



Memorandum

Date: February 25, 2010
To: City Council
From: Donna J. Grider, City Clerk *Donna Grider*
Report Type: Information
RE: Palo Alto Police Auditors Report – Bias-Based Policing

The City Manager has provided me with the attached Police Auditors Report to forward to you as per our procedures.

As part of the City's response to concerns experienced by community members about bias-based policing, the City enlisted the assistance of the Independent Police Auditor to independently review Departmental policy, training, and practices designed to forestall bias based policing and to make recommendations for changes to current policies. Since that time, the Independent Police Auditor has studied current policies as well as monitored the Department's response to the controversy. In this Report to Council, the Independent Police Auditor chronicles the Department's response to the issue as well as makes additional recommendations.



INDEPENDENT POLICE AUDITOR'S
REPORT

**Palo Alto Police Department's
Response to Concerns Regarding Bias-
Based Policing**

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Independent Police Auditor Report

PAPD's Response to Concerns Regarding Bias-Based Policing

On October 30, 2008, remarks made in a public forum by the then Police Chief roiled the Palo Alto community. Some viewed the remarks as proof that the Department had a systemic practice of bias based policing. Others found the remarks at least racially insensitive. And still others had no significant problems with the Chief's remarks or thought that her comments had been taken out of context. Regardless, the remarks did resonate throughout Palo Alto and beyond and caused City residents and their elected leaders to commence a dialogue about the remarks and the relationship between the police department and the minority community. In the aftermath of the remarks, the City's elected leaders were most interested in what type of response was called for by the Police Department in order to address the concerns raised by some members of the community. Shortly after the remarks were made, the Chief of the Department retired, leaving the development of that response to the interim Chief.

In addition to requests by City governance that the Police Department formulate a response to the concerns raised about Department relations with the minority community, the City Council also requested that the Independent Police Auditor ("IPA"), entrusted with oversight of the Police Department, also participate in and track those responses and report back to the City Council with independent observations and assessments about any such initiatives. This report by the IPA is intended to respond to that request.

I. Introduction: The "Remarks" in an Historical Framework

As observed above, the remarks of the former Chief were interpreted by many as either demonstrating evidence that bias based policing was being practiced by the Department or at least displayed racial insensitivity to the community. Rather than continue further here about the potential problematic nature of those remarks, it may be more helpful at this juncture to consider briefly the history of police relationships with the minority community in this country in order to better understand the nature of the response that those remarks generated.

Unfortunately, for too many years the United States labored under a de facto, and in some communities, a de jure practice of treating members of the minority community differently from the majority community. While the most infamous of those practices were evidenced in the Deep South through the enactment and enforcement of Jim Crow laws targeting African-Americans, the practice was not limited to that area and did not solely impact on the African-American community. Discriminatory treatment based on race or ethnicity by government officials was virtually nationwide and persons of color were not provided the same government services or opportunities as the majority class.

Of course, the historic roots of this discrimination first emanated from the legally sanctioned practice of slavery that existed for the first eighty years of this country. Even after the laws of slavery were repealed, government leaders soon enacted laws and practices designed to keep different races and cultures apart from each other, and moved to use the force of law and custom to divide communities by race or ethnicity and caused them to live in different neighborhoods, attend different schools, and have unequal access to governmental and societal benefits. This system of segregation and differential treatment endured for scores of years and was endorsed by the highest Court of our land. Even after the landmark decision of *Brown v. Board of Education* that reversed that jurisprudence, many states and cities resisted the Court's finding that "separate but equal" was unjust and tried hard to continue to enforce Jim Crow laws in housing, employment, education, and public accommodations.

The efforts of civil rights leaders to end these discriminatory laws were often met with strife, violence and resistance to change. It was under this rubric that local police were called upon by elected officials to continue to enforce the Jim Crow laws. Police were instructed throughout the country to use their police powers to impede civil rights leaders and to sustain the segregation laws and customs through arrest and discriminatory law enforcement. It was the police that were called to do society's unjust bidding and who were on the front lines in the conflict between a more just society and those elected officials and communities who held on to the discriminatory ways of the past.

The United States continues to struggle with the aftermath of a system that did not provide equality to all and made judgments based solely on the color of one's skin or ethnicity. One of those lasting effects is an understandable skepticism by persons of color about the fairness of governmental systems today, including concern about the practices of law enforcement. In light of the historical context, it is not surprising that certain members of communities believe that present day law enforcement continues to practice bias-based policing. Only a few generations ago, law enforcement was mandated by their elected leaders, laws, and custom to do so.

It is thus within this historical framework that one must consider the remarks of the former Chief. That sad history lingers and contributes to the concern that modern day police departments continue to practice bias based policing. Whether the practice is a current reality or not, the perception in many communities is that such discriminatory police practices continue.¹

The comments in question were thus viewed by some within this historical prism. Certainly, as we discuss in the next section, police departments must remain vigilant to whether bias based policing actually occurs, as difficult as that may be to detect. However, just as important, police departments and their leaders must also recognize that, even without hard and fast evidence that such policing is occurring either with individual officers or more systemically,

¹ To support this notion, one Gallup poll found that 55 percent of whites and 83 percent of blacks believe racial profiling is widespread. In an informal survey of a small sample of Stanford students, over one quarter of the students reported that they believed that the PAPD engaged in racial profiling.

a reasonable perception may remain with some that such discriminatory acts are still occurring. As a result, as important a task as ferreting out instances of bias based policing is, in many ways, it is equally critical for progressive police leaders to be mindful of, address, and endeavor to eliminate the perception that such acts are systemically occurring. For this reason, as explained below, any law enforcement response to these issues has to be holistic in nature and address police/community relations on a wider and more sustained scale.

II. Ferreting Out Bias Based Policing: The Hurdles

A. The Limitations of Data Collection and Systems Analysis

Over the past twenty years, law enforcement officials, sociologists, psychologists, statisticians and other professionals have struggled with the daunting task of attempting to establish whether, and if so, to what degree any particular department practices bias based policing. The hurdles in doing so are extremely daunting.

The most frequent way that police agencies have attempted to learn whether bias based policing is systematically occurring is through institution of vehicle stop data collection systems. Such systems require officers to document the perceived race or ethnicity of each individual stopped. That data is then accumulated and tabulated.

While the collection of stop data presents its own challenges, the largest obstacle for practitioners in this field is the difficulty in analyzing the data. In the short history of this research, professionals have had more challenges than successes in determining conclusively whether any data sets either proved or disproved the existence of bias based policing. It is now commonly held that simply comparing unadjusted census data is insufficient to learn whether bias based policing is or is not occurring in any particular jurisdiction. As this issue has matured, researchers have noted that a fair comparison and accordingly, a conclusive determination are extremely difficult to achieve. For example, simply because the data shows that African Americans are stopped disproportionately to the census demographics of a city fails to account for other variables such as the census numbers not necessarily reflecting the number of drivers or a potential influx of drivers from other municipalities. As one attempts to take into account these other factors, the more complex the research becomes, and the more difficult and costly it is for analysts and municipalities to attempt to assess the data. More often than not, jurisdictions that have attempted to analyze stop data in the past, have been left unsatisfied and unable to draw any firm or widely accepted conclusions. Even more problematic, in some jurisdictions, the same data has been assessed by competing analysts to reach opposite conclusions about whether bias based policing has occurred.

In Palo Alto, the Police Department has collected stop data for almost a decade and publicly reports such data to the City's Human Relations Commission. In early 2008, the reporting requirement was suspended by agreement with the City Manager's Office and City Council but in November 2008, after the then Chief made her controversial comments, the Council directed the Department to reinstate the reports.

In 2006, an African-American Police Chief renowned as an expert in racial profiling studied the data and reported to the City's Human Relations Commissioners that, based on his review, he did not believe that Palo Alto Police were practicing racial profiling. In 2007, students from Stanford University's Public Policy Program also conducted statistical analyses of the data and concluded that the statistical analysis supported the claim of the Department that there was not a current problem with racial profiling. However, putting these reviews aside, to the Auditor's knowledge, the data has not been subjected to the type of multi-regression analysis and multi-variable benchmarks that current leaders in this field believe needs to be figured into the calculus.

Additionally, a private citizen with a background in statistics has worked tirelessly to try to glean meaning out of the data and has concluded that, for example, minorities are the subjects of discretionary stops more so than non-minorities. During this review, the Auditor spent time talking with the private citizen and reviewing his detailed reports and found him a person of good will who continues to try to fathom meaning from the numbers. To what degree the private citizen's analyses proves or disproves bias-based policing, his conclusions certainly are important to the discussion and do not provide comfort to those who retain the perception that bias-based policing is occurring in the City of Palo Alto.

The experience of other cities that have invested many more resources into analyzing data than has Palo Alto has been that such statistical analysis does not often provide any generally acceptable and firm conclusions regarding this issue. As a result, for the City of Palo Alto, it may well be that the resources that would be needed to perform such complicated analyses are better well spent by assuming that there is a perception, if not a reality of bias-based policing and then addressing the issue of bias based policing with the community head on.

That being said, we do not advocate the termination of collecting the stop data that continues being collected by PAPD nor do we recommend ceasing the promulgation of this data to the Human Relations Commission. Regardless of the shortcomings, complexity, and expense of data analysis in this field, the collection of stop data has other important benefits. First, data collection conveys important messages both to the community and within the police department that the City is concerned with the specter of bias based policing and is not shy about providing to its public such stop data. Moreover, even if data collection cannot at present prove or disprove bias based policing, it can produce important information that an agency should have regarding the work of its officers. Over time, the data can also provide Department leaders with important indications of trends in the behavior of their officers and the community they serve. Finally, as the science of analyzing bias based policing matures, there may come a time in which such data can be analyzed more facilely with more definitive outcomes and conclusions. Assuming this possibility, the City will be well-served to have a history of data collection that can then be available to those future analysts.²

² Of course, we are cognizant of the significant resource constraints on all public entities during the nation's current economic downturn and leave to City leaders to rate this program against other valuable resource outlays that may be on the budgetary chopping block.

During our review, we also discussed the importance of ensuring that the data collection being undertaken is accurate and timely. We learned that the Department continued to be challenged by officers who fail at times to complete the card in a timely fashion or supervisors who failed to ensure a timely completion by officers under their command. That being said, our review found that the Department's professional staff remains vigilant in having this data collection obtained and current to the degree possible.

As noted above, the Department has continued to collect the stop data. In fact, to facilitate the data collection process and to address the isolated shortcomings identified above, the Department developed a new system whereby officers are able to enter the requisite data directly into the Department's record management system, thereby eliminating the need for manual stop data cards and subsequent data entry by staff. The IPA has reviewed the current system and procedures devised by the Department to reconcile the data and found that the direct entry provides for more accurate and timely recordation of the data.

B. Investigation into Individual Allegations of Bias Based Policing

As difficult as it has been to prove or disprove systemic bias based policing, establishing that any individual officer racially profiled a driver on any particular date is even more challenging. Because police officers have wide discretion to stop motorists, it is not difficult for officers to provide a non biased reason for any particular stop. Moreover, in investigating a particular allegation that a stop was racially motivated, without a "confession" by an officer that he or she stopped the motorist because of skin color, the Department is oftentimes left at the conclusion of the investigation with the motorist that believes the stop was racially derived and an officer who vehemently denies such and offers a race neutral reason for the stop.

As we have reported in the past, the Department does have investigative tools that are not available to most other police departments, namely the mobile audio in car video, to assist in investigating allegations of racial based policing. When such an allegation arises, the Department has a video record of the encounter from which to derive other clues that might either indicate or refute the allegations of bias based policing. Finally, per IPA's suggestion, in cases involving allegations of bias based policing, the Department has reviewed the subject officer's stop behavior prior to the one complained of to see whether there is an unusual pattern of stops based on the racial makeup of the motorists.

That being said, proving or disproving allegations of racial profiling are extremely problematic because of the difficulty in discerning the motivation of officers. This is perhaps why one major police agency in California reported receiving scores of complaints of bias based policing yet never being able to sustain a single complaint.

As long as police agencies are required to use the human race as their hiring pool, it must be assumed that some hires will harbor racist tendencies and may practice discriminatory policing. However, a growing body of literature has also shown that even well meaning people might be unconsciously biased in the way in which they consider and deal with others. Researchers have found that many people unconsciously make quick stereotypical

generalizations that impact their behavior and the way in which they react to certain racial groups. For example, researchers have identified implicit bias linking minorities and crime even in people who test as non prejudiced and are otherwise consciously tolerant. Perhaps the most important result of this research is the indication that people who are made aware of their implicit biases can reduce their impact on behavior. This teaching points directly to the importance of training for officers that assists them in recognizing this phenomena and correcting for it.³

In light of this, one alternative that should be considered by the Palo Alto Police Department in addressing complaints of individual racial profiling is to consider mediation as a supplement to the investigative processes. Providing the officer and the motorist an opportunity to dialogue regarding the stop could provide a more complete perspective to the complainant about the acts of the officer. The ability of the motorist to articulate the bases for his or her concern regarding the officer's actions could provide insight into whether certain implicit biases may have impacted the officer's behavior. Such a dialogue at least will provide a window for the officer about the perception of bias based policing that formed in the motorist's view as a result of the encounter and perhaps present alternative ways to avoid such perceptions occurring in the future.

III. Addressing Potential Realities and Perceptions: A Needed Holistic Response

For the reasons stated above, progressive police departments should adopt a multi-faceted sustained approach in dealing with concerns about bias-based policing. First, a clear and unequivocal anti-bias based policing policy should be adopted by the police agency and repeatedly briefed to its personnel. Second, training should be deployed to reduce actual and perceived racial bias in policing. Third, recruitment and hiring should endeavor to increase diversity among the police department as well as to ascertain and detect any attitudes of applicants that suggest problematic attitudes or bias. Finally, continued outreach and dialogue with diverse communities regarding relations between the police and its constituency is requisite.

IV. Addressing Potential Realities and Perceptions: PAPD's Response

A. PAPD's Enactment of a Fair and Impartial Policing Policy

Shortly after the controversy, the Department and the IPA discussed policy revisions that

³ The vestiges of once having been a discriminatory society also impact policing today. For example, it is too often that police departments receive citizen telephone calls requesting the police to "investigate" persons of color sighted in the neighborhood because the caller is skeptical of whether the person "belongs" in the neighborhood. Training and awareness for both dispatchers and police officers is necessary to ensure that law enforcement agencies effectively resist this modern day citizen request for, what is in essence, a summons to practice discriminatory law enforcement.

might address the concerns raised about bias based policing. The IPA suggested incorporating in any such revised policy a requirement that officers provide more timely and complete information about the reason for any stop. Since then, the Department implemented the Fair and Impartial Policing Policy. The policy instructs officers that race or ethnicity shall not be motivating factors in making law enforcement decisions. In order to reduce the perceptions of biased based law enforcement, the policy requires officers to explain to persons the reason for the stop as soon as practical. With regard to vehicle stops, the policy requires that this be done even before asking the driver for license and registration. The policy also requires that the officer provide his or her name and identification number when requested in writing.

The unequivocal statement in the policy that bias based policy will not be tolerated provides a clear message about the importance of this tenet to the Department's officers. As important are the prophylactic measures designed to reduce the perception that bias based policing has occurred. Too many officers in America do not feel the need to explain why they have stopped motorists or pedestrians. Instead, the officer demands information and identification without informing the citizen of the reason for the police action. In cases that do not result in a citation or arrest, the citizen leaves the encounter wondering why he or she was stopped in the first place. For persons of color, the paucity of information provided by the officer leads some to a conclusion that he or she was stopped because of race or ethnicity.

Requiring officers to inform citizens of the reason for the stop provides information to those citizens that helps dispel any belief that the stop was racially based. Moreover, if an officer recognizes that at the time of the stop he or she will have to articulate the reason for the stop, he or she will be less likely to have based that stop on the race or ethnicity of the citizen. Finally, the policy encourages the police to explain their actions to those stopped so that citizens can evaluate the police actions based on more information rather than less. Thus, the policy serves as a prophylactic measure that will reduce the likelihood of bias based policing from occurring, provide the citizen at the time of the stop the reason for the stop, and will assist all in a better understanding of the police citizen encounters that occur daily in the City of Palo Alto.

B. Training Designed To Advance Fair and Impartial Policing

Since the controversy, training has been initiated by the Department to advance concepts of fair and impartial policing. The training most relevant to addressing bias based policing was a multi day class hosted by the Department entitled Policing Racial Bias. Dr. Laurie Fridell, a leading scholar and expert in the area, facilitated the discussion. In attendance was command staff of the PAPD, members of the City's Human Relations Commission, and command personnel from neighboring police agencies. The IPA was also present during a part of the class.

Dr. Fridell's class is the gold standard for addressing contemporary issues of bias based policing. Many of the observations and resulting recommendations of the IPA found in this paper can be traced to insight and recommendations fostered by Dr. Fridell. The hosting of this conference was indicative of the Department's commitment to addressing the issues surrounding bias based policing. The IPA has been informed that this conference will be repeated in 2010.

Additional training accomplished by the Department included the Tools for Tolerance Executive Leadership Course. Instructors from the Simon Wiesenthal Museum of Tolerance presented the class to PAPD command staff and supervisors. The IPA has attended similar classes and is personally aware of the benefit of such training to supervisory staff in the areas of community and race relations.

An African-American lieutenant has also been designated by the Department to serve as the in-house expert in preventing bias based policing. In addition to that designation, the lieutenant was selected to participate in the United States Department of Justice Curriculum Development Team to design a nationwide training curriculum that will promote fair and impartial policing. The designation of a lieutenant to be the anti bias based policing expert for the Department is again indicative of the importance the Department has placed on this initiative.

The Department has also implemented a daily training program that focuses on Constitutional issues, case law decisions, and Department policy. The training includes a briefing and discussion, followed by a test ensuring that the officers demonstrate competency over the material. The Department maintains records of the training each officer completes and retains test scores in its management system. During this review, the IPA received a sample of the briefing program, in this case a tutorial on factors determining the reasonableness of force. The bulletin is scenario based and then ends with a test that ensures a command of law and Departmental policy.

Finally, the Department has enhanced its field training officer program. Included in these enhancements is additional training in the areas of race relations, crisis communications and cultural issues. During its review, the IPA was presented with a power point outline that discussed contemporary issues surrounding fair and impartial policing. Of commendable note was that the outline was tailored to the unique features of the Palo Alto community.

C. Recruitment, Hiring, and Promotion

During a recent promotional process for sergeant, the Department included representatives of the community who participated on the interview panel. While the idea of having community representatives involved in the promotional selection process is laudable, the IPA has not been informed of any Department initiatives relating to recruitment and hiring in relation to its fair and impartial policing efforts. Such initiatives could include policy statements recognizing the advantage of a diverse police work force and increased efforts to ensure outreach to a diverse potential applicant pool. With regard to hiring, IPA would recommend that the Department's background investigation protocol include exploration of the applicants' attitudes toward and interactions with members of other racial and cultural groups. IPA would also recommend that the Department consider that personal interviews with applicants include questions that reveal applicants' understanding and attitudes about race relations and police-community relations. While the current budgetary situation has currently reduced the Department's need to recruit or hire officers, the IPA encourages the Department to incorporate these measures now so that when the economy improves and there is a need to supplement the force with new officers, these protocols designed to foster fair and impartial policing are already

in place.

D. PAPD Outreach to Address Concerns Regarding Bias-Based Policing

Since the controversy, the Department has reached out to diverse communities in various ways. One method is through various meetings with the subsequent Chief. These public meetings have provided the community an opportunity to meet with Police Department staff and have allowed presentations on developments within the community and the police department. During these meetings, the topic of fair and impartial policing has been discussed.

Another initiative that is underway is the Police Department's Community Advisory Group. With the assistance of the City's Human Relations Commission, the Community Advisory Group was formed and includes representatives from diverse communities as well as members of the Police Department. The Community Advisory group has begun to meet monthly to discuss matters of interest, including department/community relations and fair and impartial policing. The IPA recently attended a meeting of the Community Advisory Group and found the discussion and issues raised to be topical, thoughtful, and relevant.

The Department has increased its outreach to local high schools. Included in these discussions are topics regarding individual rights, legal statutes, and the criminal justice system.

The Department has met with representatives of the United States Department of Justice Community Resolution Service. Ideas to form focus groups to engage citizens on the topic of police/community relations are in the planning stage.

Finally, the Department has increased its profile with local members of the faith-based community. While no formal program or structure has been developed, staff has opened communication networks with this important sector of the community.

E. Measuring Progress

Achieving positive results from the four-pronged holistic response outlined above will require sustained resources and interest from the Police Department. Now that the Department has embarked on this ambitious campaign to address these issues, it should begin to identify ways to measure the progress of its initiatives. While sometimes difficult to measure, the Department should attempt to develop criteria that could indicate that it is on the correct path. Some criteria that might be considered are citizen surveys, training results, and other barometers that would indicate increased trust and confidence in the Department and its members.

V. IPA Recommendations

1. The Department should continue to collect stop data and promulgate the tabulated results of that data to the City's Human Relations Commission. The tabulated data should continue to remain publicly available.

2. The Department should continue to ensure that stop data is timely and accurate. Auditing and control mechanisms should continue to be used to ensure this.

3. The Department should continue to investigate individual allegations of bias based policing. Any sustained complaints should result in significant individual accountability and discipline.

4. During the investigation, the Department should continue to take advantage of any in car video or audio record of the encounter and review prior stops to learn whether there was an unusual pattern of stopping persons of color.

4. In complaints that are not sustained, the Department should consider incorporating mediation to further discuss and address the concerns of the complainant and provide feedback to the officer regarding the nature of the complainant's concerns.

5. The Department should continue to brief and enforce its Fair and Impartial Policing Policy. The Department should consider instituting internal auditing mechanisms to learn whether there has been compliance with the prophylactic requirements of the policy.

6. The Department should continue to provide multi-faceted training addressing concerns about bias based policing.

7. The Department should continue to receive input from the community regarding promotional decisions.

8. The Department should increase its efforts to recruit applicants from diverse communities.

9. The Department should review its background application process to systemically increase its scrutiny of applicants' views and attitudes about race relations.

10. The Department should continue with its outreach to the diverse communities of Palo Alto on the issues of fair and impartial policing and community/police relations.

11. The Department should develop barometers that would help it measure the success of its initiatives in this endeavor to increase trust and confidence by all of the communities it serves.

VI. Conclusion

Since the controversy, the new leaders of the Department have made significant strides in educating themselves on the concerns about bias-based policing and then developing a plan to ensure fair and impartial policing. In particular, the Department should be commended on its efforts in training and outreach. As detailed above, the IPA hopes that the Department will continue to build on its momentum in these areas and buttress the initiative by incorporating

mediation, recruitment, hiring and auditing of the reforms that have been instituted. Finally, the Department should develop measures designed to assess to what degree these initiatives are improving police/community relations and increasing trust in the police. As part of its reporting to the City, the IPA will report back regularly on the robustness of these reforms and the degree to which the Department remains committed to them.

The unfortunate comments that were made caused some to suspect that bias based policing had impacted the Palo Alto Police Department. Perhaps the only positive consequence of the comments was that it caused the community and its elected leaders to reexamine police/community relations and provided a wake-up call to the Department that it had work to do to continue to ensure the public's trust. This report provides evidence that the Department did heed that wake-up call and worked to develop a response that has begun to address those concerns. The IPA will work to endeavor to ensure that the momentum behind that response continues for the benefit of the Department, the City, and the communities that they serve.