

Interview

In June 2001 the Metropolitan Police Department (“MPD”), District of Columbia and U.S. Department of Justice (“DOJ”) entered into a Memorandum of Agreement (“MOA”). In April 2002 former DOJ Inspector General **Michael Bromwich** was selected to lead the monitoring team formed to review and report on the implementation of and compliance with the requirements set forth in the MOA. The agreement includes reforms of the MPD in areas such as use of force, handling internal investigations of the use of force, investigating allegations of misconduct against officers, creating an early warning system, and training. **PARC** recently spoke with Mr. Bromwich about his approach to the monitoring role and his first eight months as monitor.

***PARC:** How do you view the role of the monitor?*

MB: I think it is extremely important to be clear about the limits and the scope of the monitor’s position from the outset. Under the Memorandum of Agreement that defines our monitorship, we are required to monitor compliance with each and every aspect of the Memorandum of Agreement. The breadth of that responsibility is limited by the specific provision in our MOA that we are not to supplant the roles of any of the other agencies of the DC government, including the Metropolitan Police Department and any other city agencies.

We have been very mindful of the fact that our activities must be limited to monitoring rather than moving into anything that resembles having an operational role. We found that among the chief concerns that the MPD had at the beginning of our activities – and I am sure that this is true in virtually every context in which there is a monitor over a law enforcement agency – is that we would view ourselves as having an operational role. Specifically, the MPD was concerned that we would actually conduct investigations and that we would become kind of a shadow police department in certain ways. Therefore we had to be very clear, in what we said and what we did, about the limits of our role. Our role is to monitor implementation of the MOA rather than assume an active, operational role. We had to very clear about articulating that to the police department and in reinforcing it to ourselves.

***PARC:** Have any circumstances arisen when you have decided that it is appropriate to provide suggestions in an effort to assist the department to comply with a requirement?*

MB: Yes, such occasions have arisen, and we have made such suggestions. I think we have been fortunate in having developed an open and good relationship with the MPD from the outset, which has facilitated our making such suggestions. In a variety of circumstances, for example in the training area and in ensuring the completeness of record-keeping for use of force investigations, we have offered what is described in the MOA as technical assistance, but are in fact simply suggestions or advice. Sometimes that is

done on-site by the policing experts who are working as part of our team. Sometimes it is done more formally in our quarterly reports or during in-person meetings that we have. Because of the constructive and open relationship we enjoy with the MPD, the reaction to our suggestions has generally been extremely positive.

PARC: *Can you describe how the team divides responsibilities?*

MB: Yes. Within my law firm, Fried, Frank, Harris, Shriver and Jacobson, three lawyers other than myself have played significant roles in the monitoring process. The senior lawyer who has been centrally involved in the monitoring assignment is Jonathan Aronie, who is very much involved in our day-to-day dealings with the MPD and has played a central role in organizing and coordinating our monitoring activities. In addition, two other associates – Jacqueline Stephens and Melissa Lamb – have been involved in a variety of monitoring projects. We have the international accounting firm of PricewaterhouseCoopers and we have used them primarily to help us select samples of investigations and cases that we want to review and examine. They will also be very involved in helping us with the computerized personnel database that the department is required to develop as part of the MOA.

Our three policing experts have played central and critical roles in our monitoring activities. Our experts are Dennis Nowicki, who is the former chief of the Charlotte-Mecklenburg Police Department; Mitchell Brown, who is the former chief of the Raleigh, North Carolina Police Department; and Ron

Davis, who is an active-duty captain with the Oakland, California Police Department. We have used all three of these policing experts extensively in monitoring specific aspects of what the MPD has been doing to implement the MOA. For example, in last quarter of 2002, they extensively monitored training programs that were developed to implement the MPD's newly revised use-of-force policies. They have also reviewed a large number of use-of-force investigations conducted by the investigative teams designated by the police department to review use of force. The three policing experts have conducted a wide range of monitoring assignments for us, and I have found having them to be a huge advantage for us in monitoring the agreement appropriately. The three experts have worked extremely well together in a coordinated fashion, and have given us the latitude to monitor a wide range of activities.

PARC: *Could you summarize the most important aspects of the MOA regarding use of force?*

MB: That's difficult to summarize because the MOA is a long and complex document that addresses a wide range of issues that the Department of Justice has deemed to be critical to developing appropriate use-of-force policies. Very briefly, the MOA requires specific new policies in the areas of firearm use, canine use, OC spray use, and so forth. In addition, there is a broad range of requirements in the MOA relating to investigating use-of-force incidents, training members of the department on the new policies, and developing a computerized system to track use-of-force incidents.

The new general orders embodying these use-of-force policies were developed in final form during the late summer of 2002 and were finally ready to be released in early October. New in-service training and other kinds of training on the new use-of-force policies are currently being implemented. That is what the MPD has been devoting a lot of its energies to over the last six months or so, and because these new policies are so central to the MOA, we have been devoting a lot of time and attention to the implementation of these policies in recent months as well.

***PARC:** Many of the use-of-force requirements include specific guidelines concerning firearms, OC spray and the deployment of canines? Do these guidelines differ considerably from present policies?*

MB: There are some significant differences. It has taken a lot of work to ensure that the substance of the policies has been changed in ways that are consistent with the requirements of the MOA and consistent with cutting-edge best police practices.

***PARC:** During the course of the monitoring process, if the department comes into apparent compliance, does that satisfy a requirement indefinitely, or does it need to be revisited?*

MB: It depends on the requirement. For example, the department was required to come up with new use-of-force orders and then implement them. The development of the use-of-force orders is complete and therefore satisfies the requirement to develop such orders in the first instance. By comparison, the process of implementing them will be a continuing process that will go on for the life of the

agreement. Much of our monitoring activity will be designed to ensure that the approved policies are implemented properly. The process of implementing these policies will in fact never end – not even at the point when the MOA expires.

***PARC:** How can law enforcement agencies learn from consent decrees?*

MB: By focusing on the substance of what the decrees – or the voluntary memoranda of agreement – are trying to accomplish rather than on the events that may have led to the requirements that are being imposed. It is critical that a law enforcement agency has a constructive attitude towards the decree and wants to achieve its objectives. The agency must believe in a fundamental sense that moving the agency forward along the lines set forth in the decree will benefit the department and is consistent with good policing. I think that has been the case with the MPD.

I think one of the advantages that the MPD has is a chief who believes in the objectives that underlie the MOA and believes that they are consistent with best policing practices. He believes that the objectives of the MOA push his department in the direction that I think he was already moving towards and it also provides a further impetus to move in that direction. I think that if you have a department that doesn't have that kind of support from the top, and doesn't recognize that the terms of the MOA are perfectly consistent with high-quality policing – and indeed most everything is completely consistent with high-level policing and promotes top-level policing – it makes it very difficult for an arrangement like the one we have with the MPD to work well.

In addition to top-level support, the law enforcement agency needs to have people strategically situated in the organization to mobilize the support of the department to make sure that the objectives of the MOA are implemented. In our experience with the District of Columbia, we have had top-level support from Chief Ramsey and other members of his command staff. In addition, the people we deal with who are responsible for implementing the MOA on a day-to-day basis really do support the objectives of the agreement and are working very hard to make sure the department complies with the MOA terms. Even with this kind of support, satisfying all the elements of a consent decree – or an MOA – is not a simple or easy matter and requires sustained commitment from the entire agency for a long period of time until all of the new policies, practices, and procedures become a way of life in the agency.

PARC: *Have you experienced any personal challenges since you do not have a direct background in policing?*

MB: I have a substantial background in law enforcement – seven years as a federal prosecutor and five years heading a federal law enforcement agency. But my experience was at the federal level – the 180 federal criminal investigators who worked for me at the Justice Department when I served as Inspector General did very different kinds of work than the officers of the MPD. Before this assignment, I did not have the kind of detailed working knowledge of local law enforcement that you can get only when you work in local law enforcement. I have found it interesting and illuminating to see how a local law enforcement agency works, how it mobilizes to make significant institutional change, and how

its day-to-day rhythms, preoccupations and concerns differ from those of federal agencies, which have very different responsibilities.

PARC: *Can you provide an overview of what the MOA requirements are for the Use-of-Force Review Board?*

MB: Yes, the MOA requires the Use-of-Force Review Board to conduct timely reviews of MPD use-of-force investigations. The MOA requires the MPD to develop various policies relating to the operation of the Review Board, including authorizing it to recommend discipline of MPD officers for violations of MPD's policies and training. More generally, the MOA establishes the Review Board as the entity designed to ensure quality control for all use-of-force investigations, including the authority to recommend investigative protocols and standards for all force investigations. The MOA requires the Review Board to conduct annual reviews of all use-of-force cases for the purpose of recommending remedial steps to address any systemic deficiencies it has found.

PARC: *What lessons have you learned in your first nine months on the job? Have there been any surprises?*

MB: The first nine months of the assignment have confirmed the importance of establishing a good rapport with the department from the outset. I think we have been able to do that through being transparent about what we are doing – there is no mystery or secrets about what we do, how we are doing it and why we are doing it. In the beginning of the process when we were talking with the MPD about how we would run our operation, we stressed the openness of the

process that we hoped would characterize the monitorship. I think that we have lived up to that pledge to be transparent.

Our hope was to avoid surprises and so far I think we have been pretty successful at avoiding any major surprises. That's at least as much the result of luck as of design. It is also a tribute to the MPD's efforts in seeking to satisfy the requirements of the MOA. Although there may be surprises in the future, I think the fact that we have built a solid base of trust during this initial period will put us in a good position to handle them appropriately.

***PARC:** Do you see a dichotomy between your public reports and your participation in the behind-the-scenes process?*

MB: No, I think that it turns out that people do focus on the public reports, and I think that everyone tends to orient themselves to what is going to be in the public reports. But I have found that our relationship with all parties, particularly the MPD, has been a very open and constructive one. I think that we communicate clearly with each other. As an example, in mid-December, we held end-of-the-year meetings, both with the representatives from the MPD compliance monitoring team and the Department of Justice, just to talk generally about how things are going. We discussed what they would like us to do that is differently from what we have done previously and what they have liked about our approach with the monitoring to date. I think this illustrates the kind of relationship we have tried to develop during the beginning phases of our monitorship. We communicate with one another and are

very solicitous of what the other parties are thinking and what their needs are.