

# POLICE PRACTICES REVIEW

A Publication of the Police Assessment Resource Center

April - July 2008  
Vol. 7, No. 2

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## CIVILIAN OVERSIGHT

### Special Counsel Reports on LASD Custody and Litigation Issues

**P**ARC President Merrick Bobb, who serves as Special Counsel to the Los Angeles County Board of Supervisors, has issued the 25<sup>th</sup> Semiannual Report on the L.A. County Sheriff's Department (LASD). The first three chapters in this four-chapter report focus on the delivery of care to female inmates in the L.A. County jail system. In the first chapter, the report examines medical care at the Century Regional Detention Facility (CRDF), where female inmates are housed, looking primarily at the timeliness of the evaluation and treatment provided. The second chapter focuses on policies and programs relating to pregnant inmates and new mothers in the jail, such as prenatal and postpartum care, parenting education, and child visitation. In the third chapter, the report reviews the inmate complaint process at CRDF, based on a sample of complaints that PARC analyzed with respect to the timeliness of resolution and quality of documentation. The fourth and final chapter of the report examines trends in litigation relating to lawsuits filed against the LASD during the six-year period ending in fiscal year 2006-07.

PARC's review of medical care at CRDF found significant delays in providing inmates with access to the facility's nurse clinics. Standards promulgated by the National Commission on Correctional Health Care (NCCHC) recommend that inmates be seen within 24 hours of making a request during the week, and 72 hours on weekends. Although the facility does not maintain a record of sick call requests, a review of inmate medical complaints and sick call lists suggests that inmates at CRDF often wait significantly longer before they are seen by a nurse. While the Title 15 minimum standards for California detention facilities

do not require that inmates be evaluated and treated within a specific period of time, the report recommends that the jail adopt the NCCHC standards and that it keep a record of sick call requests in order to track inmate wait times and provide a measure of accountability. The report does, however, note CRDF's significant progress with respect to its medical screening process for new inmates. As a result of a new special housing area in the intake center of the jail, inmates awaiting a medical or mental health evaluation upon their arrival at CRDF now have access to a bed and shower rather than having to spend perhaps as long as four days in a holding tank that includes neither.

Special Counsel also found a lack of formal, documented policies concerning pregnancy, childbirth, postpartum care, and related educational programs. While certain policies in these areas do

often exist in practice, such as prenatal screening, follow-up visits, and special diets, the failure to formalize them in writing has resulted in confusion among staff and inconsistencies in the provision of such care. Accordingly, the report recommends that CRDF management develop formal, written policies for pregnant inmates and new mothers. The report also notes that while L.A. County does offer a limited number of related programs available to qualifying inmates, it does less than certain other jurisdictions, such as San Francisco County, with respect to contact visit programs for new mothers and its visitation procedures in general. Special Counsel recommends the implementation of new programs, expansion of existing programs, and the use of a reservation system for minors visiting their parents in jail.

PARC's review of 346 complaints over a six-month period at CRDF revealed significant problems in the classification, investigation, and disposition of medical complaints. Specifically, PARC evaluated the complaints to determine if they were handled fairly, thoroughly, and timely. The reports concludes that while the complaints relating to conditions of confinement were generally resolved promptly and appropriately, those relating to medical care—many of which are centered on treatment delays--- were frequently classified improperly (often as routine requests), insufficiently investigated, and poorly documented. In addition, the majority of these complaints had not been resolved within the prescribed ten-day period per LASD policy, and several were still open at the time of the review. The report urges a number of improvements in the processing of inmate complaints, including more thorough documentation, timelier resolution, and the implementation of an audit process to ensure policies are adhered to.

Finally, Special Counsel reported that the LASD has experienced an increase in total dollars paid out in litigation despite a reduction in the number of new lawsuits filed. Both the number of new and closed force-related lawsuits resulting in a payout declined during the six-year period; however, an increase in the average amount paid out per closed case resulted in higher total payouts, due in large part to several large custody-related lawsuits. In FY 2006-07, for example, six cases related to in-custody injury or death resulted in aggregate settlements of \$5.635 million—slightly more than half of the LASD's total civil liability for the fiscal year. Thus, while the Department has



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seen much improvement in its risk management relating to the use of force, the same cannot be said with respect to its custody operations. As a result, the report recommends, as a first step, adding an “in-custody death or injury” category to the LASD’s litigation classification system in order to bring more attention to the problem.

The full report may be accessed online at [http://www.parc.info/client\\_files/LASD/25th%20SAR.pdf](http://www.parc.info/client_files/LASD/25th%20SAR.pdf).

“LA County’s female inmates waited months for medical treatment, report says,” *Los Angeles Times*, July 12, 2008; “Report: LA inmate deaths, injuries costing millions in settlements,” *knbc.com*, July 11, 2008.

### Atlanta Citizen Review Board Implementation Faces Hurdles

More than a year after the creation of a citizen review board in Atlanta, set up to investigate police misconduct allegations, the review board has yet to hear its first case. The Atlanta City Council unanimously approved the board after a scandal exposed significant alleged corruption in the police department’s narcotics unit. In November 2006, after apparently lying to a judge to obtain a search warrant, narcotics officers fatally wounded an elderly woman upon entering her home, and assertedly planted drugs in her basement, allegedly to provide an after-the-fact justification for the raid.

Testimony in the trial of one of the officers involved in the incident alleged that cutting corners to obtain warrants is common practice in the narcotics unit. However, despite these revelations and the impetus for an independent panel to investigate similar allegations, a citywide financial crisis has left the review board underfunded, and, until very recently, it has operated without an executive director. It also lacks the financial resources to hire an investigator, at least one of which is needed before the board can begin to hear cases. Councilman C.T. Martin, co-sponsor of the ordinance that instituted the board, says that its \$311,000 budget allocation for 2008 is \$100,000 short of what it needs to function effectively.

The citizen review board is not without its detractors. Sergeant Scott Kreher, president of the local chapter of the International Brotherhood of Police Officers, is concerned that the board will violate police officers’ due process rights and only exacerbate the real

problems of understaffing, low morale, and pressure to meet arrest quotas. Kreher believes that the problems would be better addressed by adjusting hiring practices and allowing the current investigative agencies—Internal Affairs, the District Attorney’s office, the Georgia Bureau of Investigation, and FBI—to continue doing their jobs. The union is also considering a legal challenge to the board but will not make a decision until the board hears its first case.

Supporters of the review board have criticized the lack of funding and slow progress, and remain concerned that police misconduct has continued in the meantime. An apparent lack of strong support from Mayor Shirley Franklin and a waning of political support in general have also contributed to the board’s slow start, and several months elapsed before the mayor’s office even began to appoint members to the panel. Even now, a number of issues relating to the functioning of the board are still being worked out, including the finalization of its rules and bylaws. There is nonetheless some optimism that things are starting to come together. The board just recently hired an executive director, Cristina Beamud, who is expected to begin on September 1. Beamud has been the police auditor in Eugene, OR since 2006. She previously worked as a police officer, prosecutor, and legal advisor to the Cambridge, MA police department.

“Still under review: Board to investigate police misconduct has yet to hear first case,” *Creative Loafing Atlanta*, May 14, 2008; “Board overseeing Atlanta police faces slow start,” *Atlanta Journal-Constitution*, May 16, 2008; “Under review,” *Atlanta Magazine*, July 2008; “Atlanta’s police review board hires director from Oregon,” *Atlanta Journal-Constitution*, July 25, 2008.

### New Orleans City Council Approves, Empowers Police Monitor

After establishing an Independent Police Monitor Division within the Inspector General’s office, the New Orleans City Council unanimously approved a set of specific powers and duties relating to its oversight of the New Orleans Police Department (NOPD). Although the idea of a police monitor was first endorsed by the City Council in 2003, in part in response to PARC’s recommendations, it did not receive its first budget appropriation until December, when the Council allocated funds for the monitor in the Inspector General’s 2008 budget. Inspector General Robert Cerasoli plans to hire a monitor before the end

of the year, and a committee will be established in September to help him with the search and selection process. The new ordinance requires that the monitor be an attorney with law enforcement oversight or related experience, and also mandates the hiring of a deputy monitor to assist the head monitor.

Since 1996, the public, activists, and lawyers, such as civil rights attorney Mary Howell, have requested an independent monitor to review the NOPD's policies and practices. In 2001, a task force established by then-Mayor Marc Morial, for which PARC provided testimony, explored the actual need for a monitor, and concluded in 2002 that an independent monitor was preferable to a police-citizen review board. Nonetheless, despite the task force's recommendation and strong public support for a monitor, it was not until 2006, when the Inspector General's office was set up, that the City Council began to more seriously consider the idea. In 2007, PARC was retained by Councilmember James Carter, Chair of the Council's Criminal Justice Committee, to provide a design for the Independent Police Monitor position. Many of PARC's recommendations regarding the scope of the monitor's authority and responsibilities have been incorporated into the recently-approved ordinance.

The Independent Police Monitor ordinance was a compromise measure that addressed concerns by the city's two police organizations, the Fraternal Order of Police and the Black Organization of Police, that the monitor's broad proposed powers might infringe upon officers' due process rights under state law. Final changes to the ordinance included limiting the power of the monitor to a review of completed internal investigations by the NOPD's Public Integrity Bureau, rather than allowing the monitor to conduct separate investigations, and removing the monitor's right to enter crime scenes and reopen closed internal investigations. The monitor will also lack the authority to sanction police officers, but will review the appropriateness of internally-imposed discipline.

The monitor will focus on patterns and trends of complaints, as well as various policies and procedures ---such as training and the use of force---rather than on individual police misconduct complaints and investigations. The ordinance requires that the monitor issue at least one report to the public each year. The monitor will also be required to set up a mediation process between citizens who have made

complaints and the officers who are the subject of those complaints.

The New Orleans City Council has also proposed to amend the City Charter to provide protection for the Inspector General's office from political interference. The Charter amendment would require a separate ballot initiative to terminate the office or change its authority and would also guarantee the office a budget allocation equal to 0.75% of New Orleans' general fund operating budget. The measure, which would also mandate an Independent Police Monitor within the Inspector General's office, will appear on the October ballot.

"IM, IG, and NOPD," *Blog of New Orleans*, April 6, 2008; "Inspector general budget vote OK'd," *The Times-Picayune*, June 6, 2008; "N.O. Council gives power to independent police monitor," *The Times-Picayune*, July 14, 2008; "NOPD watchdog to focus on broad picture," *The Times-Picayune*, August 9, 2008.

## **R.I. Supreme Court Validates Providence Civilian Review Board**

**T**he Rhode Island Supreme Court recently upheld the legitimacy of the Providence External Review Authority (PERA), a civilian review board created in 2002 after a long campaign by a political action group to obtain records of police brutality complaints from the Providence Police Department. The establishment of PERA was meant to provide a more independent and transparent process than the existing Law Enforcement Officers Bill of Rights, under which the investigation and outcome of charges relating to police misconduct were determined internally by the police themselves, and could only be made public under very limited circumstances.

In 2006, the police officers' union challenged PERA's legality in court as it attempted for the first time to compel two police officers to cooperate with its investigation. The union sued in Superior Court to have the investigation blocked and the review board voided, arguing that the police officer bill of rights legislation precluded the existence of a review board because only the police under that law had the power to impose discipline on police officers. The trial court ruled that because the board only recommends discipline to the police chief, it does not violate the bill of rights. The court upheld PERA's power to interview complainants, hold hearings and call police

officers to testify. The police officers' union appealed the decision.

In affirming the Superior Court decision, the Rhode Island Supreme Court ended the legal challenge to the review board. Its ruling also noted PERA's compatibility with a longstanding federal consent decree relating to how the police department handles civilian civil rights complaints against its officers. However, PERA faces an uncertain political future, as Mayor David Cicilline reportedly would like to see it abolished, and his 2008-09 municipal budget proposal does not allocate any funds for the board. City Council is currently reviewing Cicilline's proposal.

"High court upholds role of police watchdog agency," *Providence Journal*, July 11, 2008; "Judge OK's review of police complaints," *Providence Journal*, November 10, 2006.

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## CONSENT DECREES/MOAs

### Cincinnati Monitor Cites Progress, Calls for End to Oversight

The Independent Monitor appointed to track the Cincinnati Police Department's (CPD) compliance with its 2002 Collaborative Agreement (CA) stated in his penultimate report that the police department has made significant progress and that outside monitoring is no longer necessary. The CA, which was intended to improve police-community relations after incidents of racial unrest occurred in 2001 following the fatal shooting of an unarmed African-American man by a white police officer, is overseen by a federal judge and was scheduled to end in 2007. Parties to the agreement included the City of Cincinnati, the Fraternal Order of Police, and a group of civilian plaintiffs. Despite the scheduled termination date, the ACLU nonetheless successfully argued for an additional "transition" year to ensure the proper implementation of the problem-solving policing component of the CA, as reported in Vol. 7, No. 1 of the *Police Practices Review*. The positive results in this latest report from the monitor may augur for the transition year to end next month if the parties agree to do so.

A related five-year Memorandum of Agreement (MOA) with the Department of Justice concluded on schedule in 2007 after the monitor reported full compliance with 93% of the MOA's provisions and

partial compliance with the remainder. The MOA, which required the CPD to improve its policies relating to the use of force, incident documentation and investigation, training, and oversight, also established a Citizen Complaint Authority to investigate and report on allegations of police misconduct. The termination of the MOA was reported in detail in Vol. 6, No. 2 of the *Police Practices Review*.

To help fulfill its obligations under the transition year addendum to the CA, the CPD put several problem-solving policies and procedures in place, and in late 2007 began to implement them, a process that continued through June. Problem-solving policing, a concept first formulated by Herman Goldstein, recognizes that a relatively large proportion of criminal activity involves both repeat offenders and victims, and the strategy entails using information analysis and working with the community to identify and address the underlying issues and recurring problems that contribute to crime.

The Monitor's report, while strongly praising the CPD's progress, nevertheless stated that the department still needs to do more with respect to both problem-solving and bias-free policing. The CA requires that the CPD provide police services without any discrimination on the basis of race, color, or ethnicity, and obliges it to track compliance by measuring for the presence of any racial disparity in motor vehicle stops. A RAND report issued in December 2007 concluded that while there is no evidence of department-wide racial bias, "blacks continue to bear a disproportionate share of the impact of policing in Cincinnati." RAND will issue its final report on police-community relations at the end of the year. The independent monitor will issue his final report in October that will document the overall progress achieved in the CA's six-year history.

The full 21<sup>st</sup> report of the Independent Monitor may be accessed online at: <http://www.gabsnet.com/cincinnati/monitor/21stReport.pdf>.

"Monitor: City Police Far Better," *Cincinnati Enquirer*, July 15, 2008.

### Oakland Monitor Issues Report

The Independent Monitoring Team charged with monitoring the Negotiated Settlement Agreement

entered into by the City of Oakland and the Oakland Police Department (OPD), and its progress on meeting substantial compliance within 51 enumerated Settlement Agreement tasks, issued its Eleventh Status Report on April 30, 2008. The report considers the Department's progress across ten tasks.

The report characterizes OPD as being in "full compliance" across 17 of the 51 enumerated tasks described in the Settlement Agreement. OPD is in at least "partial compliance" in across another 21 tasks.

OPD "made notable progress in all the areas assessed" for the report, attaining "full compliance" in three tasks, or those relating to unity of command, use of force reporting policy, and officer-involved shooting investigations. Partial compliance was noted across four others, including those related to use of force investigations, the use of force review board, use of force reports, and training.

The report marked the Monitoring Team's "first systematic look at the impact" of newly implemented use of force policies. The report noted "a marked improvement in OPD's use of force reporting and investigations," with officers and supervisors better documenting and describing uses of force in their reporting. The report indicates that "[i]t appears that OPD's better use of force reporting" and investigation "is starting to pay off," with the Department having "experienced a decrease in excessive force allegations" and the City of Oakland having "experienced a decrease in the number of lawsuits and claims filed against the City related to police conduct."

The report also commends OPD for having "implemented or improved a number of programs that have the capacity to further more effective community policing," including creating an area command, or geographically structured, policing and accountability system; a renewed commitment to "proactive" response to "responding to crime trends"; "improved" communications with the community; and "aggressive...reaching out to other City agencies and community stakeholders."

The monitors report that the Department "has made significant strides" in its training capacities, including both field training and the Academy, but that, to quickly train the more than 70 officers that the City has directed the OPD to hire by the end of the year, the Department will likely need to contract with an

outside agency or Academy to meet the demand. The monitors indicate that "it is critical that...OPD maintains its current high standards in its recruitment" ..[and training] of new officers."

### **Independent Monitor Concludes Work in D.C.**

The Office of the Independent Monitor (OIM) issued its final report on the Washington DC Metropolitan Police Department's (MPD) progress in complying with the Memorandum of Agreement (MOA) entered into with the Department of Justice. The final report concluded that the MPD had attained substantial compliance with more than 80 percent of the MOA's 126 provisions. Termination of the MOA came a short time earlier than first anticipated.

In the report, OIM "congratulates the City, MPD, and DOJ on the successful conclusion of this monitoring program." It notes that, "in the seven years since the parties executed the MOA," the MOA "transformed the way in which the Department...employs force, trains its officers, investigates use of force incidents and allegations of misconduct, and conducts outreach initiatives with the community." The OIM expressed confidence that such reforms will endure, with the MPD now possessing "an internal audit and monitoring unit...staffed and led by committed professionals who are devoted to providing MPD with reliable information about compliance with its policies and the law."

The City and MPD still must provide bi-monthly reports "directly to DOJ concerning their progress in implementing reforms related" to some of the 20 percent of provisions in which they did not achieve substantial compliance, which include areas related to citizen's complaints, development of a computerized Personnel Performance Management System, and field training.

The report summarizes improvements and evolutions in policy and practice across the MOA's provisions. It reports particular progress in the completion of high-quality use of force incident reports and adoption of new standards, requirements, and training for the Department's Specialized Mission Units.

The full report can be accessed online at <http://policemonitor.org/080613reportv2.pdf>.

## RACIAL PROFILING

### All Racial Profiling Allegations Against LAPD Dismissed for At Least Sixth Straight Year

A Los Angeles Police Department Internal Affairs report prepared for the Los Angeles Police Commission revealed that the department dismissed all allegations of racial profiling by police in 2007. Almost 80 percent of the allegations were dismissed outright, while the remaining claims were dismissed for lack of evidence or because a completed investigation concluded that no such profiling occurred. According to a *Los Angeles Times* document review, all such complaints were also dismissed in the previous five years. While members of the Police Commission were skeptical of these findings, Police Chief William Bratton strongly defended the report from its critics, contending that such results are typical of such jurisdictions generally.

Many of the allegations occurred before the department implemented new Commission-approved investigation guidelines in November as a response to concerns in a report from its Inspector General about the thoroughness and integrity of previous investigations. As a result, it is not clear if any of the allegations investigated prior to the implementation of the new guidelines would have been sustained if the revised practices had been in place throughout the year. Included in the new procedures is a checklist that requires investigators to ask officers certain questions aimed at determining the extent to which race entered into their decision to stop a motorist.

However, according to Bratton, racial profiling is very difficult to prove short of an officer's confession. In addition, the collection and analysis of racial data relating to police stops, as required by the LAPD's Consent Decree, is not conclusive enough to establish the systemic use of racial profiling by the LAPD. Although a 2006 study performed on behalf of the city by an outside consulting firm showed that officers are more likely to ask black and Hispanic motorists to leave their vehicles and consent to a search than whites, the study was unable to conclude the existence of racial profiling.

On August 12, 2008, Chief Bratton presented a report to the Police Commission describing recent efforts by the LAPD to deal with allegations of racial profiling. That report notes in conclusion that:

“What has become apparent is that the discussion of racial profiling within the LAPD has become one of polarities. On one end of the spectrum, management, buttressed by the Consent Decree, has focused on racial profiling as serious misconduct. On the other end of the spectrum, officers steadfastly affirm that their policing is wholly unbiased.

Because of this polarity, no meaningful dialogue can take place between the community member and the officer who may have offended them. It is apparent there is a serious chasm.”

In response, the LAPD advocates mediation in some racial profiling cases while in others, where there are other substantive allegations, the full force of Internal Affairs should be brought to bear. The LAPD outlines further steps it will take to better deal with biased policing in the recruitment, selection, training, and investigative processes.

Pursuant to the Chief's report, the Police Commission recently approved a number of changes to LAPD policy relating to racial profiling. Included in these changes are the establishment of an audit process by the Inspector General for complaints of racial profiling, the implementation of a mediation process, and the replacement of the term “racial profiling” with “bias policing,” reflecting the broader nature of profiling in general. The department will also implement the use of computer tracking of police stops to help determine if a pattern of racial profiling exists

“320 complaints of racial profiling and not one had merit, LAPD says,” *Los Angeles Times*, April 30, 2008. “LAPD ordered to mediate race profiling cases,” *Los Angeles Daily News*, August 20, 2008. See also an op-ed piece by Merrick Bobb published by the *Los Angeles Times* on May 2, 2008, available on the PARC website at [http://www.parc.info/client\\_files/Articles/5-2%20Op%20Ed%20Profiling%20the%20police.doc](http://www.parc.info/client_files/Articles/5-2%20Op%20Ed%20Profiling%20the%20police.doc).

## CORRECTIONAL OVERSIGHT

### Grand Jury Report Describes Dysfunctional Orange County (CA) Jail

A recently-released report from the Grand Jury investigation of the beating death of an inmate at Theo Lacy Jail reveals serious problems in the Orange County, California jail system, in which deputies are alleged to have often relied on inmate “shot-callers” to enforce order through violence and intimidation while the deputies assertedly took naps, watched television, and played video games. The report also contained allegations that deputies fired pepper balls at inmates to punish them or make them move faster, and allegedly frequently disregarded inmate requests for medical attention because they assertedly did not want to fill out the related paperwork.

The nine-month grand jury investigation stemmed from the 2006 in-custody death of inmate John Derek Chamberlain. Chamberlain, who was charged with possession of child pornography and awaited trial, was beaten for 20-50 minutes by a group of fellow inmates who mistakenly believed he had been charged with child molestation. According to the Grand Jury, despite Chamberlain’s screams for help, deputies were alleged to be unaware of the attack until after the beating was over, when an inmate stood on a table against the window of the cellblock and waved his arms to get the attention of the deputies on duty, one of whom had reportedly been watching “Cops” and exchanging numerous personal text messages during the incident. Inmates apparently managed to clean the crime scene and wash the blood off their clothes with water from the bathrooms before the deputies were alerted. While deputies are supposed to check the cellblocks every 30 minutes, it appears that the area where Chamberlain was killed had not been checked for five hours, according to the Grand Jury.

The Grand Jury discussed testimony alleging ignorance on the part of top officials about common jail practices and deputy behavior, as well as alleged attempts by deputies to interfere with the investigation by withholding and even tampering with evidence. In addition, it is alleged that someone in the chain of command decided to investigate the killing in-house rather than giving it to the District Attorney per standard policy. However, the Grand Jury was unable

to determine how this decision was made. Then-Sheriff Michael Carona refused to testify in the investigation.

The Sheriff’s Department argued that the grand jury transcripts might contain highly confidential information and should thus be kept private, but a Superior Court ruling ordered that they be made public. Although nine inmates have been charged in Chamberlain’s death, no charges have been filed against Sheriff’s Department personnel, and all of the deputies involved in the incident still maintain their jobs. An internal investigation is ongoing, however, and some deputies may lose their jobs pending the results, according to then-Acting Sheriff Jack Anderson. Earlier this year, Orange County settled a lawsuit filed by Chamberlain’s family for \$600,000.

The Board of Supervisors of Orange County recently appointed retired LASD Deputy Chief Sandra Hutchens to serve as Sheriff-Coroner. Her Undersheriff, John Scott, oversaw reform efforts in the Los Angeles County jails while serving as Deputy Chief in that County’s Sheriff’s Department.

“Rampant abuse seen at O.C. jail,” *Los Angeles Times*, April 8, 2008; “Grand jury finds O.C. jail in disarray,” *Oakland Tribune*, April 8, 2008; “Grand jury report on jail death released today,” *Orange County Register*, April 7, 2008.

### Federal Investigation Finds Unconstitutional Conditions at Cook County Jail

A 17-month investigation by the Civil Rights Division of the U.S. Department of Justice and U.S. Attorney Patrick Fitzgerald found that numerous conditions at the Cook County Jail violated inmates’ constitutional rights. Specifically, the investigation found evidence that inmates were at risk of physical harm due to violence; that they “[did] not receive adequate medical and mental health care, including proper suicide prevention”; and that facility conditions, including fire safety measures, were constitutionally deficient. Investigators identified several inmate deaths resulting from poor jail conditions, including three suicides, two inmate-on-inmate homicides, and “multiple preventable deaths... due to inadequate medical care.”

The investigative findings letter, issued in early July 2008, detailed a long list of cases wherein inmates

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## PARC INTERVIEW

**Richard M. Aborn**, a partner in the New York City law firm of Constantine Cannon, advises police departments and criminal justice agencies in the United States and in Europe on police integrity, use of force policy, and on building more effective relationships between police departments and criminal justice agencies. He also advises public and private organizations how best to control internal corruption.



Mr. Aborn also currently serves as the president of the Citizens Crime Commission, a research and advocacy organization seeking to improve the quality of criminal justice in New York City. As president of the Crime Commission, Mr. Aborn sits on the New York State (NYS) Law Enforcement Council. Comprised of the District Attorneys of NYS, the Attorney General and the police and sheriffs departments of NYS, the Law Enforcement Council advises the governor and legislature on criminal justice policy.

From 1992 to 1996, Mr. Aborn was President of Handgun Control, Inc. (now the Brady Campaign), the leading gun control advocacy organization in the United States. Mr. Aborn was one of the principal strategists behind the passage of the landmark Brady Bill and the legislation to ban assault weapons and large capacity clips. He has testified on Capitol Hill and in numerous state and local legislatures and worked closely with the White House, the Justice Department and the Treasury Department.

Previously, starting in 1979, Mr. Aborn was an Assistant District Attorney in the Manhattan District Attorney's office where he prosecuted major felonies, including homicides. Upon leaving the District Attorney's Office, Mr. Aborn started the law firm of Aborn and Anesi where he managed complex litigation representing victims of fraudulent activity on an international basis and assisted corporations seeking to eradicate internal corruption.

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**PARC:** As someone who has been at the forefront of handgun control since the early 1990s and has been one of the principal advocates for control of handguns, what impact do you think the recent Supreme Court decision in *Heller* striking down the Washington, DC ban on handguns will have?

**Aborn:** I think it will have very little impact on the gun control movement. The Court found an individual right to keep and bear a handgun in the home for self-defense. So if a locality wanted to pass a total ban on possession of a handgun in the home it could no longer do it. It would violate the Second Amendment.

For the first time the difference between gun control and gun banning comes into very sharp focus. My principal concern and the work I've done over the years has never focused on banning handguns. Rather my concern has always been with doing whatever we can to keep criminals from getting guns. The Supreme Court said nothing in its decision that would keep us from continuing to pursue the kind of laws that we need in order to disrupt the illegal markets. For instance, the Court flat-out said that background checks are okay, limitations on commercial sales are okay, and limitations on certain types of weapons are okay (meaning assault weapons). Some time and place restrictions on possession are okay. So there is no indication that the Court has any interest in stopping us from pursuing the kind of laws that we need.

**PARC:** You seem to be suggesting that although the decision may be a blow to the movement to ban handguns, it might not necessarily be the same for the movement to control handguns. Is this correct?

**Aborn:** What might strike some people as counterintuitive is that I think this decision could actually help gun control advocates politically in this sense. For many, many years, the NRA has argued that the Second Amendment unconditionally blocked all gun control laws. Seizing on this argument, Members of Congress, and other policy makers, would say they would otherwise support gun control but for the fact that there was

a Second Amendment violation. That argument is now off the table. The NRA can no longer credibly argue that the Second Amendment bars the kind of laws that I've just discussed—one gun a month, licensing/registration, bans on assault weapons, limitations on private sales. So it removes that political argument which I think, actually, is going to be helpful.

Where *Heller* will hurt is that the NRA undoubtedly will start to take the decision and try to expand its meaning and try to whittle away the laws that we've passed. They will immediately go after those jurisdictions that have full bans, like Chicago. Then they will go after some of the possession laws around the country. That will take resources away and that hurts; there's no question that that hurts. But, substantively, I don't think that that is going to interfere with the kind of legislation that we want to get passed at either the Federal or the State level. Interestingly enough, the Supreme Court did not rule that the Second Amendment is binding on the states because this was an appeal from the District of Columbia. So there is no State incorporation argument here, so the NRA still has to overcome that hurdle.

**PARC:** *Does New York ban handguns?*

**Aborn:** No, it's a licensing jurisdiction. It's a three-tiered license here. There is a license for home possession, which has a relatively low threshold, then there's partial carry and then full carry. Full carry has a fairly high threshold to get. Partial carry is for those who want to use their guns at sporting venues, and that has a lower threshold than full carry. So the more frequently you want to carry the gun, the higher the threshold.

**PARC:** *In terms of crime reduction and the risk of crime, isn't a full or partial ban a more effective device than the kinds of licensing restrictions that you advocate?*

**Aborn:** No, there is no data to support that at all and I'll give you some contrary data. Since as early as 1911, New York City and New York State have had one of the model gun control laws in the country with a very strict licensing and registration regulatory scheme. The overwhelming number of guns—approximately 93 percent—used in crime in New York City come from out of state, from jurisdictions with very weak gun control laws. It's very easy to go down south, acquire guns in bulk, and drive them to New York and sell them on the streets. New York City law itself has been successful in keeping criminals from getting those guns here in New York from gun shops. But, obviously, local jurisdictions cannot get the job done by themselves. We need a nationwide body of law controlling the distribution of guns. You can't do it on a state-by-state basis. If we were to try nationwide licensing and registration, you would vastly reduce the number of illegal guns out there.

**PARC:** *What would prevent smugglers from getting guns in as they do now, perhaps then from off-shore?*

**Aborn:** There is no current indication that great numbers of illegal guns are coming in from offshore. There is no need. The absence of strict licensing and registration laws allow smugglers, or traffickers as we call them, to get guns from within the United States. The more relevant question is, if we did have a New-York-style law nationwide, why wouldn't the black market dealers simply get their guns in the illegal market? And I think the argument is two-fold: one, undoubtedly they would get some guns; you are not going to stop every single gun. But I do think you would vastly reduce illegal trafficking, and I think the reason is a matter of economics. Guns are extremely durable; there is no need to replenish the supply of guns because they are so durable and so there is not enough demand out there to support the costs of the large network you would need to smuggle in guns from overseas. Drugs, unlike guns, come across porous borders because there is this insatiable demand for drugs. Every time people buy drugs and use them, they have to buy more. It's the opposite with guns. Guns last; they are very well made products. So I don't think the economics would support a vibrant illegal gun market. I'm not going to argue that there would be no illegal guns out there. For sure, there some. But the history of the jurisdictions that have tried vigorous licensing and registration laws clearly demonstrate that you can vastly reduce illegal gun trafficking and therefore the violence associated with it.

**PARC:** *The Second Amendment as interpreted by the Supreme Court finds that there is a personal right to bear arms, but it doesn't—beyond handguns—really define, more narrowly, what kinds of guns would be acceptable. Is there room for*

*regulation of gun manufacturers, such that the Saturday Night Special, or the relatively cheap guns that are currently available on the market, could be banned?*

**Aborn:** I believe so.

**PARC:** *Do you think that would be a useful step?*

**Aborn:** I'm not sure you would need a ban. You'd get into a very difficult definitional problem here and maybe the definition would have to revolve around size. If someone told me what the definitions they were proposing would be, I might consider it. But I think it would be very difficult to draw that line in a way that doesn't step over into what you might call legitimate guns. I think the better course of action is to pursue a regulatory scheme.

**PARC:** *Do we know who manufactures the handguns that seem to find their way into criminal use?*

**Aborn:** Sure.

**PARC:** *Who are those manufacturers?*

**Aborn:** This actually is part of the regulatory scheme I'm talking about that would address the issue you are raising. There are the names that you know that manufacture guns: Smith and Wesson, Ruger, Glock and Colt are still out there making handguns. These are sort of household names that have been around forever. They manufacture handguns, some of which are purchased for the police and for the military, and a lot for the civilian market. But then actually in Southern California there is something that we have called the Ring of Steel, which is a group of very small manufacturers that put out these cheap handguns. If I were going to adopt a regulatory scheme, I would make sure that there was adequate oversight of how these small manufacturers are distributing those guns into the retail market. I would want to make sure that there was very careful record-keeping so that ATF, or any other law enforcement agency with jurisdiction, could check to make sure that those manufacturers weren't themselves flooding the illegal market with guns and are instead selling the guns only to legitimate retailers. You could more carefully regulate those manufacturers putting out these very, very cheap small handguns.

**PARC:** *Do licensing and registration schemes contemplate that there would be a written record and a paper trail for a gun, from the time it is manufactured to the time it is in somebody's hands?*

**Aborn:** Yes, and in fact I will take you further than that. Under legislation I would like to see passed, not only could you trace a gun from the point of manufacture to a middle man, if there is one, to the retailer, to the point of first sale, but I would actually like to see a nationwide law that bans an individual from selling that gun privately to another individual without a background check. I would want to see that sale go through the Brady background check system and make sure that anybody who purchases a gun, whether they buy it from a retailer or from a private individual, passes the Brady background check. Under current law, if you lawfully own a gun and you want to sell it to me, there is no federal regulation whatsoever over that sale. As two private individuals, not in the business of selling guns, you can just go ahead and sell it to me. So very often what traffickers will do is go to these big gun shows that are held around the country where lots of private owners put their guns out, and they sell them right there in these conventions centers, fairgrounds, etc. with no background check whatsoever and without notice to law enforcement. I think that we should stop that.

**PARC:** *We should ban gun shows or we should regulate them?*

**Aborn:** I think we should regulate the sales at gun shows, so that any sale at a gun show has to go through the Brady background check, which is called the NICS system. That way there would be a record of that transaction, and I would keep that record indefinitely in contrast to the current regulation, which only requires that the checks run under NICS be kept for a certain number of days. Then the record is destroyed. We should keep that record so we know who is buying and selling weapons. The other thing I would require is that before any gun

is sold in the United States, the manufacturer be required to pre-fire that gun and submit the used shell casing to either the state police or a Federal authority, who would then create a ballistics image of that discharged casing before allowing the gun to be sold. The reason for that is that semi-autos discharge a casing when they are fired. So very often law enforcement will find a casing at a crime scene, be able to take ballistic markings off the casing, but have no idea which gun it came from, because you have no gun to match it to. But if you would have pre-fired that gun, you would then have a computer record of which gun fired that particular casing. We've done that in New York. New York has something called the COBIS law so now before you can sell a gun in New York, you have to pre-fire the gun and submit the casing to the State Police. Once the casing is linked to a particular gun, law enforcement can begin an investigation of the history of the gun all without recovering the actual weapon.

**PARC:** *What does COBIS mean?*

**Aborn:** Collated Ballistics Identification System. California is pursuing the same idea but with micro-stamping, a different technology but which I think is a very promising technology.

**PARC:** *Please describe that.*

**Aborn:** When a bullet is fired, the casing will be marked with an identifying number, a micro-stamp, which can be seen by a reader, and that number then correlates back to a particular gun. So all the manufacturers have to do is submit the identifying number for the guns to the state authorities. So when a casing is recovered from the scene, they read the micro-stamp and they know what gun it came from.

**PARC:** *Let me switch to something else. The work that you are doing for the Crime Commission—describe that and, if you could, describe what the principal concerns or worries are in terms of the Crime Commission and crime in New York City.*

**Aborn:** The Crime Commission is both a think-tank and an advocacy organization where we develop new ideas for the criminal justice system and then promote them in the legislature or within the executive branch, wherever they are relevant. To give you some examples of the recent things that we have done, we were very active in the effort to try and expand the use of DNA evidence in police investigations and in criminal court proceedings. So we helped pass a law which expands the number of crimes for which a DNA sample is taken. The value we see in that is that it's a better and quicker way to identify whether someone did or did not commit an offense. We just did that a year ago.

The Crime Commission is also doing work in juvenile justice. In fact, we are just putting together a piece which really will be a guide to the juvenile justice system of New York. The reason we are doing that is that there are so many different agencies, both private and public, in so many different courts, involved with juvenile justice, that if you don't have a road map of what they all do, it's very hard to follow. At the Commission, we are becoming increasingly concerned about the rise in juvenile crime in New York. History tells us that when juvenile crime starts to go up, adult crime follows, and our belief is that if we can work with kids and keep them out of the criminal justice system, we stand a much better chance of keeping overall crime down, in addition to trying to keep these kids in school and in good families, etc. So we are starting to put a lot of effort into juvenile justice.

We have also created a media campaign where we talk about the sentences attendant to illegal gun possession. This campaign is seen throughout the city, with the support of the subway system and the buses and the local phone company, all carrying our campaign advising that carrying an illegal gun has a very heavy and mandatory jail sentence.

On another front, I have been working with law enforcement agencies up and down I-95 in an effort to try and develop an electronic interstate compact so that we can trade gun trafficking data and intelligence around gun traffickers amongst the various states that are involved in gun trafficking. We know exactly which states are supplying illegal guns to New York. They are all up and down I-95 which is the North-South interstate along

the Eastern Seaboard. I want to create an electronic web around that gun trafficking information. We are starting to make some progress around that.

*PARC: Will those states that are very weak, in terms of registration and licensing—Virginia and the Carolinas come to mind—be willing to cooperate in such an effort?*

**Aborn:** I believe so. I have spoken with some of the law enforcement people and they are interested and I am very explicitly saying that this is not a political effort; this is strictly a law enforcement effort, because this idea should not get caught up in the normal hyperbole around gun control legislation. There is no legislation required here; this is all executive action. So I'm trying to keep the politics out of this so we can get an important law enforcement goal accomplished.

*PARC: You have also taken a strong interest in corrections. What issues in particular are you thinking about currently?*

**Aborn:** There is a lot of focus in New York now, as there should be, on re-entry, the process that prisoners go through when they come out of jail. I also want to focus on pre-entry if you will, if we can coin a phrase here. Before people go into the system, we should put a lot of effort into that. In terms of overall crime in New York, the NYPD has done a fabulous job. Crime is down at levels that we have not seen since the 1960s. So if you are familiar with the old phrase, "we want to get back to the good old days," we are back in the good old days. When I was prosecuting homicides in this town, there were over 2,000 murders a year. Last year, there were fewer than 500; that is an enormously astonishing accomplishment.

The trick now, the key, is to keep that downward motion going and not accept the idea that it is inevitable that crime will rise. I categorically reject the notion that there is a natural cycle to crime. We just have to continue being imaginative about ways to keep crime down and also be brave enough to look at areas of crime prevention that are politically unpopular. For instance, the intersection of mental health and criminal activity is an area where we could prevent a lot of crime if we were willing to support the right treatment for offenders with mental health issues instead of reflectively seeking jail sentences. We need to be getting enough treatment spaces for criminals with drug addiction so that when they are released from prison, they are no longer addicted. Or even better, unless they are charged with violent or trafficking offenses, do not send them to prison, but rather send them to treatment. It's keeping up the very good police work that the NYPD is doing, but also building better relationships with communities. There are lots of areas that we can consider now that we never had the luxury to think about before because crime was through the roof, so the strategy was suppression, suppression, suppression. Now I think the strategy should be suppression, of course, because we need to keep crime down, but also prevention, and move the whole prevention model up higher in the tool kit.

*PARC: Have you examined what re-entry programs there are at Rikers Island, and whether they are adequate?*

**Aborn:** I met with the Commissioner of Corrections a few weeks ago, and we are just starting to do that. We should constantly evaluate whether current programs are effective in preventing people from either going into the system or to help them when they are coming out of the system. The last thing in the world we want to do is take good tax dollars and put them into bad programs. People have to be honest enough to admit when a program is not working, and when it's not working, bring it down; don't keep funding it. That way we can put money into the most effective programs. So I think this type of evaluation is really very important. One of the first things I did when I took over Handgun Control, Inc. (now the Brady Campaign) was to hire a research director despite the fact that we were right in the middle of a big political fight. People asked me why I was doing that, and I said because we really want to make sure that the laws we were proposing worked. It makes no sense at all to put effort into passing social policy legislation if it's not going to be effective. We need to focus on those things that work and I think we need to take that same idea and apply it now with vigor to questions of reentry and recidivism. We need to get the social scientists out there who know how to evaluate these programs and do good rigorous testing on them.

*PARC: Thank you very much for taking the time to speak with us.*

**Aborn:** My pleasure.

*continued from page 8*

allegedly were subjected to excessive force by correctional staff in response to minor infractions such as verbal disrespect or a failure to follow instructions, often resulting, according to the findings letter, in significant injury to the inmates. In several cases, correctional officers allegedly banded together to beat an inmate as punishment or retaliation for earlier behavior, as described in the findings letter. The findings letter asserts that, although the Cook County Department of Corrections had begun to take some measures to bring what was termed “a culture of abusing inmates” under control, reporting and investigation of the use of force by staff continued to be poor. For example, a review of Use of Force Reports found that the level of detail provided, such as the extent of the inmate’s injuries or the type of force used, was insufficient to make a determination about whether an investigation should be opened. The findings letter also reported that accountability was hampered by the fact that internal investigations were generally opened only after a lawsuit was filed about the incident. Those investigations were often inadequate, concluded the findings letter, sometimes suffering from an asserted appearance of bias or difficulty obtaining medical data from the jail’s healthcare provider. The jail has no tracking or early warning system to identify staff members who use a disproportionate amount of force, according to the findings letter.

Other conditions that, according to investigators, put inmates at risk of harm included poor supervision by staff due to overcrowding and understaffing, including the practice of “cross watching,” where one correctional officer supervises two tiers at a time. The report found that medical care was inadequate at nearly every level—including basic staffing, access by inmates, record-keeping, screening and assessment, and chronic and acute care—with apparently serious consequences for the well-being of inmates. Mental health screening, assessment, and treatment were also found to be inadequate. In particular, investigators concluded that suicide prevention measures, such as a policy of restraining suicidal inmates due to “lack of staff for continuous observation of the...inmate,” were “grossly inadequate.” Finally, the report found that the dilapidated condition of the facility created an unconstitutional living environment for inmates and put both staff and inmates at risk of harm from violence, injury, fire, and illness.

The Cook County Sheriff’s Office responded with a statement that complained that the report relied on “inflammatory language and that the Sheriff “categorically rejected” “allegations of systematic violations of civil rights at the jail.” While Cook County Sheriff Thomas Dart acknowledged problems at the facility, he faulted the report for ignoring some of the department’s reform efforts, including improvements in internal investigative and disciplinary procedure, as well as statistics indicating a decrease in the use of force by staff. Nonetheless, the Sheriff indicated his intention to fully cooperate with the Department of Justice to address concerns and avoid litigation.

The jail, the largest single-site facility in the nation with a population of approximately 9,800 inmates, has been under a federal consent decree since 1982 as a result of a class action suit filed by pretrial detainees. Although the decree focuses primarily on overcrowding, it also contains provisions about other facility conditions, including staffing and sanitation.

The findings letter can be accessed online at: [http://graphics8.nytimes.com/packages/pdf/national/Cook\\_County\\_Jail\\_Findings\\_Letter.pdf](http://graphics8.nytimes.com/packages/pdf/national/Cook_County_Jail_Findings_Letter.pdf).

The statement from the Cook County Sheriff’s Office can be accessed at: <http://www.cookcountysheriff.org/press/newspage.asp?id=229> .

“U.S. blasts jail conditions,” *Chicago Tribune*, July 18, 2008; “Federal Report Finds Poor Conditions at Cook County Jail,” *New York Times*, July 18, 2008.

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## FORCE MANAGEMENT

### NYPD Officers Used Force in 20% of Stops in 2006

A recently-released study reported that the New York Police Department (NYPD) used force in 20% of stops made in 2006. The study, prepared by researchers at the University of Michigan using internal data from the NYPD for more than 500,000 police stops, provides an unprecedented body of use-of-force statistics which the NYPD does not ordinarily make public. The NYPD defines the use of force as anything from restraining suspects, such as by forcing

them to the ground or placing them against a wall or car, to drawing their weapons and shooting at suspects.

Despite their frequent use of force, however, NYPD cops did not arrest suspects in 9 of 10 such cases. Furthermore, they did not make arrests in 4 of 5 cases during which a weapon was drawn. Civil liberties groups concerned about use of force and police stops by the NYPD have sued for access to the full data.

Police officers must have reasonable suspicion to stop and question someone, such as when they have particular information about the suspect, are investigating a nearby crime, or see suspicious behavior. According to the data, the most common reason for police stops was a suspicion that an individual was carrying a weapon, which accounted for more than 20% of all cases. Terrorism accounted for 301 police stops, of which only one resulted in an arrest, although it is not known if a related charge was ever filed.

“Cops use force – from restraint to drawn guns – in 20% of stops, data show,” *NY Daily News*, June 14, 2008.

## Report Suggests Changes To LAPD’s SWAT Unit

On April 15, 2008, the Executive Summary of the Board of Inquiry’s (BOI) final report on its 18-month examination of Special Weapons and Tactics (SWAT) operations was presented to the Los Angeles Police Commission and placed on the LAPD’s website. Prior to the release of the Executive Summary to the Police Commission and the public, the full report was delivered confidentially to LAPD Chief William Bratton. In the interim, the LAPD considered the report’s recommendations and decided to adopt most of them. The Executive Summary presents the Department’s position with respect to each key BOI recommendation.

Bratton formed the BOI after a July 2005 incident in which 19-month-old Suzie Pena, held hostage by her father, was killed along with her father. This incident was the only one from 1972-2005, the period reviewed by the BOI, in which a hostage was fatally wounded as a result of SWAT actions. Although the Pena incident prompted the BOI’s review, Bratton convened the board to look at all aspects of SWAT operations

rather than to reinvestigate this particular case. The BOI was unprecedented in that it included several law enforcement experts and professionals from outside the LAPD. The members of the Board were: Richard Aborn, Merrick Bobb, William Geller, LASD Lieutenant Phil Hansen, Gregory M. Longworth, Chief Bernard Melekian of the Pasadena Police Department, LAPD Assistant Chief Sharon K. Papa, Assistant Chief Linda Pierce of the Seattle Police Department, and Eugene Ramirez. The unanimously adopted report represented the success of the BOI in reaching consensus harmoniously and with respect for individual viewpoints.

The BOI found SWAT personnel to be dedicated professionals who train arduously, take their responsibilities seriously, and, by and large, discharge them ably, noting that there are many dedicated and courageous individuals working in SWAT now and in the past. While acknowledging SWAT’s record of solid achievement, all BOI members, including SWAT’s strongest proponents, favored change, according to the Executive Summary. The Chief adopted most of the recommendations in whole or in part and rejected only a few.

Underlying the need for change in SWAT was the view of the BOI that SWAT had become insular, self-justifying, and resistant to change. While acknowledging that in most routine matters SWAT performs ably and often admirably, the Executive Summary noted that there were incidents and trends suggesting an over-reliance on tactical operations over negotiated solutions and rigidity about changing tactics and strategy as circumstances change. The BOI also found that SWAT was often uncritical of its own.

### I. Pool of candidates for SWAT.

The Board concluded that the absence of women as team members in SWAT needed to be addressed and dealt with through reasonable, newly validated, nondiscriminatory, yet rigorous performance standards. The Board also concluded that a greater diversity of views, perspectives, talents, and life experiences would be a benefit to SWAT. How best to achieve that needed diversity focused principally on the values and drawbacks of using Metro as the selection pool. The BOI recommended Department-wide selection for SWAT.

The Chief concluded that the pool for selection of SWAT will be expanded to become department-wide. No longer will membership in Metro be the sole way for interested persons to join SWAT, as reported in the Executive Summary.

## II. Selection Criteria for SWAT.

The BOI noted that SWAT's selection criteria have not been validated in the last 10 years. The BOI concluded that existing selection criteria under-emphasized negotiating skills, patience, empathy, and flexibility while over-emphasizing physical prowess and tactical acumen. The Board thought it important to consider whether selection of individuals for SWAT should be made in whole or in part by persons outside of Metro in order to avoid an appearance that selection for SWAT amounted to a search for the like-minded.

Accordingly, the BOI concluded LAPD should rethink its selection criteria and minimum standards. SWAT should continue to seek out the most qualified candidates in order to continue its tradition of excellence, but gender and other diversity need not and should not be sacrificed in any selection process.

While the Board of Inquiry was meeting and considering its recommendation, the Department had already begun the revision of the selection criteria. The Department is presently using an interim process which includes some modification in the prior selection criteria. The Department believes this process is more extensive and better reflects the actual skills necessary.

## III. Rotation.

The BOI saw SWAT's insular culture as self-perpetuating. SWAT members seemed to believe they had career tenure, absent a major deterioration of skills. A majority of the BOI concurred with those members of SWAT's leadership who advocated that mandatory rotation on balance is beneficial. A few members of the Board were convinced that the benefits to SWAT of experienced personnel outweighed any countervailing arguments for limited tenure. Those members argue that retention in SWAT should be based upon proficiency, productivity, and the successful completion of periodic performance tests, believing that the sophistication of contemporary SWAT techniques demand unusually high levels of experience to assure high probabilities of success.

The BOI recommended mandatory rotation of police officers, team leaders, sergeants, and lieutenants after 10 years in SWAT. If the Chief of Police concurs, one five year extension could be tacked on that individual's tenure.

After that, the BOI concluded that the wealth of experience should be spread across the Department as a whole, reasoning that the highest and best use of experienced SWAT officers in their post-SWAT years is training and upgrading patrol officers and their supervisors.

The Chief concluded their rotation within SWAT should be considered in the context of rotation for all specialized units and the Department as a whole. The LAPD and the Police Commission are considering the wider rotation issues, according to the Executive Summary.

## IV. Dealing with the mentally ill and persons in an overly excited state.

The BOI found that SWAT, in common with nearly all law enforcement agencies in the United States, needs to change how it deals with persons who are mentally disturbed, under the influence of drugs or alcohol, in a heightened emotional state, or simply uncooperative, as contrasted to aggressive and combative. The BOI found that unless SWAT had reason to believe an individual is suicidal, more often than one might like, but by no means always, SWAT concluded that negotiations are or would be fruitless in instances where the optimal time for a negotiated resolution had not passed. To the BOI, SWAT appeared at times to accelerate a tactical intervention or to have exacerbated the volatility of persons in an overly excited state, rather than negotiating or waiting for them to calm down or come off the effects of alcohol or drugs. The BOI concluded that SWAT officers need substantial training on dealing with individuals in heightened emotional states. The BOI recommended the development of active training scenarios where SWAT members confront and must deal with actors playing the role of persons with a variety of mental illness and substance abuse problems, recommending that SWAT personnel should undergo rigorous and frequent training in conflict resolution, negotiation, psychology, dealing with persons who are under stress or are otherwise volatile, violent, difficult to predict, or incapacitated. The platoon should have one or more psychologists permanently assigned and specifically

trained in defusing tense situations by conflict resolution.

The Chief concluded that SWAT negotiators and the balance of the SWAT membership shall receive Critical Incident Training (CIT), a methodology already in use in the LAPD and in many other law enforcement agencies to train individuals in the knowledge and skills necessary to deal safely and effectively with persons who are mentally ill or in an overly excited state. The Chief further concluded that the LAPD's SMART teams should continue to roll out to all situations involving barricaded suspects. SMART is a unit of the LAPD trained to assist others in dealing with individuals demonstrating signs of mental illness or impairment. The SMART team determines if their services should be employed. The Chief also concluded that LAPD psychologists should continue to be actively assisting in negotiated resolutions of such confrontations.

#### V. Negotiations.

According to the Executive Summary, the BOI presented statistical data tentatively suggesting that SWAT may proceed to a tactical resolution before the optimal time for negotiation has occurred. Inadequate data collection by SWAT precluded more definitive conclusions. Nonetheless, the data suggested that where negotiation is the singular component in resolutions, negotiation times run from three-to-six hours. The data also tentatively suggested that the decision for tactical entry is occurring before the optimal negotiating time has passed. The data tended to show that in a significant number of cases, SWAT tactical response, canine search, contact with a suspect, and even the use of a chemical agent, may be occurring prior to negotiations. The data appeared to demonstrate a substantially lower amount of force is used when negotiations take place, either in tandem with other methods of resolution or alone. Injuries, shots, and uses of force appear to be lowest when negotiators are given about three hours, according to the Executive Summary, suggesting further that when negotiators are used, the need for force and other tactical options is reduced. The data seemed to suggest that more shots are fired the less time is allotted for negotiation. The BOI accordingly recommended that policy be developed that requires greater exhaustion of non-tactical solutions before force is used. Negotiators and SWAT members should be on separate teams, in the opinion of nearly all Board members.

This model is commonly associated with the FBI, NYPD, and other East Coast law-enforcement agencies, as well as Seattle on the West Coast. The BOI further recommended Compstat-like accountability should be instituted on a regular and recurring basis for SWAT, not only to account for SWAT effectiveness in crime control but also for achievement of negotiated resolutions and avoidance of unnecessary tactical solutions and strategic and tactical errors.

The Chief concluded that it is not necessary to create wholly separate teams given the potential of the current model if refined to achieve the desired result of greater exhaustion of non-tactical solutions before force is used. The data relied upon by the BOI on this issue was tentative and not definitive, principally because SWAT had not systematically collected data bearing upon the key questions. As described below, the Chief has ordered the rigorous collection and ongoing analysis of data regarding every SWAT operation. As this data is created, computerized, and analyzed, it will become clearer whether the desired results are being achieved. The Chief adopted the BOI Compstat recommendations.

#### VI. Criteria for SWAT negotiators.

In the view of the BOI Executive Summary, any negotiator working for or with SWAT should possess:

- Demonstrated capacity to establish a working relationship with persons who are volatile, violent, or in a heightened emotional state, including individuals who are mentally ill, suicidal or seriously depressed, on drugs or alcohol, or are physically or mentally disabled or otherwise impaired in their ability to respond to police commands.
- Demonstrated abilities to negotiate and establish rapport with people, including a record of resolving arrests and other tense situations verbally and without use of force.
- Dedication to peaceful resolution of conflict regardless of time or discomfort and having as the overriding priority preservation of human life, be it of suspects, hostages, third parties, or law enforcement personnel. A willingness to serve all of Metro and selected patrol assignments where necessary, not just serving SWAT.

- As set forth in the Executive Summary, Chief Bratton noted that SWAT personnel receive negotiation training and those individuals who express a desire to become a negotiator and who fulfill the criteria stated above are selected to serve in that capacity. It should be noted that all SWAT personnel are dedicated to the peaceful resolution of all conflicts.

### VII. Data Deficiencies.

Following a report of a study conducted by Richard Aborn, the BOI concluded that SWAT's data deficiencies are deep. SWAT's inability to provide complete and reliable data for analysis demonstrates that SWAT is not capably managing risks, according to the Executive Summary. The BOI adopted all recommendations in the Aborn report and therefore recommended that the LAPD:

- introduce rigorous risk management, trend analysis, data analysis, and accountability measures in SWAT, including focused data collection and use of computers in connection with foregoing;
- institute Compstat-like accountability on a regular and recurring basis for SWAT, not only to account for SWAT effectiveness in crime control and operationally, but also for achievement of negotiated resolutions and avoidance of unnecessary tactical solutions and strategic and tactical errors;
- supplement current debriefings with regular critical analysis in writing for each significant SWAT incident;
- revise After Action Reports to include a full discussion of response time, time to set up, debriefing by SWAT of first-responding officers, tactics and strategy, use of negotiators and possible use of personnel who were making progress before SWAT arrived, avoidance of unnecessary tactical resolutions, and command-and-control issues. After Action Reports and search and arrest warrant summaries should be expanded to include a full narrative description and a critical analysis of the foregoing topics.

The Chief adopted the BOI recommendations.

### VIII. Coverage.

The BOI analyzed the days and times of the week in which SWAT was called out during the period 2002--2004. It found that more often than not, SWAT was off-duty when the call came in. In 2002, 52 of 83 callouts, or 62 percent, happened off-duty; in 2003, 76 of 128 callouts, or 53 percent, occurred off-duty; and in 2004, 26 of 48, or 54 percent were off-duty. SWAT was generally slower to arrive and set up during off-duty periods. The Board learned that a SWAT officer called out off-duty had to go pick up his partner before proceeding to the location of the call, thereby losing precious time. The Board therefore unanimously concluded that at minimum, all "on call" SWAT officers should have take-home cars. The Board further recommended on-duty coverage 24 hours a day, seven days a week, or as close to that as is feasible.

The Chief adopted the recommendation that on call SWAT officers should have take-home cars. Current fiscal and budgetary realities precluded the expansion of SWAT personnel by approximately 60 officers necessary to accomplish 24/7 on-duty coverage.

### IX. Time Allocation.

As reported in the Executive Summary, the BOI found that SWAT officers had an overwhelming preference for training over other activities when not actively engaged in a SWAT operation. The Board agreed with SWAT that more attention should be paid to reducing activities such as ceremonial duties and answering phones. It disagreed with SWAT officers who think training others in the department is unnecessary. To the Board, it is one of the best uses that can be made of SWAT. A substantial number of instances where SWAT is called out are resolved by patrol before SWAT arrives.

It is important that patrol officers, supervisors, and incident commanders be trained in and be ready to act, if absolutely necessary, before SWAT is ready to go. SWAT should be involved in preparing patrol resources and incident commanders to address rapidly evolving high risk incidents in order to give them the highest chance for a successful outcome.

The Chief concurred with these recommendations.

## X. Command and Control.

### *A. The transition of operational control from patrol to SWAT.*

The Board found instances of uncoordinated and unsupervised transitions when SWAT arrives piecemeal and replaces patrol. The Board recommended that essential decisions be made at a higher level pursuant to an operational plan keyed to the specific incident. Contingencies should be identified and addressed at the planning stage so that officers are not forced to respond ad hoc to changed circumstance.

The BOI concluded that SWAT should reduce the circumstances under its control that cause officers to act without due supervision, including not having adequate resources and on-duty personnel to deploy quickly, not having the SWAT lieutenant and supervisors present at the scene from the inception, not having adequately worked out a strategy in advance, not changing strategy in light of changed circumstances, and placing too much discretion in the hands of a team leader.

Concededly, in the exceptional case, the dynamism, unpredictability, and fluidity of a situation may preclude the step by step approach under a supervisor's direction that is advocated above. The BOI did not discount the benefits of empowering SWAT personnel to take action when windows of opportunity occur to resolve a situation. These opportunities may present themselves in different forms, which may or may not involve the employment of deadly force. Opportunities sometimes exist for brief periods, and officers must be empowered to act. This empowerment comes from those in command, and can be justified on the basis of training and a full understanding by all parties of the law, policy, and protocols associated with a given type of incident. Empowerment or delegation of authority should be distinguished from abdication of responsibility. Officers must be empowered to act and then be held accountable for their actions, right or wrong.

It was the Board's perception that too much power, authority, and discretion has been reposed in team leaders and operators and too little authority is exercised by lieutenants and sergeants. Board members found troubling the degree to which

individual team leaders and team members were reported to hold supervisors in low regard or resist the notion that supervisors should actively participate in operations and in fact supervise them.

The Board recommended that greater emphasis needs to be placed on the role of command and control, transfer of responsibility, and the creation of specific yet flexible operational plans for each SWAT deployment. The overall role of sergeants and lieutenants in SWAT operations generally, and in entries specifically, needs to be enhanced. They should be actively in charge. Conversely, boundaries and limits on the discretion of team leaders need to be thoughtfully considered and articulated. The respective roles of the lieutenant, the captain, the incident commander, the chief overseeing Metro, and other executives and managers on the scene need to be thought through and defined with precision.

The Chief endorsed the development of appropriate protocols governing the subjects described above, however he did not believe it is necessary to reduce to writing protocols as the protocols for SWAT operations and the command and control of the operations are extensively covered in the initial and on going training.

### *B. The Incident Commander.*

The BOI recommended that LAPD should create a specially trained cadre of individuals with a track record of seasoned judgment to act as Incident Commanders in all SWAT operations. BOI also recommended that the LAPD institute a certification process for those who will act as Incident Commanders. In addition to completing the certification course to be instituted by the LAPD, those Incident Commanders should, among other things, be familiar with, or willing to become familiar with, SWAT strategy, tactics, and methodology, including, if advisable, cross training with SWAT. BOI further recommended that these Incident Commanders have demonstrated in their careers a dedication to peaceful resolution of conflict regardless of time or discomfort and having as the overriding priority preservation of human life, be it of suspects, hostages, third parties, or law enforcement personnel.

The BOI noted a substantial number of instances where SWAT is called out but the incident is resolved by patrol before SWAT arrives. The BOI underscored the importance of patrol incident commanders being

trained and ready to act, if necessary, before SWAT is ready to go. Deployment of SWAT and replacement of patrol should be governed by good intelligence developed as—or preferably before—SWAT arrives.

The Chief determined that the creation of a specially trained cadre to become the Incident Commander for all SWAT situations would not be necessary. The Incident Command shall remain with the local Area.

#### XI. Weapons.

The BOI was disinclined to make specific recommendations about which weapons SWAT should use. Their investigation did not turn up errors of judgment in weapons selection. Some Board members concluded that certain weapons have been used in an unnecessarily risky way. More specifically, allowing automatic weapons to be set at fully automatic is neither necessary nor desirable. The strongest argument for that position was made by a LAPD SWAT manager, who noted that neither the British nor the Israelis allow the weapons to be on full automatic setting. The Board recommended disallowing fully automatic settings, at least on the M4, unless specific supervisory approval for the fully automatic setting is given for a particular incident.

The Chief noted that, currently, full automatic settings on the M4 can only be utilized with the approval of a SWAT lieutenant or the Commanding Officer of Metropolitan Division, unless SWAT officers are spontaneously confronted with exigent circumstances.

#### XII. Personnel

The Board recommended the assignment of a second lieutenant to SWAT and an additional captain to Metropolitan Division. The Board further recommended augmentation of SWAT's intelligence gathering capacity.

While the Board was meeting and finalizing its recommendations, the Chief authorized an additional captain and the Metropolitan Commanding Officer added a second lieutenant.

The Executive Summary of the BOI's report can be accessed on the LAPD website at [http://www.lapdonline.org/home/news\\_view/37975](http://www.lapdonline.org/home/news_view/37975).

“Report Released on LAPD SWAT unit,” *knbc.com*, April 15, 2008.

## NEWS BRIEFS

### Washington D.C. Police Chief Trying to Fire Reinstated Officers

Seventeen Washington D.C. police officers, fired for misconduct but then rehired last October after the department missed disciplinary deadlines, could once again lose their jobs if Police Chief Cathy Lanier is successful in ousting them. These officers, whose wrongdoing was alleged to include lying, falsifying documents, double-dipping, and even fistfighting, were reinstated as a result of court and arbitration decisions that determined they had been wrongfully terminated due to the department's failure to make a ruling with 55 days from the time charges were filed, as required by D.C. regulations. The department was found to have had a history of missing this deadline, which has apparently resulted in the overturning of penalties for hundreds of firings and suspensions. The MPD is currently investigating the reasons behind such failures. However, D.C. Mayor Adrian Fenty recently stated that the department now has policies in place to prevent this from happening again.

Despite the rehiring, however, Lanier now assertedly intends to charge the seventeen officers with “inefficiency” to terminate them. These actions are apparently based on the suggestion of interim D.C. Attorney General Peter Nickles and reportedly have the support of Mayor Fenty. The alleged inefficiency is based upon the concern that many of these officers might lack the credibility to testify in court due to their alleged misconduct, which can be particularly problematic in criminal trials. According to Nickles, as reported in the press, this lack of credibility makes the officers unfit to continue working. As a result, the department will conduct internal investigations of each officer, according to reports.

In the meantime, Lanier will reportedly consider assigning some of these officers to desk duty. These moves have faced strong criticism from the local police officers' union, which may file an unfair labor practices suit in response.

“D.C. Trying to Again Fire 17 Rehired Police Officers,” *Washington Post*, May 24, 2008; “Reinstated D.C. cops may be fired again,” *WTOP Radio*, May 23, 2008.

## Philadelphia Police Commissioner Fires Officers for Role in Beating

Philadelphia Police Commissioner Charles Ramsey fired four police officers and disciplined four others two weeks after a group of officers were filmed beating three suspects following a car-stop in North Philadelphia. Three of the officers who were disciplined received suspensions ranging from five to 15 days, and a fourth was demoted from sergeant to officer for failing to stop the beatings. Although there were 18 police officers and a K-9 officer at the scene, none of the others were found to have violated police guidelines or acted inappropriately.

The incident, recorded by a Fox29 television news helicopter, occurred after police chased down a car carrying three men suspected of shooting into a crowd earlier in the evening.

The swift discipline was met with mixed reactions. Both the Rev. Al Sharpton and J. Wyatt Mondesire, president of the Philadelphia branch of the NAACP, praised the move. However, John McNesby, president of the local police officers' union, criticized the action as a rush to judgment and said the union will appeal

the decision. Several protesters also complained that the decision did not go far enough. The District Attorney's office is currently investigating the incident, although criminal charges have not yet been filed against any of the involved officers. The three suspects have all been charged with attempted murder for their role in the earlier shooting.

According to Ramsey, as a result of this incident, officers will be retrained in the appropriate use of force, and the city has contracted the Police Executive Research Forum (PERF) to conduct an evaluation of the police department's use of force policy and related officer training.

"Four Phila. officers fired for taped beating," *Philadelphia Inquirer*, May 19, 2008; "4 cops fired for beating," *Philadelphia Daily News*, May 20, 2008; "Prosecution presents its case vs. 3 men seen beaten by police," *Philadelphia Inquirer*, July 18, 2008.

## CALENDAR

**September 22-24** 19th Annual Problem-Oriented Policing Conference, Bellevue, WA. [www.popcenter.org/conference](http://www.popcenter.org/conference)

**October 20-22** Americans for Effective Law Enforcement: Lethal and Less Lethal Force, Las Vegas, NV. [www.aele.org](http://www.aele.org)

**October 26-30** Technology Institute for Rural Law Enforcement, Coronado, CA. [www.ojp.usdoj.gov/nij/events/all-events.htm](http://www.ojp.usdoj.gov/nij/events/all-events.htm)

**October 27-30** 14th Annual National Association for Civilian Oversight of Law Enforcement Conference, Cincinnati, OH. [www.nacole.org](http://www.nacole.org)

**November 8-12** Annual Conference, International Association of Chiefs of Police, San Diego, CA. [www.theiacpconference.org](http://www.theiacpconference.org)

**November 12-15** Annual Meeting, The American Society of Criminology, St. Louis, MO. [www.asc41.com/annualmeeting.htm](http://www.asc41.com/annualmeeting.htm)

**December 15-17** Americans for Effective Law Enforcement: Public Safety Discipline and Internal Investigations Las Vegas, NV. [www.aele.org](http://www.aele.org)



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