



THE GOVERNOR'S CITIZEN'S TRAFFIC STOP ADVISORY BOARD

October 16, 2008

State Capitol Executive Tower
3rd Floor, Board of Pharmacy Conference Room
1700 West Washington Street
Phoenix, Arizona 85007

Members Present: Jean-Jacques "J" Cabou, Luis Fernandez, Mel Hannah, Thomas Milldebrandt, Sal Rivera

Teleconference Members: Elizabeth Archuleta

Absent: Zoe Kristine Hammer Tomizuka, E. Lorenzo Jones, Orlenda Roberts

Staff: Dora Vasquez, Director, Governor's Office of Boards and Commissions, John Raeder, Governor's Office of Boards and Commissions

Guest: Chief Mikel Longman, Department of Public Safety, Deputy Director Pennie Gillette-Stroud, Department of Public Safety, Dan Pochoda, ACLU, Annie Lai, ACLU, Anni Foster, Arizona Attorney General's Office.

REGULAR BUSINESS

1. INTRODUCTIONS/CALL TO THE PUBLIC

Chairman Mel Hannah called the meeting to order at approximately 2:05 p.m. Chairman Hannah asked Board members and guests to introduce themselves.

Call to Public: No members of the public requested forum.

2. APPROVAL OF MINUTES

No Discussion

ACTION: Mr. Milldebrandt motioned to approve the April 18, 2008 minutes; Dr. Fernandez seconded; **motion carried unanimously.**

GENERAL BUSINESS

3. INTERNAL REVIEW SUBCOMMITTEE REPORT

Chairman Hannah reviewed the current status of the four standing subcommittees. Supervisor Archuleta requested to be added to the next agenda to report on the Community Relations subcommittee.

Chairman Hannah applauded the subcommittees for their hard work. He also stated that the objective of the board is to make recommendations on the issue of racial profiling to the Governor; and hoped that after reviewing the subcommittee's recommendations that the board would be in a position to fulfill that objective. In order to help facilitate this goal the ACLU recommendations to the Internal Review subcommittee were placed on the wall adjacent to the board. The ACLU recommendations as posted are:

1. Include the requirement that officers have reasonable suspicion of criminal activity prior to any request to conduct a consent search in all written DPS materials, including orders, bulletins, instructions and directions that relate to enforcement stops, including General Orders and Information Bulletins on racially biased policing.
2. The training of all present and new DPS officers shall include written materials setting forth the above policy and providing explanations and examples of what constitutes "reasonable suspicion" in a vehicle stop situation.
3. The officer shall document the factors resulting in reasonable suspicion at the time of the stop.
4. A consent search should only be conducted after a vehicle stop if the target of the search signs the Consent to Search Form.

Presentation: Dr. Luis Fernandez, Subcommittee Chairman

Dr. Fernandez first wanted to thank Mr. Milldebrandt and Chief Huddleston for their hard work on the subcommittee. He then discussed the two main areas that the subcommittee had focused on; the internal review mechanisms of DPS and consent searches. Chairman Hannah asked Dr. Fernandez to present on the consent search portion of the subcommittees work first. Dr. Fernandez expounded on the racial disparities in the application of consent searches contained in the *DPS Traffic Stop Data Analysis Study Year 1, 2007*. Dr. Fernandez felt that this data was not conclusive enough to prove that racial profiling had occurred; however, it was also not conclusive enough to preclude racial profiling. This fact lead to the examination of current DPS policy that include "reasonable suspicion" in its training, but not in any of its written materials or orders. Dr. Fernandez explained that the subcommittee could not reach an agreement on what recommendations to make, consequently had asked the ACLU to make recommendations. Following discussion the subcommittee could still not come to a consensus on the data or the ACLU recommendations but agreed to forward them to the board for additional discussion and possible action.

After a brief discussion on the data found in *DPS Traffic Stop Data Analysis Study* Chairman Hannah made reference to the "DPS response to ACLU recommendations regarding consent searches". Chairman Hannah points out that the language used in the letter was nearly identical to the language used in the ACLU recommendations. Chairman Hannah asked Chief Longman to confirm that DPS did agree with ACLU recommendation one.

Chief Longman confirmed that DPS had no objection to recommendation one; furthermore he distributed a flow-chart elaborating how DPS already trains its officers to use "reasonable suspicion."

After discussion the board came to the conclusion that members of the subcommittee, members of the board and DPS supported ACLU recommendations one and two. The board decided to discuss all the recommendations prior to taking any action.

Chairman Hannah then solicited the board's feelings on ACLU recommendation number three, that states "An officer shall document the factors resulting in reasonable suspicion at the time of the stop."

Chief Longman stated that DPS opposes recommendation number three, and cited officer safety concerns. The Chief also relayed concerns about making the police investigation techniques involved in a consent search readily available to criminal elements. Chief Longman felt that it was unnecessary to require an officer to "memorialize" every consent search by documenting reasonable suspicion.

Dr. Fernandez explained that the logic behind the recommendation was not to put officers in any type of danger; the goal is to collect data on the stops in which consent searches are being conducted but no arrest or documentation is being obtained. This data would be used to ensure that no racial profiling was occurring during traffic stops.

Chairman Hannah asked Mr. Pochoda from the ACLU to elaborate on the ACLU recommendations.

Mr. Pochoda stated that the ACLU was putting the request for a moratorium on all consent searches on moratorium. He explained that the four current recommendations before the board would be a significant step forward and were strongly supported. He discussed the logic behind recommendations one and two and then elaborated on the importance of number three. Mr. Pochoda explained to the board that there was no way for DPS supervisors to adequately monitor the application of consent searches if officers are not required to record their reasonable suspicion. Furthermore the DPS argument that this process would be unfeasible or unsafe to officers is flawed due to the fact that DPS already requires several other types of data entry at the time of a traffic stop.

Mr. Milldebrandt stated his objection to require reasonable suspicion to be recorded at the time of the stop. He suggested that it might be more practical to have the officer to include the information in reports at the end of a shift and reiterated his concern for officer safety.

Mr. Cabou moved that the board approve recommendations one and two and then continue the discussion on number three. Seconded by Supervisor Archuleta. Staff suggested the action on the recommendations be separated. The board discussed the language of the motion and recommendation one.

ACTION: Mr. Cabou restated that he moved that the board recommend to the Governor that DPS Include the requirement that officers have reasonable suspicion of criminal activity prior to any request to conduct a consent search in all written DPS materials, including orders, bulletins, instructions and directions that relate to enforcement stops, including General Orders and Information Bulletins on racially biased policing. Seconded by Supervisor Archuleta.

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques "J" Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Milldebrandt – Aye, Sal Rivera – Aye. **Motion carried unanimously**

ACTION: Mr. Cabou moved that the board recommend to the Governor that the training of all present and new DPS officers shall include written materials setting forth the above policy (the recommendation previously moved by the board on 10/16/08) and providing explanations and examples of what constitutes "reasonable suspicion" in a vehicle stop situation. Seconded by Supervisor Archuleta.

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques “J” Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Milldebrandt – Aye, Sal Rivera – Aye. **Motion carried unanimously**

Mr. Rivera request that the record reflect that both the ACLU and DPS supported the passage of recommendations one and two.

Chairman Hannah solicited discussion from the board on possible modifications to recommendation number three. Mr. Cabou stated that officer safety was of the utmost importance, however it was not obvious how this recommendation presented any additional risk to officer safety. He asked Mr. Milldebrandt to elaborate on his personal experiences as a retired DPS officer.

Mr. Milldebrandt explained that anything that lengthens the time of a stop endangers the life of an officer.

Mr. Cabou asked Mr. Milldebrandt if he thought it was possible for officers to record the reasonable suspicion if there was not an arrest, and if so when?

Mr. Milldebrandt responded that he was not opposed as long as it was not required on the side of the road.

Mr. Rivera stated that he was also inclined to support recommendation three due to the importance of recording every stop in which a consent search is conducted, but was also extremely concerned with health and safety of officers. He asked Chief Longman if there was a way to minimize any possible risk to officer safety while still recording this important information?

Chief Longman explained that there were many elements that might lead an officer to have reasonable suspicion and did not think it was practical to record all the factors that could occur during a stop. He also elaborated on the current DPS procedures that officers follow when conducting a consent search and explained the recourse a citizen could take if they felt they were treated unfairly. Furthermore an officer's actions are monitored by internal mechanisms to ensure compliance with DPS policy.

Mr. Rivera reiterated his original question and asked if there was away to modify recommendation three to satisfy the officer safety concerns of the board and DPS.

Chief Longman clarified that DPS officers are already burdened with paperwork and felt that the recommendation was unnecessary.

Mr. Rivera explained it was important because motorist deserve to know exactly why they are being asked for a consent search. Furthermore recording the stop and the reasonable suspicion is critical not just for analytical purposes but also for supervisors to ensure that officers are following the DPS policies. Mr. Rivera also felt that it would be relatively uncomplicated for officers to record their reasonable suspicion based on the training they receive and felt the relatively small number of consent searches an officer requests during a shift would not represent a large amount of additional paperwork.

Chief Longman felt he would need additional information about what the board was requesting before he could answer all the questions being asked. DPS Deputy Director Gillette-Stroud suggested that a solution to the officer safety concern might be to have the officer complete the documentation at a later time.

Mr. Cabou asked why the recording of reasonable suspicion could not be on the consent to search form that officers already use? Mr. Cabou suggested a space on the top of the current consent search form in

which officers would record their reasonable suspicion prior to asking a person to sign. This requirement would ensure transparency and protect the civil rights of motorists. Mr. Cabou also reiterated the importance of making progress on the issues even if it is at a future meeting after receiving additional information.

Dr. Fernandez clarified that the intent of recording analytical data is to make informed policy decisions to insure the civil rights of people and felt more information was needed on the application of the recommendation.

Supervisor Archuleta stated that she supported the intent of the recommendation however would need additional information on its application to insure officer safety.

Chairman Hannah asked if there was motion to table the third recommendation. The board members asked that there be a deadline added to the motion in order to assure that the mater was discussed at the next meeting.

Dr. Fernandez asked that the mater go back to the Internal Review subcommittee for further discussion. He also requested that DPS provide possible modifications to the recommendation prior to the subcommittee meeting so members and the ACLU have time to review.

Chairman Hannah moved that the board table action on recommendation three.

The members of the board where hesitant to vote on a motion to table without any type time frame or scope of work. Mr. Rivera asked that deadlines to be included in the motion.

ACTION: Dr. Fernandez amended the motion to table the discussion with a two-week deadline for the Internal Review subcommittee to meet, and a 30-day deadline for the board to meet; to vote on the third recommendation. Seconded by Mr. Milldebrandt.

Mr. Milldebrandt urged the board to consider officer safety as they continued their discussion. The members of the board agreed that officer safety was of the utmost importance.

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques “J” Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Milldebrandt – Aye, Sal Rivera – Aye. **Motion carried unanimously**

Mr. Pochoda asked that the ACLU be forward the DPS recommendations so that they also had an opportunity to comment prior to the meeting. Chief Longman agreed to submit to Director Vasquez for distribution.

4. BEST PRACTICES SUBCOMMITTEE REPORT

Presentation: Jean-Jacques Cabou Subcommittee Chairman

Chairman Hannah asked that the recommendation proposed by the Best Practices subcommittee be placed on the wall adjacent to the board. The recommendations as posted are:

1. Create a civilian review component to DPS officer discipline
2. Include mediation in the development of a new civilian review/oversight process.

3. Curtail or eliminate the use of "consent" searches. Prominent among steps that the committee feels should take without delay is amendment of the general order to abolish the ability of officers to sign consent forms on behalf of motorists who refuse to do so.

Mr. Cabou explained how the subcommittee had examined the various issues that had come before the board with greater detail. Mr. Cabou then reviewed the subcommittee's three recommendations to the board. One of the subcommittee's primary concerns was that a person could decline to sign the consent search form but could still be deemed to have consented to the search. The subcommittee was prepared to discuss the consent search recommendation today but would be comfortable if the other recommendations were presented at another time. In addition Mr. Cabou felt that it was necessary that DPS participate in the review of these two items before a recommendation could be made.

ACTION: Mr. Cabou moved that the board table further consideration of subcommittee recommendations four and five and that the subcommittee be given a chance to work with DPS and report back to the board with a recommendation at the next meeting. Seconded by Mr. Milldebrandt

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques “J” Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Milldebrandt – Aye, Sal Rivera – Aye. **Motion carried unanimously**

Dr. Fernandez explained that the intent of the recommendation is to ensure that, “... a consent search was really a consent search.”

Mr. Cabou also explained that the subcommittee felt that it was improper to consider a search to be consensual, if the subject refuses to sign the form. Therefore the subcommittee urges that the policy be changed and amended to be permitted only if the motorist agrees to sign the form.

Mr. Pochoda stated that the current policy is inconsistent with a voluntary search. He elaborated by saying a voluntary search, in which the subject refused to sign, is an indication that the search was not voluntary. Mr. Pochoda explained that the policy is completely inconsistent with any concept of voluntariness.

Chief Longman wanted to first make clear that the courts do not require a signature prior to conducting a search. Chief Longman also stated that many motorists are unwilling to sign any document, including traffic citations. He explained that there are checks and balances in place and legal oversight to review the process.

Mr. Cabou responded to the statement by saying that the board understands the Constitutional “floor” but feels strongly that DPS policy should strive for something beyond what the courts have established as a minimum requirement. Mr. Cabou elaborated that the practice of officers writing “refused to sign” on a consent form and then conducting a search is a “trap for unwary” and inappropriate for the police arm of the State of Arizona to treat its citizens in that nature.

Deputy Director Gillette-Stroud explained police situations in which people might agree to a consent search but refuse to sign a form. She also expounded on the frustration of releasing possible arrests and or busts to other jurisdictions that have a lower standards for consent searches. Furthermore Deputy Director Gillette-Stroud explained that DPS was working diligently to ensure that the consent search policy was being implemented fairly and felt it was unnecessary to take a “sledgehammer” to the current policy especially in instances in which multiple officers or video equipment may observe a subject

consenting to a search. She also points out that the reason that other jurisdictions had lost the consent search tool was the result of court decisions.

Chairman Hannah asked Mr. Pochoda if any crime statistics had been gathered from other jurisdictions that had abolished searches.

Mr. Pochoda was unaware of any statistics presently, but wanted to point out that there are officers in all law enforcement agencies that act wrongly without consent or reasonable suspicion. Additionally the board has not yet made any recommendations for change to current DPS policy. Mr. Pochoda explains that adopting this policy would be an easy balance to strike.

Chief Longman asked if witnesses, video or audio could validate the verbal consent would that suffice to address the concerns that the search was voluntary?

Mr. Pochoda had no problem with verbal consent as long as it was captured by video or audio.

Mr. Cabou stated that he was unsure that the benefits gained by consent searches outweigh the very real risk that they are often a tool for improper police procedure. Mr. Cabou also recognized and respects the difficult positions officers are confronted with and the desire for those officers to use every tool available to prevent crime. In the spirit of those feelings, Mr. Cabou suggested that the board amend the recommendation to require a signature or a video/audio recording of consent.

ACTION: Mr. Cabou moved that the board recommend to the Governor that DPS amend its General Order and all other related documents to reflect that consent searches may only be carried out if the target of the search signs the consent to search form or if the target is recorded by audio and or video giving consent.

Deputy Director Gillette-Stroud asked that Mr. Cabou define “target”.

Mr. Cabou explained that the “target” referred to the person that was being asked to give consent.

Dr. Luis Fernandez seconded the motion.

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques “J” Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Mildebrandt – No, Sal Rivera – Aye. **Motion carried with a vote of 5 – 1.**

3. INTERNAL REVIEW SUBCOMMITTEE REPORT (Continuation)

Dr. Fernandez continued with the second issue that the Internal Review subcommittee examined, DPS’s internal review mechanisms. One of the focuses of the subcommittee was to examine the criteria that DPS used to examine possible cases of racial profiling. The DPS response to this investigation was that there was no such criterion that was used in the investigative process. The subcommittee requested to view the redacted internal investigation cases in order to determine what standards were being used in the investigation of these complaints. The subcommittee was permitted to view three randomly selected cases, however the time frame in which the cases were provided did not allow for their review. Dr. Fernandez was concerned that the three cases did not provide a large enough sample and requested the files for all of the racial profiling cases that DPS had investigated. Dr. Fernandez wanted to make the following request, first that the board have access to all the files and secondly that an external body such as the Civil Rights board be given the job of reviewing each of the cases.

Chief Longman pointed out to the board that one internal investigation complaint might be hundreds of pages long and requires many hours to prepare and even longer to review and felt that the three provided cases was an adequate compromise. In addition to these cases the board would also be provided with all 26 executive summaries for each of the cases.

Mr. Rivera asked if the executive summaries would suffice in providing the subcommittee the information it was looking for.

Dr. Fernandez acknowledged the large amount of work involved in reviewing all of these cases, however feels that it is important to examine why DPS has never sustained a case of racial profiling. Dr. Fernandez suggested that it might be beyond the ability of the board to review all of the cases and suggested that an external body to review the cases.

Mr. Cabou and Supervisor Archuleta asked if Dr. Fernandez could clarify the goal of reviewing all of the DPS internal investigations. Supervisor Archuleta suggested that it might be more efficient to ask DPS to explain which criteria are used when investigating a possible case of racial profiling.

Chairman Hannah pointed out that Dr. Fernandez had asked DPS for the information but was unsatisfied with the answer. Chairman Hannah asked Chief Longman to provide the board with the criteria used to investigate claims of racial profiling.

Chief Longman explained that DPS uses the criteria contained in the general order that prohibits bias based policing.

Deputy Director Gillette-Stroud also explained that all of the complaints are reviewed by the Director's office. She then elaborated on the criteria found in the general orders and training material that officers receive.

Director Vasquez reminded the board that previously a recommendation had been made that an external body review DPS racial profiling complaints. It was determined by legal counsel that the board is the outside entity responsible for reviewing DPS policy and procedures. Director Vasquez recommended that the board divide the cases among the members for review.

Dr. Fernandez explained that due to the time constraints involved, he would review the cases already submitted and the executive summaries and make a recommendation to the board at the next meeting.

ACTION: Dr. Fernandez moved that issue of racial profiling complaints be sent to the Internal Review subcommittee with the understanding that recommendations will be prepared by next meeting. These recommendations will be based on the review of the files and the executive summaries provided by DPS. Seconded by Mr. Milldebrandt.

Mr. Milldebrandt voiced concern about the amount of time the board was taking and hoped the process could be "streamlined" in order to make the process more efficient.

Chairman Hanna pointed out that board had made several important decisions today and was confident that the board was on a good track to make additional meaningful recommendations at the next meeting.

VOTE: Elizabeth Archuleta – Aye, Jean-Jacques "J" Cabou – Aye, Luis Fernandez – Aye, Mel Hannah – Aye, Thomas Milldebrandt – Aye, Sal Rivera – Aye. **Motion carried unanimously**

5. FINAL RECOMMENDATIONS FOR DPS POLICY AND PROCEDURES RELATED TO RACIAL PROFILING

Presentation: Dora Vasquez, Governor's Office

Director Vasquez reminded the board that they had been meeting for nearly two years and it was anticipated that the board would have their final recommendations for the Governor at this meeting. She also explained to the board that the recommendations approved today would be presented to the Governor when the board had completed its work. To facilitate this goal Director Vasquez wanted to verify that all of the board members had the information they needed to formulate their recommendations and asked if there was anything else staff could provide. She also reminded the members that the minutes of the meetings could be found on the governor's web site at: <http://azgovernor.gov/CTS/Agendas.asp>.

Mr. Rivera thanked staff for their hard work and continued motivation.

Director Vasquez reminded the board that they had voted to approve the inclusion of outside members in the subcommittee process. She encouraged board members to invite others to participate but asked that provide staff with the names of those serving on the subcommittees.

Chairman Hannah thanked staff for their excellent work and confirmed that the recommendations would be presented to the Governor upon the completion of the boards work.

6. BOARD FORUM

Chairman Hannah asked that staff inform the members that were not in attendance the importance of the next meeting.

7. NEXT MEETING DATE

The Board agreed on the following meeting date: Friday, November 21, 2008 at 3:00 p.m.

8. CALL TO ADJOURN

Meeting adjourned at approximately 4:55 p.m.

*Meeting minutes transcribed by:
John Raeder
Boards and Commissions
Office of Governor Napolitano*