Minutes
Governor's Traffic Stop Advisory Board
Internal Review Subcommittee Meeting
September 18, 2008

Members Present: Dr. Luis Fernandez, Chief Robert Huddleston, Tom Milderbrandt
Members Absent: Jason Martinez
Staff: John Raeder
Others Present: Lu Himmelstein, Tim Chung, Sergeant Mike Proco, Dan Pochoda, Anne Li

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1. CALL TO ORDER
- Dr. Luis Fernandez called the meeting to order at approximately 2:10 p.m.

2. INTRODUCTIONS/ANNOUNCEMENTS
- No Announcements

3. PRESENTATION OF RACIAL PROFILING COMPLAIN DOCUMENTS BY DPS/ DISCUSSION
- Presentation and explanation of 11 different documents pertaining to DPS policy on racial profiling by Lu Himmelstein.

- Explanation on Investigation process of anonymous tips and internal roomers by Lu Himmelstein.

- Official Request by Dr. Fernandez to DPS: "This is a formal request for information regarding the racial profiling complaints received by DPS from the public. In continuation with previous Board discussions and in accordance with the legal mandate of this bodies, we seek to examine DPS internal review mechanisms, procedures, and practices relating to racial profiling complaints. To this end, we request the full records of all proceedings regarding the 32 racial profiling complaints filed since July 2006. We also request all directives, instructions, and training material specifically designed for DPS persons involved in racial profile hearing or appeal processes. We are not requesting all training material *per se*, just material that relates directly to how persons are trained to deal with racial profiling complaints"

  "Please note that in accordance with the established legal scope and restrictions of the Board, we do not intend to re-examining past racial profile cases. Rather, we are looking to focus on procedural matters. To do this, we must begin by looking at the actual complains and the outcomes. We also understand that there are important privacy issues. Thus, we respectfully request the redaction of all information that can identify individual officers. Our goal here is to take assess the procedures and practices of DPS"

- Chief Longman's email response to this request was read onto the record by John Raeder.
  Chief Longman's email stated, "In discussion with Director Vanderpool, he advises that in the spirit of cooperation & openness with the Traffic Stop Advisory Board, that I can provide an

executive summary of each of the adjudicated "racial profiling complaints." It will take a significant amount of work for Lieutenant Lynn Ideus, our Professional Standards commander to provide this report. The report will include a description of each complaint/allegation, what the Professional Standards investigation revealed & an explanation of the finding(s). During the past two years DPS has received 32 complaints alleging "racial profiling." Of the 32 complaints, six are still under investigation. The report will only include the 26 cases that have been fully investigated & adjudicated by the department."

- The Subcommittee reiterated their request to DPS to provide full records of racial profiling investigations and not executive summaries. The Sub-committee also stated once again that these records would not be used to retry or punish any officers involved.

- Chief Huddleston requested that when the reports are provided by DPS there be some mechanism, without using names, to track officers that appear in multiple racial profiling investigations.

4. RESPONSE BY DPS TO CONSENT SEARCH CLARIFICATION QUESTIONS/DISCUSSION

- **Questions asked by Dr. Luis Fernandez, Email response provided by Chief Longman.**
  1. Is the requirement for a reasonable suspicion a written DPS policy?
  Answer*: No, the requirement to have "reasonable suspicion" prior to asking for consent is derived from training that officers receive*.
  2. If so, could DPS please provide the language of this written policy?
  Answer*: N/A*
  3. Can we have a copy of the consent search form mentioned above?
  Answer*: Yes, have been provided previously.*
  4. Does the form record the specific reasonable suspicion which resulted in the search?
  Answer*: No*
  5. Are individuals being searched required to sign the form?
  Answer*: No, General Order 4.2.30 states, "f the owner or driver of the vehicle consents to the search but refuses to sign the Consent to Search form, the officer shall document on the form the individual refused to sign but gave verbal consent to search." The policy goes on to say, "The officer should try to have a witness or an audio tape of the verbal consent to search."*
  Can the officer sign the form for the individual being searched?
  Answer: *See response in #5.*
  7. Are there cases where the individual refuses to sign? What is done in this case?
  Answer*: Yes, see response in #5.*
  8. What happens if there is a consent search with no reasonable suspicion?
  Answer: *There is no legal obligation for an officer to have reasonable suspicion prior to requesting voluntary consent to search. DPS trains officers to use this higher standard as a matter of practice. If it is determined that an officer is conducting consent searches without reasonable suspicion that it will be the supervisor's responsibility to address the issue, either through counseling or remedial training.*

- Dan Pochoda explained the Arizona ACLU position on consent searches and recommendations for changes to DPS's consent search policy.

- Dr. Luis Fernandez cited an example from the *Traffic Stop Data Analysis Study;* page 171, Figure 7.9 and 7.10. The data collected supported the following conclusions:
  "The drivers' race/ethnicity indicates that certain ethnic/racial groups were significantly more likely than others to be asked for consent to search. Specifically, 1.6% of Hispanic and Black drivers were asked for consent to search, compared to only 0.6% of Caucasians drivers."

"Hispanic drivers were significantly less likely to refuse consent when asked, compared to all other racial/ethnic groups. That is, Hispanic motorists were significantly more likely to be asked for consent to search and significantly less likely to refuse to give consent when asked, compared to other racial/ethnic groups. Specifically, only 8.5% of Hispanic drivers asked for consent to search refused to give consent, compared to 18.6% and 18.7%, respectively, of Caucasian and Native American drivers who were asked for consent and refused."

"Blacks and Caucasians have higher and similar search success rates (16.5% and 16.7%, respectively), compared to Hispanics and Native Americans. Consent searches of Hispanics (9.4%) were also significantly less likely to be successful compared to Blacks and Caucasians"

- Dr. Fernandez interpreted the data to read that," Hispanic drivers are searched at a much higher rate, refuse at a much lower rate, and are found to have possession of drugs at a much lower rate." Dr. Fernandez stated that this data indicates that consent searches that are being performed are not factually based.

- Possible recommendations for the Sub-Committee to consider.
  - Elimination of Consent Searches
  - An officer must record reasonable suspicion before conducting a consent search.

- After discussion the sub-committee could not reach a consensus on a recommendation to make to the full board on consent searches. A suggestion was made by Dr. Fernandez to forward the different consent search options to the Full Board for further discussion.

- Dan Pochoda offered to provide the subcommittee with more consent search options, written in more detail, for discussion at the next subcommittee meeting.

- The subcommittee will examine the different options in more detail before making any recommendation.

5. DPS PRESENTATION ON IMMIGRATION AND RACIAL PROFILING/DISCUSSION

- Presentation by Cmdr. Tim Chung on DPS policy on immigration enforcement as it pertains to traffic stops.

6. CALL TO THE PUBLIC

- None

7. FUTURE MEETING DATES

- October, 16th – 2pm

8. FUTURE MEETING AGENDA ITEMS/DISCUSSION

- Continuation of Racial Profiling Complaint Discussion
- Continuation of Consent search Discussion

9. ADJOURNMENT