

POLICE PRACTICES REVIEW

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CIVILIAN OVERSIGHT

RCMP's Review Agency Seeks New Powers

The Commission for Public Complaints Against the RCMP (Royal Canadian Mounted Police), has proposed changes that, if approved, would "ensure effective civilian review of the national security activities of the RCMP." The recommendations were included in a report to a Canadian commission investigating the treatment and deportation to Syria of Maher Arar, who is a citizen of both Syria and Canada.

According to reports, Syrian-born Arar was detained in late September 2002 by U.S. immigration officials as he traveled home to Canada from Tunisia. He was questioned about his alleged ties to terrorist groups, based in part on intelligence provided by the RCMP. Arar was carrying a Canadian passport when U.S. officials deported him to Syria about ten days after he was originally detained. He was jailed there for a year and later alleged he had been tortured; he was returned to Canada in October 2003.

In its review of the RCMP's role in the Arar case and in national security generally, the Commission for Public Complaints (CPC) noted that the RCMP's role in national security is growing, with new functions added to the agency's responsibilities since passage of the 2001 Anti-terrorism Act. "Secrecy in such matters is necessary," according to the CPC, "but it is the secrecy that makes effective review of government actions in this area so essential to the preservation of the rights of Canadians." According to the CPC, its powers are inadequate to fulfill its monitoring duties. Due to its limited authority, the CPC faces obstacles accessing RCMP documents and evidence needed to carry out investigations, and is not empowered to audit RCMP policies and practices unless a

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

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complainant has filed a complaint and initiated the investigative process.

In its report, the CPC requests four specific powers:

- To compel testimony and require the production of documents in the course of a review or investigation;
- To summon people and administer oaths during a review or investigation;
- To receive evidence whether or not admissible in court in the course of a review, investigation or hearing; and
- To conduct audits.

The CPC also offered a broader proposal for oversight reform—the creation of a permanent review mechanism to monitor every Canadian federal entity involved in national security operations. The proposed National Security Review Commission (NSRC) “would have the benefit of a holistic view of national security activities, rather than the isolated picture gathered by any of the existing review bodies” in Canada, according to the report. The NSRC would have unfettered access to information, the power to initiate and conduct audits, and would not be driven by complaints. The CPC and other oversight bodies would forward their reports and complaints to the NSRC for review. The full report and press release can be accessed online at www.cpc-cpp.gc.ca/DefaultSite/Home//index_e.aspx?ArticleID=1. www.cbc.ca/news/background/arar/; *Toronto Star*, March 2, 2005.

CONSENT DECREES/ MEMORANDA OF AGREEMENT

Fourth Walkill Report Released

Monitor Dean Esserman and PARC, which acts as staff to the Monitor, released the fourth compliance report on the Town of Walkill’s 2001 consent decree with the State of New York. The New York Attorney General had obtained the consent decree because of the Walkill Police Department’s systematic abuses of authority, including stopping female motorists for improper reasons and harassing Department critics.

The latest report, which covers the period between March 2004 and February 2005, documents that the

Town came into substantial compliance with the consent decree in January 2005, after having been out of compliance for more than six months for the following reasons: persistent and lengthy delays in the Department's investigations of personnel complaints; lengthy delays in the preparation and presentation of early warning system reports; significant delays in reviewing videotapes from patrol car cameras; and the failure to fill the Deputy Chief's position for more than one year. Wallkill is required to remain in substantial compliance through January 31, 2006 to be released from the decree.

According to the Monitor's report "the *most serious* current problem with compliance" is equipment malfunction of patrol car video cameras. Cameras turning off during the middle of a stop, taping over previously-recorded events, and tapes not picking up conversations were among the issues identified. The Monitor saw "no reasonable alternative other than purchasing new recording equipment using DVD, rather than the obsolete VHS technology." The Monitor gave the Town a deadline of April 15 of this year for presenting a timetable for purchase and installation of DVD recorders in every patrol car.

The Monitor's report updates the status of three problems identified in previous reports: a few members were the subjects of a disproportionate percentage of complaints; some officers were filing complaints against other officers to "settle personal scores;" and the Department's complaint investigations were taking longer than mandated by the decree. While the Monitor reported that the first problem persists, fewer complaints are being "brought in apparent bad faith." Moreover, the duration of investigations has been shortened, with 83 percent of the investigations in 2004 being completed within the 180-day statute of limitations for imposing officer discipline, as compared to 37 percent of the investigations in 2003.

The full report, as well as the Monitor's previous reports, can be accessed online at www.parc.info/pubs/index.html#site.

PG County Completes First Year of Monitoring

The Independent Monitor Team for Prince George's County's January 2004 memorandum of agreement (MOA) with the U.S. Justice Department has released

its third quarterly report assessing MOA compliance by the county and its police department. The MOA is intended to promote police integrity and prevent unconstitutional conduct of Prince George's County Police Department (PGPD) officers. The report, covering the period between October 1 and December 31, 2004, reviews the MOA's 67 requirements and focuses on use-of-force investigations, officer training, and personnel management.

The monitoring team, led by Eduardo Gonzalez and the Alexandria Group of MPRI, has set three compliance phases for the PGPD: the first to create an approved policy; the second to design and hold training on the policy; and the third to implement the policy throughout the PGPD and ensure that personnel are performing accordingly. Within each phase, the PGPD's performance in meeting specific requirements can be found in compliance, pending compliance, or not in compliance. The monitoring team has defined compliance with a particular requirement as when "in excess of 94 [percent] of the relevant indicators conform to the provisions as articulated in the MOA."

In the most recent quarter the monitoring team addressed three areas that had been of concern previously. In the first area—PGPD creation and issuance of MOA-compliant policies and directives—the report praised progress made. Currently, the PGPD has achieved Phase I compliance with 60 percent of its requirements; 18 percent of the MOA's requirements are in pending compliance. By contrast, just 46 percent were in Phase I compliance at the end of the previous quarter. Though the report commended the PGPD's progress, it also noted the Police Chief and Monitor "both agree that at this stage in the process, with the exception of the EIS [Early Identification System] requirements, the department should have been in full Phase I compliance." The Department has not reached Phase II compliance on any of the requirements. The latest report as well as previous reports can be accessed online at www.co.pg.md.us/Government/PublicSafety/Police/progress.asp?h=20&s=&n=230%20.

Pittsburgh's Release from Decree Imminent

The City of Pittsburgh and the U.S. Department of Justice (DOJ) filed a joint motion in early April to end the last remnants of federal monitoring of the

ACADEMIC RESEARCH

The main question in “Police Organizational Factors, the Racial Composition of the Police, and the Probability of Arrest,” an article featured in the March issue of *Justice Quarterly*, is how the racial composition of police departments influences the probability of arrest for white and black offenders. The authors, David Eitle, Lisa Stolzenberg, and Stewart J. D’Alessio also explore the relationship between other police organizational characteristics and race-specific arrest rates.

The authors predicted that in police departments with larger proportions of black officers, offender race would not affect the likelihood of arrest as much as it would in police departments with smaller proportions of black officers. This is because, they argue, increased minority presence in police departments may break down traditional patterns of policing and stereotypes of minority communities. To test this hypothesis, the authors used data from the 2000 National Incident Based Reporting System (NIBRS), the 2000 Law Enforcement Management and Administrative Statistics (LEMAS), and the 2000 decennial Census. There were 19,099 aggravated assaults and 100,859 simple assaults in 105 cities across the United States included in the study.

The authors found that police departments with larger proportions of black officers are more likely to arrest both black and white suspects for simple assault than are police departments with few black police officers. Additionally, the greater the proportion of black officers in a police department, the weaker the relationship between an offender’s race and the likelihood of arrest for simple assault. The authors note that findings from this study support the general conclusion that extralegal factors do affect police decision making, especially in situations where police have greater discretion, such as arrest. *Justice Quarterly*, March 2005; Vol. 22, No. 1.

Pittsburgh Bureau of Police (PBP) stemming from the 1997 “pattern or practice” consent decree, according to press reports. Entered into by the DOJ, the City, the PBP, and Pittsburgh’s Department of Public Safety, the decree was the U.S. government’s first against a law enforcement agency using its “pattern or practice” powers established in 1994. The decree focused on officer management and supervision; community relations; training; and investigations of officer misconduct allegations.

Most of the decree was lifted in 2002, but the federal court ordered that the Department of Public Safety’s Office of Municipal Investigations (OMI)—which investigates civilian complaints of misconduct against officers—remain under review because of what a DOJ press release described as “the failure of the OMI to comply largely to the significant backlog of misconduct complaints and the failure to investigate complaints thoroughly,” according to a DOJ press release. Auditor James D. Ginger, who has continued to report on OMI compliance with the decree, reportedly said the City has been in full compliance since July 2003 and no longer needs to be under

federal monitoring. The agreement to officially end the consent decree must still be approved by a federal judge. www.usdoj.gov/opa/pr/2002/August/02_crt_499.htm; *Pittsburgh Post-Gazette*, April 6, 2005; *Pittsburgh Tribune-Review*, April 6, 2005.

COMMUNITY POLICING

Police-Immigrant Relations Conference Held

Researchers, representatives from civic and human rights organizations, and immigrant community groups met in late March at Princeton University for “Justice and Safety in America’s Immigrant Communities,” the second conference in a three-part series on police-immigrant community relations. The series, sponsored by Princeton’s Policy Research Institute for the Region, the Vera Institute of Justice, and the New Jersey Institute for Social Justice, seeks to address public safety challenges involving immigrants and police.

The first conference, held last November, was attended by representatives from law enforcement and criminal justice agencies from the same jurisdictions as the second meeting's participants. The third and final conference, scheduled for May 20, will involve representatives of both sets of participants. "By bringing together regional leaders from law enforcement and immigrant communities, and leading scholars from around the country, we hope both to catalyze and to inform a broader discussion," said Vera's Anita Khashu, one of the conference's organizers. Another goal of the series, according to Khashu, is to create networking opportunities that might result in future collaborations between the police and the communities they serve. For more information about the conference series, see www.vera.org/project/project1_1.asp?section_id=6&project_id=70.

RACIAL PROFILING

Penn Adopts Policing Recommendations

University of Pennsylvania (Penn) President Amy Gutmann recently approved recommendations from Penn's Ad Hoc Committee on Safety in a Diverse Environment. The Committee, comprised of faculty, staff, and students, was formed following a November 2004 incident in which a student and several friends were stopped on campus by officers who were looking for theft suspects. The incident raised some concerns in the university community about police interactions with African American males on campus. Gutmann asked the members to "look closely at the relationship between the Division of Public Safety (DPS) and people of color, most specifically African American males," according to the Committee's final report. The DPS is the umbrella under which the University of Pennsylvania Police Department (UPPD) falls.

The new report builds on the findings and recommendations of a 2004 Ad Hoc Committee on Racial Profiling report. The 2004 report resulted in UPPD policy requiring that an annual review must be conducted of "aggregate data on pedestrian and vehicular stops, citations, arrests and searches by perceived race, ethnicity, and gender." The Chief of Police was also required to conduct a monthly review of traffic stops and the proportion of those stops leading to citations, arrests, or searches, disaggregated

by a subject's perceived characteristics. According to reports, the DPS now holds monthly forums for students to discuss safety issues with DPS personnel. One recommendation from the new report urges the DPS to develop a FAQ sheet on UPPD procedures and protocols to be published online and in Penn's newspaper. Both committees' reports as well as information about the DPS and UPPD can be accessed online at www.publicsafety.upenn.edu/. *Daily Pennsylvanian*, March 15 and 29, 2005.

FORCE MANAGEMENT

IACP Issues Stun Weaponry Deployment Guide

The International Association of Chiefs of Police (IACP) has published a step-by-step guide to assist law enforcement agencies choose, acquire, and employ Electro-Muscular Disruption Technology (EMDT)—"devices that use a high-voltage, low power charge of electricity to induce involuntary muscle contractions that cause temporary incapacitation." Among more commonly-known EMDT devices are the stun guns manufactured by the Taser and Stinger companies. The guide, *Electro-Muscular Disruption Technology: A Nine-Step Strategy for Effective Deployment*, asserts that as law enforcement use of EMDT proliferates, departments must address legitimate concerns "such as officer and suspect safety, community acceptance, acquisition options, policy development, training requirements, and agency and officer liability."

The IACP recommends, as a first step before procuring EMDT, that a department form a leadership team to consider related concerns. If the team determines that such devices are a deployment option, it must place EMDT on the department's use-of-force continuum. The safety and effectiveness of the technology compared to other use-of-force options must be considered, states the guide, and the team "should attempt to outline the general circumstances under which it would recommend that officers be authorized to use EMDT." Following placement on the continuum, a department must conduct a cost/benefit analysis of EMDT usage and then decide who will be responsible for various tasks such as procurement, training, and incident review.

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PRESIDENT'S PERSPECTIVE

By Merrick Bobb, President

The *Los Angeles Times* reported recently that three major Southern California law enforcement agencies will change long-standing policies known as sanctuary rules, which prohibit officers from inquiring about the immigration status of persons they stop. The LAPD, the Los Angeles County Sheriff's Department (LASD), and the Orange County Sheriff's Department (OCSD) have said they will now carve out exceptions to the previous prohibitions and accept federal invitations to enforce certain federal immigration laws. Some law enforcement agencies in Florida, Alabama, and Nebraska have already done so, and agencies in Connecticut, Arkansas, and Oklahoma are considering it.

In part, these changes are prompted by the rise of multinational gangs like Mara Salvatrucha that operate in Central America as well as in the United States. The LAPD estimates that there may be as many as 30,000 undocumented persons with criminal records on the streets of Los Angeles today. The Commander of the LAPD's Rampart Division estimates that there are 1,000 previously convicted and deported gang members at large today in Rampart alone, according to the *Los Angeles Times*. In recent months, Rampart detectives have arrested 18 Mara Salvatrucha gang members suspected of illegal reentry into the United States, a federal crime that can result in imprisonment for 10 years or more.

The OCSD will give the U.S. Bureau of Immigration and Customs Enforcement (ICE)—the INS's successor for enforcement of immigration laws—the opportunity to train up to 500 deputies in the enforcement of such laws, 200 of whom Sheriff Michael S. Carona intends to train before the end of this year. Those deputies reportedly would then be empowered to enforce those laws when involved in special investigations of sexual predators, gang members, and other specific targets of specialized units. The Sheriff has stated that Orange County deputies will not randomly patrol for undocumented persons and will not check the immigration status of individuals who were victims of crime and report it, said the *Los Angeles Times*.

The LAPD will proceed in a narrower manner than the OCSD. Under the new policy, which is currently being written, LAPD officers will be empowered to arrest individuals they encounter who have reentered the U.S. after deportation for a prior criminal conviction for a serious crime. Chief William J. Bratton states in media reports that the reason for the change or clarification is to target individuals who prey upon immigrants: "The people the policy is designed to target are those who victimize immigrants." Chief Bratton alludes to gang members and drug dealers who reenter the United States illegally to commit new crimes in the immigrant community. Upon encountering a suspect believed to have been previously deported, the officer will contact a supervisor who will in turn contact the federal government to confirm the criminal conviction and deportation and to obtain a federal warrant for arrest, according to reports.

One of the LAPD deputy chiefs tasked with drafting the new formulation of the rules has offered assurance that the LAPD will proceed cautiously and draft a narrow, delimited document. There is no reason to doubt that Chief Bratton and the LAPD are proceeding in good faith. Nonetheless, thus far, it is unclear how an LAPD officer will come to have a reasonable suspicion that a given individual has been convicted of a serious crime and previously deported. One would guess that to do so, the officers will necessarily have to question persons about their immigration status. If so, it remains to be seen whether large numbers of Latinos and Asians and other groups will routinely be asked about their immigration status by virtue of their appearance or accents. Even if people are not questioned about their status, there is the possibility that the LAPD could compile lists of persons whose status was checked following an encounter with the law enforcement agency and who were found to be undocumented but without criminal records. Whether such lists, if compiled, would be maintained and made available to federal immigration authorities has yet to be publicly discussed.

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In the jails, the LASD is beginning a program in which custody assistants will be trained to question foreign-born convicted inmates about their immigration status prior to release or transfer to state prison. The LASD will place a 48-hour immigration hold on those convicted inmates found or suspected to be undocumented. ICE will be notified and given an opportunity within those 48 hours to arrest such inmates or place a further hold on them. The LASD is considering whether or not to permit deputies on patrol assignments to inquire about the immigration status of persons they stop. No decision has been reached as yet, according to the Sheriff's Department.

No reasonable person will quarrel with arresting and prosecuting undocumented individuals convicted of serious crimes who have illegally reentered the United States. But many reasonable people will quarrel about whether the questioning of persons suspected of being undocumented, or running routine status checks on suspected undocumented persons, criminal or not, is worth placing in jeopardy the trust that has gradually and painfully been established over many years between the police and the immigrant population. Some police departments have concluded that it is not worth it. The NYPD floated a trial balloon about changing the rules that was quickly shot down by immigrant rights groups. The Chicago Police Department will not change the sanctuary rules contained in a 1989 executive order issued by the City's mayor. On the other hand, the Miami Police Department in Florida and the Grand Island Police Department in Nebraska have decided to cooperate with ICE.

Sanctuary rules are grounded in a belief that state and local police should not be handmaidens of the federal immigration authorities and should concentrate on fighting state law crimes in their own backyards. At the same time, the rules recognize that no police department can fight crime by itself: It must have sources and informants in the community, and the community must voluntarily convey information about criminal activity and criminal suspects directly to the police. If reporting crime puts one at risk of deportation, even those most grievously injured by crime will not report it or assist the police in any way.

Fighting Al Qaeda, espionage, or mass destruction is not among the rationales put forward by the Southern California law enforcement agencies that are changing the sanctuary rules. This is not at all to belittle the threat posed by criminal gang members. But criminally-convicted gang members or drug dealers who reenter the country are just one part of a wider threat posed by gangs and drugs in general. Attacking general gang criminal activity may be a smarter way to proceed rather than concentrating on what must be a relatively small subset of previously-deported criminal gang members.

So far, no one has proposed a way to accomplish legitimate law enforcement ends without widespread questioning of individuals whose appearance or accent suggests immigrant status, illegal or not. No one at the LAPD has yet publicly announced the list of serious crimes that will permit an officer to question an immigrant about his status or the circumstances under which such questioning will be permitted. The possibility is that haystacks of people will be interviewed to find one small needle. The means may be disproportionate to the importance of the ends, and much more could be lost in trust and cooperation than will be gained by catching a few criminals. To be sure, immigrant communities will breathe easier and thank the police if convicted and deported gang members are not allowed to reenter or remain in their communities. If, however, the police dragnet is cast too wide and the perception takes hold that the police are rousting young men merely because of their Latino appearance or accents, community support may begin to dissipate. So too if police resources to fight gangs and drugs in general are cut to concentrate narrowly on previously deported criminal gang members and, in the wake of that, general gang and drug activity rise.

While many of the details regarding sanctuary rule changes have not been announced, the potential exists for the rules to be swallowed up by exceptions. That potential is coupled with the failure of local police

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leaders to make convincing arguments in support of the proposed changes. Nearly ignored in the course of the discussion regarding the sanctuary rules thus far is the responsibility of the federal government—not local governments—to ferret out and remove convicted criminals who have illegally reentered the country. It is somewhat paradoxical for the LAPD and the LASD, both of which complain constantly and, in general, correctly about lack of resources, to take on the added burden of federal immigration law enforcement.

The Los Angeles Police Commission and the L.A. County Board of Supervisors should not countenance changes to the sanctuary rules absent a persuasive demonstration that the questioning of immigrants can be narrowly tailored and will not lead to widespread stops of individuals based upon perceived ethnicity or otherwise undermine cooperation with the police. The Board of Supervisors should in addition monitor the jail program that they recently approved. Overall, fiddling with the sanctuary rules presents risks and may create bad precedent. Criminals convicted of serious crimes who illegally reentered the country should be caught and punished. The real question is whether it can be done without racial profiling and diminished cooperation of immigrant communities with the police.

According to the IACP, the next step is to reach out to the community since “heightened public concern warrants that deployment plans be carefully developed with full recognition that community acceptance is essential to their success.” EMDT policies and procedures must then be developed to determine permissible and impermissible uses, post-incident medical protocol, and incident reporting. Following this, the guide directs, a department must create a comprehensive training program and then choose a course of deployment, preferably a phased-in approach during which special operations teams, supervisors, or a selected group of officers first deploy EMDT. Finally, the IACP recommends that departments assess EMDT use and results, as well as determine appropriate action for officer breaches of policy, which can include “counseling retraining, or disciplinary action needed to ensure compliance with EMDT policies.”

The guide on EMDT deployment “should be used to engage departments and communities in a partnership to develop policies and procedures that reflect public safety priorities and provide clear and concise instructions for using this less-lethal force option,” says the IACP. The full guide, which was supported by the National Institute of Justice, can be accessed online at www.iacp.org/research/rcdcuttingedgetech.htm.

LEGAL AFFAIRS

Los Angeles Settles Most Rampart Lawsuits

According to Los Angeles City Attorney Rocky Delgadillo, the City has resolved 206 of the total 214 claims and lawsuits stemming from the Los Angeles Police Department’s (LAPD) Rampart Division scandal for roughly \$66.2 million. The scandal revolved around alleged corruption and misconduct by Rampart anti-gang CRASH (Community Resources Against Street Hoodlums) officers accused of framing, beating, or shooting suspected drug dealers, gang members, and others. Several involved officers were eventually convicted of corruption-related offenses. “Total Rampart payouts are projected to be no more than \$70.2 million” once all 214 cases are resolved, said Delgadillo. The eight outstanding cases are active or on appeal, and 27 of the 206 cases resolved thus far were dismissed, according to the City Attorney’s Office. Delgadillo said that the average payout per case has been \$400,000, with the highest single payout made to Javier Ovando, who was paid \$15 million in 2000.

The City Attorney said that the LAPD must continue to identify at-risk officers, maintain independent civilian oversight, invest sufficient funds in officer supervision, and carefully recruit and train officers. The City Attorney’s press release and related information can be accessed online at www.ci.la.ca.us/atty/index.htm. *Los Angeles Times*, March 31, 2005; *Los Angeles Daily News*, April 1, 2005.

NEWS BRIEFS

Portland Police Overseer Heads to Denver

Richard Rosenthal, the director of the City Auditor's Independent Police Review Division (IPR) of Portland, has been named the first Independent Monitor in Denver. Denver Mayor John Hickenlooper proposed the creation of the Office of the Independent Monitor last year, following several controversial officer-involved shootings, according to reports. Denver voters approved the plan presented by the mayor, calling for the Office to monitor and participate in certain internal investigations of members of the Denver Police and Fire Departments as well as the Denver County Sheriff's Office. Rosenthal and his staff will also audit internal investigations of citizen complaints conducted by the DPD and the Sheriff's Office. According to press reports, his immediate goals include establishing an officer-citizen mediation program for resolving complaints, hiring outside consultants to review Denver policies regarding officer-involved shootings, and creating ties with the City's residents. Information and press releases about Denver's Independent Monitor can be accessed online at www.denvergov.org/Mayor/default.asp. *The Oregonian*, March 26, 2005; *Denver Post*, March 27, 2005.

California Taser Bill Under Consideration

California State Assemblyman Mark Leno (D-San Francisco) has proposed legislation that would require every law enforcement agency in the state to submit monthly reports to California's Justice Department during 2006 with information about whether it uses Tasers (or other stun guns falling under the bill's definition), and if so, about every incident in which the weapons are drawn or used. Questions to be answered include:

- Did the Taser deliver a charge or shock?
- What was the reason the Taser was used?
- How many shocks were administered, and what was the length of each shock?
- What was the subject's age, gender, race, or ethnicity?
- Was the suspect injured in connection with the employed Taser?

Assembly Bill 1237 defines a Taser as "any mechanism that is designed to emit an electronic, magnetic, or

other type of charge or shock through the use of a projectile, and is designed for the purpose of temporarily immobilizing a person by the infliction of that charge or shock." If the legislation passes, Tasers would also be included among weapons whose manufacture, sale, import, or possession by civilians (excluding law enforcement officers carrying out their official duties) is punishable by imprisonment. The legislation recently cleared the Assembly's Public Safety Committee and was referred to the Committee on Appropriations, according to press reports. The full text of the bill can be accessed online at www.assembly.ca.gov/acs/defaulttext.asp. *Modesto Bee*, April 8, 2005.

INTERVIEW

In 1997, the City of Steubenville (OH) and the Steubenville Police Department entered into a federal "pattern or practice" consent decree with the U.S. Department of Justice, becoming only the second police department to enter into such a decree. Under the leadership of Chief William A. McCafferty, the department came into full compliance with the decree and was released from it in early March of this year. After obtaining a bachelor's degree in Accounting and holding several management positions, McCafferty turned to policing in 1989, when he was hired by the Steubenville Police Department. He became the department's Acting Chief in 2001, and was sworn in as the permanent Chief in January 2003, overcoming the Justice Department's interest in appointing an outsider as head of the department. PARC recently spoke with Chief McCafferty about his department and its reform efforts.



PARC: Please describe your background in policing and law enforcement management prior to becoming chief of the Steubenville Police Department (SPD).

WM: I was hired by the Steubenville Police Department in November of 1989. I had attended the Ohio State Highway Patrol Basic Police Officer's Academy in Columbus, and then I worked as a Steubenville patrolman until April 1998 when I was

promoted to sergeant. In June of 1999, I was promoted to captain. On September 10, 2001, I was appointed Acting SPD Chief, and I continued in that role until the U.S. Department of Justice agreed that I could be sworn in as permanent chief, which took place on January 24, 2003.

PARC: *Could you tell our readers about the SPD? How big is your department, and what are the main crime problems and policing situations the SPD faces?*

WM: Our department is slated for 49 officers, four dispatchers, and six civilian employees. Each shift of our patrol division is commanded by a captain and a sergeant. Depending on the shift, there are approximately six to nine patrolmen on duty. We also have detective, juvenile, and narcotics divisions. I have an operations captain and an administrative captain, and there is one sergeant now in Internal Affairs.

Steubenville has about 20,000 residents now, down from close to 40,000 in the early 1970s. The steel mills employed about half of the population here. Since the mills have cut back, the population has continually left the area.

The main problem we have in our city is street-level drug dealing, especially of crack cocaine. A lot of our local drug traffic has been traced back to Detroit and Chicago. We did have a huge problem with oxycotton [a street name for the medical drug OxyContin]—prevalent on the East Coast and over-prescribed by doctors. It's like heroin. Since we've done a good job getting the oxycotton dealers off the street, now heroin is making a comeback. Another main policing concern of ours is juvenile crime.

PARC: *What led to the U.S. Justice Department's interest in the Steubenville Police Department's conduct? What were the main policing issues later addressed in the SPD's 1997 federal "pattern or practice" consent decree?*

WM: In the late 1970s through the early 1990s, there were a lot of civil lawsuits brought against the City for excessive force and unlawful arrests. To make matters worse, there really wasn't an internal affairs division in the Police Department to manage the cases. The operations captain, second to the chief, handled most of the cases, and they weren't handled very well, leaving us open to even more lawsuits. Also, if you were a party to a lawsuit as an officer, there was no counseling, no type of discipline, no training. The Police Department never changed with the times; it stayed the way it had been in the 1960s. It just continued to maintain its status quo.

The consent decree was an all-around, general "best practices" decree. We were never identified as having one specific problem, such as racial profiling. The decree's main focus areas were inadequate policies for training, monitoring, supervising, or disciplining police officers, and for investigating allegations of officer misconduct.

PARC: *When you first came on as the chief, how did you set your priorities for achieving compliance with the consent decree's requirements? Did you make any immediate changes in the way the Department was managed?*

"In the late 1970s through the early 1990s, there were a lot of civil lawsuits brought against the City for excessive force and unlawful arrests. To make matters worse, there really wasn't an internal affairs division in the Police Department to manage the cases.... The Police Department never changed with the times; it stayed the way it had been in the 1960s. It just continued to maintain its status quo."

WM: I was a captain replacing the previous Acting Chief, so I was still

just Acting Chief. I truly didn't believe I would become the permanent chief. I said, "I'll hold the Department down until you guys get an outside Chief." And I said to Charles Reynolds, our court-appointed auditor, "You tell me what you want me to do while I'm here, and I'll see if I can do it." His main concern was that there were several open internal affairs cases that had never been brought to a close. One case involved a man in prison who claimed he was innocent and had been set up by a Steubenville police officer. This gentleman requested a polygraph test. For some reason, my predecessors couldn't get him such a test in prison. Mr. Reynolds asked me to try to get one for the man. I got him one, and he

passed it. I think that may have led to him being paroled. He never admitted to any guilt because he truly believed he wasn't guilty. I believe the polygraph test might have helped him.

I also looked at the rest of the pending internal affairs cases and knew that we had to bring them to a close, no matter what we had to do. And we did so. Additionally, we had a poor employee performance evaluation system. I put one together that met Justice Department standards, though it's difficult to get everything you want into an evaluation system.

I think I took a different approach to SPD management than my predecessors had. I was a lot more open to the concept of a consent

"I believed that we needed policy changes, and I thought those changes would make for a better department. I thought this is what should be done, not what had to be done."

decree. I believed that we needed policy changes, and I thought those changes would make for a better department. I thought this is what should be done, not what had to be done. Mr. Reynolds and I had disagreements on certain issues, but all along we were both moving towards the same goal—to have a modern police department with best practices.

I needed to switch people around within the Department. It took me awhile to get the right people in the right places to help achieve compliance with the consent decree. But we eventually got it done.

PARC: *What were the major challenges you faced in implementing the consent decree, and how did you respond to those challenges?*

WM: I was a patrolman when the consent decree started. The first thing the chief at that time did, if I remember correctly, was to establish an internal affairs division with a captain and two sergeants. Captain Locascio was head of that. He and Mr. Reynolds got along well, and the Captain really understood the concept of internal affairs. The IA Division came into compliance rather quickly.

From what I remember, these guys from Internal Affairs put together many of the new policies and then sent them to DOJ to be approved. Looking back on them, my own feelings are that some of the policies

were too wordy and too difficult to understand. I think my predecessors thought, "We'll make this look like it's a real tough policy and DOJ will be impressed." But they never thought about the fact that we in the Department would have to live by these policies. This has been a challenge, working with some of these policies.

PARC: *In general, how did SPD personnel view the consent decree? Were certain sectors of the department particularly resistant to the decree? How did you encourage "buy-in" for the decree among SPD personnel?*

WM: At the beginning, anybody who was a veteran officer—top management on down—didn't want any part of the consent decree. I

remember once when I was a patrolman, one captain walked up to me and said, "Ten guys are going to lose their jobs right away." Well, no ten officers ever lost their jobs down here. Most of those veterans left rather quickly in the first two years of the consent decree. We had a big turnover—that's how I got promoted so quickly, moving from sergeant to captain in a year. I would say that the veterans and upper management were not happy at all about the consent decree because they didn't want somebody else running their department.

Before I was allowed to be named permanent chief, the Justice Department had Mr. Reynolds make me a course syllabus with "best practices" classes I had to take within a year, most of them through the International Association of Chiefs of Police. Anything Mr. Reynolds or the consent decree said had to be done were things that other police departments had been doing on their own for years. This is what made me buy into the consent decree. I would then come back to my Department and say, "You know, we're not the only place in the world that does this. You'd be surprised at the other departments doing this on their own." I'd also have captains' meetings or meet with captains one-on-one. If a problem with the decree arose and someone didn't understand why we had to do something, I would explain why.

PARC: *Were any specific SPD divisions instrumental in helping the Department as a whole to comply with the decree?*

WM: Again, the Internal Affairs Division, under Captain Locascio's leadership, very quickly complied with the consent decree. I relied on him a lot for advice when I came on as chief. With our training program, I went through several training officers. For some reason, that was a difficult aspect for us to come into compliance with. One training officer would go overboard, and the other one wouldn't do enough. I finally found a patrolman who worked under a training captain, who said, "Hey, this isn't that hard." He got us into compliance with the training.

PARC: *What kind of working relationship did you have with the court-appointed auditor, Charles Reynolds? Did the nature of that relationship impact the SPD's reform efforts?*

"Even after losing the first arbitration case, I wasn't afraid to make another decision, because the point is not what the arbitrator thinks is correct, but what I think is correct for running the Department."

WM: I really can't say enough positive things about Mr. Reynolds. Even before I worked with him as the chief, he was always nice to me. He'd always stop in whenever I was working, whenever he was here for a visit. I knew about his background and everything he'd done. It's pretty impressive. I always looked to him as somebody who was an ally, not an enemy. He gave me a lot of good advice. I've seen other chiefs of police who've had trouble with their auditors, but Mr. Reynolds was a great help.

Early on, the sergeants and the captains didn't buy into our policy changes. I would tell them, "Mr. Reynolds counsels everybody. He looks at departments all over. He's got to have some smarts, maybe a lot more than we have here now."

PARC: *How did the City and the SPD share responsibilities and work together to comply with the decree?*

WM: The Police Department did most of the work, and the City footed the bill. In the beginning, the City would have weekly compliance meetings with

the mayor, city manager, law director, SPD chief, and the SPD operations captain.

Once I was made Acting Chief, the city manager said, "Don't let us slip any." But then I started getting things done, so he and the mayor pushed for me to be made permanent chief. We now have a new city manager who is really great and has been really supportive. He's been city manager in large cities and knows everything about how a modern police department operates.

PARC: *Several of the Auditor's quarterly reports noted that city labor arbitrators had a tendency to "mitigate the seriousness of police misconduct... and to trivialize sound personnel practices when making their decisions." Did this affect your authority and ability to impose discipline? If so, how has this issue been addressed?*

WM: This did not affect my authority. I made the same decisions I would have made

regardless of the arbitration cases. Even after losing the first arbitration case, I wasn't afraid to make another decision, because the point is not what the arbitrator thinks is correct, but what I think is correct for running the Department. I'm frustrated with the arbitrators because I sit through some of the sessions, see their decisions, and think, "They're seeing something a lot different than what I'm seeing."

We're a small city, and the officers' union has an attorney who basically specializes in arbitration. Our Department attorney is involved in everything, so he's not as specialized. But, lose the cases or not, I would still make the same decisions, even if I had to do it all over again. Yes, some officers fired were given their jobs back by arbitrators, but the officers didn't work or get paid during the arbitration process. In several of the cases, officers had to go six or seven months without job or income, and I don't think anybody wants to do that.

PARC: *Was the Steubenville community involved in any way with the implementation of the consent decree's requirements? How has the decree's implementation affected the SPD's relationship with the community?*

WM: There were a few small groups of people who wanted the Police Department investigated, and they were happy with the consent decree being imposed. But as far as the implementation, once we finalized the decree, the groups had nothing to do with the implementation, unlike what I see in Cincinnati with the agreements [involving the community] there. As I said, our consent decree was never focused around particular issues such as racially-biased policing, but rather around the general running of a police department.

It's hard to say whether SPD's relationship with the community has changed, because everybody has his or her own opinion about the police—whether it's good, bad, or indifferent. I find that most people are indifferent. Other people would contact me and threaten to call the Justice Department over stuff having nothing to do with the consent decree—such as parking tickets—when we were about two audit quarters away from being released from the decree.

A lot of times, people in Steubenville would throw the consent decree in officers' faces. My narcotics officers received a lot of complaints. I think that possibly when consent decrees happen, a lot of the criminals go after narcotics divisions, thinking that if they make complaints, the officers will not mess with them anymore. But that result never happened here. The complaints came and were fully investigated, and we found that the officers hadn't done anything wrong.

PARC: *Now that the City and the SPD have been released from the consent decree, do you think the reforms put in place will endure?*

WM: As long as I'm chief of police, the reforms will remain in place. And I'm going to make more of them. For example, with the issuance of all these new policies since the decree started, we've been living out of two policy books—one with consent decree-mandated items and the other our old policy book which dates back to around 1996. I'm going to make one complete manual that includes all of the DOJ-approved policies, as my first order of business now that we've gotten out of the decree.

Before the decree, we only had forms to record "Terry stops" or traffic stops resulting in citations, so we didn't have a full picture of who was being stopped. Our current forms record all stops, whether there is a citation or simply a warning given. Now we have this information, and we're going to continue to use the forms and to collect data. I believe in all of this. Being from a small town, people want to talk to the chief of police, whereas in a larger city, they can't get to the chief. But here they want to talk to the chief; they don't want to talk to a sergeant, they don't want to talk to a captain. I need to know everything that is going on. I need to know about a traffic stop, even if there was just a warning. I don't want somebody calling me on Monday morning and telling me about

"As long as I'm chief of police, the reforms will remain in place. And I'm going to make more of them."

being given a warning that I don't have any information about. Every morning we have a meeting at

9:30—the operations and administrative captains, the training officers, and I. By 9:30, all of us have already read the latest incident reports and picked out for discussion any issues that we've seen. Without the effort of these and other SPD captains, being released from the consent decree would have been impossible.

PARC: *What do you see as key differences between implementing consent decree reforms in jurisdictions like Steubenville and larger cities such as Los Angeles or Detroit?*

WM: I think the main difference is that, like I said, in a smaller city, everybody wants to talk to the chief. I really think that in larger cities, the chiefs of police need their district commanders to be on top of things and know exactly what's going on. Those chiefs can't know all of their officers. But the district commanders need to know what's going on in their districts so that they can answer any citizen's questions or respond to the chief's questions.

I deal with a smaller amount of people in Steubenville. Nobody is going to slip through the cracks here, because I know the officers. Even the newer officers—I know their personalities. If there's a complaint, I can think to myself whether or not I could see a particular officer doing something. While I don't know how larger departments handle their decrees and come into compliance with requirements, maybe

they should break down their departments into smaller areas the size of Steubenville, so that they can say, "This district is in compliance, and that district is not." Then a chief can evaluate who is not doing their job and can switch people around if necessary.

Also, in a larger department, you have a bigger population of employees to pull from. When I went to Pittsburgh a couple of times, I learned that some of their officers are attorneys. I only have one officer who will be an attorney—a sergeant who is in law school. You just don't have that vast amount of knowledge in a small department that you have in a large one. In that regard, larger departments can utilize their numbers. Recently, someone from the Cincinnati Police Department told me that they have a whole division assigned to working on their agreements. I can understand having a whole division in a department that size, but if you take four officers away from me to work on a consent decree, that's a big impact on Steubenville's numbers since we have just 49 officers.

PARC: *As a police chief, how do you feel about federal consent decrees and the U.S. Justice Department's powers to launch "pattern or practice" actions? Do you think the progress made in Steubenville would have happened absent the consent decree?*

WM: I believe the Justice Department should go and look at departments, point out some problems, and make sure to give each department a set amount of time to correct any problems. And if a department doesn't correct the problems in the set amount of time, then I don't think the Justice Department has any other choice but to seek a court-mandated action.

I don't believe progress would have been made in Steubenville without the consent decree. Change is always difficult, but it's constantly needed. I don't think anybody here in Steubenville would have ever taken the steps to impose any of these changes.

"Steubenville is now a whole new department.... Prior to my appointment as chief, everything was 'Charles Reynolds [the auditor] said...' or 'the Justice Department said this is why we are making changes.' After awhile, it became 'this is what we here in Steubenville want to do.'"

PARC: *What advice would you offer to chiefs of other departments that may become the subject of Justice Department "pattern or practice" actions?*

WM: I attended several classes with other chiefs, many of whom didn't feel that it was necessary to have all sorts of data available. But if you have data, and the Justice Department ever comes in to investigate your department, you can always just lay out the data and say, "Here. This is what we do. You show me what we're doing wrong." If you don't have all that information, you have nothing with which to defend yourself. Say you're being investigated because it's

been alleged that your department carries out a disproportionate number of traffic stops involving certain groups. If you don't have traffic stop data, how do you defend your numbers and

any disparities? We have all of that information in Steubenville.

So it's important to have your record-keeping down, as well as your disciplinary system. I was once at a use-of-force class where the instructor asked if pointing a weapon at someone constitutes a use of force. The class was divided. Many participants said it was not a use of force. So if an officer pulls a gun and points it at somebody in some of these jurisdictions, there might not be any forms filled out or anything done. We have a policy in the SPD where pointing a weapon is indeed a use of force and requires a form to be filled out. I'm going to be upset if an officer had pulled a gun and pointed it at me. That's pretty intimidating. A major part of managing a police department is what you are doing to correct any problems that you may have. The Justice Department looks at this.

PARC: *What are you most proud of having accomplished as chief of the SPD?*

WM: Truthfully, I would have to say getting that prisoner I mentioned earlier his polygraph test. People have different beliefs about the polygraph, but a lot

of people believed he was innocent. I'm just glad he got the opportunity he requested.

Also, I didn't want to let down the mayor or city council, who really wanted me appointed. The Justice Department at first wanted an outside chief; that was stipulated in the consent decree. But I think Mr. Reynolds believed in me, too. It was a lot of pressure. I didn't want to let anybody down, and I don't believe I did.

Steubenville is now a whole new department. About half of our officers have been hired since the consent decree, so they've never known anything but what we've always done under the decree. Prior to my appointment as chief, everything was "Charles Reynolds said..." or "the Justice Department said this is why we are making changes." After awhile, it became "this is what we here in Steubenville want to do."

CONFERENCES & MEETINGS

May 13-May 14, 2005 – National Organization of Black Law Enforcement Executives, NOBLE National Leadership Training, Atlanta, GA. Online at www.noblenatl.org/

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_expo.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

June 7-June 10, 2005 – National Youth Gang Center, National Youth Gang Symposium, Orlando, FL. Online at www.gangsymposium.org

June 25-June 29, 2005 – National Sheriffs' Association, 65th Annual Conference & Exhibition, Louisville, KY. Online at www.sheriffs.org/conf-annual.shtml

July 10-July 13, 2005 – Correctional Education Association, 60th International Conference, Des Moines, IA. Online at www.ceanational.org