

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DISTRICT**

In re Cincinnati Policing

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Case No. C-1-99-3170

Judge Dlott

**REPORT TO THE CONCILIATOR
SPECIAL MASTER/INDEPENDENT MONITOR**

INDEPENDENT MONITOR/SPECIAL MASTER TEAM

Saul Green
Independent Monitor

Richard Jerome
Deputy Monitor

Joseph Brann

Rana Sampson

Nancy McPherson

John Williams

Timothy Longo

David McDonald

Raven Sword

**CITY OF CINCINNATI
SPECIAL MASTER REPORT TO THE CONCILIATOR**

I. Introduction

This Report is based on the Monitor's determination that the City of Cincinnati is not complying with the Collaborative Agreement (CA) and Memorandum of Agreement (MOA) provisions requiring the City of Cincinnati and the Cincinnati Police Department (CPD) to provide access to any and all documents, staff, and facilities necessary for monitoring the Agreements. The City's non-compliance with the CA is a material breach of the Agreement. CPD's actions and positions are contrary to the Value Statement and purposes of the CA, as well as the specific operative provisions of the CA.

There have been several events in the last four weeks that lead us to this conclusion, including one of the members of the Monitor Team being denied permission to go on a ride-along with a CPD Commander that had been scheduled, and that was part of the Monitor Team member's responsibilities. These events are described below.

The Monitor and the Monitor Team members in this matter were designated Special Masters by the Federal District Court in In Re Cincinnati Policing, Case No. C-1-99-317, Order Regarding Masters, December 22, 2002 (Doc. No. 104). Pursuant to the Federal Rules of Civil Procedure, Rule 53(c), a special master "has and shall exercise the power to regulate all proceedings in every hearing before the master and to do all acts and take all measures necessary or proper for the efficient performance of the master's duties under the order." To carry out the duties of Monitor and Special Master, the Monitor has prepared this Report for and filed it with the Conciliator in the Collaborative Agreement, and with the Parties.¹ This Report has been filed with the Conciliator also because the Conciliator has before him and is considering the Plaintiffs' Motion for Order Directing Compliance with Collaborative Agreement., and the actions of the City cited in that Motion (e.g., denial of permission for plaintiffs to go on ride-alongs or attend training session; exclusion of the Department of Justice to participate in an ETS demonstration or obtain files and documents) are similar to the City's actions described here. Based on the facts observed by the Monitor, the Monitor has determined that the City's actions cited in the Plaintiffs' Motion also violate the provisions of the CA and the MOA.

II. The Collaborative Agreement and its Requirements

A. The Mission and Purpose of the Collaborative Agreement

As noted in the Value Statement of the CA in paragraph 2 of the CA, problem oriented policing "frames the overall philosophy and practices" at the core of the CA. Among the purposes of the CA listed in paragraph 10 are to resolve social conflict, improve police-community relations, reduce crime and disorder, and foster mutual respect and trust among community members, including the police. The CA itself states

¹ This Report is different than the quarterly reports required by paragraphs 107 of the CA and the MOA. The Monitor's Eight Quarterly Report will be issued on January 14, 2004.

very explicitly that “this Agreement is outcome oriented, putting great emphasis on objective measures of police-citizen relations and police effectiveness.” ¶13.

The CA also states that the Parties (including the City) “shall adopt problem solving as the principal strategy for addressing crime and disorder problems. Initiatives to address crime and disorder will be preceded by careful problem definition, analysis and an examination of a broad range of solutions.” ¶16.² As a central part of this strategy, “the City of Cincinnati is committed to community problem-oriented policing (CPOP) as a means to reduce crime and improve the quality of life for its citizens.” Id. Paragraph 17 notes that “[c]urrent research and case studies from around the world indicate that the problem-solving process known as SARA (Scanning, Analysis, Response, and Assessment) effectively addresses crime, disorder, and fear of crime in communities.” Paragraphs 20-28 include an explanation of CPOP, and specifically note the importance of problem definitions (including repeat patterns of offending, victimization, or locations), analysis, a broad search for solutions based on that analysis, and evaluation or assessment of the problem-solving efforts.

Analysis is key to the type of approach adopted under the CA: “The second principle guiding community problem-oriented policing is that problems are carefully analyzed prior to developing a solution. Community problem-oriented policing is an information intensive strategy that places a premium on data, intelligence, community input, and analysis. The analysis is designed to reveal critical aspects of the problem that can be altered to effect a reduction in the problem.” ¶21. In addition, the City is responsible for evaluating problem-solving efforts put in place: “The City of Cincinnati will routinely evaluate implemented solutions to crime and disorder problems, regardless of the agency leading the problem-solving effort.” ¶16. Paragraph 29 of the CA lists and describes the Parties’ responsibilities for numerous aspects of CPOP implementation.

B. The Monitor’s Role

The Monitor’s role in the CA is to “review and report on the Parties’ implementation of, and assist with the Parties’ compliance with, this Agreement.” ¶91.

Paragraph 100 of the CA states:

The City and the CPD shall provide the Monitor with full and unrestricted access to all CPD and City staff, facilities, and documents (including databases) necessary to carry out the duties assigned to the City and the CPD by this Agreement, provided, however, that the Monitor shall not have access to any material protected from disclosure by the attorney-client privilege and/or work product doctrine. Any materials or information claimed to be protected by the

² The term “problem-solving” used in the Agreement is drawn from “Problem-Oriented Policing,” an approach to policing proposed by Professor Herman Goldstein among others, and it includes problem identification, problem analysis, review of a range of solutions, solutions application, and evaluation of impact, as opposed to the more familiar everyday use of the term problem-solving that tends to imply just creative solution-finding.

attorney-client or work product privilege shall be logged with information including the author, date, nature of the material, reason for the claim of privilege, and persons to whom the material was disseminated. The Monitor shall cooperate with the City to access people and facilities in a reasonable manner that, consistent with the Monitor's duties, minimizes interference with daily operations.

In addition to conducting compliance reviews (§103), issuing quarterly public reports detailing the Parties' compliance with and implementation of the Agreement (§107), and offering technical assistance (§99), the Monitor also plays an integral role in evaluating the outcomes of the Agreement. Under paragraphs 30 and 31, the Parties are to develop "a system of evaluation to track the attainment of the goals agreed to between the Parties" and an Evaluation Protocol to accomplish the system of evaluation, "**under the supervision of the Monitor**" (emphasis added).

III. Recent Actions

A. December 1, 2004, Visit to Police Academy to Observe Management Training

During the week of November 29, 2004 to December 3, 2004, three members of the Monitor Team – Rana Sampson, Joe Brann and Nancy McPherson - were in Cincinnati for a site visit to observe, review and monitor CPOP activities by the CPD, the Police-Community Partnering Center and members of the community.

On December 1, 2004, two of the three members (Ms. McPherson and Mr. Brann) visited the Police Academy at 8:00 am, with the intent to observe the first two hours of management training for CPD supervisors. The first section of the training was to be a "State of the Department" presentation by Chief Thomas Streicher. The Team members met Chief Streicher and Lt. Howard Rahtz in the front office of the Academy and informed the Chief that they were there to observe the training. The Chief responded that he would rather that the Team members not attend, as he believed the discussion would be inhibited by the presence of non-CPD members. This was the second occasion on which the Chief requested members of the Monitor Team not to observe him addressing Department members.

C. December 1, 2004, Meeting with Lt. Col. Richard Janke

At 10:00 am, December 1, 2004, the three Team members arrived at Police Headquarters to meet with Lt. Col. Richard Janke. Gregory Baker, CPD's Executive Manager of Police Relations, also attended. The meeting was intended to discuss with Lt. Col. Janke the CA and CPOP. When Joe Brann asked Lt. Col. Janke for his comments about progress on the CA during the last quarter, Lt. Col. Janke responded by stating that the question was so general, he could not even respond. He also stated that the question was the stupidest question he had ever heard. Several questions were asked by the Monitor Team members, but Lt. Col. Janke elaborated on his disdain for the questions.

Lt. Col. Janke also criticized the competence of the members of the Monitor Team, stating that they did not know anything about policing, and he questioned the relevance of the Monitor's Reports. He stated on several occasions that "these meetings are a waste of time" and complained about the "redundancies" he and others encountered in having to respond to questions from the Monitor Team.

Throughout the meeting, Lt. Col. Janke became increasingly animated and heated, and focused his attention and criticism on Rana Sampson, the Monitor Team's principal CPOP expert. (Ms. Sampson's expertise and experience is reflected in the resume and bio attached as Appendix 1 to this Report.) He challenged her competence regarding CPOP. He also complained about the reporting requirements of the CA, especially the Monitor Teams' interest in and evaluation of "outcomes," stating "what are we paying RAND for?"³ Lt. Col. Janke also criticized the cost of the monitoring work, stating that the Monitor Team should spend more time in Cincinnati observing the police department than in writing reports. Although the meeting was scheduled for two hours from 10:00-12:00 am, Lt. Col. Janke stated that the Team members could get up and walk out if they wanted to. At 11:00 am, Nancy McPherson noted the time and the Team members agreed that it was time to end the meeting.

B. December 3, 2004, Scheduled Ride-Along for Monitor Team Member Rana Sampson

On December 3, 2004 at 10:00 am, Rana Sampson was scheduled to meet with Captain Vince Demasi to talk about the Street Corner Narcotics Unit, and to go on a ride-along with Captain Demasi to see what CPD was doing at different drug markets.

At 10:15 am, Ms. Sampson was escorted to a conference room at Police headquarters, with Chief Thomas Streicher, Lt. Col. Richard Janke, Capt. Paul Humphreys (Vice), and Capt. Demasi. Gregory Baker shortly joined the meeting. Ms. Sampson was provided a two-page paper providing a brief description of different CPD programs. Ms. Sampson stated that she would like to focus on narcotics complaints, how they were received and addressed by CPD. Capt. Humphreys gave a good description. Ms. Sampson asked about the CPD's narcotics complaint tracking system and how far the data went back, and Capts. Demasi and Humphries responded to the question. Ms. Sampson also asked about repeat locations, and Capt. Demasi described CPD's list of approximately 20 locations where there were multiple complaints (five or six, or more). They also continued to describe some of the new programs and efforts that have worked well, such as landlord training, court watch, drug house abatement, and some that have not worked that well, such as stay-away orders on drug dealers as a probation condition.

³ This objection to the Monitor's review and evaluation of "outcomes" is similar to statements made by other CPD and City officials. In an earlier meeting, a City official stated that the Monitor Team should focus on "systems and processes" and not on outcomes or changes that may be needed in the future. It was also suggested that the CA is "touchy-feely" and has become a "to-do list where the City is the doer and everyone else is an observer."

Lt. Col. Janke then asked what the purpose of the meeting was, and stated that it was a waste of time. Chief Streicher asked “What are we doing here?” and repeated the question several times, and asked “what are you accomplishing, and don’t tell me that ‘we signed the Collaborative.’” Ms. Sampson stated that she was trying to understand CPD’s processes for the purpose of monitoring, and then to go on a ride-along with Capt. Demasi to see some of the drug markets and how CPD is handling them. Chief Streicher asked Ms. Sampson “What do you understand, so I know you understand it?” Ms. Sampson did not respond to the question, as she believed that simply repeating the information provided by Capts. Demasi and Humphries would not be productive. Chief Streicher repeated the question several times. At that point, Ms. Sampson stated that she would like to go on the ride-along. Lt. Col. Janke asked what part of the CA specifically refers to drug markets and what is CPD supposed to do at them. Ms. Sampson responded that the CA is highly specific regarding addressing repeat problems.

At that point, Chief Streicher stated that he did not understand what Ms. Sampson was doing in Cincinnati and at CPD. He repeated the question “What are you doing here?” several times. Ms. Sampson began to state that she did not work for the Chief and the Chief repeated his question “What are you doing here?” Ms. Sampson stated that she “would like to go on the ride-along now.” Chief Streicher responded that there was a “language problem” and that what Ms. Sampson defined as a drug market was different than CPD’s definition. He asked “What is a drug market?” and repeated the question several times. Ms. Sampson responded that a drug market is different in different places, and she was asked to describe one of those places. Ms. Sampson stated that in Camden, NJ, it is often one or two people standing on a corner or in an intersection selling drugs, but in some cities it is mostly inside a house or apartment building or complex; in other places there is a lookout on the street, and some there is a visible “steerer.” After stating that the definition depends on the location, Ms. Sampson once again asked to go on the ride-along.

After the above exchange and one more request to go on the ride-along, Chief Streicher asked “To see what? You’re going to look at a building, a street?” Ms. Sampson stated that she would like to start with the repeat addresses (discussed earlier). Lt. Col. Janke asked what that had to do with the CA. Ms. Sampson stated that the CA is quite specific that repeat, chronic crime locations should be analyzed, tailored solutions applied, and then the results measured for their impact and success.

Chief Streicher then stated “Tell me your advice on what we should do at drug markets.” He asked this question several times, with some vehemence when Ms. Sampson did not respond, and asked Ms. Sampson “You came here and refuse to answer my question?” When Ms. Sampson repeated again that she would like to go on the ride-along, Chief Streicher again asked whether Ms. Sampson was going to answer his question, “yes or no.” Ms. Sampson stated that she did not think that the Chief really was looking for an answer. After another exchange, Ms. Sampson stated that each market is different, and stated that she “would like to go on the ride-along now.” In response to the

Chief's question of what she would look at, Ms. Sampson stated that she would look at whether there was analysis, response and assessment.⁴

After another question of what Ms. Sampson was "doing here?" Ms. Sampson stated that she would like to look at repeat narcotics locations, starting with some of the 20 locations being tracked. She also stated she thought the meeting had been completed, and that she was ready to go on the ride-along, with the Chief's permission. Chief Streicher stated that she did not have his permission, that he would not allow her to go on a ride-along or meet at police headquarters, and that she could "leave the building now."

Ms. Sampson then walked back to the hotel where she was staying.

On the morning of December 6, 2004, Monitor Saul Green placed a telephone call to Chief Thomas Streicher to discuss the December 3, 2004, meeting. Several hours later, after not getting a return phone call, the Monitor sent the following e-mail to Chief Streicher:

-----Original Message-----

From: Green, Saul A.

Sent: Monday, December 06, 2004 3:11 PM

To: 'thomas.streicher@rcc.org'

Subject: December 3, 2004 meeting with Rana Sampson
Chief Streicher,

It's my understanding that prior to Rana Sampson's scheduled December 3 ride-along with Captain Demasi she was taken into a meeting with you, Col. Janke, Captain Demasi, Vice Captain Humphreys and Greg Baker where she was questioned, among other things, regarding the purpose of the monitoring, what is being accomplished, what is a drug market and where the CA refers to drug markets? Rana responded, and then eventually asked to be allowed to proceed with the scheduled ride-along. It is my understanding you told her she could not go on the ride along.

I need to know why Rana was denied the opportunity to go on the scheduled ride along, and what your decision to deny her access to the ride-along means in terms of future ride-alongs by the monitor team and future monitoring activities.

Saul

As of December 27, Chief Streicher has not returned the Monitor's phone calls or e-mail.⁵

IV. Monitor's Assessment and Determination of Non-Compliance

⁴ These are among the key elements of problem solving known as SARA -- Scan, Analysis, Response, and Assessment, which is both a nationally researched 'problem-oriented policing' approach, and part of the CPOP approach that CPD has adopted and is required to implement.

⁵ It should also be noted that CPD's Communications Section (PCS) expressed interest in having Monitor Team member David McDonald participate in three vendor demonstrations of CAD/RMS systems in January 2005, to provide technical assistance. On December 20, 2004, Mr. McDonald was informed by CPD leadership in an e-mail that his "assistance will not be needed for the demos."

A. Non-Compliance with Paragraph 100, Monitor Team's Access

Based on the facts as described above, the Monitor has determined that the City and the CPD is not complying with paragraph 100, and its obligation to provide "full and unrestricted access" to all CPD and City staff, facilities and documents.

As an example, Rana Sampson's scheduled ride-along with Capt. Demasi was requested on November 22, 2004 and arranged more than a week before December 3, 2004.⁶ CPD had requested that Monitor Team members evaluating CPOP community activities contact and coordinate with CPD District Commanders, which the Team members did. CPD also requested that we coordinate our monitoring activities with Gregory Baker and Lt. Broxterman, (the Executive Manager of Police Relations and MOA Compliance Coordinator), which we also have done. Certainly, Mr. Baker was aware of the scheduled December 3, 2004, ride-along, and of the meeting that the CPD conducted, as he was informed of the ride-along and participated in the meeting.

The Sampson ride-along is entirely consistent with the duties of the Monitor Team, as problem-solving (including problem definition, analysis, examination of a range of responses, and assessment) is central to the purpose and operative provisions of the CA, and is the "principal strategy for addressing crime and disorder problems." ¶16. It certainly cannot be argued that narcotics and drug markets are not a crime and disorder problem.

We also note that the December 6, 2004, CA Status Report, states that "CPD commends the Monitoring Team's efforts to 'see and feel' problem-solving face-to-face and encourages the Team to make more site visits to witness the good work that is being accomplished." The Sampson ride-along was exactly the kind of effort that the CPD encouraged and stated it wished to see. However, as noted above, Chief Streicher denied permission for Ms. Sampson to go on the ride-along that had been earlier scheduled, and that was a specific part of her responsibilities as a member of the Monitor Team. Moreover, Ms. Sampson has met with Capt. Demasi in prior quarters, has gone on

⁶ The following is the e-mail correspondence between Ms. Sampson and Capt. Demasi. The initial correspondence to Capt. Demasi from Ms. Sampson also was sent with a cc to Gregory Baker:

Nov. 22: Ms. Sampson to Capt. Demasi: I hope all is well. Some members of the Monitoring Team will be in Cincinnati the week of November 29th for a site visit and I was wondering if I would be able to meet with you to see how progress is coming on some of the drug sites the community identified to your Street Corner Narcotics Unit. If possible, I would also like to see some of the sites that your Unit has participated in addressing. Is there some time that you would be available to meet on Tuesday, Nov. 30th or Friday, December 3rd?

Nov. 23:

Capt. Demasi to Ms. Sampson: Dec. 3rd is good we look forward to seeing you.

Nov. 23 Ms. Sampson to Capt. Demasi: Excellent. What time on Friday, December 3rd works for you? In a message dated 11/23/2004 6:13:24 AM Pacific Standard Time, Vince.Demasi@cincinnati-oh.gov writes:

Ms. Sampson:

You name it I will accommodate your schedule.

previous CPD ride-alongs, and has also met with the commanders of Vice and the captain overseeing Management Crime Analysis, among others.

It is therefore clear that the Monitor and Monitor Team has cooperated with the City to access people and facilities, “in a reasonable manner that, consistent with the Monitor’s duties, minimizes interference with daily operations.” ¶100. Despite that reasonable effort, CPD has denied the Monitor and the Monitor Team access to staff and facilities that are necessary to carry out our duties.

B. The Monitor’s Role includes a Review and Evaluation of Outcomes

A very central part of the Monitor’s role as the monitor for the CA is to review, assess and evaluate whether the City, the CPD, and the other Parties have successfully implemented the provisions of the CA, including the implementation and adoption of CPOP. Implementation of the CA is not limited to the creation of policies and procedures. Indeed, while “systems and processes” are tremendously important, the CA states very clearly that “achieving mutually agreeable solutions to the above mentioned goals [those listed in ¶10] described by the citizens of Cincinnati is the criteria for success. Consequently, **this Agreement is outcome oriented, putting great emphasis on objective measures of police-citizen relations and police effectiveness.**” ¶13 (emphasis added). This outcome-oriented approach applies both to problem solving and to the Evaluation Protocol (or “mutual accountability plan” as described in ¶30). For problem solving, or CPOP, the CA states that “the fourth principle [of CPOP] is that problem-solving efforts are evaluated to determine if the problem has been reduced.” ¶23. For the Evaluation Protocol, outcomes are why it is included in the CA: to evaluate, measure and track the attainment of the goals of the CA.

The Monitor and the Monitor Team have duties and responsibilities both in assessing the outcomes of CPOP and in implementing and monitoring the Evaluation Protocol. Our role is not limited to reviewing policies and procedures. Indeed, under the CA, the system of evaluation is to be developed “under the supervision of the Monitor” and the Monitor is supposed to supervise the evaluation oversight. ¶30. Thus, the selection by the Parties of RAND to be the evaluator does not diminish or contradict the role of the Monitor in assessing and reviewing outcomes.

C. The City of Cincinnati's Non-compliance is a Material Breach of the Collaborative Agreement

The City's non-compliance with the CA is a material breach of the Agreement. CPD's actions and positions are contrary to the Value Statement and purposes of the CA, as well as the specific operative provisions of the CA. Therefore, the Conciliator should forward his findings and conclusions to the Court, for a finding that the City has engaged in a material breach of the Agreement.

Respectfully Submitted,

/s/ Saul A. Green
Saul A. Green
Monitor

/s/ Richard B. Jerome
Richard B. Jerome
Deputy Monitor

Appendix 1

Rana Sampson Bio

Rana Sampson is an international community policing and problem-oriented policing consultant, and the former Director of Public Safety for the University of San Diego. She was previously a Commissioner on the California Police Officer Standards and Training; a White House Fellow; a National Institute of Justice Fellow; a senior researcher and trainer at the Police Executive Research Forum; an attorney; and a patrol officer, undercover narcotics officer and patrol sergeant with the New York City Police Department (NYPD). At the NYPD she was awarded several commendations of merit and won the National Improvement of Justice Award.

Rana Sampson is author of a number of crime reduction publications, including five separate problem-solving guidebooks for police: *Drug Dealing in Privately Owned Apartment Complexes*; *False Burglar Alarms*; *School Bullying*; *Acquaintance Rape of College Students*; and *911 Abuse and Misuse*. She is the coauthor (with Michael Scott) of *Tackling Crime and Other Public-Safety Problems: Case Studies in Problem-Solving*, which documents high-quality crime control efforts from around the United States, Canada and Europe. She is also the author of “Advancing Problem-Oriented Policing: Lessons from Dealing with Drug Markets” (2003), in J. Knutsson (ed.), *Problem-Oriented Policing: From Innovation to Mainstream, Crime Prevention Studies*.

Rana Sampson has worked with police agencies across the United States and internationally, assisting them in implementing community and problem-oriented policing. She is a frequent speaker on crime reduction, community policing and problem-oriented policing at national and international conferences. She is a judge for the Herman Goldstein Award for Excellence in Problem-Oriented Policing, a former judge for the James Q. Wilson Community Oriented Policing Award and the police Fulbright awards, and was a founding member of the Center for Problem-Oriented Policing, a U.S. Department of Justice funded center advancing knowledge of crime and other public safety problems. Ms. Sampson holds a law degree from Harvard and a bachelor's degree from Barnard College, Columbia University.