



U.S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

January 14, 2000

The Honorable Douglas M. Duncan
County Executive
Montgomery County
101 Monroe Street
Rockville, Maryland 20850

Dr. Charles A. Moose
Chief
Montgomery County Department
of Police
2350 Research Boulevard
Rockville, Maryland 20850-32194

Re: Complaint Number 171-35-13

Dear County Executive Duncan and Chief Moose:

We are pleased to transmit the attached Memorandum of Agreement and to provide a summary of our investigation. By letter dated December 12, 1996, the Coordination and Review Section, Civil Rights Division, notified then-Chief Carol Mehrling of the Montgomery County Department of Police ("MCPD") that we had received a complaint from the Montgomery County Chapter of the National Association for the Advancement of Colored People ("NAACP"), and that we were initiating an administrative investigation of the MCPD pursuant to Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c), ("Safe Streets Act") to determine whether its officers were engaging in discriminatory actions against African Americans.

On October 15, 1999, we met with you to discuss our investigative process, summarize our investigation, outline our recommendations for compliance, and provide notice of your opportunity to engage in voluntary compliance negotiations as provided by regulations implementing Title VI and the Safe Streets Act. The President of the Fraternal Order of Police ("FOP"), Montgomery County Lodge 35, also was present at the meeting. The County, the MCPD, and the FOP expressed a strong interest in addressing in a positive manner the issues raised in our investigation and, as a result, the County, the MCPD, the FOP, and the Department of Justice entered into negotiations.

These negotiations have culminated in a Memorandum of Agreement that today is being signed by the County Executive, the Chief of Police, the FOP President, and representatives of the Department of Justice. The Agreement will become effective once it is ratified by the FOP membership, which is anticipated to occur within four weeks. We commend the County, the MCPD, and the FOP for their willingness to work cooperatively with the Department of Justice to resolve this matter and to enter into this Memorandum of Agreement that fully resolves the investigation undertaken by the Department. The Agreement illustrates how parties can work together to amicably resolve complaints without resort to contested litigation.

Title VI and the Safe Streets Act together prohibit discrimination on the basis of race, color, national origin, sex, or religion by law enforcement agencies that receive financial assistance from the Department of Justice. The MCPD is a recipient of such financial assistance. Title VI and the Safe Streets Act prohibit intentional discrimination, and longstanding regulations issued by the Department pursuant to these statutes also prohibit actions that have an unjustified discriminatory effect. 28 C.F.R. §§ 42.104(b)(2), 42.203(e). Both statutes provide for the Department to conduct investigations of administrative complaints alleging discrimination and to seek to secure compliance with these statutes.

The complaint alleged that officers of the MCPD discriminate against African Americans with regard to use of excessive force, discourteous conduct, and selection of persons for traffic stops, pedestrian stops, and searches. It further alleged that the MCPD does not adequately monitor and supervise its officers, particularly with regard to the manner in which complaints are received, investigated, and resolved. In support of these allegations, the NAACP forwarded to the Department of Justice over 150 complaints from individuals who identified specific instances in which they believed that Montgomery County police officers discriminated on the basis of race in carrying out their law enforcement duties.

In conducting this investigation, the Department of Justice reviewed the information forwarded to us by the NAACP and, in addition, gathered and reviewed extensive information from the MCPD and other sources. We collected and reviewed training materials from the MCPD Police Training Academy and attended diversity training conducted at the Training Academy for recruits and in-service officers. We reviewed various MCPD departmental orders, policies, and procedures. The Department reviewed individually more than 600 civilian and internal complaint files at the MCPD Office of Internal Affairs (“OIA”) for a period covering 1996 to 1998. We obtained and analyzed computerized data from all traffic citations issued by MCPD officers in 1997 and 1998. We interviewed many individuals including complainants, community leaders, County employees and officials, MCPD officers and managers, and FOP representatives. Additionally, we retained the services of a police practices expert.

This letter sets forth a summary of our investigative findings. Since Title VI and the Safe Streets Act apply to law enforcement agencies and not to individual officers per se, we are not making a finding against any individual officer. We recognize that the County, MCPD, and FOP

have articulated viewpoints different from our own about the relevant facts during the course of the negotiations, however, this letter does not endeavor to describe these contrasting viewpoints or present our responses to them. In seeking to resolve this matter, the parties have chosen to look forward and to reach an agreement that all the parties believe will result in better policing for the community, without the delay that would have resulted from litigation. Even so, it is appropriate that both you and the community know the basic findings of our investigation. We hope that with this information, the residents of Montgomery County will be able to place the agreement in context and to see that the terms of the agreement are tailored to address the areas where the investigation revealed that work was needed.

First, we found no evidence that the MCPD has a deliberate policy of discriminatory law enforcement. Rather, MCPD policy specifies that “[e]mployees of this department will not discriminate against, harass, or use derogatory language in referring to any other employee or citizen on the basis of race, color, national origin, religion, sex, or any other basis as prohibited by county, state, and federal law.” Our investigation also showed that the majority of the police officers in Montgomery County perform their difficult jobs with respect for the community and in compliance with law. Second, after an extensive review of the evidence described above, we have determined that the evidence was insufficient to conclude that MCPD officers used excessive force against African Americans or that African Americans were differentially subjected to discourteous conduct by MCPD officers. That does not mean that there has never been an instance of excessive force, but it does mean that, in this case, the evidence does not show that the MCPD or its officers either routinely use excessive force against African Americans or that an informal policy of such excessive force exists.

On the other hand, our investigation did reveal that African Americans were being subjected to different treatment with regard to stops and post-stop actions, and that MCPD management has not adequately addressed this issue through training, supervision, positive corrective action, and discipline. Further, we determined that the MCPD did not ensure timely and proper investigation of many complaints against officers. One significant problem in this regard, and part of the reason that this investigation has been so lengthy, is that the MCPD relies on an antiquated paper filing system as its only method of tracking complaints against officers. The lack of proper recordkeeping is an important area of our findings, and one on which we believe the County must focus, so that future monitoring will be more efficient.

Our analysis of traffic citation data shows that during 1997 and 1998, MCPD officers issued traffic citations to a statistically significant higher percentage of African American motorists than would be expected given the demographic makeup of the driving population. Specifically, African Americans comprised 21 percent of the Montgomery County residents stopped and cited by the MCPD in 1997 and 1998, according to the computerized citation data maintained by the State of Maryland, although they comprised only an estimated 12 to 14 percent of the County motorists. We have found no credible evidence that there are racial differences in traffic infraction rates.

This statistical analysis was buttressed by our review of individual incidents and the OIA investigative files, which included complaints from African American individuals who alleged they were stopped and/or detained without proper justification. While we found instances in which the stop and post-stop activities were justified, we also identified instances in which African Americans were stopped based upon insufficient identifying information other than their race or were subjected to unreasonable police actions following the stop. Our review of the OIA files revealed no similar complaints from white individuals.

We recognize that the County and the FOP disagree with our analysis. The Memorandum of Agreement will result in the MCPD collecting substantial additional information, by race, on traffic stops, and this information will be used, in part, to refine the analysis outlined above. The collection of such data is a forward-looking and important positive step on the part of the County, the MCPD, and the FOP.

Our review of the MCPD's management practices revealed a number of inadequacies. Training on issues relating to race (including diversity training and training on the issues described above) has not prepared officers to address appropriately the difficult issues they face in the field. Complainants have been discouraged from filing complaints, complaints have not been properly accepted and referred for investigation, and complaints alleging serious violations (such as discriminatory policing) have been investigated by precinct supervisors rather than by OIA (the specialized police unit that is supposed to handle such matters). Complaints also were not investigated and resolved in a timely manner, in part because there was not an adequate system for tracking open matters, and because OIA lacked sufficient human and technical resources to carry out its mandate effectively. Although this problem was not limited to African American complainants, it disproportionately affected them because more African Americans than whites filed complaints.

The Memorandum of Agreement provides for the development and implementation of policies, practices, and procedures that focus on and address the issues raised by our investigation as outlined above. The Agreement incorporates the MCPD's existing nondiscrimination policy and, in addition, specifies that police officers may not rely, to any degree, on a person's race or national or ethnic origin in making a traffic stop or taking any post-stop action, except in narrowly defined circumstances (for example, where race or national or ethnic origin is part of an appropriate suspect description). In furtherance of this policy, the Agreement provides that officers will record the race and national origin of all drivers who are the subject of traffic stops, instead of recording this information only when drivers are cited, and will record information on post-stop actions such as requests for a consent search. These data will be entered into a computer and will be analyzed to assess the need for appropriate nondisciplinary actions, including changes in traffic enforcement criteria, policies, or practices, and additional training, counseling, or supervisory monitoring.

In addition, the MCPD agrees to take a number of concrete steps to improve the procedures for receipt, investigation, tracking, and timely resolution of complaints. Notably, the MCPD will install a new computerized system for the purpose of tracking all complaints. The system will be used to produce monthly status reports on all investigations, so that the progress of a complaint can be easily and efficiently tracked. Furthermore, the MCPD will take steps to ensure that OIA has the human resources needed to perform its functions. In addition, the position of Director of OIA will be elevated to the rank of Captain or above. The MCPD will develop and implement an OIA manual detailing its policies and investigative procedures, so that the community can understand OIA's role and responsibilities. The MCPD further agrees to notify an officer's immediate supervisor and District Commander whenever a discrimination complaint is filed against an officer. Finally, to ensure prompt handling of complaints, the Agreement requires that an investigative report be completed within 90 days after a complaint is received, except in the rare instance of a complex case.

Under the Agreement, training provided by the MCPD will be enhanced. The Agreement provides both for immediate improvements and for the parties to jointly select an outside expert consultant who will further evaluate MCPD training and prepare recommendations to be implemented by the MCPD, subject to Justice Department approval. The MCPD also will act to improve community relations and community understanding of police procedures.

Finally, the Agreement provides that implementation of the Agreement will be monitored by an independent consultant, who is jointly selected by the parties. This consultant also will assist the County and the MCPD with compliance and issue periodic public reports.

In conclusion, we again would like to strongly commend the County, the MCPD, and the FOP for their willingness to work together with us to amicably resolve this matter, and we look forward to your continued cooperation as the terms of the Memorandum of Agreement are implemented. Together, the parties have set a course for exemplary policing by the Montgomery County Department of Police.

Sincerely,



Bill Lann Lee
Acting Assistant
Attorney General
Civil Rights Division



Lyne A. Battaglia
United States Attorney
District of Maryland

Honorable Douglas M. Duncan
Chief Charles A. Moose

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cc: Laurie Robinson
Assistant Attorney General
Office of Justice Programs

Linda Plummer
President
Montgomery County Chapter of the NAACP

Walter E. Bader
President
Fraternal Order of Police, Montgomery County Lodge No. 35