

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

IN RE: RACE : Case No. C-1-99-317
DISCRIMINATION IN :
CINCINNATI POLICING : Judge Dlott
:
:
: EXPERT REPORT OF CECIL
: L. THOMAS

I. INTRODUCTION

My name is Cecil Thomas. I have been asked to provide to the Plaintiffs an expert opinion on the history efforts to identify and address the disparate treatment of African American citizens by the Cincinnati Police Division (CPD).

II. QUALIFICATIONS

I am the Executive Director of the Cincinnati Human Relations Commission (CHRC). I have served in this capacity since February, 2000. The mission of the CHRC is to

“[P]romote ways in which people in Greater Cincinnati communities learn to get along and safeguard equal opportunities for all. The activities of the CHRC help our communities overcome racial prejudice and all forms of discrimination, and to become harmonious, respectful and cohesive. As a catalyst for change the CHRC uses the tools of fact-finding, training, information sharing, community education, cultural literacy, mediation, hate crime responses, and conflict management.

The Commission was founded as the Mayor’s Friendly Relations Committee in 1943 and has always attempted to assist the City and the Community improve police-community relations through the use of investigation, mediation and cooperation.

I am a graduate of the CPD cadet and recruit academies. I have an associate degree from the University of Cincinnati in Law Enforcement technology with a

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concentration in Police-Community Relations. I have 27 years of experience as an officer in the Cincinnati Police Division (CPD). I have studied racial profiling, community oriented policing, hate crimes, team building and other subjects that relate to the topic of this report over the course of my career. My curriculum vita is attached to this report.

I am not receiving a fee for my work in this case. I am providing this testimony as an independent expert. While this work is consistent with my duties as CHRC director, As a witness in this case I am not speaking as a representative of the CHRC.

III. OPINION

All of my opinions expressed in this report are held to a reasonable degree of professional certainty.

It is my opinion that the Cincinnati Police Division has been on notice for many years of various practices that have a disparate impact on African American citizens. These include giving undue weight to the race and color of a person who is stopped; charging a disproportionate number of African Americans with discretionary offenses and stopping, searching, detaining and using force on African Americans without reasonable suspicion that a crime has been committed. The City has acquiesced and ratified these practices by failing to adequately supervise and discipline those officers responsible for these civil rights violations. This deliberate indifference to the rights of African American citizens, residents, and visitors has caused injury to these persons and will in the future continue to cause such injury if the practices are not corrected.

A. BASIS FOR OPINION

I moved to Cincinnati in 1959. I was present in the city during the race riots of 1967. My own observations of excessive force and racial discrimination by the police in the 1960's helped me decide to work for positive change by entering law enforcement as a career. I knew that the Cincinnati Police Division needed to become integrated; that the officers needed to be trained to deal with people of all races in an equitable manner and that officers guilty of police misconduct needed to be accountable and disciplined. I have spent my entire adult life working to improve police-community relations in Cincinnati.

This report will catalogue the most important events in the last 30 years with respect to the treatment of African Americans by the police in Cincinnati. As will be shown, the failure to eradicate discrimination against African Americans stems from the failure to heed calls for reform in police discipline, police training, and a failure to impose on front line supervision and officers the mandate that race discrimination will not be tolerated.

1. Riots and Kerner Commission Report

In 1967 at least eight major cities in America erupted in race riots. Cincinnati was one of those cities. On June 12, 1967 a riot started in the Avondale area of Cincinnati. Over 40 fires were started and more than 63 persons were injured, one person was killed and 404 persons were arrested. The riot was triggered in part by complaints about the enforcement of the loitering law in a disproportionate manner against African Americans¹. The initial round of arrests during the riot found police charging whites with disorderly conduct which had a maximum sentence of 30 days in jail and a \$100.00 fine.

¹ The 1968 report of the National Advisory Commission on Civil Disorders, "The Kerner Report", 1988 edition with Preface by Fred Harris. The Kerner Commission noted that between January 1966 and June, 1967, African Americans represented 170 of 240 or 71% of the loitering arrests. *Id* at 47.

The African Americans, however, were charged with violation of the Riot Act which was punishable by a year in jail and a \$500.00 fine. This disparate treatment further fueled claims of race discrimination. With the arrival of the Ohio National Guard, order was restored to the streets but African American frustration remained high. *Id* at 50.

The Commission noted that African Americans in all of the cities experiencing riots had an “intense ..resentment against the police,” firmly believing that police brutality and harassment occurred repeatedly in their neighborhoods. *Id.* at 302. A common complaint was verbal harassment and “*the stopping of Negroes on foot or in cars without obvious basis.*” The Commission repeated the testimony of one witness on the impact of such practices: “these strip the Negro of the one thing that he may have left – his dignity, “the question of being a man.” *Id* at 303 (emphasis added).

The Commission noted that many police agencies had adopted practices that encouraged arrests and “aggressive” patrol tactics. Also, many officers had been removed from beats and placed in cars:

The patrolman comes to see the city through a windshield and hear about it over a police radio. To him, the area increasingly comes to consist only of law breakers. To the ghetto resident, the policeman comes increasingly to be only an enforcer.

Loss of contact between the police officer and the community he serves adversely affects law enforcement. If an officer has never met, does not know, and cannot understand the language and habits of the people in the area he patrols, he cannot do an effective police job. His ability to detect truly suspicious behavior is impaired. He deprives himself of important sources of information. He fails to know those persons with an “equity” in the community – homeowners, small businessmen, professional men, persons who are anxious to support proper law enforcement – and thus sacrifices the contributions they can make to maintaining community order.

Id. at 305.

The Commission stated that police misconduct – “whether described as brutality, harassment, verbal abuse, or discourtesy – cannot be tolerated even if it is infrequent. It contributes directly to the risk of civil disorder. It is inconsistent with the basic responsibility and functioning of a police force in a democracy.” The commission recommended that “Police departments must have rules prohibiting ..misconduct and enforce them vigorously. *Police commanders must be aware of what takes place in the field, and take firm steps to correct abuses.*” *Id.* at 305 (emphasis added).

The Commission noted that the lack of an effective mechanism to grieve police misconduct was a major source of “Negro hostility to police.” The Commission recommended that making a complaint should be easy; that a specialized agency should field and investigate complaints, and that the complaining party should be able to participate in the investigation and hearing, with conciliation opportunities available. *Id.* at 312-313.

The Commission also recommended that community service officers be appointed to improve relations and communication with African American communities. Recognition should not be given only to officers for arrests. Rather “award systems should take equal cognizance of the work of officers who improve relations with alienated members of the community..” *Id.* at 320.

2. Introduction to Racial Discrimination Within The Cincinnati Police Division

The City of Cincinnati has a history of intentional discrimination against African Americans within the CPD. In 1976, along with other members of the force, I filed a charge of race discrimination with the Equal Employment Opportunity Commission

(EEOC) against the City alleging discrimination in hiring and promotions within the CPD.

The EEOC investigated the claims and determined that there was probable cause to believe there was intentional racial discrimination in hiring and promotions.

The charge was eventually referred to the United States Department of Justice which filed suit against the City of Cincinnati in 1980 alleging race and sex discrimination. *United States of America v. City of Cincinnati*, U.S.D.C. Case No. C-1-80-369.

A consent decree was negotiated with the City and the Fraternal Order of Police and that decree is still in force regulating hiring and promotions through the rank of sergeant in the CPD. A copy of the decree and the supporting stipulations are attached as Ex 1.

In 1987 a similar consent decree was negotiated with the City to resolve allegations of race and sex discrimination in the promoted ranks above the rank of sergeant. See *Sentinel Police Association v. City of Cincinnati*, Ct. C.P. Ham. Cty. Case No. A8704567. That decree also remains in place. A copy of that decree is attached as Ex 2.

3. History Of Previous Investigations Of Disparate Racial Treatment Within And By The Cincinnati Police Division

a. 1979 Justice Department Community Relations Service

1979 was a low point for police relations with the African American Community in Cincinnati. In one four month period four black citizens and four white police officers were shot and killed. The United States Justice Department Community Relations

Service attempted mediation but even the police chief and the Fraternal Order of Police disagreed over how to respond to protests from the African American Community. A task force at the time recommended expansion bullets, shotguns on the dashboards of cruisers and .357 magnum pistols be issued to officers. That fueled further tension. Fistfights broke out at city council hearings on police-black relations. In May, police officers engaged in a “stress day” strike which included abandoning police cruisers on all sides of city hall.

The 1979 DOJ Community Relations Service Annual Report states that at the end of the year tensions were still high but changes in police recruiting, assigning a black officer to internal and opening a dialogue with the sentinel Police Association helped somewhat.

b. 1979 Mayor’s Community Relations Panel

The Mayor’s Community Relations Panel including Chair Lawrence Hawkins, VP of the University of Cincinnati, and member Archbishop Joseph L. Bernadin reported to City Council in 1979 that a problem existed in the CPD “beyond simply a few bad apples.” The report further noted that citizens believed that ,

City Council, the City Administration, or the Police Administration neither really care nor are willing to do anything about reported incidents of misconduct. The existing complaint mechanisms have little credibility... The perceived lack of concern on the part of official Cincinnati for disciplining police misconduct has contributed to an atmosphere of fear and distrust. The public questions whether or not the Police Division can police itself, and more seriously, whether elected officials and appointed officials are willing to control the police.

Hawkins Report, III-2.

The Hawkins report also noted that members of the African American community perceived racism and class prejudice by the police. The major institutional problems the

group discovered were lack of police accountability for misconduct; lack of adequate training in human relations and other areas; insufficient number of minority officers; lack of communication between minorities and police; and lack of racial equality in the delivery of policing services.

c. 1981 Report of the Ohio Advisory Committee to the United States Commission on Civil Rights, Policing in Cincinnati, Ohio: Official Policy and vs. Civilian Reality.

The Ohio Advisory Committee to the United States Commission on Civil Rights conducted a lengthy investigation into the Cincinnati Police Division. They wrote a comprehensive report. Their findings included:

Cincinnati police officers frequently fail or refuse to provide civilians with the reasons for their actions and incorrectly perceive requests and demands and reasons for resistance. This conduct creates great resentment, fear, and distrust in civilians and may ultimately create actual resistance.

The ...shift from a .38 to a .357 caliber handgun and controlled expansion bullets ...has been a source of considerable outrage and fear by Cincinnati civilians many of whom view the increased stopping power of the new equipment solely as a power game by the Police Division.

Many organizations and individuals have raised concerns about the adequacy of training in the area of response to crisis situations...

[Many are]concerned with both racism and class prejudice because of what they view as demonstrable contempt and disrespect of police for both poor blacks and poor whites.

The investigative process of the Cincinnati Internal Investigation Section is one of the most controversial issues that face the community

Due to the fragmented approach and the absence of full support of the Police Division, from the chief to the officer on the street, community relations programs in the Police Division have failed to achieve their stated objectives.

Those findings generally identified actions in several areas that would reduce racial tension within the Division and improve police-community relations including (1)

More visibility in and communication with the neighborhoods on crime prevention issues and improve officers' ability to communicate with diverse segments of the community (Rec. #1, 2, 14); (2) Public access to the Police Division Rules and Regulations (Rec. #3); (3) Modify Use of Force rules (Rec. #4); Upgrade ability to investigate citizen complaints, monitor record of each officer, communicate citizen complaint process to public (Rec. 5, 6, 9, 10); Improve services for officers under stress (Rec. # 7); Require officers to explain actions in routine encounters (Rec. #8); Promote racial diversity in the force, including in training staff (Rec. 11, 12, 15).

The Advisory Commission also recommended a civilian police review and a "mechanism for mediating or arbitrating civilian-police disputes which permits civilians to obtain, where appropriate, restitution for damages to self or property." Report, p. 72.

d. 1983 Report to City Manager Sylvester Murray

On June 27, 1983, received a report prepared by the "City Manager's Review Committee" (CMRC) including Cheryl Grant (now a judge). The "comprehensive Report" was nearly two years in preparation and was designed to "answer in definitive terms the question posed – IS THERE RACIAL PREJUDICE-RACISM IN THE CINCINNATI POLICE DIVISION?" The CMRC conducted a carefully designed study and concluded that: "[E]ighty-six percent (86%) of the representative sample states "yes," racism does exist in the attitudes and behaviors of the men and women within the division." P. 20. participants asserted their personal belief that racial prejudice-racism does currently exist among some members of the Police Division.."

In addition to the empirical study pursued by the CMRC, the committee also reviewed the management actions of the Police Division that had been taken in response

to a report from The Ohio Advisory Committee to the United States Commission on Civil Rights.

The Murray report noted that while racism was present in the CPD, it was not a consciously promoted by senior management which it viewed as opposed to racism. The Murray Report recommended that the recommendation of the Ohio Advisory Committee be implemented; that increased initiatives be taken in training; that African-Americans be increased in management; that integrated teams be assigned to cars when two people ride together; and that the CPD clearly state that racially inflammatory communications such as jokes, slurs etc will not be tolerated. Report, p, 47-48. The CMRC also encouraged action in an area that “was constantly discussed by the respondents, and where there can be major change, is in the area of opening the communication lines from senior management to the ‘street cop.’” Report, p. 45

e. 1991 Walter Brown Report

In 1991, two black men, Walter Brown and Ervin Fanning, died as a result of actions taken during their arrests by Cincinnati Police Officers. A report on the case generated several recommendations that relate to improving race relations. The panel recommended increased training, including cultural diversity training. The panel also called for an improved system of selecting, training and compensating the field training officers.

f. Crosby Report

In 1995, Pharon Crosby, an African American student, was subjected to excessive force by Cincinnati Police officers in the central business district. The case was studied by a panel of top city administrators. Recommendations by the panel to the City manager again called for increased training and for better measures to review police misconduct, and track and supervise officers who use excessive force or engage in other inappropriate conduct. The City Manager decided to establish a Citizen's Advisory Commission on police matters after the Crosby incident.

g. 1995 City Manager Police Review Panel

In January, 1995, at the request of City Council, City manager John Shirey appointed a review panel to investigate racial discrimination in the Police Division. The panel, headed by former Ohio Governor John J. Gilligan, concluded that the CPD has a fine police force but noted that:

The panel heard extensive testimony dealing with discriminatory attitudes and actions involving both race and gender bias on the part of individuals within the Police Division. While these various practices and symptoms do not appear to be the result of deliberate design, their effect creates an atmosphere of suspicion, tension, and even animosity among many members of the force. This is damaging to morale and harmful to operational efficiency....*The failure to eradicate these attitudes and activities in the Police Division appears to result, at least in part, from a reluctance to institute necessary organizational and procedural reforms and to implement such reforms in a determined and consistent manner.*"

(Report, p. 1)(emphasis added). The Panel recommended that the consent decree goals be achieved; that a cadet program be reestablished; and that the civil service code be amended to expand those eligible for appointment as chief of police. The panel also encouraged more diversity and conflict resolution training and a renewed commitment to

community oriented policing “on every level of the Division.” (Report, p. 5). A lack of fairness in police discipline was reported and the Panel called for a review of the “current structure of the Internal Investigations Section...Consideration should be given to the creation of a new and independent unit...” (Report, p. 9). The Panel was very specific about its concerns regarding police management: “one of the higher ranking Caucasian officers who appeared before the panel believed that a basic problem in the Police Division which applies specifically to the matter of race relations is that there was no “shared vision” of what the Police Division should be...” But the Panel stated that “*The vision of Community Oriented Policing should guide all actions of police personnel from the officer on the beat to the Chief.* The Safety Director, the City Manager and City Council should understand the full implications of COP and support it at every step.” (Report, p. 9)(emphasis added). As late as 1995 the Panel was continuing to find that racially insensitive slurs and jokes “poison[ed] the atmosphere.” *Id.* at 10. The Panel closed by encouraging the City to “review on an annual basis the efforts of the Division to carry out this program.” *Id.* at 11.

h. 1998 Mediation Report

In 1998, the City entered into an agreement with several community groups drawn largely from the African American community. The United States Department of Justice mediated this agreement. In the agreement, the City agreed to increase staffing for the Office of Municipal Investigation and create a civilian police review panel. The City again agreed to upgrade training on cultural awareness and special needs; and again agreed to upgrade its system for tracking officers’ performance.

i. 1999 Sentinel Police Report

In 1999, the Sentinel Police Association presented the City with a “Final Report for the New Millenium.” The report included over 150 complaints from African American civilians who alleged racial targeting, racially discriminatory stops, excessive force, all echoing the types of complaints that had triggered commissions and studies for more than thirty years.

j. 2001 Chairman’s Roundtable on Public Safety

During the year 2000, Councilmember Charles Winburn convened a “Roundtable on Public Safety.” Membership included police and community representatives. After meetings and discussions, the group issued a final report which stated:

There appears to be a lack of cultural understanding and respect between the majority of the Police Department and minority communities...there is a need for greater sensitivity on the part of all police officers in their interactions with citizens.

Police have received inadequate training and development in order to effectively serve minority communities (i.e., inadequate exposure to effective diversity training programs). The consequence is that immature but armed police officers are placed in high stress situations.

There is a lot of resentment over instances of apparent police brutality or excessive use of force in mostly minority communities.

Citizens feel intimidated by police.

Police administration is perceived as unable to effectively monitor and affect attitudes of police officers or enforce appropriate standards of behavior.

Citizens want to be supportive of police but need factual, honest information.

B. PRESENT POLICE POLICIES AND PRACTICES THAT DISCRIMINATE AGAINST AFRICAN AMERICANS BASED ON RACE

Based upon my knowledge of the history set out above, my ongoing review and investigation of citizen complaints to the CHRC, Sentinel Police Association and to the City; my ongoing review and study of OMI, IIS and CPRP reports; and my experience of 27 years as a member of the CPD the following practices are known to have a racially discriminatory impact but are nonetheless acquiesced in by the police division management:

Stops of African-American persons without reasonable suspicion that a crime has been committed;

Disproportionate application of the following practices to African American persons: Undue detention, unnecessary searches, improper use of handcuffs, improperly locking innocent citizens in cruisers, improperly forcing innocent persons to obey direction at gunpoint.

Disproportionate retaliation against African Americans who seek badge numbers and names from police officers

Disproportionate charging of discretionary offenses against African Americans
Discretionary Offenses as a Pretext for race-based stops

Failure to monitor, supervise and discipline white officers who are targets of repeated complaints

Rewarding officers for aggressive police practices and arrests rather rewarding those who implement the Community Oriented Policing Philosophy

Establishing arrest expectations by neighborhood

C. MISCONDUCT INVESTIGATIONS

If racially discriminatory practices develop in an organization it can only be eradicated if a process exists to investigate and hold accountable wrongdoers.

The Office of Municipal investigation has been chronically understaffed for the job it is expected to perform. Its recommendations have historically been ignored. One study

completed on the first five years of OMI operation found that OMI made a finding of improper conduct against 94 officers but none of those officers received any discipline as a result of OMI's investigations and findings.

The Citizen Police Review Panel has been understaffed and its recommendations to date largely ignored..

D. POLICE SUPERVISION AND DISCIPLINE

Line commanders in the Cincinnati Police Division are not effectively implementing policies. The 1998 Mediation Agreement included a commitment by the city to upgrade the data it would keep on all officers in order to better track their performance and detect discriminatory or other improper conduct. Those portions of the Agreement have yet to be implemented.

The city has a poor record in labor arbitrations, having lost each of the last ten cases. This causes police administrators to undercharge and settle for discipline that is too weak to fit the misconduct.

E. POLICE TRAINING

Repeated city pledges to train officers in verbal de-escalation; conflict resolution, diversity, and cultural sensitivity have not materialized into a coherent diversity training program. Moreover, it has not prepared White officers to conduct themselves in a manner that is safe for the African American civilians or the officer who engages him in a high stress situation. The Roundtable report accurately summarized the current situation:

Police have received inadequate training and development in order to effectively serve minority communities (i.e., inadequate exposure to effective diversity training programs). The consequence is that immature but armed police officers are placed in high stress situations.

One of the critical training deficiencies is the lack of experience by field training officers who are expected to provide on the job training to new officers. The Sentinel Police Association recommended a variety of training improvements in 1999 but they have not been adopted..

F. CONCLUSION

The history of racial discrimination in policing in Cincinnati is filled with unkept promises by the City to correct known deficiencies in training, practices, supervision and discipline. Any remedy that the parties achieve in this case must be detailed, verifiable and enforceable.

CECIL THOMAS

Date: _____