilets. This results in serious health problems for them.

These are all major issues that we've encountered. We've also run into other issues where people's disability-related medication is taken away from them when they're arrested or brought in for interviews and not provided new medication on-time or not all. This can lead to serious escalations in their disabilities. Law enforcement agencies have to take all of these issues into account and modify their policies as necessary to make sure that people with disabilities have full access to the criminal justice process.

PARC: *Are there specific moments during a police interaction in which a large number or majority of individuals with disabilities require special help from law*

enforcement? If so, what can officers do to provide such assistance?

EH: For individuals who are deaf, the first moment—and the moment that will set the tone—is the initial interaction, whether in a home or somewhere in the field. The Miranda warning, if there is one, is important as well. At the initial interaction, if there's no interpreter provided, officers tend to try to communicate either with notes or by trying to spell out things if they know how to finger spell. But this is not very effective. It's like me trying to S-P-E-L-L O-U-T E-V-E-R-Y-T-H-I-N-G. It takes forever, and if you forget the first letter of the word that I'm spelling, you don't know what the word is. Often, a deaf person doesn't understand what the police are saying, or the police will interview everyone at the scene except the deaf person and will end up with a slanted picture of what happened.

Regarding Miranda, just having the warning written out as "You have the right to remain silent" doesn't necessarily work for a person whose primary language is American Sign Language and is already silent. The English words don't translate. It makes more sense for police to say, "You don't have to say anything."

Other moments of interactions are in tense situations where police might assume that someone has a dangerous intent towards them when really the person has a disability and is trying to figure out what is going on and is reacting in fear. Interviews are also moments in which a difference can be made in how you approach people with disabilities. Keeping them in an interview room, police need to be able to involve an interpreter but must be careful about how they use that interpreter. People often don't understand that the interpreter is essentially an objective tool to translate what an officer says and translate back what the person with the disability says. An officer can't talk to the interpreter and ask him or her to assess the person or determine if the person is believable. It's very important to make sure that communication is effective, that police are getting the full answer and not just what the person thinks an officer wants to

"Another problem we've seen a lot is physical access to police stations.... How empowered do you feel to exercise your rights to be protected from crime if you can't actually get in a law enforcement building?"

hear or what they can say quickly enough to end the interview.

PARC: *Are there legal requirements stemming from the Americans with Disabilities Act or other laws that require law enforcement officials to do, or not to do, certain things during their encounters with or detention of people with disabilities?*

EH: The ADA requires law enforcement agencies to make what are called reasonable modifications in policies, practices, and procedures, whenever those are necessary to ensure access for individuals with disabilities. But you don't have to make a modification if it would fundamentally alter the program being provided. So there a lot of ways police officers or sheriff's deputies may need to modify their normal practices to accommodate a person with a disability. They may have to allow the service animal to accompany the person with the disability or provide a human guide so that the person has independence to the extent that it is allowed. Agencies may have to modify the practice of usually taking people's medications away from them in the instance where a person with a disability needs that medication in order to prevent seizures or to allow them to function. The ADA provides a very flexible standard. If there's some policy, practice, or procedure that is keeping this person with a disability from accessing whatever services other people would access, then an agency may need to make modifications.

Also, law enforcement agencies have to ensure that their communications with people with hearing, speech, and vision disabilities are as effective as their communications with other people. To do that, they can provide auxiliary aids like sign language interpreters in complicated discussions, handwritten notes in simple discussions, large print when giving materials to vision-impaired persons, or just slowing down conversations with someone who is hard of hearing.

Finally, agencies must provide program access. The LASD has to find a way to make either its building or

its complaint process accessible to the wheelchair user who wants to file a complaint. For the person being interviewed or who's in custody, the police have to find ways to make all of those programs physically accessible. People with disabilities need access to all the pieces of the justice process. The courts have held that the ADA doesn't just apply to benefits or services being provided; it applies to arrests and interviews—things that we would rather not have happen to us. Nonetheless, when they do happen to us, they have to be accessible.

PARC: *In your view, do officers receive adequate training to handle encounters with people with disabilities? What are some common training problems you've identified in such encounters?*

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EH: Officer training is very often inadequate. Officers may receive a brief training when they start or may be told to watch a

videotape. But such training is usually not deep or broad enough and comes off to officers as not being very serious. The training needs to be reinforced and updated periodically because officers will forget if they don't encounter people with disabilities regularly. It's important that when they do encounter a person with a disability, that the training is fresh enough in their minds and serious enough to be useful to them.

When agencies just show a video, no one really takes the video very seriously. Training videos are notorious opportunities to make jokes and do something other than watch. If an officer has a particular situation dealt with recently, that officer will not be able to get answers from a videotape. The officer needs a person able to respond to particular questions.

It's very important that trainings involve real people with disabilities, because rules only stated are too simplified. Unless you understand that American Sign Language is fundamentally different from English (so just speaking very slowly or loudly will not help), you will not understand why you are supposed to communicate in certain ways. You need to understand why a rule is as it is. That's when training sticks.

PARC: *Does your group, or do others, provide guidance or resources for police to assist them in identifying various common disabilities?*

EH: We've done some trainings for the departments with which we've been involved. We also have some referrals that we make for agencies that need training. The U.S. Department of Justice has a web site, www.usdoj.gov/crt/ada, with a number of printed publications about specific disability issues, including law enforcement.

PARC: *Are there any police or sheriff's departments around the country that have, in your opinion, embraced model policies and practices when it comes to the needs of people with disabilities?*

EH: We focus primarily on Southern California, so what I know is that the LAPD, through its working group that we're involved with, is approaching model policies for working with the deaf community. The key to that has been involving the deaf community, so that officers know why deaf individuals need what they need and realize that this is a community they need to communicate with.

PARC: *What would you say are some disabilities that are most frequently not recognized or handled properly by police?*

EH: Deafness is one. Mental illness and developmental disabilities—like mental retardation—are very often misunderstood. Also, cerebral palsy is often not recognized. People assume that a person with cerebral palsy has mental retardation when the person doesn't. People sometimes assume that a person is drunk because his or her gait may be different. Police officers have been known to mistake people who are perfectly aware and unimpaired for being drunk or on drugs just because of their disability.

PARC: *In general, how should police dispatchers do a better job in receiving calls from people with disabilities and dispatching law enforcement to respond to such calls?*

EH: This has actually gotten much better since the ADA passed. Now most police departments are recognizing TTY calls from the deaf community and not hanging up on people who don't hit the space bar. A common problem has been that when someone calls police dispatch on a text telephone, the police have required the person to hit the space bar to make a beeping sound. But when a person with a disability is calling the police in an emergency, the person doesn't always think to hit the space bar. Dispatchers are getting better trained for that.

The other thing is that you can't assume that because you're not hearing what you expect to hear, that the call is a prank. The last thing to do is to hang up. You have to assume first that the caller is a person with a disability who is trying to communicate in a different way. One key is to know what resources are available.

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The most important thing is to find out ahead of time how to access an interpreter to be dispatched with an officer, how to access an expert in developmental disabilities, who to

call about issues that come up in the dispatch process, and then how to communicate that information to the officers. Keep trying when speaking to people with disabilities. Sometimes it will take you three times to figure out what a person who's had a stroke or who has cerebral palsy is saying to you, but you can do it.

PARC: *The WLCDR has been involved in several lawsuits alleging that police officers or sheriff's deputies had violated the rights of deaf people. Would you describe the Diamond v. Los Angeles Police Department settlement? Would you describe the pending case, Valenzuela v. Los Angeles County Sheriff's Department?*

EH: In the *Diamond* case, Mr. Diamond had been involved in an argument in a parking lot. The police were called and had been told Mr. Diamond was deaf and needed an interpreter. The officers did not have an interpreter when they arrived. They proceeded to interview everyone at the scene except Mr. Diamond. He wanted to communicate with them and tried to

use sign language. Officers told him to shut up and sit down. After a while, he tried to communicate with them again. Apparently, the officers mistook his sign language gestures as aggression. They jumped on him, knocking him to the ground and breaking his dentures. They then handcuffed him and threw him in the car, where he sat for quite some time. They took him in and held him, still not providing Mr. Diamond with a sign language interpreter. They provided a finger speller who tried to communicate, but finger spelling doesn't work, as I explained earlier. Mr. Diamond did not understand that he wasn't being arrested or taken for medical care and that he didn't have to come back to court. He left in a state of complete confusion about what had happened, without having been able to give his side of the story. The police assumed that because they'd gotten the story entirely from the other side, that it was Mr. Diamond's fault. Mr. Diamond never got to say what happened and went to court not knowing that his case wasn't being pursued.

We filed a lawsuit on Mr. Diamond's behalf and on behalf

of the other members of the deaf community in Los Angeles to get the LAPD to adopt appropriate policies to provide sign language interpretation when necessary. We helped draft the policy that the LAPD now has in place; we ensured that the Department has a contract with interpreter services that can provide interpreters in less than an hour; and we helped form the LAPD's working group that's primarily doing outreach with the deaf community and trying to build trust that the LAPD will respond appropriately.

In the *Valenzuela* case, LASD deputies were called to the house of a deaf young woman. They tried to communicate with her by yelling. They expected her to be able to read their lips and understand. They were giving her orders, and she couldn't understand them. The deputies beat her, and she ended up unconscious and in the hospital. So this profound misunderstanding led to a serious escalation of the problem. They thought she was not complying, but she wasn't hearing what they said.

We filed suit on her behalf against the LASD, which similarly doesn't have appropriate policies to provide sign language interpreters when interviewing or arresting people who are deaf. We are in current litigation and hope to resolve the issue in a way similar to the LAPD case.

PARC: *What is the biggest challenge you face in advocating for reforms to improve police treatment of those with disabilities?*

EH: The biggest challenge is the basic attitude that "We don't have to make changes. We're doing enough. This is not a big enough percentage of the population to merit extra attention or different services." That assumption is mistaken. When you fail to do these things correctly, you end up with entire communities of people with disabilities afraid of the

"When you fail to do these things correctly, you end up with entire communities of people with disabilities afraid of the police who are supposed to be protecting them. If you see the police as victimizers or enemies, that doesn't lead you to have a positive view of the law, law enforcement, or compliance with the law."

police who are supposed to be protecting them. If you see the police as victimizers or enemies, that doesn't lead you to have a positive view of the law, law enforcement, or compliance with

the law. I think the costs are much larger if you ignore people with disabilities than they are if you take the relatively minor steps to make sure that people have full access to the criminal justice process.

PARC: *What have you done at WLCDR that you are most proud of to advance respectful police interactions with people with disabilities?*

EH: The working group with the LAPD, police officers, deaf advocates, attorneys, and others is a crucial tool. As we learned during our litigation, you can't just go to police or any other organization and say, "You have to do this. This is the law." It is much more effective if you get inside, if you get "buy-in" from management, if you get interactions going between actual police officers and actual people with disabilities, so that they can understand each other's perspectives. This kind of group is ideal, where you can have that interaction to create policies that work both for the people with disabilities as well as for the police officers trying to do their jobs. This group has

worked very well. Litigation may be necessary to call attention to a problem and get doors open, but it is not the end.

Information about the WLCDR can be accessed online at www.wlcmdr.org. For more information about the ADA and law enforcement, go to www.usdoj.gov/crt/ada/q%26a_law.htm. To learn about criminal justice and people with mental retardation, go to www.thearc.org/faqs/crimqa.html.

CONFERENCES & MEETINGS

April 18-20, 2005 – Office of Juvenile Justice and Delinquency Prevention (OJJDP), School Resource Officer Training Seminar, Los Angeles, CA. Online at www.youthforjustice.org/news.html

April 21-23, 2005 – Police Executive Research Forum, Annual Meeting, New York, NY. Online at www.policeforum.org

April 25-27, 2005 – Northwestern University Center for Public Safety and Traffic Institute, Fourth National Symposium on Racial Profiling, Chicago, IL. Online at server.traffic.northwestern.edu/traffic/course_more.asp?id=527

May 15-19, 2005 – American Jail Association, 24th Annual Training Conference and Jail Expo, Kansas City, MO. Online at www.corrections.com/aja/conferences/annual_overview.shtml

May 23-27, 2005 – International Association of Chiefs of Police, 29th Annual Law Enforcement Information Management Training Conference, Greensboro, NC. Online at www.iacptechnology.org/2005LEIM.htm

May 24-27, 2005 – International Association of Law Enforcement Intelligence Analysts & Law Enforcement Intelligence Unit, Annual Conference, Alexandria, VA. Online at www.leiu-homepage.org

May 29-June 2, 2005 – International Association of Directors of Law Enforcement Standards and Training, Women in Law Enforcement: Issues for Standards and Training, Annapolis, VA. Online at www.iadlest.org/2005/index.htm