CUTBACKS

In the post-September 11 world, the New York Police Department has already lost hundreds of experienced officers to death, retirement, and private sector jobs. Now Mayor Bloomberg comes along and, facing a $4.7 billion budget gap, proposes reducing the force by 1,600 officers to save money. He intends to do this by not replacing the officers who have left the department in the last few months. There are, of course, many objections to using attrition alone to reduce a labor force, not the least of which is that attrition deprives management of discretion. As Bloomberg himself has noted repeatedly, the private sector's demand for good New York cops is likely to go up, not down. Meanwhile, the department's low starting salary of $31,305 impedes recruitment.

This would not be a bad time for Commissioner Raymond Kelly to bring back zero-based budgeting--the budgeting theory from the 1970s that urged policy makers to return to zero each year, building up their budgets and management structures completely fresh. Many expenditures should now be reconsidered. For example, how many former city officials have police protection? Former Police Commissioner Howard Safir had round-the-clock protection from two detectives until he was quietly asked to relinquish this perk by the Bloomberg administration. Who else, no longer on a government payroll, is protected? Every such expenditure should be scrutinized.

Similarly, all deployment of police officers to caretaker jobs should be examined. Should police officers patrol street fairs, for example? Parades? Community events? And if they are on duty, should they simply stand around, as was the custom under previous administrations?

Should another push toward civilianization be undertaken? Are there NYPD jobs--receptionists, clerks, phone operators--now held by police officers that would be more suitably handled by civilians?

TALE OF TWO CHECKPOINTS

Former prosecutor that he was, Mayor Rudy Giuliani regularly used the courts as a second front in his war against crime. Even when he lost, his litigiousness bought him time.

Among his most controversial tactics were his traffic checkpoints, which he used for all sorts of purposes--stopping drug traffic, checking for seat-belt use, looking for unlicensed or drunk

drivers. Now a state judge has ruled that police checkpoints set up to screen traffic on high-crime blocks are unlawful because cops are subjecting citizens to illegal searches and seizures. The decision specifically declares unconstitutional the NYPD's Model Block Program, by which the police barricaded the ends of target blocks and stopped vehicles, asking to see driver's license, registration, and proof of insurance. Only drivers who lived on the block, had business there, or who were visiting family were allowed to enter.

In People v. April Pope, Acting Bronx Supreme Court Justice Robert Cohen ruled unconstitutional an NYPD stop of a vehicle at the corner of West 174th Street and Grand Avenue, where a checkpoint had been set up to counter prostitution and drug dealing. When an officer was unable to find April Pope's licence number in computer records, she admitted that the license was fake and that her license had been suspended. She was arrested.

Citing a November 2000 U.S. Supreme Court decision, Indianapolis v. Edmond, Judge Cohen said the New York program was similar to the Indianapolis checkpoint program, whose primary purpose was to find illegal narcotics. This, said the Supreme Court, was an infringement of a motorist's Fourth Amendment rights because the vehicle stops were not based on individualized suspicion of criminal activity.

Judge Cohen wrote that, "Although laudable in purpose, the checkpoint program at issue is ultimately for the purpose of crime control." Crime control did not meet the limited exceptions set forth in by the Supreme Court.

Commissioner Kelly said the NYPD was still reviewing the decision, which would not "immediately affect" the program. He added that checkpoints are nearly always set up at the request of the community.

Judge Cohen apparently thinks he's speaking for the community in his decision since he wrote that, "The impact of this program upon all citizens in this neighborhood is egregious and violates the Fourth Amendment." Who's right, Kelly or Cohen, about what the neighborhood wants?

OTHER CHECKPOINTS OKAY

In a second U.S. Supreme Court case cited by Judge Cohen, Delaware v. Prouse (1979), the court virtually invited state and local governments to introduce another kind of checkpoint--one

that questions "all oncoming traffic at roadblock-type stops." This case proved useful to the Giuliani administration when model block checkpoints were criticized by some neighborhood activists in 1999 just as issues of racial profiling by police were heating up. Deflecting criticism that checkpoints were only used in minority neighborhoods, Giuliani quietly instituted a new kind of checkpoint--one that blocked, stopped, and questioned all incoming traffic in neighborhoods without high-crime rates. The East Side's Third Avenue, for example, became a frequent checkpoint in which cops said they were looking for things like seat belt violations. This in effect had been pre-approved by the Supreme Court.

Drivers caught in such checkpoints--which caused massive traffic jams and hour-long delays--were often furious by the time they reached the front of the lines and were casually waved on by the cops. Doubtless such New Yorkers would enjoy the Delaware v. Prouse dissent written by Chief Justice Rehnquist: "Because motorists, apparently like sheep, are much less likely to be 'frightened' or 'annoyed' when stopped en masse, a highway patrolman needs neither probable cause nor articulable suspicion to stop all motorists on a particular thoroughfare, but he cannot without articulable suspicion stop less than all motorists. The Court thus elevates the adage 'misery loves company' to a novel role in Fourth Amendment jurisprudence."

The New York Police Department now faces the odd situation of having had its crime-related checkpoint--the Model Block Program--declared unconstitutional, while the checkpoint concerned with trivial matters like seat belt violations is just fine with the courts.

What Kelly will do with this is anyone's guess. It was never clear that the general checkpoints, like the ones on Third Avenue, served any legitimate police purpose. Such checkpoints should be relegated to the past. The checkpoints in high-crime areas are more difficult. The city will surely appeal Judge Cohen's decision, but the question is ultimately as much a policy issue as a legal one. Were these checkpoints effective in reducing drug traffic and violent crime? Were they supported in their neighborhoods? Did residents feel their rights were infringed? Is this intense use of police personnel efficient?

Since the legal distinction drawn by the court is one of universality--you can set up a checkpoint and stop absolutely everybody constitutionally--the city can keep the Model Block Program if it chooses. It just has to make sure that absolutely everyone coming into the neighborhood is stopped--and inconvenienced.

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