



Minutes
Governor's Traffic Stop Advisory Board
Internal Review Subcommittee Meeting
August 7, 2008

Members Present: Dr. Luis Fernandez, Chief Robert Huddleston, Tom Milderbrandt

Members Absent: Jason Martinez

Staff: Dora Vasquez, John Raeder

Others Present: Lu Himmelstein, Lieutenant Leonard Diaz, Amy Foster, Sergeant Mike Proctor

1. Call to Order

Chairman Luis Fernandez called meeting to order at 2:08 pm.

2. Presentation by Department of Public Safety Lieutenant Leonard Diaz, Commander of the Professional Standards Unit – Racial Profiling Complaint Investigation Process.

Lieutenant Diaz presented on the DPS procedure for investigating claims of racial profiling. This presentation began with the reading of the DPS standing order on racial profiling. A copy of the order can be found at: <http://www.azdps.gov/agreement/pdf/4.2.30.pdf>

Lieutenant Diaz also discussed methods citizens can use to file a complaint and a brief description of the investigative process. All racial profiling complaints are forwarded to DPS's Professional Standards Unit. When a complaint is received it is reviewed by the commander of the Professional Standards Unit and then referred to an investigator. The investigator conducts separate interviews with the officer and the citizen who filed the complaint. After the investigator has conducted the interviews and reviewed the facts of the case they will issue a report to the commander. The commander will then review the report and send to the division chief. The division chief will decide to sustain the complaint or exonerate the officer. Regardless of the division chiefs decision it is then sent to the director's office for additional review and final approval.

Lieutenant Diaz also reported that there have been 32 complaints of racial profiling since July 1, 2006; including three current complaints.

Questions/Discussion:

(Questions and answers are paraphrased and not direct quotes unless indicated)

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Chief Robert Huddleston: Is there a common theme that your average complaint seems to follow? If there is a common theme, was probable cause established?

Lieutenant Diaz: The common cause is a traffic stop. Individuals receive a citation, warning or a repair order, for whatever reason they perceive that they were racially profiled.

Chief Robert Huddleston: Is clearance of the case dependent on whether probable cause was established?

Lieutenant Diaz: DPS requires documentation of probable cause for every traffic stop. During the investigation of a racial profiling complaint the investigator will examine the reason for the stop.

Chief Robert Huddleston: As apart of the investigation do you look for trends? If an officer's name was continually being brought up would DPS notice?

Lieutenant Diaz: Two different methods are used for tracking officer trends. A manual system and an automated system are used to generate reports tracking officer trends.

Tom Milderbrandt: Who conducts the actual investigation?

Lieutenant Diaz: The Professional Standards Unit investigates all racial profiling complaints.

Tom Milderbrandt: How many people at that level?

Lieutenant Diaz: Five investigators work for the Professional Standards Unit, four officers and one civilian.

Dr. Luis Fernandez: What are the criteria to sustain a racial profiling case?

Lieutenant Diaz: Anything that indicates a person has been racially profiled, "...I cannot innumerate specifically what that would be for you."

Dr. Luis Fernandez: Can someone from DPS tell board what those criteria would be? Is that apart of DPS protocol?

Lieutenant Diaz: "No it is not."

Dr. Luis Fernandez: Since July First 2006 how may racial profiling cases have been sustained?

Lieutenant Diaz: Zero

Tom Milderbrandt: Is there a specific trend that would explain why DPS has experienced as increase in racial profiling complaints?

Lieutenant Diaz: There is no identifiable trend, the complaints are, "...across the board..." and no specific reason for the increases has been identified.

Dr. Luis Fernandez: "I think we were going to get some feed back about whether we can get some basic information on the cases."

Dora Vasquez: Informed the Board that the one of the terms of the settlement was that the board could not re-examine old racial profiling cases and suggested that DPS might be able to create a matrix to organize specific traffic stop data for the subcommittee to examine.

Dr. Luis Fernandez: How would the process of asking for a Matrix of information occur?

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Dora Vasquez: If the subcommittee provided DPS with a request for specific information like, Number of Stops? Racial Demographics? What the stop was for? What was the outcome? Would DPS be willing to prepare a Matrix?

Lu Himmelstein: DPS will need to see the exact information that the subcommittee was looking for before an answer could be given.

Dr. Luis Fernandez: The subcommittee will submit a request to DPS containing the types of information that the subcommittee might find useful. Specific questions that might be important are: Where are the stops occurring? What is the gender of the parties involved? What is the race of the parties involved?

Lu Himmelstein: DPS would need to see the elements that the subcommittee is looking for and then would respond to the request.

Dora Vasquez: What is the task that you hope to accomplish by looking at this data?

Dr. Luis Fernandez: The subcommittee is looking at the procedures for investigating a case of racial profiling. The Subcommittee would like to evaluate this process with the goal of making recommendations for improvement. The board has been tasked with eliminating racial profiling and the subcommittee wants to assure that everything is being done by DPS to prevent racial profiling. Once the subcommittee has reviewed the traffic stop data then suggestions to improve the process can be made.

Tom Milderbrandt: Suggests that the report should come from the full board and not the subcommittee.

Dr. Luis Fernandez: The subcommittee will follow legal advice as to the proper method for issuing a report.

3. Presentation by Sergeant Mike Proctor, Department of Public Safety – Consent Searches.

Sergeant Proctor presented on the DPS procedure for Consent searches. This presentation began with the reading of definitions and the DPS policy on consent searches.

A copy of the policy can be found at: <http://www.azdps.gov/agreement/pdf/4.2.30.pdf>. Sergeant Proctor also read the statistics connected with all DPS Searches. The quoted 2006 statistics are:

- DPS made 460,545 stops or citizen contacts.
- DPS conducted 21,200 searches or 4.6% of total stops
- Of the 21,200 searches consent searches accounted for 13.4% of the searches
- As a result of searches DPS made approximately 5,000 seizures.
- 52% of items seized where not narcotics

Sergeant Proctor explained how DPS consent to search policy was more strict than required by courts. In order to request an consent search officers must have reasonable suspicion that a crime is occurring and a signed consent form from the individual being searched.

Questions/Discussion

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Chief Robert Huddleston: When consent to search is requested, is the form presented at that time?

Sergeant Proctor: Yes, all officers are issued the form

Chief Robert Huddleston: Is there a report that is required in addition to the form to be completed by the officer?

Sergeant Proctor: As apart of data collection it is required that the officer answer the following questions. Did you ask the person for consent? Did the person accept or reject? Was the form signed or not signed?

Chief Robert Huddleston: Can a person revoke consent once a search has begun?

Sergeant Proctor: Yes, the person who consented to the search can stop the search at any time.

Chief Robert Huddleston: A special point to make is that DPS goes above and beyond what most departments require for consent searches.

Tom Milderbrandt: "...one of the reasons we wanted you [DPS Sergeant Proctor] to come here today is because I have heard officers get emotional about the fact that if this tool was taken away from them...and I thought we needed to hear [from DPS] because there is a movement by some people on this board and the ACLU, which has a large membership on this board to abolish consent searches nationwide. And I think it is important that DPS have an opportunity to present what they do, and how they do it...." Mr. Milderbrandt then gave an example of a successful consent search that had just occurred and then commented, "...there are some states that have abolished consent searches, and I am also fully aware that this has largely been done because of the pressure, the political pressure and the activity of the ACLU nationally. I think that it is important that we watch and protect our activities within the State of Arizona."

Dr Luis Fernandez: Asked for clarification on the statistics that were provided. What is the breakdown on race for these searches?

Sergeant Proctor: Sergeant Proctor Informed the subcommittee that a detailed breakdown of the statistics could be found in the *Traffic Stop Data Analysis Study* on pages 171-182, a copy of this study can be found at:

[http://www.azdps.gov/agreement/pdf/ADPS Traffic Stop Data Analysis Study Year 1 Final 2007 11.07.07.pdf](http://www.azdps.gov/agreement/pdf/ADPS_Traffic_Stop_Data_Analysis_Study_Year_1_Final_2007_11.07.07.pdf)

Tom Milderbrandt: "...I think the subcommittee is going to recommend that the Department look into consent searches, and if that happens I want to be sure that a patrol officer like your self, a supervisor, preferably at least one patrol officer, that is out there, is available to the board for questions..."

Dr. Luis Fernandez: Wanted to clarify that the reason the subcommittee was asking these questions was because the board's task is to eliminate racial profiling. The idea is not to take away police tools but rather to understand if racial profiling is occurring. The goal of the subcommittee should be to study the 13.4% of searches that are consent searches and examine to see if there is racial disparity as to how the searches are being administered.

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Chief Robert Huddleston: Inquired about the scope of the responsibility of the board.

Dr. Luis Fernandez: Read E.O. 2006-12.1

http://azgovernor.gov/dms/upload/E0_082406_2006_12_SDOC4111.pdf

4. Discussion

The Subcommittee discussed if immigration enforcement fell within the scope of the boards responsibility. Dr. Fernandez requested that DPS provide a representative to explain procedure for immigration enforcement as it pertained to traffic stops.

5. Future meeting dates/locations

TBD