

POLICE PRACTICES REVIEW

A Publication of the Police Assessment Resource Center

June 2005
Vol. 4, No. 6

- 1 **CIVILIAN OVERSIGHT**
NYC Review Board Reports Busy Year
- 2 **CONSENT DECREES/
MEMORANDA OF AGREEMENT**
Oakland Progress Noted in Report
Monitor Praises LAPD's Progress
- 4 **ACADEMIC RESEARCH**
- 4 **RACIAL PROFILING**
Missouri Releases 2004 Traffic Stop Data
- 5 **STANDARDS & TRAINING**
GAO Issues Report on Use of Tasers
- 6 **LEGISLATION**
Two Bullet ID Bills Pending in California
- 6 **NEWS BRIEFS**
Justice Department Investigates Beacon PD
Providence (RI) Review Board Begins Operations
- 7 **INTERVIEW**
DC Office of Police Complaints Executive Director
Philip Eure
- 14 **CONFERENCES & MEETINGS**

CIVILIAN OVERSIGHT

NYC Review Board Reports Busy Year

In its 2004 annual status report, the Civilian Complaint Review Board (CCRB), which investigates misconduct complaints against New York City Police Department (NYPD) officers, reported a record high 6,210 complaints received last year. The total represents a 12 percent increase over 2003 and a 51 percent increase in yearly complaint filings since 2001 when the numbers began "rising steadily." The CCRB pointed to its telephone complaint system as one significant cause of the increase; since 2002, complaints phoned directly to the CCRB have risen by 83 percent. CCRB investigators also closed 5,822 cases in 2004, the most in the past nine years and almost a thousand more than were closed in 2003, though there were also 14 percent more open cases than at the end of 2003.

More than 18,000 misconduct allegations made up the 6,210 complaints. Though their raw numbers increased, improper force, discourtesy, and offensive language allegations decreased as a percentage of total allegations. Abuse of authority allegations increased as a percentage of the whole, in large part because of claims that officers improperly questioned or stopped civilians. The 353 allegations made in 2000 about improper questioning and stops rose to 1,509 in 2004.

Consistent with previous years, blacks comprised a little over half of all alleged victims of police misconduct while representing one-quarter of New York City's population. Whites and Asians were underrepresented among alleged victims, while Latinos lodged a share of complaints roughly equal to their percentage of the population. As for the characteristics of the subject officers, the CCRB noted that the "race and gender of officers against whom complaints were filed in 2004 closely mirror the demographics of the department as a whole," with

PARC

POLICE
ASSESSMENT
RESOURCE CENTER

Biltmore Court
520 South Grand Avenue, Suite 1070
Los Angeles, California 90071

Tel (213) 623-5757
Fax (213) 623-5959
Email: information@parc.info

POLICE ASSESSMENT RESOURCE CENTER

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.

Board of Trustees

Lowell Johnston, *Chairperson*
 Esther Bush
 Zachary Carter
 John Dunne
 Michael Graham
 Wade Henderson
 Bonnie Guiton Hill
 Michael Jacobson
 Christopher Stone
 Elizabeth Watson

Senior Advisors

Ronald Davis
 Thomas Frazier
 Bernard Melekian

President

Merrick Bobb

Executive Director

Sandra Cuneo

The *Police Practices Review* is published 12 times a year by the Police Assessment Resource Center.

Copyright © 2005, all rights reserved. Material in this newsletter may be reproduced and/or circulated without permission when proper acknowledgement is made.

No copyright is claimed in the text of the statutes, regulations and excerpts from court opinions quoted in this work. The opinions expressed herein are not those of PARC and their inclusion herein does not constitute an endorsement by PARC.

To subscribe to the *Police Practices Review* (or to access it electronically), visit our website at www.parc.info.



one exception being male officers, who make up 83 percent of the NYPD but were 90 percent of the subject officers in complaints.

The board substantiated at least one allegation in 16 percent of the complaint cases closed in 2004 after full investigation, compared to 14 percent the year before. The NYPD imposed discipline in 91 percent of the cases the CCRB recommended in 2004. Finally, the report noted that since October 2004, the NYPD has allowed the board to access the department's officer photographic database directly from CCRB headquarters. The faster access "should enhance the reliability of witnesses' identification of officers and decrease the time it takes to complete investigations," the CCRB stated. The full annual report can be accessed online at www.nyc.gov/html/ccrb/pdf/ccrbann2004.pdf.

CONSENT DECREES/ MEMORANDA OF AGREEMENT

Oakland Progress Noted in Report

The Independent Monitoring Team (IMT) for the Oakland Police Department (OPD) recently released its sixth compliance report on the 2003 Settlement Agreement between the private plaintiffs who alleged officer misconduct in a civil lawsuit, and the OPD and City of Oakland. The IMT said the OPD "accomplished more during the last two months of this reporting period than it had during all previous reporting periods combined." The IMT attributed that progress in part to an admonishment from the court and in part to the leadership of Interim Chief Wayne Tucker. Appointed in February 2005, Chief Tucker "has expressed his commitment to accomplishing the [Settlement Agreement] reforms... and made clear to OPD's command staff and rank and file that he considers these reforms simply good policing," the IMT reported. The Settlement Agreement (SA) provisions as a whole address the OPD's internal affairs operations, use-of-force reporting and review, personnel supervision and management, officer training, and community policing.

At the time of the IMT's report, the OPD should have completed 45 of the 51 SA tasks, according to the agreed upon timetable for task compliance. The

department has thus far achieved policy compliance, the first of three levels (policy, training, and actual practice), with 22 tasks. In contrast to the previous period when the OPD could not show training compliance with any tasks requiring training, the OPD “made impressive strides this reporting period in verifying that it has conducted training on new Settlement Agreement policies,” said the IMT.

The IMT praised the OPD’s recent implementation of the Management Assessment Program (MAP), which consists of weekly meetings of the Chief and commanders in order to focus on OPD priorities such as SA reforms and compliance. “MAP is beginning to enhance management accountability,” the IMT observed, “because commanders are expected to explain shortcomings in their areas and to provide remedial plans.”

The IMT also noted progress and concerns relating to the Internal Affairs Division (IAD). During the reporting period, Chief Tucker and the OPD restructured the IAD, putting a captain rather than a lieutenant at the helm to “heighten the stature” of the division. Another lieutenant and additional training were also provided to support IAD investigators. However, cautioned the IMT, “too many internal investigations continue to exceed reasonable timeframes and, in some instances, the statutory deadline for imposing discipline.”

The IMT was also concerned about OPD’s internal reviews, namely firearms discharge investigations and review boards. Deficiencies in firearms discharge review boards include untimely reviews; the lack of any review tracking; and inadequate involvement by OPD divisions such as Training and Internal Affairs. The full IMT report can be accessed online at www.cdsusa.org/cdsimt.html.

Monitor Praises LAPD’s Progress

The Independent Monitor for the City of Los Angeles and Los Angeles Police Department (LAPD) has said it is “generally pleased with the progress of the Department in achieving compliance in most areas” of the June 2001 consent decree with the U.S. Justice Department. The decree focuses on areas such as use-of-force and incident documentation, LAPD self-auditing, gang-unit supervision, use of confidential informants, and risk and personnel management.

During the fifteenth quarter, ending March 31, 2005, the Monitor examined 29 decree paragraphs or subparagraphs and found the City and LAPD in full compliance with 19. A determination was withheld on two, and the rest were judged not in compliance.

The Monitor expressed concern with the effectiveness of discipline imposed on officers responsible for out-of-policy shootings. LAPD’s Chief of Police, the Monitor noted, does not have the authority to decide the extent of officer discipline for certain serious uses of force (including officer-involved shootings) found out of policy. The L.A. Police Commission ultimately makes disciplinary decisions. Additionally, officers “may and often do secure” insurance from the Police Protective League that reimburses them for wages lost as disciplinary action. This insurance system “undermines the LAPD’s ability to appropriately administer discipline in an effort to positively influence an officer’s future behavior for the benefit of the officer, the Department and most importantly the community,” the Monitor wrote.

The Monitor also expressed concern about the qualifications of Field Training Officers (FTOs). At least 11 of 80 FTOs whose personnel files were reviewed should never have qualified nor been allowed to train probationary officers. The 11 FTOs had been found administratively responsible for offenses including fraud, multiple personnel complaints, domestic violence, and releasing confidential information. Some of the offenses resulted in lengthy suspensions, and at least two FTOs never attended mandatory FTO school. “The egregiousness of some officers’ offenses leads us to question whether they are fit to even serve as officers in the LAPD, let alone train future officers,” said the Monitor.

The Monitor did commend the LAPD for several achievements, including a program to identify mentally-ill persons who have a high number of service calls, in order to coordinate those individuals’ access to mental health services. The Monitor noted that “on a very small budget and often using their personal equipment, members of the Quality Assurance Unit (QAU) within the Training Group developed a 90-minute web-based e-learning training module on police integrity.” The department provided this training for more than 9,000 sworn personnel—over 95 percent of the LAPD—in six weeks. The full

ACADEMIC RESEARCH

“Patrol Officer Responses to Citizen Feedback: An Experimental Analysis,” an article featured in the June issue of *Police Quarterly*, examines the effect of providing citizen feedback to patrol officers on their attitudes and job performance. The authors of the study, William Wells, Julie Horney, and Edward R. Maguire, found that citizen feedback does not affect officers’ job performance, their attitudes toward the communities they serve, or the scope of their job. The study was conducted in one police agency, the Lincoln (NE) Police Department, using a total of 57 officers who volunteered to participate.

The purpose of the study was to test whether providing citizen feedback would produce attitudinal and behavioral change in police patrol officers. According to the authors, citizen feedback is one of many alternative measures of police performance that can be used to “meet customer demands and provide better service, increase their accountability to citizens, demonstrate their effectiveness, and measure the broad range of services that are part of the police function.”

To evaluate whether citizen feedback could produce change in police, the authors focused on two general outcomes: officer behaviors and officer attitudes. Officer behavior was measured by supervisor and citizen ratings of officer performance. Officer attitudes were measured by a survey that assessed the importance of various police activities, job-related stress, and officer perceptions of their working environment, among other things.

The results indicated that citizen feedback did not have any effect on patrol officers’ attitudes, nor did it affect officers’ behaviors. The citizen surveys used in the study were already in use by the Lincoln Police Department. The Department’s Quality Service Audit (QSA) is an ongoing survey of citizens who have had official contact with Lincoln officers. Although feedback from these surveys does not appear to have any effect on changing attitudes or behaviors of individual officers, the authors cite evidence from the Department’s own evaluation of data collected from the QSA that suggests feedback intended to impact individual officer acts may be most effective when it addresses very specific behavior. The Department also found that department-wide change was more likely to occur when the organization responded to aggregate citizen feedback, rather than providing individualized feedback to officers. The authors conclude that while collecting feedback from citizens is not enough, the need for innovative ways to collect and process feedback *and* use it to accomplish change is an opportunity for collaboration between police agencies and researchers to test and refine these methods and ultimately improve police practices. *Police Quarterly*, June 2005, Vol. 8, No. 2.

quarterly report can be accessed online at www.krrollworldwide.com/about/library/lapd/.

RACIAL PROFILING

Missouri Releases 2004 Traffic Stop Data

A Missouri law enacted in 2000 requires all police officers to report specific information, including a driver’s race, for every traffic stop, and all law enforcement agencies in the state to submit their data annually to the Missouri Attorney General. Under the law, Missouri can withhold funding for agencies

not complying with the reporting requirements. The *2004 Annual Report on Missouri Traffic Stops* includes data from a total 1,365,575 stops performed during the year by 603 law enforcement agencies—roughly 83 percent of the state’s total agencies. The total stops resulted in 106,430 searches and 74,484 arrests.

The report lists four indicators it says “may be useful in initiating further assessments of racial profiling in traffic stops”—disparity index, search rate, contraband hit rate, and arrest rate. The disparity index, the report explained, is the difference between a group’s proportion of drivers in the total stops and proportion of the driving age population. Whites were less likely

to be stopped in 2004 than their share of the driving-age population would suggest, as were Asians and Native Americans. On the other hand, African Americans made up 13.7 percent of stopped drivers but 10.3 percent of the driving-age population. They were stopped “at a rate 34 percent greater than expected based solely on their proportion of the population 16 and older,” noted the report. Hispanics were slightly overrepresented in stops. Missouri Attorney General Jay Nixon cautioned that a group’s share of the driving-age population may not mirror its share of actual drivers, and that the ethnicity of out-of-state drivers stopped could also weaken the index’s accuracy.

Search rate data showed that African Americans were 71 percent more likely and Hispanics 84 percent more likely than whites to be searched. While African Americans and Hispanics were subject to a disproportionate share of traffic searches, contraband was found on a smaller percentage of both groups’ drivers than on white drivers. The contraband hit rate was 22.4 percent for whites; it was 15.3 percent and 14.4 percent for African Americans and Hispanics, respectively. “This difference,” the analysis opined, “is most likely attributable to the higher arrest rates for African-Americans and Hispanics, circumstances that compel a search” of individuals not arrested for contraband-related offenses.

The arrest rate showed that African Americans and Hispanics were arrested in larger percentages than whites. Five percent of white drivers stopped were arrested, whereas between eight and nine percent of African-American and Hispanic drivers stopped shared the same fate. Nixon said the stop and search disparities were similar to previous years and “should be cause for ongoing review by law enforcement,” but warned that statistical disparities alone do not prove the existence and practice of racial profiling. “Almost every jurisdiction will have factors that may necessitate increased law enforcement patrols in certain areas or impact the demographics of drivers using its streets and thoroughfares,” he concluded, and the annual report gives those jurisdictions an opportunity to explain such information and circumstances. The full 2004 report can be accessed online at www.ago.state.mo.us/racialprofiling/racialprofiling.htm.

STANDARDS & TRAINING

GAO Issues Report on Use of Tasers

The U.S. Government Accountability Office (GAO) has issued a report on the use of Tasers by selected law enforcement agencies. The report was compiled at the behest of the House of Representatives’ Subcommittee on National Security, Emerging Threats and International Relations, which is part of the House Committee on Government Reform. The GAO focused on two areas: “(1) the policies and procedures related to the issues of ‘use of force,’ training, operations, and safety for selected law enforcement agencies that have purchased and used Tasers; and (2) federal, state, and local laws that specifically address Tasers, including TSA’s [Transportation Security Administration’s] authority to regulate Tasers onboard aircraft.” For the report, the GAO deemed a Taser any weapon “that shoots two stainless steel barbs up to a distance of 25 feet and results in an incapacitating 50,000 volt electric shock.” The GAO noted that the brand Taser itself is reportedly used by more than 7,000 agencies in the United States.

The GAO reviewed the policies and procedures of seven state and local law enforcement agencies: the Austin (TX) Police Department; the Ohio Highway Patrol; the Orange County (FL) Sheriff’s Department; the Phoenix (AZ) Police Department; the Sacramento (CA) Police Department; the Sacramento (CA) Sheriff’s Department; and the San Jose (CA) Police Department. These agencies, said the report, “had purchased and used the largest number of Tasers for the longest period of time.”

None of the seven were found to have specific, separate use-of-force policies for Tasers; rather, Tasers were included in existing policies and placed on the agencies’ use-of-force continua. Among the seven agencies the Taser was placed at three different levels on the use-of-force continua. The Sacramento PD allows Taser use when an officer perceives potential harm, as when a subject is “assaultive” and causes risk of physical injury to another person, said the GAO. The Orange County Sheriff’s Department, on the other hand, permits Taser use in situations “such as when a subject is ‘passively resisting’ by not responding to the lawful, verbal commands of the officer.” Officials from the U.S. Department of

Homeland Security's Federal Law Enforcement Training Center told the GAO in comments on the draft report "that they believe that to avoid the inconsistency among law enforcement agencies as to where Taser use is placed in the use-of-force continuum, a standardized training program on the use of Tasers is needed."

Six of the seven agencies require yearly officer recertification on Tasers. The seventh, the San Jose PD, does not have yearly recertification but does include the Taser in its annual use-of-force simulations training. All of the agencies require officers to detail the type of force used when they fill out official forms; three of the agencies have special incident report forms for Tasers. Other than daily visual and battery checks of Tasers, which all seven require, the Austin and Phoenix police departments were the only two to mandate a test fire before each officer's shift. Safety procedures to avoid using Tasers on or near children, pregnant women, bystanders, and flammable substances were in all seven departments' guidelines.

Regarding laws and regulations addressing Tasers, the report noted some federal, state, and local jurisdictions had these but that requirements for regulating Tasers differed. The U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives—the federal agency that classifies firearms—does not consider the Taser a firearm, and thus "the Taser is not subject to any federal regulations regarding the distribution, sale, and possession of firearms." U.S. Army and TSA, however, have established regulations that circumscribe allowable Taser possession and apply similar restrictions on them as are on firearms. Some states and municipalities, too, have specific regulations. The full GAO report can be accessed online at www.gao.gov.

LEGISLATION

Two Bullet ID Bills Pending in California

California's state senate and assembly both recently passed bullet identification bills. The assembly bill would require certain guns to have distinguishing serial numbers and to stamp those on bullet casings when fired, while the senate bill would require certain bullets in California to be manufactured with unique identifiers on them.

Assembly Bill 352 would redefine "unsafe handgun" to include any semiautomatic pistol that, beginning in January 2009, is "not designed and equipped with a microscopic array of characters that identify the make, model, and serial number of the pistol, etched into the interior surface or internal working parts of the pistol, and which are transferred by imprinting on each cartridge case when the firearm is fired."

In contrast, Senate Bill 357 would require all handgun ammunition manufactured, imported into the state, sold, lent, given, or possessed be serialized with identification numbers, also beginning in January 2009. The author of the bill said that since the serial numbers would be associated with a buyer at the point of sale, law enforcement could trace bullets back to the purchaser and the place of purchase. The bill states that serialized ammunition will be "identified in a manner prescribed by the [California] Department of Justice so that all assembled ammunition contained within a package provided for retail sale, or as otherwise specified by the department, is uniquely identified."

Opponents of both bills told reporters that law enforcement officials would have difficulties tracking gun crimes to the perpetrators since many criminals get handguns through illegal channels. Several law enforcement agencies are supporting the two pieces of legislation, and California Attorney General Bill Lockyer helped sponsor the senate bill. More information about AB 352 and SB 357 can be accessed at www.assembly.ca.gov and www.sen.ca.gov, respectively. *Associated Press*, June 3, 2005; *Los Angeles Times*, June 3, 2005.

NEWS BRIEFS

Justice Department Investigates Beacon PD

A recent letter from the U.S. Department of Justice (DOJ) to the Beacon Police Department (BPD) in New York outlines a series of recommendations for improving the police department's written policies and procedures to ensure that they comply with constitutional rights. The letter focused on the BPD's policy and procedure manual, use of force and use-of-force reporting, vehicle pursuits/roadblocks, civilian complaint investigations, and officer supervision and training.

The Special Litigation Section of the DOJ's Civil Rights Division began investigating the BPD in late 2004 for an alleged "pattern or practice" of misconduct pursuant to powers legislated to the Justice Department in the Violent Crime Control and Law Enforcement Act of 1994. The DOJ emphasized that its investigation of the BPD, an agency serving 16,000 residents with 37 full-time sworn officers, is ongoing and that the DOJ's findings are not exhaustive.

The BPD's policy and procedure manual, said the letter, "was developed in 1987 and has not been revised significantly since its development." The DOJ recommended that the police department provide a policy with a use-of-force continuum, appropriate definitions of lethal and non-lethal force, and de-escalation techniques. The DOJ said BPD officers have few alternatives to deadly force; while they may carry impact weapons, such as a baton, "there is no requirement that officers carry any intermediate weapon and no uniformity in the weapons they carry." The letter recommended the BPD choose a standard issue intermediate weapon to be carried by all officers.

No specific use-of-force report is used by BPD officers "which would permit a systematic review of uses of force by type and by individual officer," the DOJ found. The police department's policies also do not describe how uses of force are to be reported to supervisors and what supervisory review should occur. The DOJ noted that both officer training needs as well as patterns of unauthorized force could be identified through standardized use-of-force reporting and review. On the issue of civilian complaints, the letter said the BPD's intake process possibly discourages complaint filing since persons must first come to the department, discuss their complaint with the sergeant on duty, and then tell the sergeant what they think should be done on the matter. "It does not appear that complainants had access to complaint forms," said the DOJ, "unless they first had this discussion with the Sergeant on duty." The absence of a consistent complaint investigation policy "poses difficulties to the complainant as well as the officer involved in the incident, both of whom are entitled to know in advance what their rights and responsibilities are in the course of the investigation." The DOJ letter can be accessed online at www.usdoj.gov/crt/split/documents/split_beacon_ta_letter_6-21-05.pdf.

Providence (RI) Review Board Begins Operations

After the city council first established the Providence External Review Authority (PERA) in a 2002 ordinance, the civilian review board opened its doors for business in late June of this year. Before PERA's creation, the Providence Police Department (PPD) handled all complaints of officer misconduct. PERA will investigate, hold hearings on, and make findings concerning misconduct allegations against PPD officers such as complaints of excessive force, harassment, rudeness, abusive language, theft, or discrimination. Hearings conducted by the agency will be heard by five randomly-selected members of PERA's 20-member board, the *Providence Journal* reported. The board does not have subpoena power.

PERA will also make disciplinary recommendations, based on its findings, to the PPD Chief of Police. The agency does not have the authority to impose or enforce discipline, and PPD Chief Dean Esserman is not obligated to accept its recommendations. However, the Chief must explain to the city council his reasons for rejecting any of PERA's disciplinary recommendations, said reports. *Providence Phoenix*, July 1-7, 2005; *Providence Journal*, June 27, 2005.

INTERVIEW

Philip K. Eure became the first executive director of the District of Columbia's Office of Citizen Complaint Review in July 2000. The agency, since renamed the Office of Police Complaints (OPC), is the independent body that receives, investigates, and resolves police misconduct complaints filed by the public against officers of the city's Metropolitan and Housing Authority police departments. Before coming to the OPC, Mr. Eure was a senior attorney in the Civil Rights Division of the U.S. Department of Justice, where he litigated on behalf of employment discrimination victims. He received his undergraduate degree from Stanford University and his law degree from Harvard Law School. PARC recently spoke with Mr. Eure about the OPC and its oversight work and functions.



PARC: *Why was the Metropolitan Police Department's civilian oversight body, the Civilian Complaint Review Board, abolished in 1995? What then gave rise in 2001 to the opening of a new independent agency that would eventually become the current Office of Police Complaints?*

PE: The Council of the District of Columbia abolished the Civilian Complaint Review Board—our predecessor agency—for a variety of reasons, all of which had contributed to the community and the Metropolitan Police Department (MPD) losing faith in the agency. CCRB had a huge backlog of complaints and was inadequately staffed and funded. The city council finally just put it out of its misery in 1995. There had been a lot of tension between the agency, police management, and the officers' union; officers often did not show up for investigative interviews and hearings even though the agency had subpoena power. So after 1995, there was no citizen oversight of MPD or the D.C. Housing Authority Police Department (DCHAPD) until our agency opened to the public in January 2001.

In the late 1990s, community and advocacy groups came together and pushed for the creation of a new agency that resulted in what is now OPC. The council called in various experts to look at different models from around the country, and sought input from the stakeholders within the city. Minneapolis's then existing Civilian Review Authority was a model for our agency. The council also looked at San Francisco and other cities with investigative models of oversight.

PARC: *What first brought you to the OPC? What was your relevant professional experience prior to becoming the OPC's executive director?*

PE: A former colleague from the U.S. Department of Justice (DOJ) was a member of the then newly-appointed Citizen Complaint Review Board (now the Police Complaints Board (PCB)), which was the oversight body for the Office of Citizen Complaint Review (now OPC). The board invited me to apply for the position of executive director of the office. After an interview process, the five board members selected me for the position five years ago. I spent most of my professional career prior to OPC as an attorney in DOJ's Civil Rights Division, where I represented victims of employment discrimination. I went around the country investigating and suing a lot of state and

local government employers, including police and fire departments, in cases brought by the United States on behalf of victims of employment discrimination. Through this, I became very familiar with police culture and practices around the country. While at DOJ, I was also detailed from 1997 to 1998 to advise the Haitian government as part of a criminal justice reform project. My focus was to help the judiciary and prosecutorial systems become more transparent and more accountable.

I would like to think that having worked in civil rights on behalf of victims of discrimination—including police officers and applicants—combined with my knowledge of law enforcement, gives me a certain amount of credibility at the helm of an agency that handles complaints against police officers.

PARC: *Please briefly describe what the OPC does, the complaint categories that fall under its investigative authority, and the agency's complaint process.*

PE: We do a little bit of everything. We have five major functions: we investigate, mediate, and adjudicate police misconduct complaints filed by the public, we have an expanding policy recommendation program, and we do active community outreach. OPC's investigative authority covers six categories of complaints: harassment; discrimination (based on race, sex, gender, religion, sexual orientation, disability status, and other areas including student status and personal appearance); retaliation for filing a complaint with OPC; unnecessary or excessive force; language or conduct that is insulting, demeaning, or humiliating; and failure to wear or display required identification or to identify oneself by name and badge number when requested to do so by a member of the public.

As for the process, it is complaint driven, meaning that we must have a written, signed complaint form before we can open an investigation. We also must receive the complaint form within 45 days of the underlying incident. After we receive a complaint, we screen it to be sure it falls within our jurisdiction and then we generally assign it for investigation by one of our staff investigators. Each of these complaints must then be resolved through successful mediation, dismissal, or adjudication. We can send a complaint to mediation at any point in the process and, otherwise, complete the investigation and determine

if the complaint should be dismissed or referred to a complaint examiner for a written decision on the merits of the complaint. If necessary, the complaint examiner can conduct a hearing to resolve the complaint. The complaint examiner's written decision sustaining the complaint is forwarded to MPD for imposition of discipline. If the complaint examiner does not sustain the complaint, the case is dismissed.

PARC: *What advantages do you see to the form of civilian oversight in the District of Columbia? Are there any drawbacks or areas where you would like to see the OPC's mandate expanded?*

PE: In terms of advantages to our form of civilian oversight, I'm not persuaded there is a one-size-fits-all. What works here will not necessarily work in another city. We've capitalized on the structure created by our enabling statute in Washington, and I think we're performing well in several areas. We've avoided some of the pitfalls of the original CCRB by ensuring that the city provides us with adequate funding and by focusing on the recruitment of a very capable staff of professionals. Also, one of our advantages is that we've been able to maximize citizen involvement in working towards greater police accountability. We will soon have our twentieth employee at OPC. We have pools of almost 20 complaint examiners and 30 mediators who assist with different parts of the process. And we have the five PCB members, one of whom is a member of MPD while the other four cannot have any law enforcement affiliation, as required by statute. Since we opened in January 2001, more than 40 college interns and law clerks have worked here. So when you add up the numbers, taking into account former employees, mediators, and complaint examiners, we're talking about well over 100 deeply committed and knowledgeable citizens who have been very involved in helping to promote greater police accountability in Washington. Those are very impressive numbers. I'd like to think that we're creating a culture of police

accountability in the District of Columbia that will sustain itself over the years and will continue to push the city government to maintain and improve these oversight processes.

Other advantages include our authority to independently investigate citizen complaints, our subpoena power, and our adjudicated decisions that are binding on MPD and DCHAPD. These advantages give our agency a lot of teeth, including the power to bring officers and third-party witnesses in for interviews and hearings. OPC's determinations are not just recommendations but instead are enforceable decisions.

Our investigative work is very labor intensive, so our model requires a city government that is committed to providing adequate funds to hire enough investigators. If an agency's investigative unit is working productively and efficiently and there is no

backlog of cases to resolve, it can be presumed that the agency has a sufficient number of investigators. Although we didn't have an adequate number of investigators in the early years, the District government has been quite supportive recently.

"[One] of our advantages is that we've been able to maximize citizen involvement in working towards greater police accountability.... I'd like to think that we're creating a culture of police accountability in the District of Columbia that will sustain itself over the years and will continue to push the city government to maintain and improve these oversight processes."

But if there is a budget problem in the future, who's to say whether OPC will be deemed a priority by the city? I think that to the extent any city or jurisdiction goes down the investigative model path, there must be an acknowledgment that this work is labor intensive. And that requires adequate funding.

PARC: *How do you determine which complaints the OPC will adjudicate (or handle through the office's complaint examination process), refer to the MPD or DCHAPD, or send to mediation?*

PE: This determination is essentially governed by OPC's statute. Each week, I get together with Deputy Director Tom Sharp, plus our chief investigator and assistant chief investigator, to screen every single complaint that has come in and to discuss how it

should be handled. Any complaint that falls within one of our six areas of jurisdiction is investigated. Any complaint that is criminal in nature, and by this we're talking mostly about excessive force complaints, is referred to the U.S. Attorney's Office, which is our local prosecutor in Washington. Complaints that are untimely or fall out of our jurisdiction are referred to MPD or DCHAPD. I believe that a drawback of our system is that complaints must be filed with our agency within 45 days of the underlying incident. This is a shorter time period than I would have devised if I were writing the legislation creating this office, and it's short compared to the time limits in other complaint agencies. I do have the power in some cases to extend the filing deadline, but we generally refer untimely complaints to the police department, which has no such time limits.

The complaints that end up being adjudicated through the complaint examination process are ones where we've completed full investigations and made a reasonable cause determination that police misconduct may have occurred. The complaints that are dismissed are also the result of full investigations. A report is written and reviewed and I then make a determination that the complaint lacks merit. Finally, one of the five PCB members must concur with my determination. The PCB members themselves are on a rotating schedule for reviewing dismissals.

PARC: *The OPC closed roughly 33 percent more complaints in 2004 than in 2003. At the same time, the number of formal complaints that were dismissed nearly doubled. To what do you attribute the increase in closed complaints but also the much larger increase in formal complaints dismissed?*

PE: The higher number of complaints that we closed in fiscal year 2004 has to do with increased staffing and efficiency. We've had new complaint management software in place for about two years that has helped us manage and track our complaints. Also, our investigative supervisors—Chief Investigator

Clifford Stoddard and Assistant Chief Investigator Kesha Taylor—have been very good at moving complaints through the system and setting achievable timelines and due dates. We also have a detailed investigations manual given to new investigators. These factors have increased the productivity of our investigative unit while not sacrificing the quality of the investigations.

The increase in the number of complaints that were dismissed in 2004 has a lot to do with clearing a backlog of complaints. We were not able to really tackle this backlog until we got the additional investigators, which happened largely last year. In fiscal year 2004, we pushed to get these

older complaints finished, ultimately increasing the number of complaints we resolved overall but necessarily increasing the number of dismissals as well.

PARC: *Could you describe your complaint examination program for case adjudication? How do you select the complaint examiners? Why are former MPD employees ineligible to be examiners?*

PE: Those complaints where our investigation found a reasonable cause to believe that police misconduct may have occurred are referred a pool of complaint examiners. We have assembled about 20 distinguished lawyers, all of whom live in Washington. They come from all areas of the law, have been practicing for at least five years, and have some background in litigation or arbitration. These are top-notch attorneys, interviewed and screened by me and then given final approval by PCB. Each complaint examiner generally gets a few complaints per year.

OPC's statute does not permit a former MPD employee to be one of our complaint examiners or even investigators. We are supposed to be an agency that is independent of MPD and DCHAPD, so limiting the hiring of former police department employees

"Although we didn't have an adequate number of investigators in the early years, the District government has been quite supportive recently.... I think that to the extent any city or jurisdiction goes down the investigative model path, there must be an acknowledgment that this work is labor intensive. And that requires adequate funding."

limits any actual impairment, or appearance of impairment, of our independence.

Nonetheless, by statute, one of the five PCB members is also a member of MPD. The MPD member who had been with us since the beginning, and recently resigned, worked very well with the citizen members. They usually reached a consensus on all matters presented to them. He was supportive of police oversight and accountability. This is not to say that there might not be problems down the road if there was someone appointed to the board from MPD who did not have the same commitment to police accountability. That hasn't happened yet, but our system allows for that possibility. Still, there are four citizens versus the one police department member. There are some people in the police oversight world who are suspicious of having a representative of the police department involved in the management of an independent body. But I can say that the way it's worked so far has been fine, and our agency's arrangement has actually provided many advantages that come from having an established relationship with someone from the department.

PARC: *Why do you think a high percentage of adjudicated complaints—more than half in 2004—are sustained by the OPC? How has that rate varied during recent years?*

PE: All complaints that are referred to complaint examiners are ones for which we've already determined there is reasonable cause to believe police misconduct may have occurred. These are complaints that already have potential merit. The reasonable cause standard, however, is a lower standard than that of the preponderance of evidence, used by the complaint examiners to resolve complaints. So the examiners get good or potentially good cases, but not all will necessarily pass the preponderance of evidence

test. That largely explains why half or more complaints are generally sustained by complaint examiners. That figure might fluctuate a bit but has remained fairly constant. We don't think it's an unduly high number based on the standards that have been set up for referring complaints to complaint examiners.

PARC: *What types of complaints can be mediated? Since complainants and/or officers cannot request mediation, how does the OPC determine which specific cases should be mediated?*

PE: All complaints are potentially eligible for mediation, except for force complaints where physical injury resulted for the complainants. We especially

"All complaints are potentially eligible for mediation, except for force complaints where physical injury resulted for the complainants. We especially look for complaints where there was an extended encounter between the officer and the citizen, or the opportunity for repeated contacts, and where by mediating the incident the parties might have a better understanding of the actions that led the citizen to file the complaint."

look for complaints where there was an extended encounter between the officer and the citizen, or the opportunity for repeated contacts, and where by mediating the incident the parties might have a better understanding of the actions that led the citizen to file the complaint. We end up mediating a lot

of language or conduct and minor harassment complaints. The vast majority fall into these categories.

We don't make any assessment as to whether or not we think that mediation for a particular complaint will be successful; we look for the opportunity for greater understanding as a result of the mediation session. There can be some benefit even if no agreement is reached, simply by having the officer and citizen in the same room with a mediator to discuss the incident that led to the filing of the complaint.

PARC: *Why was the decision made allowing the OPC to require that officers and complainants participate in mediation?*

PE: We do have the authority to bring in the parties for mediation. There are some mediation purists who

may not agree with the compulsory aspect of this process, but only attendance is required; we don't have the authority to require the parties to enter into an agreement. So from our perspective it is still essentially a voluntary mediation program.

In terms of required attendance, the way we back this up is that if officers do not show up for mediation, and don't have a good reason for not showing up, they are disciplined by MPD. And if complainants don't have a good reason for not showing up at the mediation session, even though it was scheduled in advance and they received many reminders, we have the authority to dismiss the complaint. With these incentives in place, we're able to get parties into the mediation room.

Our mediation program is not revolutionary in this respect. Many court systems in the U.S. have required that an attempt at mediation be made before certain types of cases can be brought to trial. Our statistics show that OPC's approach consistently results in 75 to 80 percent of complaints sent to mediation successfully ending with an agreement between the parties. I think the proof is in the statistics. We think it's good for the police departments as well as for the public to come together in this forum to learn more about what led to a complaint being filed with our office. To the extent that we can, we'd like to see the number of complaints referred to mediation continue to increase.

PARC: *What kind of outreach programs has the OPC undertaken to increase public awareness of the civilian complaint process?*

PE: Our public affairs specialist, Melanie Degging, has put together a program that targets various groups such as youth, Latinos, and those people living in some of the economically depressed outer wards of city. In addition, we've developed an interactive training program for high schools, where we speak to youth groups and train young people about how to handle contacts with police officers and report complaints of possible abuse. We get everyone involved, including

our investigators and myself. Within the last year, we've supplemented this sort of community outreach by targeting various social service providers that can then pass information about our office on to their clients.

PARC: *Has the MPD's 2001 Memorandum of Agreement (MOA) with the U.S. Department of Justice affected your work? Have any aspects of your office or mandate changed as a result of reforms required by the MOA?*

PE: The MOA has had a positive impact on many fronts. It has helped us establish procedures with MPD for arranging officer interviews and exchanging information and documents relevant to our

investigations. The MOA has provisions that require that MPD disseminate information about OPC and that each station have OPC complaint forms and information sheets available to the public. The

agreement also requires that MPD instructors regularly provide our staff with training in MPD's policies and procedures. These requirements have helped us work out very specific procedures that go beyond what is contained in OPC's statute and regulations. We probably would have established these over time, but the MOA gave us leverage to get these things established more quickly and without much resistance.

The MOA also places some obligations on OPC to share information with the Department that it needs to adequately and effectively track complaints against its officers. The agreement also was the impetus for us to develop a thorough investigations manual that has been praised by DOJ and lays out the various steps of our investigative process. It is a kind of how-to manual that is very useful for new and experienced investigators.

PARC: *The DC city council has held hearings and passed legislation prohibiting certain police tactics in response to protests in Washington, D.C. What is the status of those initiatives? How has your office been involved in*

"We do have the authority to bring in the parties for mediation. There are some mediation purists who don't agree with the compulsory aspect of this process, but only attendance is required; we don't have the authority to require the parties to enter into an agreement."

discussions about proper police tactics and policies during mass demonstrations there?

PE: This legislation, which sets specific standards as to how the police are supposed to handle First Amendment protests in the District of Columbia, just took effect this past spring. Under that law, PCB has been given the power to monitor and evaluate MPD's handling of First Amendment assemblies. We are now just beginning to work with MPD on what the role of our agency will be in monitoring protests, such as those that will happen in September when the International Monetary Fund and World Bank hold their regular meetings.

PARC: *How do you ensure that the Mayor and Chief of Police give as much consideration as possible to your policy recommendations? Which policy recommendations made by the PCB have been implemented?*

PE: We make sure to follow up with the mayor, city council, and chief of police after we have issued policy recommendations. It's all well and good to do as we did a couple of weeks

ago—we issued a recommendation that MPD publish its general orders and directives online—but we did that without knowing whether or not MPD would be amenable to it. But if it's going to happen, it's going to occur because the Chief of Police has been convinced it's the right thing to do. That may mean us going to talk with the Police Chief and others within MPD, lobbying people in the Mayor's office or having city council members weigh in.

The first two policy recommendations we issued—one on racial profiling and the other on disorderly conduct arrests—have largely been implemented. The follow-up process for the racial profiling recommendation has been a long, arduous process, but the city has finally selected an expert to collect and analyze traffic stop data and other numbers. We're now in the process of following up on two new recommendations: one about the handling of juveniles in the company of adults who've been arrested, and

the other about the publication of MPD general orders. We fully intend to persuade MPD to do the right thing and implement those policy recommendations.

PARC: *Could you discuss PCB's recent recommendation that you just mentioned regarding the MPD's treatment of minors in the care of arrested persons?*

PE: This is a perfect example of how our investigative and adjudicative model of oversight allows us to detect gaps in police accountability and to address those problems. This recommendation arose out of a complaint that had been filed with OPC in which two juveniles had gone to a club with the mother of one of the juveniles. The mother was arrested after an encounter with the police, and the kids, who were from suburban Maryland, were basically abandoned on the street by the officers. A complaint examiner

sustained the decision against the police. By looking at best practices and procedures in other cities, we issued a policy recommendation with some specific suggestions and recommendations for reuniting children in similar

situations with other responsible adults if they are with an adult who gets arrested.

PARC: *What are you most proud of having accomplished in your current position, and what are your goals for the OPC?*

PE: We've assembled an extremely talented and diverse group of employees. As I indicated earlier, we will soon hire our twentieth employee. That will give us a total of 13 people in our investigative unit. We put a great deal of effort into recruiting and hiring the most capable people we can find. We could not have accomplished as much as we have if we didn't have such a talented staff.

I think our mediation program, with its 75 percent success rate, has also been quite an accomplishment in promoting greater dialogue between the police and the community. And our complaint examination program has attracted leading Washington lawyers to

"We want to improve our ability to identify patterns of police misconduct based on the complaints that come into our office and then come up with constructive proposals for change within the police departments that will reduce the number of complaints we receive. We hope to be a positive force for better policing by coming up with solid policy recommendations."

adjudicate our police misconduct complaints. This lends credibility to OPC's well-crafted decisions while also providing guidance to MPD on the appropriate standards of police officer conduct.

We're primarily a complaint-driven organization based on the investigative model, but we do have policy review authority. We really did not have the resources to issue frequent policy recommendations until recently. You can expect to see more in the way of recommendations from OPC in the future. We'll be issuing another one regarding the alleged harassment of people on bicycles in the next couple of weeks. We want to improve our ability to identify patterns of police misconduct based on the complaints that come into our office and then come up with constructive proposals for change within the police departments that will reduce the number of complaints we receive. We hope to be a positive force for better policing by coming up with solid policy recommendations.

Given Washington's history of police oversight—particularly the failed predecessor agency in 1995—we really want to continue to have as much credibility as possible in the eyes of all stakeholders, be they the public, police officers, or MPD management. We are constantly meeting with these stakeholder groups to get their input. We don't always agree with all of these groups on every issue, but keeping communication going and doing an effective, fair job in resolving police misconduct complaints goes a long way towards being seen as a credible organization.

Finally, as someone who is also interested in global human rights issues, I'm pleased that we've been able to share our experiences with representatives of jurisdictions from all over this country and around the world that are interested in learning how police accountability works in the nation's capital. Just since the beginning of this year, we've offered technical assistance to the governments of Uzbekistan and Israel and the city of Boston. It's nice to know that our work is making a difference in Washington and possibly beyond.

CONFERENCES & MEETINGS

August 23-26, 2005 – California Department of Justice, Criminal Intelligence Bureau, Attorney General's 19th Annual Organized Crime, Gang, Criminal Intelligence, and Terrorism Training Conference, Sacramento, CA. Online at www.caagconference.org

September 7-10, 2005 – National Institute of Justice, 8th Annual Crime Mapping Research Conference, Savannah, GA. Online at www.ojp.usdoj.gov/nij/maps/savannah2005

September 24-28, 2005 – International Association of Chiefs of Police, 112th Annual Conference, Miami, FL. Online at www.theiacp.org/

October 10-12, 2005 – Americans for Effective Law Enforcement, Police Civil Liability Seminar, Las Vegas, NV. Online at www.aele.org/Seminars.html

October 23-26, 2005 – National Association for Civilian Oversight of Law Enforcement, 11th Annual Conference, Miami, FL. Online at www.nacole.org

October 23-26, 2005 – International Association of Correctional Training Personnel, 21st Annual Conference, Nashville, TN. Online at www.iactp.org/conferences.htm