MAYOR'S TASK FORCE ON POLICE DISCIPLINE

REPORT AND RECOMMENDATIONS

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I. EXECUTIVE SUMMARY OF RECOMMENDATIONS

By Executive Order, The Mayor of Philadelphia asked this Task Force to "propose any action necessary to improve, inter alia, the Police Department's disciplinary practices, procedures and standards." Accordingly, we have examined the Philadelphia Police Department ("PPD" or "Department") and its disciplinary system from many different angles and from many different perspectives and observations. The Task Force has interviewed or heard testimony from more than forty individuals and reviewed thousands of pages of documents and other written materials. Consequently, we have developed recommendations to make the Department's disciplinary system more transparent, consistent, and fair. These recommendations are summarized below.

A. Internal Disciplinary Processes

The Department's internal disciplinary processes have been improved over the last few years, particularly under the command of Commissioner John Timoney. Such improvements include the creation of the Police Board of Inquiry's ("PBI") Charging Unit, the implementation of Command Level Discipline, and the use of a case tracking system. Nonetheless, several areas warrant further improvement and reform:

1. The Disciplinary Code is outdated and incomplete. Charges are presently shoehorned into largely inapplicable sections, creating inconsistency and unpredictability. Efforts to revise the Code should proceed expeditiously, and the current Code should be abandoned.

2. The PBI should use randomly selected permanent or semi-permanent panels of hearing examiners. The officers who comprise PBI panels should receive specialized training on the handling of evidence, objections, the assessment of testimony, and the concepts of precedent and consistency.

3. To increase public confidence in the disposition of citizen complaints, PBI panels hearing citizen complaints should include an appropriately credentialed civilian member with full voting rights. Further, the Department should publicize that PBI hearings pertaining to citizen complaints are open to the public.

4. The PBI should receive additional resources and staffing, specifically aimed at hiring additional Department Advocates and court reporters. PBI hearings should be professionally transcribed in a timely and appropriate manner. Moreover, PBI hearings and operations must take place in a professional environment that reinforces the importance of the disciplinary system.

5. To avoid real or perceived conflicts of interest created when nearly every PPD officer is a member of the same union, individuals ranked captain and above should be part of a separate bargaining unit.

6. Departmental record-keeping and tracking must be improved to provide more meaningful and complete evaluation of Departmental practices and trends. For example, although certain individuals and groups perceive that discipline is not imposed without consideration of race, gender, and rank, the statistics that might enable a reliable assessment of this claim are not easily accessible under current methods of record-keeping and tracking. Therefore, records must be maintained that, among other things, allow for an analysis of the race and gender of those who impose and receive discipline, and the City must ensure that such documentation is regularly reviewed and its significance evaluated.

B. Arbitration

While arbitration could be an efficient and fair alternative to formal litigation, the arbitration system presently applied to disciplinary grievances is inefficient and, in some respects, unproductive. Volume and delay are so excessive that an average of 541 days elapses from the time an arbitration demand is made until its final disposition. All participants in the process bear some responsibility for these problems and each must take action to reform the system at all levels. Accordingly, the Task Force makes the following recommendations:

1. Arbitration should be used less frequently, and the City should examine whether certain types of disciplinary actions should be ineligible for arbitration.

2. Both the City and the Fraternal Order of Police ("FOP") must work to move cases forward in an expeditious and professional manner. The City and the FOP should work cooperatively to resolve more disputes at the pre-arbitration stage; the FOP should seek to withdraw cases not meriting arbitration sooner in the process; and early settlement of arbitrations should be encouraged. The City, in particular, should endeavor to continue fewer arbitration hearings.

3. The City should lobby the Pennsylvania legislature to expand the scope of judicial review of arbitration decisions.

4. The City-funded portion of the FOP legal services plan should not be used to finance the litigation of internal disciplinary proceedings.

C. Civilian Involvement

The Task Force unequivocally supports meaningful civilian involvement in the disciplinary process and commends the diligent efforts of the Police Advisory Commission ("PAC"), the entity presently charged with outside oversight of the Department. Nevertheless, a variety of factors have diminished its effectiveness. The following recommendations will promote more effective civilian oversight:

1. The PAC and the Integrity and Accountability Office ("IAO"), along with their respective staffs and budgets, should be combined. This new entity should have the same broad powers provided under the executive order creating the PAC. It should focus on broad-based reviews of the Department and its policies, practices, and procedures. Parallel investigations that duplicate those of the Department's Internal Affairs Division ("IAD") should be minimized.

2. The new entity should continue to act as a liaison for citizens with grievances against individual officers, including counseling, advising, and directing those individuals to the IAD as appropriate.

3. The City should support the new entity in a meaningful way. In particular, it should be afforded regular, consistent access to the Mayor's Office, and the Mayor should fill vacancies expeditiously.

D. Training, Testing And Evaluation

The best way to improve the disciplinary system is to minimize the need for formal discipline in the first place. Accordingly, we examined how the Department trains, tests, and evaluates the front-line supervisors responsible for managing personnel and imposing discipline. The Task Force also examined training as an alternative to formal, punitive disciplinary action. We recommend the following:

1. Testing for sergeants and lieutenants should incorporate sections designed to evaluate and rank a candidate's ability to manage and discipline subordinates. Thereafter, annual performance evaluations should include assessment of whether supervisors are in fact properly managing and disciplining subordinate officers.

2. Supervisors should attend mandatory, regularly scheduled continuing education courses on personnel management, supervision, and discipline.

3. Where appropriate, training and counseling should be substituted in place of punitive forms of discipline. Thereafter, centralized records regarding such training and counseling (also known as positive discipline) should be maintained so that other potential disciplinary problems can be identified and addressed early in an officer's career.

II. INTRODUCTION

On March 27, 2001, Mayor John Street issued an Executive Order establishing this Task Force on Police Discipline. In accordance with the Executive Order, this Task Force has worked with the Department, other interested organizations, and various community members to "investigate the Police Department's current disciplinary procedures, policies and standards[.]"[1]

In making our recommendations, we did not specifically take into account budget constraints, collective bargaining considerations, or political or legislative feasibility. We concluded that if we limited ourselves strictly to likely outcomes under the status quo, we would be able to offer little constructive criticism. We hope that our recommendations, particularly taken in light of previous reform efforts, will stimulate change both within the Department itself and more broadly.

We emphasize that we do not believe that the creation of this Task Force or our recommendations are either an indictment of the Police Department or an effort to undermine individual officers. To the contrary, we have the highest respect and admiration for the heroic efforts of our Police Department. A recent editorial in the Philadelphia Inquirer accurately summarizes the motivations of this Task Force:

> As another city honors its fallen officers, the disciplinary reform efforts here can be viewed properly as a tribute to the overwhelming majority of police officers who do their jobs honestly and with uncommon bravery.
>
> Those officers must understand that fair, surefooted sanctions for police who step out of line are in their and the Police Department's best interests. Such a system builds citizens' confidence and respect for men and women in uniform and ultimately makes a cop's difficult job easier due to that public backing.[2]

We believe that a fair and consistent disciplinary system is in the interests of the Police Department, the FOP, individual officers, and the City as a whole. It is in the spirit of fostering improvement that we offer our recommendations.

III. BACKGROUND

Before turning to our findings and recommendations, some background pertaining to the formation of this Task Force, our approach, and past evaluations provide context for the work in which we have engaged.

A. Formation Of The Task Force

Notwithstanding the broad language of the Mayor's Executive Order, this Task Force was created in response to particular events. The first event was the March 2001 disclosure of the Department's handling of the case of Captain James Brady.[3]

In February 1998, IAD received an allegation that Captain Brady, commanding officer of the Homicide Unit, was involved in an automobile accident while intoxicated.[4] According to the officer who reported the incident, he and another officer were pressured by Lieutenant Joseph DiLacqua of the 26th District Command to write an accident report falsely stating that Captain Brady was involved in an accident with another vehicle that forced him to swerve into an elevated rail pillar. The officer who came to IAD stated that Lieutenant DiLacqua ordered him and the other officer to move the vehicle to a location that corroborated this version of events and to write the accident report to conform to this fabrication. The reporting officer reluctantly complied with these instructions but reported the incident to IAD shortly thereafter.

Following a lengthy investigation, IAD concluded that Captain Brady and Lieutenant DiLacqua engaged in wrongdoing. In particular, IAD concluded that Lieutenant DiLacqua acted wrongfully by deliberately staging an automobile accident to mislead investigators; permitting Captain Brady to leave the scene of the accident; ordering an officer to falsify police reports and misrepresent facts to investigators; and intentionally withholding or providing false information to investigators. The IAD found that Captain Brady acted wrongfully by driving a police vehicle

while under the influence of alcohol; leaving the scene of the accident and failing to report the accident; failing properly to supervise Lieutenant DiLacqua by acquiescing in his cover-up; and intentionally withholding or providing false information to investigators. While IAD had no previous complaints against Captain Brady, fourteen complaints were on file against Lieutenant DiLacqua, six of which had been sustained and three of which were open. Two of Lieutenant DiLacqua's previous disciplinary actions involved similar automobile accidents. In one, he allegedly filed a false report of damage to a police vehicle; in the other, he failed to require a driver in a fatal auto accident submit to a breathalyzer examination.

For our purposes, the most important aspect of this matter is the Police Department's response. While the incident and IAD investigation occurred during the tenure of former Police Commissioner Richard Neal, current Commissioner John Timoney imposed discipline through a mechanism, discussed subsequently, known as the Commissioner's Direct Action. Using this mechanism, Commissioner Timoney ordered that both Captain Brady and Lieutenant DiLacqua receive twenty-day suspensions but permitted them to use accrued vacation time to satisfy this penalty. Neither suffered any loss of rank. However, following public disclosure of the incident, Captain Brady was removed from the Homicide Unit and placed on night command. Lieutenant DiLacqua also was placed on night command, but he was eventually promoted to captain. While Commissioner Timoney ultimately reversed his earlier opinion that the twenty-day suspensions were appropriate, the substantial coverage of the incident and the perception of inconsistent application of discipline led to public outcry.[5]

Only two days after the initial press coverage of the Brady case, Ellen Ceisler, Director of the IAO, released a report ("the "Ceisler Report") that "undert[ook] a comprehensive analysis and assessment of the Philadelphia Police Department's disciplinary system."[6] While the Ceisler

Report concluded that recent reforms had improved the disciplinary system and that there had been a significant, meaningful improvement in IAD investigations, it also found that there were numerous deficiencies and a lack of transparency in the Department's disciplinary standards. The Ceisler Report particularly identified tracking and record-keeping as flaws that permeated the system.[7]

The Ceisler Report and public reaction to the Brady incident motivated the creation of the Task Force.[8] We stress, however, that this Task Force was not charged with investigating the Brady matter. Rather, the Task Force's broader mandate is to "propose any action necessary to improve, inter alia, the Police Department's disciplinary practices, procedures and standards."[9] While the handling of the Brady case has served as motivation for some of our recommendations and has assisted us in understanding the disciplinary processes of the Department, this Task Force has not analyzed the incident in detail, either to substantiate or refute the IAD's findings or to determine whether or not Commissioner Timoney acted properly with respect to this specific case. Similarly, although we address many of the issues raised in the Ceisler Report, we do not specifically address the findings or conclusions of that Report as a whole.

B. The Task Force's Investigation

The Task Force met more than twenty times from the beginning of April 2001 until the end of November 2001. Initially, we educated ourselves on the facts and issues before us. Six of our members have extensive professional experience with the Philadelphia criminal justice system, a fact that substantially assisted in this effort.[10] In the course of our work, we met informally with many people representing the Department as well as outside organizations with an interest in this subject.[11] We also engaged in our own review and research of these issues.

Following this information gathering process, which lasted from April until September, the Task Force presided over five days of public hearings.[12]

We were impressed with the willingness of many individuals to come forward, both in their personal and official capacities. Numerous members of the Department offered the Task Force extensive commentary and supporting materials, with the understanding that the information they provided might be placed on the public record. In addition, many members of the public contacted us to express their views on the subject through telephone calls and e-mails.[13]

Because so many issues touched upon union representation or collective bargaining, the Task Force believed that it was important to gain the insights of the FOP, the union representing virtually every officer in the Department. Although the FOP had already filed a grievance challenging the formation of this Task Force,[14] Richard Costello, the current president of the FOP, met with the Task Force informally, accompanied by Kenneth Rocks and James McDevitt, vice-presidents of the FOP, and Jeffrey Kolansky and Thomas Jennings, attorneys for the FOP. At that meeting, the FOP agreed to assist the Task Force in some respects and specifically agreed to provide the Task Force with disciplinary statistics broken down by race and gender, which Mr. Rocks represented he maintained. Since that productive meeting, the FOP has declined to assist the Task Force further. In particular, when the Task Force asked for the statistics the FOP had agreed to provide, the FOP, through its attorney, refused, expressing concern that the information would be misused. The FOP also declined to appear at the public hearings, and, consequently, the FOP never shared its perspective in a public forum. However, we have, throughout this Report, referred to the positions articulated at the informal meeting.

C. Past Efforts At Reform

Before discussing our specific conclusions and recommendations, we stress that we do not write on a blank slate. Indeed, as one witness testified, this is at least the fifth or sixth similar effort over the last thirty-five years.[15] Although prior mandates were not necessarily directed at police discipline, two previous reports—the Tucker and Makadon Reports—have discussed many of the same issues.

The March 1987 Tucker Report was an "independent review of the status and potential of the Philadelphia Police Department"[16] that addressed a wide range of issues. Some of its recommendations intersect with ours. In particular, as part of its overall recommendations regarding improved labor relations, the Tucker Report recommended a separate bargaining unit for managerial personnel.[17] Similarly, the March 1999 Makadon Report was directed to "consider the operations of the Philadelphia Police Department and to issue a report regarding the types of changes that need to be implemented in the Police Department to minimize corruption and misconduct."[18] That Report also recommended separating command level officers (i.e., captains and above) from the existing bargaining unit[19] and suggested revisions in the promotional process.[20]

The Committee of Seventy also has addressed good governance and focused in whole or in part on the Police Department. In particular, in 1998, the Committee of Seventy issued a report entitled "Philadelphia Police Department Governance Study" that extensively reviewed this Department and compared it with the police departments of the twenty largest cities in the United States. Many of our recommendations align with those contained in the Governance Study.[21]

Some of the reforms proposed by these previous reports have been implemented. Moreover, other pressures for reform, such as the consent decree following the 39th District

investigation, have led to significant and meaningful changes in the Department, many of which have improved the disciplinary system. In many ways, the Brady matter highlights just these improvements. For example, virtually every individual who spoke with this Task Force discussed the significant improvement in the IAD system. Indeed, the IAD investigation in the Brady matter appears to have been thorough and appropriate.

We particularly wish to mention certain positive changes that have been implemented in the past two or three years. For example, the PBI has benefited substantially from the addition of a trained attorney to its staff and by the implementation of the Charging Unit. Similarly, it appears that Command Level Discipline has allowed for a more expeditious resolution of minor disciplinary cases without the need to resort to the often-protracted PBI and grievance arbitration processes. Finally, although there are areas for improvement, we consistently were impressed by Commissioner Timoney's commitment to improving the disciplinary process and the Police Department as a whole.

IV. THE CURRENT DISCIPLINARY SYSTEM[22]

The Task Force reviewed formal and informal disciplinary procedures used by the Department, both of which are summarized below.

A. Formal Discipline

The formal disciplinary process is typically initiated when a commanding officer submits a Form 75-18 (or Charge Sheet), a memorandum requesting disciplinary action, an evaluation memo, and, if applicable, the IAD report to the PBI. The Form 75-18 resembles a police report, including a list of Disciplinary Code sections allegedly violated with a supporting narrative.[23]

Once the Form 75-18 and supporting documentation are submitted to the PBI, they are reviewed by the PBI Charging Unit, which was established in December 1999.[24] The Charging Unit, which determines what charges should be brought under the Code, attempts to insure consistency, from district to district and across racial and gender lines, in the charges brought against officers accused of similar improper conduct.[25] The Unit prepares a specification of charges and provides it to the accused officer's commander, with the understanding that a corresponding Charge Sheet will be prepared.[26] Once the Charge Sheet is finalized, the PBI assigns the matter a Control Number and returns the sheet to the accused's commanding officer, who presents the materials to the officer.[27]

At this point, some cases are resolved through a mechanism known as Command Level Discipline, by which the commanding officer imposes the sanction without a formal hearing before the PBI. Command Level Discipline only may be imposed if the charged officer's potential exposure is a penalty of five days suspension or less and the officer pleads guilty. If the officer pleads guilty and accepts Command Level Discipline, he or she relinquishes the right to challenge the sanction imposed by the commanding officer in a grievance arbitration. While

higher-level officers review the commanding officer's Command Level Discipline, there is currently no provision for changing the decision. Rather, the Department relies upon a largely unspoken system by which higher-level officers hold commanding officers accountable for the propriety of sanctions imposed through Command Level Discipline.

If an officer is either ineligible for Command Level Discipline or declines it, the commanding officer prepares additional copies of the Form 75-18 and supporting documents and forwards them up the chain of command to the Inspector, Chief Inspector, Deputy Commissioner, and, finally, the Commissioner for either approval or disapproval and amendment. If the Commissioner utilizes the Direct Action mechanism, the Commissioner simply imposes the penalty that he believes appropriate. If this rarely-used process is applied,[28] an officer who disagrees with the result may proceed directly to grievance arbitration. In the more routine case, however, where the Commissioner's Direct Action is not applied and the Police Commissioner approves the Charge Sheet, the matter is returned to the PBI, where a hearing is scheduled.[29] Under either the Commissioner's Direct Action or the more routine case involving PBI charges, the subject officer may plead guilty and thereby avoid the subsequent disciplinary process.

The PBI panel members who preside over disciplinary hearings are selected from officer ranks on a rotating basis. Panel members are selected from officer ranks because the hearing traditionally has been perceived as an administrative, peer review proceeding. Since at least 1966, the panel has been comprised of three active-duty police officers.[30] Of the three officers, one would be of the same rank as the accused officer and the other two would be of higher rank.[31] At the PBI hearing, the Department's position is presented by a Judge Advocate, who is currently an officer with a law degree. Charged officers are typically represented by experienced

trial attorneys retained by the FOP on the officers' behalf. In rendering a decision, a PBI panel only is required to explain its decision in writing if it acquits on all charges brought against the officer. Consequently, guilty verdicts, split decisions, and offense downgrades usually are unexplained. If the PBI finds that a charge has been sustained, it imposes a sanction on the officer.

The PBI panel's findings are recorded and forwarded up the chain of command for review for approval or for disapproval and amendment to the Executive Officer, the Deputy Commissioner, and then the Commissioner. The Commissioner may overturn the findings and impose a sanction pursuant to the Commissioner's Direct Action. If the Commissioner approves the sanction, it is forwarded to the Personnel Officer for final, internal disposition. The Personnel Officer records the findings and provides notification of suspension or dismissal, and the forms are filed and recorded at the PBI.

At the conclusion of the internal, formal disciplinary process, a sanctioned officer may challenge any sanction exceeding a reprimand through a three-step grievance process culminating in arbitration. For practical purposes, arbitration is often the "end of the road" because of the unavailability of judicial review in most cases.

In addition, in some cases, the PAC may seek to add a civilian component to the disciplinary process by engaging in an independent investigation, as discussed subsequently.

B. Informal Discipline

In addition to these formal discipline systems, the Department extensively uses informal discipline,[32] which is often the preferred choice of all parties. The disciplined officer is not exposed to the potential sanctions in the Disciplinary Code, such as a suspension, and there is no record of the conduct in the officer's personnel file. Likewise, the commanding officer is given

great latitude to manage and impose discipline and standards of conduct as he or she sees fit. Informal discipline is routinely and successfully employed by military and paramilitary organizations, and proponents insist that it is necessary to the routine operation of such organizations. The lack of required justification and documentation, however, makes it difficult, if not impossible, to track the results, including the identities and characteristics of those disciplined, and the nature, type, and frequency of discipline imposed.

Some commanding officers, for their personal reference, maintain notes regarding disciplinary counseling or reassignment related to officer conduct. These notes typically remain in the originating district and do not follow a subsequently transferred officer, although, upon request, they may be provided to another commanding officer for review. Such notes may be used to demonstrate progressive attempts to correct conduct before resorting to the formal disciplinary process. Additionally, such notes, when cross-referenced against officer performance evaluations and assignment sheets, may facilitate the monitoring of potential inconsistencies and use of informal discipline for improper purposes.[33]

V. THE INTERNAL DISCIPLINARY PROCESSES

In examining the disciplinary system as a whole, the Task Force began with the internal application of discipline**.** Although there are numerous areas that we could have addressed, we determined that the PBI, the composition of the bargaining unit, and record-keeping were the areas most in need of change. Though other areas, such as IAD investigations and the Commissioner's appointment powers, are undeniably important, we determined that they did not warrant such extensive attention by this Task Force, either because successful reforms have already been implemented or because of a tangential relationship with discipline.[34]

A. The City And The Department Should Strive To Make Further Improvements And Reforms To The Police Board Of Inquiry

As previously discussed, the PBI and its Charging Unit, respectively, function as the initial adjudicative and processing bodies in the formal disciplinary process (i.e., disciplinary actions initiated by means of a Charge Sheet—Form 75-18).

By all accounts, the creation of the Charging Unit has been instrumental in improving disciplinary consistency. Under prior practice, individual commanding officers were solely responsible for charging under the Police Disciplinary Code.[35] This duty has been removed from individual commanders and given to the Charging Unit.[36] This centralized system has increased consistency and uniformity in charging for similar offenses and misconduct.[37] Critically, centralization also aims to eliminate charging disparities that may arise as a result of race, gender, and rank, as well as the personal relationships that could influence a commanding officer's judgment when charges are brought against a close friend or colleague.

The Task Force also commends the Department's efforts to implement a case tracking system for all disciplinary matters at the PBI stage. Commissioner Timoney explained that the

potential previously existed for charges to be lost or sidetracked due to a unilateral decision by a commanding officer not to go forward with charges, or because a commanding officer simply neglected to send charges up the chain of command.[38] Now, under recently enacted procedural changes, all charges must be brought through the Charging Unit, which assigns a Control Number designed to ensure that disciplinary charges continue to move forward.[39]

We mention these reforms explicitly because their success has enabled the Task Force to focus on other aspects of the PBI process in which additional reforms may improve the overall professionalism and consistency of this portion of the disciplinary process. After examining all aspects of the PBI, we determined that the Disciplinary Code, the composition and training of PBI panels, and allocation of resources were the greatest remaining deficiencies.

1. Revisions To The Disciplinary Code Should Be Implemented As Soon As Possible

Discipline of officers is hampered by an outdated, imprecise Disciplinary Code. Numerous witnesses and other commentators have described the Code, which was written approximately twenty years ago, as obsolete. Lieutenant Daley, the Department Advocate summarized: "[the Code] is a document that has certainly outlived its current life value."[40] In a nutshell, the Code is seriously deficient because it is overly vague in its description of prohibited conduct. Rather than directly and specifically banning conduct universally acknowledged as improper (most notably, excessive force, which is not even mentioned) the Code contains broad "catchalls"—such as §4.20, "failure to comply with regulations"—that are used to bring charges for many different types of misconduct.[41] The use of these generic provisions results in seemingly arbitrary charges because it becomes difficult for the Department meaningfully to differentiate the seriousness of conduct. These problems create a ripple effect throughout the entire system from the initial charging decision forward. We understand that the Department is

working on a revised Code and that some of the proposed changes may require collective bargaining.[42] We strongly urge that these efforts continue and that a revised Code be adopted and implemented as soon as possible.

2. The Selection Of PBI Members Should Be Reformed And, In Certain Cases, Should Include A Civilian Component

After cases are processed by the Charging Unit and referred for a hearing date, the charges against an officer are heard by the three-person PBI panel (as described previously in section IV). Under current Department practices, PBI hearing panels are comprised of members assigned by the Department's Executive Officer, Marvin Burton.[43] In picking a panel, Mr. Burton testified that he uses the following methodology:

> I try to make sure there's a minority genderwise or racially on each panel. And I try to . . . balance it out. I know some commanders have a propensity of being extremely tough, and I know some commanders have a propensity to be extremely lenient. So I try to get a balance where . . . one compliments the other [to] come up with a fair resolution to the disciplinary issue.[44]

With respect to the selection of PBI panel members, we are concerned that the present system, in which the Executive Officer unilaterally selects panel members, remains susceptible to the same concerns of actual or perceived manipulation as the previous system in which members were selected by the Advocate: Discretion has simply shifted. Perhaps more importantly, the current panel selection process cannot achieve consistent findings and penalties for similar offenses, as the panels hearing comparable cases on different dates have no way of knowing whether they are treating accused officers consistently. Captain Markert, a frequent PBI member, testified:

> Q. [H]ow does one panel know . . . what a previous panel may have done when faced with a similar set of circumstances? . . .

A. . . . If somebody is charged with conduct unbecoming an officer on a Monday and then another panel is picked on a Tuesday on the same charge, there is no way.[45]

In addition, during his opening remarks to the Task Force, Captain Markert stated:

> I have heard much talk about consistency. Consistency is difficult to achieve for the simple fact that every case is different and has its own merits. However . . . consistency can come from the personnel . . . making up the board. Members of the board should all receive the same training and be assigned for set periods of time, perhaps two weeks or maybe even a month. . . . It is the PBI panel that decides the cases. And we need consistency there. You just can't bring a district captain in and spend a day down at the PBI and expect any type of consistency. It doesn't work. Once a ruling on the case has been made, each member of the panel should prepare a written report to the executive officer and certainly for review by the police commissioner as to why that decision was made.[46]

We agree with Captain Markert. We therefore recommend that the Department establish permanent or rotating panels where, at the very least, the chairperson of each panel would be experienced and knowledgeable of past panel decisions and important precedent.[47] The Department also should randomly select panel members or boards (assuming that some type of permanent or rotating panels are created) so that charges of "stacked" panels can be avoided.

By instituting this change along with reforms in the training process described herein, the PBI panels would become professionalized in the same manner that reforms in the Charging Unit further professionalized the Department's preparation of disciplinary charges. Particularly given the significance of panel adjudications in all subsequent disciplinary proceedings, these reforms are an essential step in removing the ad hoc and occasionally random quality of PBI judgments.

We also believe that greater civilian participation in the PBI process would engender public confidence in the disposition of citizen complaints.[48] To this end, we make two recommendations. First, PBI panels considering civilian complaint cases (and only civilian

complaint cases) should include a civilian member who would maintain full voting and deliberation rights. Ideally, this appointee would be a retired judge, lawyer, or other similarly credentialed person who would provide the panel with a citizen's perspective. We stress that this particular recommendation is made in conjunction with the recommendation, discussed subsequently, that the PAC cease its efforts to conduct parallel investigations of individual cases of alleged misconduct. Rather than eliminating citizen involvement in misconduct investigations altogether, we believe that that citizen participation is more effectively accomplished through membership in appropriate PBI panels.

Second, the Department should more effectively communicate that PBI proceedings dealing with citizen complaints are open to the public,[49] with sufficient advance notice of the hearings.

3. Specialized Training For PBI Panel Members Should Be Established

The testimony as to whether panel members receive any training on basic hearing practices and procedures was somewhat equivocal. Mr. Burton testified:

> [I]n the police department, a member of the Police Board of Inquiry goes to promotional training and they explain the whole process, what's permissible as far as evidence, what's not permissible. Basically they're taught to follow the basic rules of evidence with hearsay evidence being admissible.[50]

When asked whether he believed any additional training should be given to panel members, Mr. Burton stated:

> [W]e're currently trying to formulate a training program. I think that's critical. A lot of time, just like in the other courts, one person will allow something into evidence, and another won't. There's a lot of cases where when the situations come up and someone objects, the chairperson is not sure whether to allow that information in . . . or not. . . . [A] lot of times they're just basically . . . using their best judgment, which may not always be correct.[51]

In contrast, Captain Markert, a thirty-year veteran of the Department who has served on several panels from 1995 to the present (including service as board chairman),[52] described his first experience as a PBI panelist:

> The very first time I was called down there, quite honestly, I was scared to death. **I had absolutely no training.** A lawyer is making an objection. The advocate for the police department is back and forth. And I had to make a ruling.[53]

In the absence of training, an officer who is selected to serve as a panel member today suffers from the same lack of training that Captain Markert experienced in 1995.[54] Captain Markert has suggested that panel members receive training on evidentiary rulings, management of the record, and, in general, the proper way to handle procedural and factual issues at the hearing.[55]

From our review of the record, the Task Force believes that the only training that PBI panel members receive are the broad instructions on "Formal Disciplinary Procedures" as part of their "pre-promotional" training.[56] Specifically, when an officer is promoted, he or she completes a brief but intensive training regimen on topics related to the newly attained rank. For example, newly minted sergeants must complete ten days of classroom training on thirty-three topics ranging from mental health awareness to auto theft.[57] Newly promoted lieutenants and captains must complete five days of classroom training on twenty-three and twenty-six topics respectively.[58] The brief training on PBI processes and procedures that officers receive during pre-promotional training is inadequate, and additional, specialized training for PBI panel members is needed.[59]

Accordingly, we strongly recommend a system where PBI panel members are trained thoroughly in the formal disciplinary process and the importance of the PBI hearing in particular. Specific topics should include the role of a panel member and the panel chairperson, the manner in which an administrative hearing should be conducted, how objections and other procedural

matters should be addressed, and suggested penalties for common offenses. Because these hearings largely create the record for all subsequent disciplinary proceedings, we believe this reform is crucial.

4. Resources Dedicated To The PBI Must Be Improved

The Task Force concludes that there are serious deficiencies in the resources allocated to the PBI. In particular, the PBI's needs regarding physical facilities and staffing are simply not being met.

a. The PBI's Facilities Are Inadequate

A Task Force staff member visited Police Headquarters on November 2, 2001 to inspect the PBI's facilities. The visit revealed that the March 2001 Ceisler Report still accurately describes PBI facilities and resources, despite the fact that the Report was released more than six months ago. Ms. Ceisler wrote:

> The PBI is located on the first floor of Police Headquarters in an area of the building with such poor air circulation [that] a noisy and distracting fan is sometimes necessary to alleviate the stifling heat, even in the winter months. The floors and furniture are perpetually coated with a fine layer of dust. Some of the PBI filing cabinets are so decrepit, hanger wires are used to open the overstuffed drawers. The Department Advocate's desk, along with filing cabinets, discarded computer equipment, and stacked boxes containing an overflow of disciplinary files are located in the hearing room. This arrangement affords the Advocate no private location to speak to and prepare witnesses. During Board deliberations, the Advocate is forced to stand and wait, along with defense attorneys and police witnesses, in the anteroom of the hearing room where most of the PBI's Administrative staff (two civilians and a corporal) are situated. Working conditions in this anteroom are overcrowded and the confidentiality of sensitive records and information may be compromised since they are open and obvious to police personnel, defense attorneys, and other witnesses.

> Limited seating in a small hallway outside the hearing room is typically inadequate to accommodate the civilian and police witnesses who often wait hours for their hearings to begin. Civilians who filed complaints against officers, or supervisors who filed disciplinary actions against subordinates stand or sit in close proximity, which can create a tense, stressful and potentially volatile atmosphere.[60]

Public buildings in general, and courthouses in particular, are designed to command respect and signify the importance of our governmental institutions and traditions. However, the present run-down physical plant suggests disregard for the PBI process. Accordingly, as did the Ceisler Report, the Task Force recommends that PBI hearings be conducted in a professional and appropriately court-like environment that conveys the importance of the PBI. The Police Department Advocate and her staff must be provided with a professional, properly resourced work environment to underscore the importance of their work.[61] Similarly, accused police officers and their counsel deserve a more court-like environment.

b. The PBI's Staffing Is Inadequate

The lack of resources is reflected in problems beyond the physical environment. The staff resources are simply inadequate for the tasks they are expected to perform.

The limitations in the support staffing are reflected most clearly in the provision for court reporters. While PBI is required to maintain a stenographic record of every disciplinary proceeding, it currently cannot do so. PBI has a single court reporter on its staff who is faced with the seemingly impossible task of attending and transcribing proceedings Monday through Thursday from approximately 10:00 A.M. to 4:00 P.M. while simultaneously preparing finished transcripts of prior hearings. Given this fact, the Task Force was not surprised by the IAO's finding that "only 1% to 2% of the hearings are actually transcribed."[62]

The Department must take whatever steps are necessary to ensure that all PBI hearings are professionally transcribed. At a minimum, an additional court reporter should be hired to share the dual responsibilities of transcribing testimony and transcript preparation now being handled by the Board's sole reporter. Clearly, timely and properly recorded notes of testimony would be extremely useful if future proceedings (i.e., arbitrations) arise subsequent to the PBI hearing, as a professionally transcribed record might enable the arbitration process to become more efficient. For example, preserved testimony might eliminate the necessity of all witnesses testifying in person. In appropriate, simple cases, arbitrators might even be able to make determinations based on paper submissions.

With respect to professional staffing, the PBI currently has one Department Advocate, Lieutenant Jacqueline Daley. On average, Lieutenant Daley independently prepares for and tries two to three cases a day, four days a week. Because the introduction of Command Level Discipline has successfully removed minor disciplinary charges, matters now tried at PBI are typically more complex and involve the presentation of between three and six Department witnesses. Notably, the law firm retained by the FOP to represent officers in PBI proceedings generally assigns four attorneys to the task, with each attorney typically handling only one of the four weekly sessions.

Lieutenant Daley undoubtedly requires assistance. No matter how dedicated and conscientious, we find it difficult to believe that any single attorney adequately could prepare for the volume of cases that Lieutenant Daley is expected to handle alone. The solution is straightforward: We recommend that the Department, after consulting with Lieutenant Daley, hire at least one additional attorney. We encourage the City to be guided by Lieutenant Daley's assessment in the event she recommends hiring more than one attorney.

B. The City Should Seek To Clarify The Present Bargaining Unit To Remove Captains And Above Therefrom

One union, the FOP, represents virtually every officer in the Department through a single bargaining unit that includes all sworn personnel under the rank of deputy commissioner. Accordingly, the bargaining unit includes such high-ranking positions as chief inspector, inspector, staff inspector, captain, and lieutenant, as well as similarly high-ranking positions in the District Attorney's office. All of these positions carry some degree of supervisory responsibility over rank-and-file employees of the Department, and many positions also include significant managerial or policymaking functions.

Although the correlation between the composition of the bargaining unit and the imposition of discipline is largely anecdotal and somewhat unclear, we conclude that those members of the Department who impose discipline should be in a separate bargaining unit from rank-and-file officers to avoid the real or perceived conflict of interest that is inherent in a system in which officers who impose discipline may be pressured, even if implicitly, to look the other way because of perceived disloyalty to fellow union members or because of a fear of reprisal from that union.

1. Most Sources Suggest that It Is Preferable To Have More Than One Bargaining Unit

According to many individuals who testified before us and based on several recommendations from previous Task Forces and commissions, bargaining unit composition has a real effect on Department practices in general and on discipline in particular.

a. Substantial Testimony Indicates That A Single Bargaining Unit Is Undesirable

Several individuals who publicly testified suggested that clarification of the current bargaining unit to exclude supervisory level officers would improve the disciplinary system by eliminating the perceived or actual conflict of interest that exists in the present system.[63]

The strongest advocate of change was Commissioner Timoney. Although he had not considered this to be a particularly significant issue when he began his tenure in Philadelphia, it has become, to him, "the single most important issue facing this department."[64] He described the problem as permeating all levels of discipline, from the time discipline is initially considered until the stage of grievance arbitrations:

> You have good supervisors, sergeants and lieutenants and captains, who are required to institute discipline against subordinates. Those lieutenants or captains are now at the Board of Inquiry for an arbitration hearing being grilled by a lawyer who their dues paid for . . . . [T]his lawyer, is now grilling them, and implicit in this exchange, and sometimes more than implicit, but implicit in this exchange is that I am also your lawyer and maybe I won't be as enthusiastic if you get in trouble and I have to defend you.
>
> It is an inherently ethically corrupt system.[65]

When asked how a single union has hampered effective Departmental discipline, Commissioner Timoney continued:

> I think you must be realistic about this situation. As I said before, we are asking sergeants and lieutenants, the front-line supervisors to make sure that the police officers are out there doing their business and doing it correctly. That's hard enough.
>
> And we're asking them to be tough with the police officers but fair . . . .
>
> The system has all the disincentives in the world for a sergeant or a lieutenant to turn a blind eye, not to get involved. Because you are going to find yourself pretty soon, whether it's at the Board of Inquiry or later on in an arbitration hearing, faced with your lawyer, the lawyer that you pay for [with] your dues,

> now hammering away at you and sometimes in the most vile manner . . . .
>
> And so those implicit threats are there, and whether you believe it or not, they are there.
>
> And who could blame a sergeant or a lieutenant . . . not . . . looking to be the front man or woman out there on the front line? And so you have got to face that situation.
>
> You then have to face the . . . I will call it a magazine. This gets mailed out to the membership, I guess, on a monthly basis. And so you get excoriated, so that if you don't get home and grab the mail ahead of time, your wife gets to read or your kids get to read about what a horrible human being you are, and you paid the dues for this magazine that's ripping you apart.
>
> It is an awful, awful situation that goes on here. It is just an untenable situation to put those sergeants and lieutenants and captains.[66]

Other witnesses, including Kenneth Jarin, an attorney with extensive experience in City labor negotiations; Frederick Voight, the Executive Director of the Committee of Seventy; Lieutenant Daley; Ms. Ceisler; and Marlene Ramsay, Executive Assistant to the Commissioner for Labor & Employment Matters, Philadelphia Department of Human Services, also identified the existence of a single union as an undesirable situation that created disciplinary problems because of the risk of conflict of interest.[67] While none of the witnesses who actually were responsible for imposing discipline stated that they believed that these concerns had ever altered their own approach to discipline, we find it telling that none of these witnesses defend the present system.

We acknowledge that one witness, James Jordan, the former Chair of the Law Department's Litigation Group and the former Director of the IAO, stated that even though a single union is not desirable or the best practice, it would be difficult to change the system. Consequently, he suggested that the Department learn to address the FOP in a more effective

manner.[68] We also acknowledge that the FOP would not support a change that would require the exclusion of supervisory officers from the present bargaining unit. At our informal meeting with the FOP, their representatives stated that they saw no conflict in the present arrangement and suggested that such recommendations for clarification were a backdoor way of weakening a powerful union that had effectively represented its constituents. In the end, while we understand this position, we simply agree with other witnesses that there is a significant potential for conflict of interest.[69]

b. It Is Not The "Best Practice" To Have A Single Bargaining Unit

Our opinion that it is undesirable to have a single bargaining unit is reinforced by the conclusions of other commentators and the approaches of other cities.

While the Tucker Report did not inquire specifically into discipline, it nonetheless concluded that review of literature reveals "certain basic principles," including the conclusion that "management personnel should not be in the same organization with line officers" because of "inherent conflict between these two groups of employees, including the fact that supervisors may be required to discipline subordinates."[70] The Governance Study reached the same conclusion, stating that "[t]o eliminate perceived or real conflicts of interest, most interviewees have suggested that certain Police Department command ranks should be separated from the bargaining unit, or that another bargaining unit should be created specifically for those command ranks."[71]

The Philadelphia system also diverges from the practices of most major cities in the United States. In fact, Philadelphia has the largest police force in this country with a single union for the entire department—virtually all other large forces separate upper management from the rest of the department.[72]

> In the majority of the twenty largest cities, the upper management is separated from the rest of the department, either with non-union top ranks or with a different union for the command level. New York has five unions, one for each rank, from patrolman to captain. . . . [I]n Chicago, the courts granted police supervisors the right to create their own collective bargaining unit. In San Diego in 1997, city negotiators were successful in removing the rank of captain from union representation. Two cities in Texas, Dallas and Houston, have several unions from which all officers can choose.[73]

Obviously, there are numerous differences among various police forces in terms of history, approach, structure, and size,[74] but we find that the prevailing practices in most other cities weigh against continuing the present structure.

2. Supervisory Personnel Should Be Placed In A Separate Bargaining Unit And, If Necessary, Act 111 Should Be Revised

We recommend that the City of Philadelphia seek to clarify the present bargaining unit to remove individuals ranked captain and higher from the existing bargaining unit because of their role in imposing discipline. We believe that the current system creates at least the possibility of a conflict of interest for those who must impose discipline with very few countervailing benefits. We also recommend the creation of a second bargaining unit so that those individuals removed from the present bargaining unit retain union representation. These two recommendations go hand-in-hand: In the absence of a new bargaining unit, we would not support exclusion of any officers from the present union.

We recognize the daunting task of separating out these officers into a separate bargaining unit, largely because of the strictures of Act 111, the law governing this and other police departments in the Commonwealth. Under Pennsylvania law, the City of Philadelphia would have to engage in a process known as unit clarification to exclude supervisory officers (probably captains or above) from the bargaining unit on the theory that they act as managerial employees.

This unit clarification process would take place before the Pennsylvania Labor Relations Board. The legal hurdles, while difficult to overcome, would not be insurmountable.[75]

First, under Act 111 as presently drafted, there is no provision to create separate bargaining units. Taken literally, were the City to move for the exclusion of any group of officers, they likely would be left without union representation. As noted above, we believe that this result is unacceptable. Any movement for clarification must provide for representation for those officers removed from the present bargaining unit. Commissioner Timoney[76] identified this as a crucial component of any effort to achieve unit clarification, and the Committee of Seventy[77] and Mr. Jarin[78] have noted that this difficulty has been a serious obstacle to reform efforts. Consequently, assuming that the City could not reach an alternative agreement with the FOP to create another bargaining unit, the Pennsylvania General Assembly should amend Act 111 to accomplish this outcome.[79]

C. The Department's Record-Keeping Should Be Improved To Address The Perception That Discipline Is Imposed Based On Race, Gender, And Other Inappropriate Considerations

The final internal discipline issue is the perceived disparate imposition of discipline based on considerations such as race, gender, rank, or other inappropriate factors. Quite simply, we are unable to draw any conclusions about such practices because of the inaccessibility and decentralization of the underlying data. Accordingly, we conclude that the establishment of a meaningful, accessible, and coordinated tracking system is an essential first step in addressing this perception.

Several witnesses testified that race and gender played a significant role in the imposition of discipline. For example, Rochelle Bilal, a current Philadelphia police officer and previously an officer in the Guardian Civil League, contended that racism and sexism pervade the

disciplinary system.[80] More specifically, she stated that an evaluation by the Guardian Civic League showed that African-American females were "treated more harshly or disciplined more than anyone else in the police department."[81] The Task Force also heard from State Representatives Leanna Washington and Harold James, who have held hearings on potentially discriminatory practices within the Philadelphia Police Department but whose report has not yet been issued. Finally, we spoke informally with a number of individuals who made the same claims but who requested anonymity.

Other witnesses, including Commissioner Timoney, acknowledged past problems with race and sex discrimination but believe that these issues have largely been alleviated.[82]

While we do not discount the possibility that race and sex are the basis for the inappropriate imposition of discipline, we have been unable to locate any statistical evidence that would conclusively prove or disprove this claim. Even Officer Bilal commented on the lack of statistical proof, stating that she had sought statistics on race and sex from the Department numerous times but had never received anything useful.[83] We believe that the following exchange with Mr. Voight is particularly instructive:

> Q. [D]o you have any information useful to us about disparities based on race or gender?
>
> A. No, we don't[,] and I'm unaware of any statistical analysis or otherwise that I have seen that anybody does have.
>
> . . .
>
> . . . I have not seen any statistical analysis that would bear that out. I will assure you that on an [anecdotal] basis, there are large numbers of people who believe all of it, whatever piece you want. There are people in that department who believe that, in fact, there is discrimination based on rank. There are people in that department who believe that there is discrimination based on ethnicity, on race, on gender.[84]

Ms. Ceisler made a similar point, noting that while outside sources have engaged in analysis of this issue (which also is incomplete), there is a perception within some corners of the Department of unfairness and improper motivations for discipline.[85] While we heard testimony that different entities within the disciplinary system, such as PBI, maintain their own records, we are concerned by the seeming fragmentation and lack of centralization of such documentation.

Unfortunately, the absence or inaccessibility of such data only reinforces a perception of inequality. As Inspector Cooney noted, the perception of such unfairness "affects everything. It affects the discipline. It affects the morale. It affects the performance. If you let it go, it's like a cancer."[86] Mr. Jordan specifically tied this lack of documentation to race and gender:

> Right now one of the problems with identifying whether or not there is racial disparity is the whole charging process is a jumble, as Ms. Ceisler's report shows . . . [B]ecause the system is, as a practical matter, not auditable, nobody can say that there is racial bias or gender bias, but also nobody can say that there isn't, and in the absence of the ability to really assess that, it is just going to fuel the perception by a lot of people that there is bias.[87]

We do not wish to reinvent the wheel: Ms. Ceisler's Report identified many of the same documentary problems we discovered in our inquiry. She recommended, both in her testimony before this Task Force and in her earlier Report, the meaningful tracking of cases throughout the disciplinary process.[88] We wholeheartedly support the complete implementation of the Ceisler Report's recommendations with the specific provisos that: (1) records must be maintained to allow analysis of the race and gender of those who impose and receive discipline; and (2) the City ensure that the documentation is regularly reviewed and its significance evaluated and that a report of the evaluation be provided to the Mayor or the Mayor's designee. While we recognize that statistics of this nature, taken alone, may be misleading if not properly analyzed,[89] we find the alternative—inadequate documentation—to be much worse.

VI. THE ARBITRATION PROCESS

In 1999, the Pennsylvania Supreme Court stated:

> It is axiomatic that the arbitration of labor disputes is highly valued and greatly favored in our Commonwealth. The benefits of arbitration are many. Arbitration is swifter, less formal, and less expensive than traditional dispute resolution by courts. Arbitration has been described as more responsive to individual needs and preferential in light of the ongoing relationship between employer and union. Perhaps most importantly, arbitration has been seen as a prime force in the policy of reducing industrial strife.[90]

During our proceedings, the Task Force reviewed substantial information concerning the arbitration of disciplinary grievances between the Department and the FOP. We conclude that police arbitrations do not now serve to "reduc[e] industrial strife."[91] Rather, the arbitration system, as currently used by the parties, exacerbates existing tensions within the disciplinary system.

A. The Current System

The current Act 111 Award between the City and the FOP incorporates a multi-step grievance procedure that the FOP may invoke to appeal from the Police Commissioner's formal disciplinary findings. Importantly, this grievance procedure provides the disciplined police officer with additional layers of due process beyond those inherent in the previously discussed PBI process.

The grievance procedure consists of three steps. Under the first step, the grievant has thirty days to ask the Commissioner or his designee to reconsider the disciplinary action. Apparently, few grievances are resolved at the first step. Executive Officer Marvin Burton, who is responsible for the Department's implementation of the grievance process, testified that his "position is basically the [C]ommissioner has reviewed [disciplinary] cases and determined that this is the appropriate discipline."[92]

If the grievance is not resolved at the first step, the FOP may proceed to mediation by the Director of the Mayor's Office of Labor Relations. As this step is virtually never used,[93] most cases proceed to the third step, in which the grievant either may appeal to the Philadelphia Civil Service Commission or commence a labor arbitration with the American Arbitration Association ("AAA"). The Civil Service Commission is an independent, three-member body empowered to review the discipline of civil service employees,[94] while the AAA is one of the nation's most recognized private dispute resolution forums. Both the Civil Service Commission and the AAA review police disciplinary appeals under a "just cause" standard.[95]

When the FOP decides to pursue arbitration, it files a "Demand for Arbitration" with the AAA. The FOP presently retains a Philadelphia law firm to represent officers at arbitration. The Department generally is represented by the Law Department's Labor & Employment Unit, although the City occasionally retains outside law firms for particular arbitrations. After the arbitration demand is filed, the FOP and City select an arbitrator pursuant to the AAA's Labor Arbitration Rules. Following the selection of an arbitrator, a hearing is scheduled and, eventually, conducted. The arbitrator must decide whether the imposed discipline is supported by "just cause." Although AAA rules require the arbitrator to issue a ruling within thirty days of the hearing, this deadline often is extended because of the filing of post-hearing briefs or requests by the arbitrator for additional time.[96]

B. Outcomes Of Police Discipline Arbitrations

On August 17, 2001, the Mayor's Office of Labor Relations ("MOLR") presented us with a well-documented report entitled "Analysis of Arbitration Cases for Mayor's Task Force on FOP Discipline" (hereinafter "MOLR Report"). The MOLR Report showed citywide arbitration outcomes for the 821 City labor arbitrations filed after January 1, 1995 and closed prior to

August 15, 2001. The FOP filed 593 of the arbitrations studied; of these, 336 arbitrations challenged discipline.

Below are the outcomes of the 336 Police discipline arbitrations studied:

Withdrawn by FOP	26%
City Win	20%
Union Win	19%
Settled	18%
Split Decision[97]	11%
Consolidated	6%

We have not undertaken a case-by-case analysis of the arbitrators' findings, nor are we prepared to subscribe to Commissioner Timoney's view that irrational arbitration awards are the norm.[98] However, during our deliberations, we learned of several arbitrations in which Departmental discipline was overturned in fairly egregious circumstances. While we acknowledge the FOP's point that these decisions are not current, the outcomes nonetheless are troubling.[99]

C. The Arbitration System Should Be Reformed At All Levels

A number of problems in the arbitration process have become apparent. The most significant are the volume of cases, delay in resolution of cases, and the standard of review applied by the courts to arbitrations. The reforms we have suggested seek to address these issues.

1. There Are Excessive Delays In The Arbitration System Due To The Large Number Of Disciplinary Cases That Are Appealed

a. The Disproportionately High Volume Of Police Arbitrations

As of September 10, 2001, the City's municipal unions had 504 open labor arbitrations against the City.[100] Of these 504 arbitrations, 355 arbitrations were filed by the FOP, and 149 arbitrations were filed by all other municipal unions combined.[101] In other words, police

arbitrations currently account for approximately 70% of the City's entire arbitration caseload. When one limits the analysis to discipline arbitrations, the percentage of police arbitrations grows to approximately 79% of the citywide caseload.[102] The Task Force also heard testimony that, from May 2001 through August 2001, a total of 106 arbitration hearing dates were scheduled.[103] Of these, eighty-seven hearing dates (or 82%) concerned police arbitrations, and nineteen hearing dates (or 18%) concerned all other agencies/unions combined.[104]

The Task Force concludes that four factors account for the high volume of police disciplinary arbitrations, none of which is that police are particularly likely to be disciplined.

First, the Department and the FOP fail to take full advantage of the pre-arbitration grievance process to resolve disputes. As noted earlier, the Department is disinclined to compromise at the first step of the grievance process (reconsideration), and it apparently does not use the second step of the process (mediation).[105] This contrasts with the approach taken by other City agencies.[106]

Second, the FOP's defense of internal disciplinary proceedings are financed by the City through contributions to the FOP's legal services fund. The City makes monthly payments of $22.00 per member to both the FOP and the Firefighters' Union for their respective legal services funds.[107] The City makes monthly payments of $12.00 per member for the legal services funds of its non-uniformed employee unions.[108] According to public testimony, however, the FOP is the only municipal union that uses its legal services fund to finance a defense in internal disciplinary proceedings, such as PBI and disciplinary arbitrations.[109] Thus, the FOP has no financial deterrent to filing and litigating large numbers of internal disciplinary actions.[110]

Third, the FOP files a large number of arbitrations that are withdrawn after a substantial period of time. The FOP withdraws 26% of its discipline arbitrations and 35% of all arbitrations.[111] This compares unfavorably to several other municipal unions, including the Firefighters' Union (which withdraws 23% of all arbitrations), District Council 33 (which withdraws 19% of all arbitrations), and District Council 47 (which withdraws 18% of all arbitrations).[112] More effective and timely screening of cases would allow those without merit to be withdrawn at an earlier time or even not filed at all.

Fourth, MOLR data reveals that the City settles fewer arbitrations with the FOP than it does with its other municipal unions. While only 18% of FOP arbitrations are settled, the City settles 36% of its District Council 33 arbitrations, 40% of its District Council 47 arbitrations, 36% of its Deputy Sheriff arbitrations, and 35% of its Firefighter arbitrations.[113]

b. The Delay In Resolving Police Arbitrations

Given the volume of cases, delay is a fundamental problem, even though one of the goals of arbitration is to save time.[114]

According to the MOLR Report, for the 593 police arbitrations analyzed, an average of 541 days elapsed between the filing of the arbitration demand and disposition.[115] Limiting the analysis to police disciplinary arbitrations, the average elapsed time was lowered slightly to 519 days.[116] Such delay, undesirable in courtroom litigation, is indefensible in informal dispute resolution. For example, the Administrative Office of the United States Courts reports that, for the twelve month period ending September 30, 2000, the median time for disposition of federal lawsuits filed in the United States District Court for the Eastern District of Pennsylvania was 7.8 months (or approximately 234 days).[117] Even for federal civil lawsuits that proceed to trial, the median time for disposition is fifteen months (or approximately 450 days).[118] It is extraordinary

that, on average, federal civil actions with attendant discovery, motion practice, and trial, can be resolved more quickly than police labor arbitrations, which entail virtually no discovery and few of the formalities required in federal court. Nor is the delay explained by the complexity of the cases, as even the most routine police discipline arbitrations take an excessive amount of time to be resolved.[119]

Arbitration also compares unfavorably to Philadelphia Civil Service Commission proceedings with respect to the time it takes for cases to be completed. As noted earlier, City employees (including police officers) can challenge disciplinary actions by appealing to the three-member Civil Service Commission.[120] Like arbitrators, the Commissioners conduct evidentiary hearings and issue written decisions explaining their findings.[121] The Commissioners apply the same "just cause" standard applied by arbitrators.[122] Yet, Civil Service Commission proceedings are completed much more quickly than arbitrations. Data we received indicates that Civil Service Commission appeals filed during the six-month period from June 2000 through December 2000 were completed in an average of 185 days.[123]

We conclude that three factors primarily account for the delay in arbitrations.

First, the FOP waits too long to withdraw arbitrations that it decides not to pursue. According to the MOLR, on average, the FOP does not withdraw its disciplinary arbitrations until over 500 days after the filing date.[124] This is significant because 26% of all police discipline arbitrations are eventually withdrawn.[125]

Second, too many arbitration hearings are continued. The Law Department's previously mentioned analysis of police arbitration hearings scheduled from May 2001 through August 2001 reveals that, of the eighty-seven scheduled hearings, the City requested eighteen continuances and the FOP requested eleven continuances.[126] Thus, the City and the FOP

combined to request that 34% (twenty-nine of eighty-seven) of all scheduled hearing dates be continued.[127] The primary reason for continuances requested by Law Department attorneys is witness unavailability; others testified that, because arbitrations are a lower priority than criminal court appearances and other police obligations, police officer witnesses sometimes cannot appear at arbitration hearings.[128] Compounding the problem, the long delays in the arbitration process mean that civilian witnesses may become difficult to locate or reluctant to testify years after the alleged incident.

Third, both the City and FOP wait too long to settle arbitrations. The MOLR reports that the average post-arbitration settlement between the City and the FOP is not reached until over 400 days after the arbitration is filed.[129]

2. Reforms Must Be Undertaken To Address Volume And Delay

Based on the above findings, we recommend the following reforms.

a. More Disputes Should Be Resolved At The Pre-Arbitration Stage

Arbitration is the most elaborate and adversarial step in the police disciplinary process. The FOP, the City, and their respective attorneys commit substantial time, effort, and resources to the arbitration process. The fundamental question is whether this commitment is appropriate. We conclude that it is not.

Rather than undertaking the difficult task of sitting down and attempting to resolve discipline issues, we believe that the Department and the FOP have simply "punted" the great majority of their disagreements to lawyers and third-party arbitrators. This approach, which flies in the face of economy and common sense, is seriously flawed. Litigation and its accompanying acrimony and expense should be reserved for the most serious disputes.

This Task Force does not seek to cast blame on either the Department or the FOP for the apparent breakdown in the pre-arbitration process. Both parties appear to have valid complaints about each other's conduct. On one hand, the FOP files and withdraws many more arbitrations than other municipal unions. This practice fosters the perception by police officials that the FOP is "disruptive"[130] and "grieves every form of discipline that we ever put out there."[131] On the other hand, the Department seems less inclined than other municipal agencies to reevaluate employee discipline during the pre-arbitration grievance process. This practice apparently fuels the FOP's perception that arbitration is the only meaningful method of challenging disciplinary decisions.

The Department and the FOP should make good faith efforts to expand the use of pre-arbitration dispute resolution. Currently, at the post-arbitration stage, 18% of police discipline cases are settled by the lawyers and 11% of the cases result in split-decisions.[132] These results suggest that not every police discipline case is "black and white" and that pre-arbitration compromise would benefit all parties.

The first two steps of the current grievance process—reconsideration and mediation—appear to provide the Department and the FOP with a meaningful opportunity to resolve disputes prior to arbitration. While we are not wedded to any particular procedure or pre-arbitration process, we do believe that a more meaningful dialogue should take place. We recommend that the City take whatever steps are necessary to ensure that, prior to arbitration, FOP grievances are aired in a serious effort to resolve differences at the pre-litigation stages.

b. The City And The Parties Involved Should Change The Ways In Which They Use Arbitration

Improving the pre-arbitration process will not be enough because too many cases are already in a broken arbitration system. No Philadelphia police officer should have to wait over 500 days to have his or her arbitration decided, withdrawn, or settled.

Volume and delay are closely related problems that, in combination, feed the enormous arbitration backlog. Every scheduled arbitration occupies one of a limited number of arbitration hearing dates. Thus, the parties' penchant for withdrawing or settling arbitrations at the "eleventh hour" wastes hearing dates that could have been used to resolve other backlogged arbitrations[133] and attorney time that could have been used to prepare other arbitrations.[134] Moreover, when either party continues an arbitration hearing, the previously scheduled hearing date is wasted, witnesses are potentially inconvenienced, and a future hearing date (which could have been dedicated to another case) is occupied. This is no way to reduce a litigation backlog.

We do not seek to micromanage municipal labor relations by selecting a particular method to resolve the current arbitration dilemma. It is clear that any cure to the arbitration backlog, however, must focus on accelerating the time at which the parties evaluate arbitrations for withdrawal or settlement. Under federal court practice, parties must confer at the outset of litigation "to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement or resolution of the case."[135] We suggest that the City and the FOP meaningfully implement a similar practice. The parties should meet and discuss arbitrations shortly after the FOP files the arbitration demand, perhaps through monthly meetings or some other form of case conferencing.

In addition, the parties should consider some plan whereby the responsible party is punished for cases that are unnecessarily withdrawn or continued at the last minute. We are

troubled by estimates that 35% of all police arbitrations are withdrawn and approximately 34% of all hearing dates are continued. Furthermore, even if the parties cannot mutually agree to some accountability program, the Law Department should maintain its practice of tracking the number of continuances and should minimize the number of continuances it seeks.

Finally, we suggest that the City and the FOP consider grouping together categories of cases for possible early resolution. For example, the City and FOP might agree to some method for quickly resolving all cases involving very minor suspensions or involving similar factual or legal issues. Just as the courts have recognized the benefits of consolidating litigation involving common questions of law or fact,[136] the parties to arbitration may be able to benefit from consolidation.

c. Some Categories Of Discipline Should Not Be Eligible For Arbitration

We heard testimony that, under state law, police disciplinary arbitrations may be limited to certain categories of discipline and that some Pennsylvania jurisdictions have implemented just such limitations.[137] We also heard testimony that, under prior agreements between the City and the FOP, not every type of police discipline was arbitrable.[138]

We understand that a one, three, or five-day suspension is a significant event in any employee's career. We also understand that any lost income resulting from a suspension will adversely affect the employee's personal finances. Nevertheless, we are troubled that substantial time, energy, and goodwill is expended to arbitrate suspensions of relatively minor duration. In many cases, the arbitration fees alone far exceed the employee salary withheld due to the suspension.[139] In addition, the arbitration of minor suspensions consumes valuable attorney time and adds to the arbitration backlog, thus causing delays in the time it takes for all arbitrations to be resolved. Finally, it seems absurd that a police officer should have to wait an average of 519

days to find out whether his or her three-day suspension will be upheld. The fact that the arbitrator might draft an elaborate opinion (often exceeding ten pages and costing thousands of dollars) only adds to the absurdity.

We believe that arbitration should be more limited, although we are not prepared to recommend particular cut-off criteria. Under the Philadelphia City Charter, the Civil Service Commission is permitted to review the propriety of employee discipline under a "just cause" standard.[140] With respect to suspensions, however, its jurisdiction is limited to employees who are "suspended more than ten days in any one year."[141] This limitation was "imposed to prevent the overburdening of appeal dockets"[142] and presumably reflects the drafters' public policy conclusion that suspensions of less than ten days in a year are not significant enough to justify a quasi-judicial review mechanism. Using the City Charter as a guide, the City might consider taking the position that suspensions of ten days or less should not be eligible for arbitration. We recognize, however, that City policymakers may choose different criteria.

Importantly, our recommendation that the City seek to limit the arbitrability of suspensions is predicated on our assumption that, consistent with our other recommendations, the PBI process will be improved to foster more consistency and objectivity. If the process can reach its full potential, police officers receiving minor suspensions should be able to leave the PBI process feeling that they received a fair hearing and that their due process interests fully were protected. At the PBI, the officer already is represented by high-quality legal counsel and permitted to present his or her own witnesses and cross-examine Department witnesses. In many private employment settings, the PBI process, standing alone, would surpass the full gamut of due process provided to disciplined employees.

Even if no limitations are placed on the arbitrability of suspensions, we question whether it is necessary for the parties to treat all arbitrations as equal. For example, if virtually all types of discipline continue to be eligible for arbitration, we encourage the City and FOP to agree that "minor" suspensions (however that term is defined) be subjected to an expedited schedule or consolidated for hearing. We also question whether it is necessary or economical for an arbitrator to draft an elaborate, multi-page opinion in every arbitration. We encourage consideration of a process whereby the City and FOP agree to allow the arbitrator simply to "rule from the bench" and issue a one-page award. This practice would save time and money. Also, it may enable arbitrators to rule on multiple cases in one sitting, thus helping to reduce the arbitration backlog. The Task Force recommends that the Law Department explore the legal implications of this option and, if approved by the Law Department, the City should pursue such an agreement with the FOP.

d. The FOP Legal Fund Should Not Be Used For Internal Disciplinary Proceedings

As discussed previously, officers' defenses in the large volume of disciplinary arbitrations are financed by the City through contributions to the FOP's legal services fund.

We are aware of the difficulty individuals may have in retaining high-quality legal services, and we applaud the City and the FOP for providing a legal services fund. We believe, however, that the City should adopt the practice it utilizes with its other unions and not permit its contributions to be used to fund defenses in internal disciplinary proceedings. Common sense suggests that the FOP might be more judicious in selecting those cases that proceeded to arbitration if it were responsible for the cost. If no other benefit occurred, some portion of the withdrawn arbitrations might never be filed or, if filed, might be withdrawn more quickly.

Consequently, we recommend that the City attempt to limit the FOP's use of the legal services fund to finance defenses at PBI and at disciplinary arbitrations filed against the City.

D. The Judicial Standard Of Review For Arbitrations Should Be Changed

As noted above, we do not conclude that most or even many arbitrations are decided irrationally. However, we believe that the standard of review presently applied to grievance arbitrations should be reformed.

Once the arbitrator issues a decision, the losing party can appeal the decision to the Court of Common Pleas. Under present law, Pennsylvania courts apply the so-called "narrow certiorari" standard of review to police discipline arbitrations. This standard, which was first applied to discipline arbitrations in a Pennsylvania Supreme Court case entitled City of Philadelphia v. Fraternal Order of Police, Lodge No. 5 (Betancourt),[143] does not permit the losing party to challenge an arbitration decision that was "wrong" on the merits but procedurally proper. Rather, the Betancourt standard strictly "limits courts to reviewing questions concerning (1) the jurisdiction of the arbitrators; (2) the regularity of the proceedings; (3) an excess of the arbitrator's powers; and (4) deprivation of constitutional rights."[144] Under Betancourt, arbitrators may make errors of law or fact without being reversed[145]—in a recent case, the Pennsylvania Supreme Court conceded that Betancourt placed "severe limits" on courts' appellate authority.[146] Lower courts consistently have applied the Betancourt standard, and to our knowledge, none has overturned an arbitration decision for being wrong on the merits.[147]

We conclude that the scope of judicial review of arbitration decisions is overly narrow and recommend that the City lobby the legislature to overturn the Betancourt decision and replace it with the "essence test" ordinarily applicable to the judicial review of labor arbitrations.[148] Several witnesses, including Commissioner Timoney, identified the judiciary's

inability to reverse outrageous arbitration awards as a persistent problem.[149] Even if the actual number of such dubious decisions is low, the fear of such decisions has an effect on the imposition of discipline. For example, Commissioner Timoney suggested that he tailors disciplinary decisions to reflect what he believes will be upheld by arbitrators.[150]

Recommending a legislative response to Betancourt is neither new nor radical. Various respected interest groups have advocated legislation overturning Betancourt so that police discipline arbitrations are subject to the same standards of review that apply to other public employees.[151] Furthermore, in a 1999 case, Pennsylvania Supreme Court Justice Castille expressed "extreme discomfort" with Betancourt and proposed that the Betancourt standard "be expanded in grievance arbitration cases to include review of arbitrators' powers where it appears that an arbitrator's decision is manifestly unreasonable, arbitrary and capricious."[152] Likewise, Supreme Court Justice Nigro has expressed his belief "that the certiorari review as defined in Betancourt is too narrow."[153] The task of legislatively overruling Betancourt will not be easy, but, in our view, the goal is clearly worth the effort.

VII. THE FUNCTIONS OF THE POLICE ADVISORY COMMISSION AND THE INTEGRITY AND ACCOUNTABILITY OFFICE SHOULD BE MERGED INTO A SINGLE ENTITY THAT FOCUSES PRIMARILY ON BROAD POLICY ISSUES

One of the most sensitive issues facing the Task Force was the relationship between civilian review and police discipline. From the outset, we stress our deep respect for the dedicated efforts of all those who have worked so diligently with the PAC, the primary entity outside the Department engaged in oversight activities, and who have contributed to the establishment of a civilian presence in the Department. However, because we ultimately conclude that the PAC is compromised in its ability to function effectively, we recommend a restructuring of the PAC and redefinition of its mission.

A. The Present Structure And Operation Of The Police Advisory Commission

In October 1993, Mayor Edward Rendell signed Executive Order No. 8-93 creating the PAC. The PAC consists of fifteen members appointed to staggered terms by the Mayor with some input from the City Council.[154] Hector Soto currently serves as the PAC's Executive Director. The FOP has challenged the PAC on several occasions, although courts have consistently upheld the PAC's legality.[155]

The PAC characterizes its mission as follows:

> [The] PAC is an autonomous, all civilian, non-police agency charged with the responsibility of monitoring, and helping to improve the relationship between the Philadelphia Police Department and the general public. To that end, [the PAC] is authorized to conduct fact-finding investigations concerning individual allegations of police misconduct and/or concerning broader issues of police department policy or procedures. The jurisdiction of [the PAC] is limited to allegations of physical abuse, abuse of authority and certain types of verbal abuse. The fact-finding investigatory power of [the PAC] may be initiated upon the request or petition of a member of the public, the Police Commissioner, or upon [the PAC's] own initiative.[156]

Within thirty days of receiving a recommendation from the PAC, the Police Commissioner is required to "respond in writing regarding which recommendations are accepted, rejected, or will be implemented with modifications."[157]

The PAC's powers and duties include, inter alia: (i) advising the City's Managing Director and Police Commissioner "on policies and actions of the Police Department;" (ii) "improv[ing] the relationship between the Police Department and the community;" (iii) reviewing "individual incidents" of police misconduct; and (iv) studying "broader issues . . . of concern to the community, the Police Department, or the Police Commissioner."[158] Importantly, the Executive Order explicitly requires that, in studying and reviewing "broader issues," the PAC "shall, to the best extent possible, minimize duplication of effort between the [PAC] and any other existing agencies which have jurisdiction over the same matter."[159]

With respect to individual complaints about police misconduct, the IAD has "overlapping jurisdiction" with the PAC, and complainants are informed of this when their complaints are filed.[160] If a complainant agrees to the referral of his or her complaint to IAD, a copy is forwarded, often with a summary of the complainant's PAC interview.[161] If a complainant decides against IAD referral, the IAD receives notice of the complaint without further information.[162] If a complaint does not fall within the PAC's jurisdiction, the complaint may be forwarded to IAD for evaluation and appropriate action.[163]

In carrying out its functions, the PAC is entitled to broad access to Police Department documents and information, [164] and in fact, the Executive Order provides that City officials "shall ensure that all [investigatory] agencies cooperate to the greatest extent possible in the performance of their respective activities, studies, and operations."[165] The PAC, moreover, is empowered to conduct public hearings.[166] At first blush, the PAC appears to have many of the

official trappings of a court or administrative tribunal,[167] and PAC hearings generally are open to the public.[168] Post-hearing deliberations, however, are conducted by the presiding panel in executive session.[169] The PAC has subpoena power to compel the production of documents and other information and the attendance of witnesses at interviews and panel public hearings, and the PAC's Executive Director may issue a subpoena to any person or organization possessing information relevant to the PAC's tasks.[170] All testimony received at public hearings is given under oath or affirmation administered by the presiding officer.[171] An official stenographic record is kept.[172]

B. Limitations On The PAC's Effectiveness

We conclude that two main factors compromise the PAC's effectiveness: its overlap with other entities in the Department, particularly with respect to investigations of individual complaints, and the lack of respect afforded to the PAC by both the City and the Department.

1. There Is Significant Overlap Between The PAC And Other Entities

There is significant overlap between the PAC and at least two other entities, the IAO and the IAD. The PAC is clearly aware of this issue. Indeed, during informal discussion with the Task Force, PAC officials expressed serious concerns about its ability to contribute when both the IAD and the PAC simultaneously consider a particular allegation of police misconduct.

a. The PAC Overlaps With The IAD, Particularly With Respect To The Investigation Of Individual Complaints

According to Mr. Soto, established protocols require that all PAC correspondence on new complaints, in addition to routine requests for documents and information concerning complaints, are forwarded solely to IAD through the PAC's Police Department liaison.[173] PAC officials, however, have contended that IAD has misfiled PAC complaints. Mr. Soto claims that

"[e]xperience and evidence have demonstrated that [the liaison], working in good faith by himself to the best of his ability, cannot handle the volume of correspondence forwarded by the Commission."[174] Mr. Soto further believes that IAD does not always notify the PAC of police officer interviews by IAD,[175] stating that this hampers the PAC's ability to conduct efficient field investigations.[176]

Perhaps most significantly, according to the PAC, the parallel nature of IAD and PAC investigations creates problems. For instance, according to Mr. Soto's informal discussion with this Task Force, IAD often concludes its investigation before the PAC has finished its own hearing and provided its recommendation to the Police Commissioner. The Commissioner then makes a disciplinary determination before the PAC has concluded its process, rendering the PAC's eventual recommendation moot. According to the PAC, IAD does not attend PAC hearings, causing the IAD investigators to miss valuable opportunities to observe the demeanor and credibility of witnesses. Given its current resources, the PAC contends that it simply is unable to "compete" with IAD in parallel investigations. It does appear that, with respect to individual investigations, the PAC is largely duplicating IAD's function.

b. The Jurisdictions Of The IAO And The PAC Overlap With Respect To Policy Reviews

Although the PAC appears more concerned with its intersection with IAD, we also note substantial overlap in the PAC's and the IAO's jurisdiction with respect to their ability to review broader Departmental policies.

In September 1996, the City entered into an agreement to settle a federal class action civil rights lawsuit entitled NAACP v. City of Philadelphia, 96-CV-6045 (E.D. Pa.), which alleged widespread police misconduct in Philadelphia's 39th Police District.[177] The NAACP Agreement required that the City create an Integrity and Accountability Officer ("IA Officer") "to be

responsible for assessing, auditing, and/or reviewing Departmental policies, Internal Investigations Bureau Operations, and specific investigations."[178] The IA Officer's "essential responsibilities" were to include "monitoring" of the IAD and Ethics Accountability Division functions and "development, analysis, and critique of corruption controls, as well as identification of corruption hazards and other misconduct."[179] According to public testimony, the IA Officer is "supposed to be permanent" and "is theoretically to exist forever."[180] The NAACP Agreement, however, is silent in this regard and, even if it were not, the City may seek to amend the NAACP Agreement under appropriate circumstances.[181]

Attorney Ellen Ceisler currently serves as the IA Officer and has one staff member to assist her.[182] According to Ms. Ceisler, the Department has been "fully supportive" of her endeavors and has been very cooperative in providing her with documents and other information.[183] In past years, the IA Officer has studied issues such as the use of force by police officers, personnel management, and operations of the IAD.[184] Most recently, in March 2001, the IA Officer issued the report on the disciplinary system that played a role in creating this Task Force. As demonstrated by these efforts, the IA Officer shares with the PAC the ability to engage in broad policy review, even though the PAC generally has not exercised this power. Notably, however, in contrast to the PAC, the IA Officer has no power to subpoena documents or testimony.

2. Problems With The PAC's Persuasive Authority On Issues Of Police Discipline

In addition to the structural and organizational difficulties outlined above, the PAC has complained to the Task Force—accurately, we believe—that its recommendations on police discipline are largely ignored. Although Police Commissioner Timoney has issued a general order requiring police personnel to cooperate with PAC investigations,[185] discussions with PAC

representatives in a formal and informal setting have convinced us that the Department's cooperation has been grudging at best. For example, through the end of fiscal year 2000, Commissioner Timoney accepted only one of the eighteen recommendations from the PAC regarding discipline to be handed down to police officers.[186] As the PAC candidly concedes:

> It remains true . . . that the Commissioner for the most part has not accepted the Commission's recommendations. His stated reasons have varied[,] ranging from objections concerning the weight or analysis of the evidence considered by the Commission to objections concerning the nature or severity of the allegation.[187]

The PAC also complains that the Police Commissioner ignores its recommendations when they are untimely and rendered after discipline already has been imposed.[188]

Indeed, the PAC's assessment that Commissioner Timoney does not wholeheartedly support the PAC as currently constituted appears valid. In his testimony before the Task Force as well as in his informal meetings with us, Commissioner Timoney stated that he did not believe that the current PAC could function effectively, largely because of its "dual-track" approach.[189] In essence, Commissioner Timoney stated that it was impractical for him to wait for the PAC to hold its hearing and issue its findings before he imposed discipline. As he stated, "That's not going to sustain an arbitration."[190] He also contended that the PAC hampers his ability to impose progressive discipline because of its emphasis on punitive responses to misconduct.[191] In the end, however, the Commissioner suggested that his disagreements with the PAC ran deeper, stating that the PAC should either be given complete control over certain matters or entirely removed from the disciplinary process. He also suggested that there were few, if any, jurisdictions in which a civilian review board had functioned effectively.[192]

We cannot help but conclude that the Department's attitude is reinforced, at least in part, by the City's own treatment of the PAC. The PAC has little or no direct access to high-ranking

City officials, and there are persistent vacancies on the PAC that have not been filled since the new administration took office.

C. Because Of Its Overlap And Lack Of Departmental And City Support, The PAC's Structure And Mission Should Be Redefined

We believe that civilian oversight in the discipline of police officers in Philadelphia must continue, and we reject the suggestion that civilian review constitutes an inappropriate interference in police business. We agree strongly with the goals of the PAC as articulated in the executive order establishing that body, as civilian involvement in the disciplinary process and in the Department as a whole is essential to improving the system's accountability and public perception and trust in the Department.

The question, however, is what type of civilian oversight is most effective and can most usefully be exercised. Because the problems outlined previously have made it impossible for the PAC as presently constituted to meet these goals, we believe that the PAC must be reorganized and its mission redefined and clarified. Even if the PAC is not reorganized, we believe that many of these recommendations would enable the PAC to meet its goal of providing assistance to citizens who have complaints about their encounters with the Department.

1. The PAC's Focus Should Shift Away From Individual Investigations Except In Particularly Significant Cases

The PAC should focus its efforts on broad, systemic reviews of the Department and largely abandon efforts to conduct parallel investigations of individual incidents of alleged misconduct, except in certain cases as discussed below. As noted, a persistent external criticism of the PAC (and an ongoing internal concern) is that its recommendations and conclusions have little or no effect on disciplinary decisions of the Department, even when discipline is actually imposed. In addition, we agree that focusing the PAC's efforts almost exclusively on individual

cases without consideration for the type or significance of the allegation has led to a lack of focus. Too often, the PAC plays catch-up in a duplicative investigation, the results of which will receive little attention in the best of circumstances.[193]

Moreover, at least thus far, the PAC's policy function has been substantially overshadowed by its individual case role. For example, since it began operations in mid-1994, the PAC has received almost 1100 complaints, and conducted hundreds of investigations.[194] In contrast, the PAC has paid relatively less attention to broader issues, as revealed in a prepared statement presented to the Task Force by Mr. Soto:

> Since beginning operations, the Commission has initiated or completed 35 public hearings . . . on the complaints of citizens . . . The Commission also has conducted two public hearings, one on Police Stress in 1995 resulting in a 60 page report, and the second in June of this year on issues relevant to the police department's acquisition and execution of premises search and arrest warrants.[195]

We very much support hearings on topics such as police stress and the execution of warrants. Indeed, we believe that the PAC should focus its efforts primarily on such reviews. These systemic evaluations of the Department are crucial and represent effective endeavors that the PAC could profitably—and uniquely—undertake, particularly because of its extensive subpoena powers and its ability to compel the testimony of witnesses. As it presently stands, though, the PAC is spread too thin to engage in such systemic critiques because of its efforts to review every complaint, no matter the type, that comes before it.[196]

We stress that shifting the PAC's focus to policy issues should not foreclose the examination of significant cases that speak to particularly weighty issues. Some individual cases can be evaluated as a means of commenting on specific issues, such as excessive force. We

believe, however, that the more common complaints should, at least initially, be handled through the IAD or other departmental processes.

2. The PAC Should Be Merged With The IAO

The recommendation that the PAC shift its focus to broader, systemic reviews of the Department leads to our second recommendation: The PAC and the IAO should be combined into a single body that would operate as an independent agency outside the Department.[197] The budgets of the two entities should be combined, as should the staffs.

Broadly speaking, such a change would allow the strengths of both entities to be exploited most effectively, while minimizing or eliminating the problems that have limited the usefulness of both the PAC and the IAO.[198] As described previously, the IAO primarily engages in broad, policy reviews of the department as a whole with an eye towards systemic improvements. Particularly if the PAC's mission is redefined as we recommend, the IAO and the PAC's goals would overlap even more than they do presently.

We also believe that combining the IAO into the reconstituted PAC might allow the IAO's own agenda to be met more effectively, as the IAO's present status as an entity within the Police Department makes it difficult for the IAO to engage in some critiques of the Department. Unlike the largely independent PAC, the IAO does not have subpoena power and cannot compel testimony or the production of documents. While we compliment Commissioner Timoney, who has been quite cooperative with the IAO, we are concerned about any system that relies so heavily on the goodwill of a given Commissioner. We also note that the IAO's goals will be more achievable if it has access to improved resources and staffing. [199]

3. The PAC Should Continue To Serve As A Liaison For Citizens

We also believe that the PAC, in whatever form it exists, should continue to serve as a liaison for citizens. As Mr. Soto noted in his testimony, in the past year, the PAC attended or participated in "at least 70 community meetings, public forums, workshops, governmental committee meetings" and held 10 monthly meetings of its own.[200] It has also produced numerous resource materials and answered many citizen concerns. During the public hearings on this issue and following our own review of materials, we conclude that the PAC serves a valuable purpose by providing a public alternative for complaints about the Department. Many citizens understandably may be apprehensive about going to the Police Department to file a complaint against one of its officers. We see no reason why a newly reconstituted PAC could not continue to assist citizens in navigating the internal investigatory process. We also see no reason why even a reformed PAC could not play a role in ensuring that complaints are investigated in a timely fashion and that members of the public are treated with respect and consideration.

4. The City Must Give Meaningful Support To The PAC

In addition to these structural reforms, we strongly recommend that the City—from the Mayor down—support the PAC in a meaningful way through increased access and by the expeditious filling of vacancies on the PAC's Board. Without such support from the City and the Mayor's office, the PAC will experience the same difficulties that it has from its inception, regardless of what other reforms are made.

VIII. TRAINING, TESTING AND EVALUATION

We believe that the best way to improve the disciplinary system is to minimize the need for formal discipline. Accordingly, we examined how the Department trains, tests, and evaluates its front-line supervisors who are primarily responsible for managing personnel and imposing discipline. We also examined the use of training in appropriate situations as a substitute for formal, punitive disciplinary action.

A. Testing Of Sergeants And Lieutenant Candidates Should Include Assessment Of Their Ability To Manage And Discipline Subordinates[201]

Promotion within the Department is based on a series of examinations developed and administered by the City's Personnel Department. The examinations for sergeant and lieutenant generate a list of eligible candidates from which the Department fills openings. The time-in-rank required to qualify for the sergeant's examination is two years, and the time-in-rank required to qualify for the lieutenant's examination is three years. Most cities require more time-in-rank for promotion to these positions than does the City of Philadelphia.

The preparation and administration of both examinations are very similar. Both examinations consist of two parts. The first part is a multiple-choice examination consisting of approximately 100 questions. Our concerns center on the second phase, the oral examination.[202] Those who pass the written examination are allowed to proceed to the oral examination, which consists of two scenarios designed to test an applicant's knowledge, experience, and maturity. One scenario is technical in nature, while the second is supervisory in nature. To develop these scenarios and draft model answers, the Personnel Department creates a committee of police officers from cities comparable to Philadelphia (i.e., Los Angeles, Atlanta, Houston, and Dallas).

On the day of the test, the candidate is given the scenarios and is allowed between 30-45 minutes to prepare his or her response. After this preparation time, the candidate appears before a panel of two ranking officials from another jurisdiction. Each scenario is administered by a separate panel of two officials. The candidate is given between 10-15 minutes to present his or her response and is required to remain before the panel for the entire testing period. The candidate is graded on a variety of factors, including the accuracy of the response and ability to communicate. It is our understanding that a candidate can pass the "supervisory" section as it is presently drafted solely by memorizing a set of rules and that the examination does little to identify those individuals who would excel at a supervisor role. After appearing before both panels, the candidate's total score by all four officials is tallied and divided by four. The candidate must achieve a score of seventy in order to pass the oral examination.

During the Task Force's examination of this aspect of the Police Department, our immediate attention was drawn to the relatively short period of service (two years) after which a police officer becomes eligible to sit for the sergeant's exam. Coupled with the fact that an officer's ten months of training at the Police College counts toward the two year requirement, we are concerned that officers can become eligible for promotion into supervisory roles before accumulating the experience necessary to develop maturity and leadership skills. Indeed, two witnesses testifying at the public hearings, Deputy Commissioner John Norris, Commanding Officer of IAD, and Captain Charles Bloom, Commanding Officer, Strategic Training and Development Unit, recommended that the time-in-rank requirement (relating to promotion to the rank of sergeant) be increased to five years.[203]

Although we have considered this issue carefully, the Task Force concluded that the real issue is not the length of service but whether the supervisory candidate possesses the maturity

and skills necessary to manage and discipline others. Further, an across-the-board increase in the time-in-rank requirement may exclude from supervisory positions motivated officers who are more than capable of leading and managing others. Therefore, we recommend that the Police Department work closely with the City's Personnel Department to revise the oral section of the promotional exams for first-line supervisors (i.e., sergeants and lieutenants) so that the exams more accurately measure and assess a candidate's maturity level and supervisory abilities. Further, the persons administering the oral section of the exam should be made aware of these evaluation criteria so that appropriate emphasis can be placed on questioning in these areas.

B. Performance Evaluations Should Be Used To Determine Whether Supervisors Are Properly Managing And Disciplining Subordinate Officers

To ensure that the Department's disciplinary system is functioning effectively and appropriately, the manner in which supervisors manage and discipline subordinates must be monitored and evaluated. Unfortunately, it does not appear that the Department's current evaluation system fosters an accurate appraisal of a supervisor's performance in this area. As the Makadon Report commented in addressing this very issue:

> The Department must substantially improve its performance evaluation system because the current system does not involve any meaningful assessment of an officer's performance. Rather, it is based on an overly simplistic rating system that does not reflect even gross differences between officers.
>
> Civil Service Regulations require the Department to establish a performance evaluation system for officers. The performance rating system allows only two options: "satisfactory" or "unsatisfactory." We have been informed that over 99% of all police officers are rated "satisfactory" in a given year.
>
> In our view, this two-tiered rating system is too limiting and discourages honest evaluations. Because almost all officers are rated "satisfactory," it is virtually useless to the Department in

> making promotional decisions, or in disciplining problem officers.[204]

We understand that the evaluation system has remained essentially unchanged since the release of the Makadon Report. Captain Arthur Grover, the Commanding Officer of the Department's Recruit Training Unit, testified:

> As a rater, I'm compelled to rate the marginally [satisfactory] employee and the star [employee] in the same way, in terms of a forced choice between satisfactory and unsatisfactory. I can utilize the narrative section to bestow some positive comments on the star. But the bottom line is looking at that form in terms of the forced choice, those two individuals will have the very same rating.[205]

Echoing the Makadon Report, we strongly recommend instituting, either by way negotiation or arbitration, a rating system that provides a broader and more meaningful range of performance level categories.[206] Such categories should be designed specifically to assess an officers' performance and leadership abilities and to discourage supervisors from providing superficial (and often misleading) performance appraisals.[207] With respect to performance appraisals for supervisory personnel, evaluations specifically must assess the officer's ability to manage, supervise, and discipline—as well as lead—subordinates under his or her command.

C. Mandatory, Regularly Scheduled Continuing Education Courses For Supervisors On The Topics Of Personnel Management, Supervision, And Discipline Should Be A Department Priority

Following graduation from the Police College, officers receive continuing education and training three ways. First, officers must annually complete state-mandated training to maintain their certification as law enforcement officers in the Commonwealth.[208] This training includes twelve to sixteen hours of classroom instruction on legal developments related to police work, as well as certification testing in firearms proficiency, CPR, and first aid.[209]

The second type of continuing education revolves around the pre-promotional training that officers receive in connection with an advance in rank. As discussed above, when an officer is promoted, he or she is required to complete a brief but intensive training regimen on topics related to his or her newly attained rank. For example, newly minted sergeants are required to complete ten days of classroom training on thirty-three topics ranging from mental health awareness to auto theft.[210] Newly promoted lieutenants and captains are required to complete a mere five days of classroom training on twenty-three and twenty-six topics respectively.[211] Importantly, personnel management and discipline are only two of the numerous topics and issues that are covered in these pre-promotional training regimens, since the thrust of pre-promotional instruction as a whole is to provide officers with a broad overview of the issues they will confront in their new positions.

Only the third avenue of continuing education involves instruction specifically intended to improve skills in personnel management, supervision, and discipline. The Department's Training Bureau offers courses that have been developed in conjunction with Penn State and Northwestern Universities.[212] These courses include the Police Supervisor In-Service Training Program ("POSIT"), the Police Executive Development Program ("POLEX"), and an additional program offered through Northwestern's School of Police Staff and Command.

The POSIT course is a five-day program of instruction for law enforcement professionals who perform as first-line supervisors (i.e., sergeants).[213] The POLEX class is a two week program of instruction designed for law enforcement managers and executives holding the ranks of lieutenant and above.[214] The Northwestern program is a more in-depth and lengthy course of study. Students attend two weeks of classes each month with the other two weeks off (and the students back at work) for approximately three months.[215] Much of the program deals with

supervisory management issues and personnel evaluations.[216] At Commissioner Timoney's direction, the minimum rank needed to participate in this program was lowered from lieutenant to sergeant.[217] Students completing the program are eligible to receive eighteen college credits.[218]

Although the Department attempts to offer the POSIT, POLEX, and Northwestern courses approximately every two years, budgetary constraints limit its ability to do so.[219] Rather than usual and customary funding channels (i.e., as a recurring line item in the Department's budget), financing for POSIT, POLEX and the Northwestern program is dependent on the Education and Training Bureau securing grants from the Commonwealth.[220] Finally, the POSIT, POLEX, and Northwestern courses are not mandatory but are instead offered on a voluntary basis.[221]

While the Task Force was impressed by the quality of these continuing education opportunities for supervisors, we were equally concerned that funding and staffing shortfalls have seriously hampered the Department's ability to offer this instruction in a timely and consistent manner. Under the present system, without dedicated and recurrent funding, the Task Force fears that the Education & Training Bureau can handle only that which is absolutely essential: recruit and MPO training, with continuing education opportunities for supervisors becoming a distant afterthought.[222] Testimony by Inspector Michael Cooney, Commanding Officer, Education and Training Bureau, and Director, Philadelphia Police College on the funding issue is instructive.

> Q. If the police academy was asked to undertake [additional management training] would it be able to at this point?
>
> A. I think that with sufficient resources we could do that, yes.
>
> . . .

Q What type of resources?

A. Additional personnel and finances. We do have a means of financing some of the outside courses through block grants. That's how we send folks to Northwestern University. I might as well get a plug in now. . . I'm always after additional funds. We are actually reimbursed from the state, from the MPO Commission for both recruit and in-service training. And it's quite a healthy amount, hundreds of thousands of dollars. My understanding is [that the MPO reimbursement] goes into the [City's] general fund. It would be very helpful if some of that [reimbursement] would find its way back in the police department in the form of training funds. . . So, those kinds of resources, additional personnel and finances would be very helpful and I think help us train our folks more consistently and more timely, yes.

Q. Would it be fair to say that currently your resources are dedicated to training recruits as opposed to continuing education for supervisory personnel?

A. I think a lot of time is spent with recruits and then a lot of time is spent certifying 7,000 people under the MPO commission rules. . . . We just went through an organizational change. We looked at our organizational chart and separated into different facets [of] what we should be doing, strategic training, development, some career development things. We've made these slots, but we really haven't filled [them] with personnel. We would like to do a lot more in-service [training] than we're able to do right now.[223]

To have the most professional and well-trained personnel possible in the Department's supervisory ranks, adequate resources must be allocated to the Education & Training Bureau. To be effective, programs such as POSIT and POLEX, and the courses given through Northwestern University's School of Police Staff and Command, should be offered by the Department in a regularly scheduled, consistent manner. Further, although we realize that time in training is time off the streets, we recommend that, rather than being voluntary, such training should be mandatory for those seeking supervisory positions.

D. Centralized Records Regarding The Imposition Of Positive Discipline Should Be Maintained So That Potential Disciplinary Problems Can Be Identified And Addressed Early In An Officer's Career

Recognizing that some forms of police misconduct are the result of a lack of proper instruction and supervision, the Task Force examined how training and counseling can be used in appropriate situations as a substitute for formal, punitive disciplinary action. On this topic, Police Commissioner Timoney testified:

> Positive discipline is when you find an officer at fault [and] where it is really not an egregious violation, it may be a stupid mistake, and it may be easily correctable through training, through counseling, better supervision, a whole host of things.
>
> That's my first inclination in most cases. I give them a first shot, try and train them. Maybe they didn't do a good job at the academy, maybe the sergeant didn't do a good job, so let's try [positive discipline] . . . in the less serious cases.
>
> And then if that fails, you go to negative discipline, and that's suspensions and all the way up to termination.[224]

Current examples of improper conduct that are addressed through focused counseling and/or training include situations in which a police officer exhibits intolerance to a member of a minority group or where an officer operates his or her police vehicle in an unsafe manner. Commissioner Timoney commented:

> [P]ositive discipline may in some cases be the best recourse, retraining a police officer, sending a police officer who has made an off-color remark to a woman or a racial minority, sending them to counseling or up to the academy to sensitivity training because some people don't know any better.
>
> So suspending him for five days or three days isn't going to teach him to know better. You are better off educating him and training him and letting him know.
>
> Of course, if it happens again, then . . . you obviously punish somebody.[225]

It is the Task Force's understanding that, at present, the Department does not maintain a standard policy or procedure with respect to recording incidents of positive discipline. Nevertheless, some commanders are known to use memoranda, "counseling forms," or handwritten notes to document when positive discipline is meted out.[226] To the extent that records regarding the imposition of positive discipline do exist, they are not distributed outside of the district. If an officer is transferred, information regarding his or her positive discipline history may or may not follow to the next assignment.

While the Task Force approves of the use of positive discipline under appropriate circumstances (i.e., minor offenses), we also believe that the Department should take this approach one step further. Operating from the assumption that certain types of minor misconduct early in an officer's career constitute warning flags of potentially more serious misconduct later on, the Task Force recommends that the Department (particularly the Education & Training Bureau) compile a list of infractions that will presumptively result in appropriate training and counseling.[227]

Additionally, we are concerned that the Department does not currently maintain a centralized database regarding the imposition of positive discipline throughout the Department. Consequently, commanding officers do not always have a complete understanding of the employment, counseling, and disciplinary histories of the personnel under their supervision, increasing the possibility that the right decision may not be made in response to future incidents of misconduct.

IX. CONCLUSION

In conclusion, a Report such as this does not arise or arrive in a vacuum. The City of Philadelphia is fortunate to have an extremely capable, honorable, and dedicated police force, and we admire and applaud the thousands of officers who comprise the Department. We commend Commissioner John Timoney for his leadership and for the many significant changes he has already implemented in an effort to improve the administration of discipline within the Department. And though we might dissent, we accept as sincere the opinions of those who might disagree with parts or all of this Report.

We could not have issued this Report without the cooperation and assistance of many individuals. We appreciate all who called, wrote, and appeared before the Task Force, both informally and during our public hearings. We thank the Department, the City Law Department, and the Mayor's Office, whose representatives helped us gather critical facts and records. We thank the partners, associates, and assistants of the Task Force members, many of whom performed countless tasks in support of our efforts. Finally, though, we express our deep gratitude to our Task Force colleagues, Jill Baisinger, Adrian King, Jr., Kathleen O'Connell, and Louis Shapiro, without whom we would have been sorely disadvantaged.

This Report is our contribution to a City we love and believe in. Our goal from the beginning was to offer informed, constructive suggestions for improvement and continued success. Where we have failed, the fault is ours alone.

Respectfully submitted,

The Mayor's Task Force on Police Discipline

ENDNOTES

[1] Exec. Order § 3 (Ex. 1).

[2] Editorial, "Philly Police Reforms," Philadelphia Inquirer, Sept. 22, 2001.

[3] The story was first covered in the Philadelphia Inquirer on March 25, 2001. See Mark Fazlollah, "How a Top Cop Drank, Drove, Crashed and Covered it Up," Philadelphia Inquirer, Mar. 25, 2001, at A-1.

[4] The Task Force reviewed the entire IAD investigation file in this matter. The description of the Brady case contained herein is based upon that review.

[5] See, e.g., Mark Fazlollah, "Abraham to Review '98 Police Cover-Up," Philadelphia Inquirer, Mar. 26, 2001, at A-1; Mark Fazlollah & Robert Maran, "Timoney Defends Decision," Philadelphia Inquirer, Mar. 27, 2001, at A-1; Mark Fazlollah, "Timoney Does an About-Face," Philadelphia Inquirer, Mar. 28, 2001, at A-1; Alfred Lubran, "Police Step Down–and Up–Working The Night Shift," Philadelphia Inquirer, Apr. 17, 2001, at A-1.

[6] IAO, Report on Disciplinary System 2 (Mar. 2001) [hereinafter, "Ceisler Report"].

[7] See, e.g., id. at 14-20.

[8] See Exec. Order ¶¶ 1-2; see also Ken Dilanian, "Wayward Philadelphia Officers are Punished Lightly," Philadelphia Inquirer, Mar. 27, 2001, at A-1.

[9] Exec. Order § 3.

[10] Mr. Miller previously served as an Assistant United States Attorney and the Chief of the Criminal Division of the United States Attorney's Office for the Eastern District of Pennsylvania. Mr. Eisenhower and Ms. Epps are also former Assistant United States Attorneys, and Ms. Epps now teaches numerous criminal law courses. Mr. Negrin and Ms. Short were formerly Assistant Philadelphia District Attorneys. The Honorable Nelson Diaz formerly served as a Philadelphia Common Pleas Court judge who handled criminal as well as civil matters. A brief biography of each Task Force member is included at Appendix A.

[11] A list of individuals with whom the Task Force spoke on an informal basis is included at Appendix B.

[12] A list of individuals who testified at the public hearings is included at Appendix C.

[13] In acknowledgement of the public's interest in this issue, the Task Force established a web site containing an e-mail link (http://www.phila.gov/mayor/jfs/ptf/index.html), a mailbox, and a phone number at which individuals could leave messages. We also issued public notices in various local newspapers. The Task Force attempted to respond to each person who wrote or called and determine whether he or she had information that would assist the Task Force. Notwithstanding these efforts, most members of the public who contacted the Task Force simply did not have information that spoke to issues of police discipline. Rather, most people raised issues of alleged police misconduct rather than the Department's response to that alleged misconduct.

[14] See Demand for Arbitration, dated July 2, 2001 (Ex. 2).

[15] See Testimony of Fred Voight at 53-54 (Sept. 10, 2001). All references to "Testimony" cite to the transcripts prepared from the five days of public hearings held by this Task Force at City Hall.

[16] Philadelphia Police Study Task Force, Philadelphia and Its Police: Toward a New Partnership at 15 (1987) [hereinafter, "Tucker Report"].

[17] Id. at 137-40.

[18] Report & Recommendations of the Police Corruption Task Force Pursuant to Executive Order 97-1 of the Mayor of Philadelphia 1 (1999) [hereinafter, "Makadon Report"].

[19] Id. at 19-20.

[20] Id. at 12-13.

[21] Committee of 70, Philadelphia Police Department Governance Study 1 (1998) [hereinafter, "Governance Study"].

[22] Much of the information used in preparing this section is drawn from the Ceisler Report, see id. at 6-13, and from a memorandum prepared by Peter Winebrake, Esquire, Chief Deputy City Solicitor for Labor and Employment, entitled "Overview of the Police Disciplinary System" (Apr. 27, 2001) (on file with the Task Force). We also relied on information conveyed during the public testimony of Mr. Winebrake; Lieutenant Jacqueline Daley; Captain William Markert; Commissioner John Timoney; and William Grab, Director of Labor Relations. Finally, we referred to Police Department Directive 79.

[23] If the alleged misconduct involves a civilian complaint against a police officer, potential criminality, official corruption, or a shooting by a police officer, the formal disciplinary process is often initiated by an investigation conducted by IAD. The IAD employs over fifty individuals and is overseen by Chief Inspector Robert Eichler, who reports directly to Deputy Commissioner John Norris. In the event of an IAD investigation, the accused officer is entitled to 72-hours of notice before he or she is interviewed regarding the allegations and is also entitled to representation, typically by an attorney provided by the FOP. At the conclusion of its investigation, the IAD issues a report, which is then attached to, and submitted with, a Form 75-18 to the PBI. If criminal charges are at issue, IAD refers the matter to the District Attorney and the appropriate Police Detective Division. At the conclusion of the IAD investigation, a Report is addressed to the Police Commissioner and proceeds through the chain of command. The Commissioner may refer the case to the DA and order discipline, he may simply order discipline, or the file may be closed. See, e.g., Testimony of Lieutenant Jacqueline Daley at 135 (Sept. 10, 2001).

[24] See Ceisler Report at 7.

[25] Id. at 136-38.

[26] Id. at 138.

[27] See Disciplinary Flow Chart (Ex. 3).

[28] This is the process that was applied to Captain Brady and Lieutenant DiLacqua.

[29] See Disciplinary Flow Chart.

[30] See Testimony of Marvin Burton at 73 (Oct. 1, 2001).

[31] Id.

[32] See, e.g., Ceisler Report at 6 n.6.

[33] For example, in the 25th District, Captain Thomas Nestel, III, requires supervising officers to complete and file Counseling Forms for this purpose. These Counseling Forms document any informal corrective action (including

training) taken by the supervising officer with an explanation. Although the FOP filed a grievance, it is our understanding that this grievance has been settled in a manner that allows the Department to continue using the form.

[34] As noted previously, this Task Force was not given the mandate to recommend general improvements in the Police Department. It is because of this limitation that we have declined to issue any recommendations regarding revision to the Commissioner's appointment powers, notwithstanding the seeming agreement by other commentators that this would be a useful reform.

Under the City Charter provisions governing the Philadelphia Civil Service, the Police Commissioner is permitted to appoint only two deputies—all other positions within the Department, even high-level managerial and policy positions, are filled through the Civil Service process. See Philadelphia Home Rule Charter § 7-301. Numerous commissioners, including Commissioner Timoney, have contended that this inability to shape the upper levels of the Department has hampered their ability to impose discipline in the manner that they believe to be appropriate. See Testimony of Commissioner John Timoney at 43-44 (Oct. 4, 2001); see also Voight Testimony at 54-55; Makadon Report at 13-14 (recommending change); Tucker Report at 154 (same); Governance Study at 16-17; Committee of 70, Personnel Practices Governance Study at 43, 47 (1986). While we are not unsympathetic to this view and tend to agree that the Commissioner should have more appointment powers, we have simply not been presented with testimony or other documentation demonstrating that the limits on appointments have a concrete effect on discipline in particular and that revising this portion of the Charter would in some way therefore improve the Department's disciplinary processes. Given this fact and the extremely onerous and politically difficult effort that would be required to revise the Charter, we believe that the other issues addressed in this Report should be the focus of efforts to improve the disciplinary process.

[35] Ceisler Report at 7.

[36] Id.; see also Daley Testimony at 137-38.

[37] Daley Testimony at 139-40.

[38] Timoney Testimony at 11-12.

[39] Id. at 12.

[40] Daley Testimony at 152; see also Ceisler Report at 8-9; Testimony of Ellen Ceisler at 85-88 (Sept. 10, 2001).

[41] Timoney Testimony at 9-10; Ceisler Report at 8-9.

[42] Timoney Testimony at 14.

[43] Burton Testimony at 72-73. Prior to the reforms recently initiated by Commissioner Timoney, the Police Department advocate was responsible for selecting the officers detailed to sit on PBI panels. Id. at 72. Thus, the person responsible for prosecuting the Department's case against an accused officer was also responsible for selecting the persons who would determine whether the Department had produced evidence sufficient to support the charges at issue. Not surprisingly, concerns arose regarding the appropriateness of this procedure. Apart from basic conflict of interest concerns, some in the Department felt that Advocates were inclined to pick PBI panels based upon selected members' reputations for being either "tough" or "easy" in police disciplinary matters. Id. at 73.

[44] Id. at 77.

[45] Testimony of Captain William Markert at 139 (Sept. 24, 2001).

[46] Id. at 129-30.

[47] Several individuals testifying at the Task Force hearings endorsed the consideration of a permanent PBI panel. See Daley Testimony at 156-57 (stating: "Yes, I would be in favor of a more permanent PBI panel…. I think it would go a long way towards consistency in having individuals in a more consistent setting hearing cases across the board"); Ceisler Testimony at 113-14; Testimony of John Norris at 36 (Oct. 1, 2001); Markert Testimony at 143; see also Burton Testimony at 76 (generally supporting concept but expressing concern that a permanent panel might be prejudiced against officers who come before the panel repeatedly).

[48] Hector Soto, the PAC's Executive Director, recommended increased civilian involvement at the PBI stage. Testimony of Hector Soto at 25 (Sept. 25, 2001).

[49] The Task Force understands that all other types of PBI proceedings, particularly those dealing with police methods and tactics, are closed to the public, a division that we believe to be appropriate. See Burton Testimony at 77.

[50] Id. at 74.

[51] Id. at 75.

[52] Markert Testimony at 126, 137.

[53] Id. at 137 (emphasis added).

[54] Id. at 140.

[55] Id. at 138; see also Ceisler Testimony at 96-97; Norris Testimony at 36.

[56] See Burton Testimony at 74.

[57] See Pre-Promotional Training Curricula (on file with the Task Force).

[58] Id.

[59] See supra notes 53-55; Ceisler Report at 36 (commenting that "Board members are not objectively evaluated, nor do they receive training or instruction in the expectations and policies of the Department regarding the role and responsibilities of a board member"); Daley Testimony at 157 (stating that, among other things, "[training] would go a long way towards perhaps improving the system"), see also Frazier Group, LLC, Best Practices Review of Comparable Cities at 14 [hereinafter, "Frazier Report"] (Ex. 4).

[60] Ceisler Report at 30; see also Ceisler Testimony at 95.

[61] Id. at 30-32.

[62] Id. at 31; see also Soto Testimony at 23-24 (noting that the PAC has experienced difficulty in acquiring transcripts).

[63] Commissioner Timoney suggested separating individuals ranked sergeants and higher from the present union. Timoney Testimony at 42.

[64] Id. at 17; see also id. at 38 (same). Kenneth Jarin, an attorney with extensive experience in labor negotiations, used strong language, referring to this as a "terrible system for any organization to have, particularly a police organization[.]" Testimony of Kenneth Jarin at 43 (Sept. 25, 2001); see also id. at 59; Norris Testimony at 49-53 (stating that one of his first reforms would be to "take the supervisors out of the Fraternal Order of Police, Lodge 5"); Burton Testimony at 82-83 (suggesting that current structure creates a conflict of interest); Testimony of

William Grab at 112-13 (Oct. 1, 2001) (suggesting that current system creates bad incentives and conflicts of interest).

[65] Timoney Testimony at 17-18.

[66] Id. at 40-42.

[67] Jarin Testimony at 44-45; Voight Testimony at 72-74; Daley Testimony at 158; Ceisler Testimony at 115-16; Testimony of Marlene Ramsay at 14, 44-45 (Sept. 24, 2001). Inspector Michael Cooney stressed that while the single union was not an ideal situation, he did not believe it had affected his own disciplinary decisions. Testimony of Inspector Michael Cooney at 112-14 (September 25, 2001).

[68] Testimony of James Jordan at 51-52 (Sept. 24, 2001).

[69]We address the FOP's more significant concern—that many officers might be stripped of any union protection—below.

[70] Tucker Report at 138.

[71] Governance Study at 13. This Committee included the following statement: "[M]any high ranking department officials made it very clear that they did not feel that the FOP represented them or was concerned with their best interests. Some said the FOP was constantly prohibiting them from doing their jobs and they resented paying into a system that perpetuated difficulties for them." Id.

[72] Id. at 13; see also, Frazier Report at 3-5.

However, as one of the witnesses before the Task Force testified, this structure is not particularly unusual for uniformed public sector employees in Pennsylvania because of the way Act 111 has been construed. See Jarin Testimony at 40-45. Mr. Jarin explained that Act 111, 42 P.S. § 217, which governs all police departments in Pennsylvania, may be contrasted with Act 195, the law governing other public employees in Pennsylvania. Under Act 195, non-supervisory employees are represented in one bargaining unit, while so-called "first level supervisors" are included in a separate unit with which management must meet but with which there is no requirement of bargaining. Individuals above the first level supervisors—"managerial" employees—have no right to be in a union. Under case law interpreting Act 111, the dividing line falls much higher and excludes only those designated as managerial employees, who are generally defined as individuals involved in policy making decision, budget development, collective bargaining, and similar processes. Consequently, in practice, under current interpretations of Act 111, many, if not most, police departments in Pennsylvania have a similar union organization as does Philadelphia. See id. at 40.

[73] Governance Study at 13.

[74] Id. at 19-20 (comparing structure and size of twenty largest police forces).

[75] The City previously attempted to remove lieutenants and higher ranks from the FOP bargaining unit in 1988. The record in that case contains transcripts of two brief hearings before the Pennsylvania Labor Relations Board ("PLRB"), an FOP motion to dismiss the petition and exhibits introduced at the hearings and submitted in support of the motion to dismiss. After numerous continuances, the last action in the case was a continuance granted in December of 1992. The petition has not been dismissed by the PLRB despite more than eight years of inactivity. Despite this absence of activity, the Secretary of the Board indicated that the record was fairly extensive. Were the City to proceed with this course of action, the record should be reviewed to determine the basis for the FOP's motion to dismiss the petition and to determine whether a new proceeding should be instituted or the old petition revived.

[76] Timoney Testimony at 18-19.

[77] Governance Study at 13.

[78] Jarin Testimony at 47-48.

[79] Governance Study at 13; see also Tucker Report at App. B at 187-88.

[80] Testimony of Rochelle Bilal at 93-101 (Sept. 24, 2001).

[81] Id. at 95. Notably, at the informal meeting we held with the FOP, its representatives made the same claim.

[82] Timoney Testimony at 73-80; see also Jordan Testimony at 49 ("[I]n three years of reviewing virtually every internal affairs investigation that was completed during that time, I did not find a case where it appeared to me that anyone was motivated by race. That doesn't mean it doesn't happen."); Norris Testimony at 50-51 (noting same).

[83] Bilal Testimony at 105-06. Although Karen Simmons stated that she did maintain some statistics, her testimony suggested that this information is not kept in any form that would be useful for these purposes. Timoney Testimony at 79-80.

[84] Voight Testimony at 69-70. In response to another question, Mr. Voight acknowledged that there were certainly lawsuits that raised "discrimination problems," but he emphasized that that these cases did not specifically address discipline. However, he continued, "I was not meaning to suggest at all that there has not been that history. You and I both know of a commissioner and a mayor who did not believe that women were fit at all in any fashion to serve in that department." Id. at 71-72.

[85] Ceisler Testimony at 120-23, 125-26 ("I will tell you that there is a very strong perception that race or sex or rank or who you know influences what happens to you in terms of disciplin[e]—that is a very strongly held belief, and I believe it is very corrosive." Id. at 120.); see also Jordan Testimony at 49-51 (stating that, while he had found no evidence, there is a strong belief in racist and/or sexist imposition of discipline).

[86] Cooney Testimony at 126.

[87] Jordan Testimony at 77-78.

[88] Ms. Ceisler noted before this Task Force that "one of the major problems I found was that after the disciplinary paper is filed, after the 7518s were filed by the commanding officer, nobody ever found out what happened to it." Ceisler Testimony at 110; see also id. at 113. She noted that computerized tracking was an innovation that would hopefully address this problem. Id. at 110; see also generally Ceisler Report.

[89] Timoney Testimony at 78.

[90] State Sys. of Higher Educ. v. State Coll. Univ. Prof'l Assoc., 743 A.2d 405, 409 (Pa. 1999) (footnote omitted).

[91] Id.

[92] Burton Testimony at 95.

[93] As this second step is not currently utilized, the grievant usually proceeds directly to the third step. The FOP has expressed a desire to use the second step, and it recently commenced litigation demanding that the second step be utilized. The Police Department opposes such an approach.

[94] See Philadelphia Home Rule Charter §§ 3-804, 7-200, and 7-201; Philadelphia Civil Service Regulations §§ 17.01-17.06.

[95] Philadelphia Home Rule Charter § 7-303.

[96] MOLR Report.

[97] Apparently, the Police Commissioner does not agree with the MOLR definition of "split decision" in every case. In particular, the Commissioner views any change or diminution of his discipline as a union win. Thus, if an arbitration reduced a ten-day suspension to five days, the MOLR would characterize the outcome as a "split decision," while the Commissioner would characterize the outcome as a "union win."

[98] Timoney Testimony at 22-27.

[99] For example, in one arbitration, Philadelphia v. FOP, No. 96-3281 (Pa. Commw. Ct. Apr. 14, 1998), a police officer, while on duty in April 1994, crashed her patrol car and was taken to the hospital. Blood samples revealed the presence of cocaine and alcohol in the officer's system. The IAD subsequently concluded that grievant was under the influence, and the Police Department dismissed the officer. After conducting a hearing, the arbitrator found that "[t]he City has proven, through credible evidence that [grievant] had cocaine in her system[.]" Nonetheless, the arbitrator reinstated grievant without back-pay.

In another case, AAA Case 14390 00146 93, the IAD determined that the police officer stole a money order while executing a search warrant in 1991. The officer acknowledged possession of the money order but contended that he found it at the police station after the raid. The case went to arbitration, and, in a July 1994 award, the arbitrator observed that the officer "presents a somewhat bizarre story in explanation of his conduct or, indeed, lied about the events which were the basis for the disciplinary action. . . " Nonetheless, the arbitrator reinstated the officer without back-pay.

In a third case, AAA Case No. 14390 00757 97, the IAD determined that, in 1997, an officer refueled his personal vehicle at a Hertz car rental parking lot and left without paying. Grievant allegedly used his police identification to get onto the lot. The officer was criminally charged but not convicted. In an April 1998 award, the arbitrator deemed the officer's conduct "objectionable and inconsistent with the standards of conduct expected from a Philadelphia police officer. Nonetheless, "and with some reluctance," the arbitrator reinstated the officer with back-pay.

In a fourth case, AAA Case No. 14 390 00198 95 W, an officer was arrested in December 1994 for selling illegal switch blades to an undercover State Trooper. The officer was criminally charged and agreed to be placed in an ADR program. Notwithstanding these proven facts, the arbitrator converted grievant's termination to a thirty-day suspension and reinstated him.

[100] Testimony of Peter Winebrake at 13-14 (Sept. 10, 2001).

[101] Id. at 14.

[102] Id. at 15-16. As the MOLR Report notes, the current situation is consistent with historical trends. Of the 821 arbitrations analyzed by the MOLR, 593 arbitrations (or 72%) were brought by the FOP, and 228 arbitrations (or 28%) were brought by all other unions combined.

[103] Winebrake Testimony at 15-16.

[104] Id. Other paramilitary organizations do not have this volume of disciplinary arbitrators. The MOLR reports that, as of October 11, 2001, there were 333 open police arbitrations, compared to 41 arbitrations filed by the firefighters' union and three arbitrations filed by the City's deputy sheriffs. See MOLR Report.

[105] We acknowledge, however, that the Department contends that it "seriously utilizes" these steps and that it believes that the FOP is unwilling to do so.

[106] See Ramsay Testimony at 28-29 (discussing the Department of Human Services' success in resolving disputes prior to arbitration).

[107] Jarin Testimony at 51.

[108] Id.

[109] Id. at 52.

[110] Arbitration is expensive. In addition to the significant attorney's fees incurred throughout the process, the parties must split a filing fee of $350.00 per case and pay the assigned arbitrator's daily rate, which generally ranges between $800.00 and $1,400.00 per day. According to information provided by the City Law Department, in fiscal year 2001, the City paid to AAA approximately $120,000.00 in labor arbitration fees for cases involving the Police Department. This covers the City's share of AAA payments. The Task Force has not obtained any information concerning the FOP's payments to AAA during this time period. However, it would not be surprising if the amount also exceeded $100,000.00.

[111] MOLR Report.

[112] Id.

[113] Id.

[114] See State Sys. of Higher Educ., 743 A.2d at 409 (characterizing labor arbitrations as "swifter, less formal, and less expensive than traditional dispute resolution by courts").

[115] MOLR Report.

[116] Id.

[117] See Administrative Office of United States Courts' website, located at http://www.uscourts.gov.

[118] Id.

[119] Some recent examples are described below:

> In AAA Case No. 14 390 00754 97 CD, a police officer challenged his two-day suspension stemming from alleged misconduct in September 1995. The arbitration demand was filed on May 2, 1997. In February 2001, the arbitrator issued a nine-page opinion overturning the suspension. The City estimates that the parties paid over $2,500.00 in combined arbitration fees.
>
> In AAA Case No. 14 390 00495 00, a police officer challenged her one-day suspension stemming from alleged misconduct in February 1998. The arbitration demand was filed on March 20, 2000. In June 2001, the arbitrator issued a ten-page opinion overturning the one-day suspension. The City estimates that the parties paid nearly $2,000.00 in combined arbitration fees.
>
> In AAA Case No. 14 390 00636 98 A, a police officer challenged his five-day suspension stemming from alleged misconduct in June 1997. The arbitration demand was filed on April 16, 1998. In June 2001, the arbitrator issued a fifteen-page opinion reducing the five-day suspension to one day. The City estimates that the parties paid over $5,000.00 in combined arbitration fees.

In AAA Case No. 14 390 00047 99 A, a police officer challenged his three-day suspension stemming from alleged misconduct in January 1998. The arbitration demand was filed on January 8, 1999. In January 2001, the arbitrator issued a twelve-page opinion sustaining the three-day suspension. The City estimates that the parties paid over $3,500.00 in combined arbitration fees.

In AAA Case No. 14 390 00956 00 A, a police officer challenged his two-day suspension stemming from alleged misconduct in August 1998. The arbitration demand was filed on May 30, 2000. In May 2001, the arbitrator issued a nine-page opinion reducing the two-day suspension to a written reprimand. The City estimates that the parties paid over $2,000.00 in combined arbitration fees.

In AAA Case No. 14 390 00491 00, a police officer challenged his three-day suspension stemming from alleged misconduct in February 1999. The arbitration demand was filed on March 20, 2000. In May 2001, the arbitrator issued an eleven-page opinion overturning the suspension. The City estimates that the parties paid over $2,000.00 in combined arbitration fees.

In AAA Case No. 14 390 00020 00, a police officer challenged his three-day suspension stemming from alleged misconduct in February 1999. The arbitration demand was filed on December 23, 2000. In March 2001, the arbitrator issued a nine-page opinion upholding the suspension. The City estimates that the parties paid over $2,000.00 in combined arbitration fees.

In AAA Case No. 14 390 01577 99, a police officer challenged his three-day suspension stemming from alleged misconduct in January 1999. The arbitration demand was filed on September 29, 1999. In January 2001, the arbitrator issued a six-page opinion upholding the suspension. The City estimates that the parties paid nearly $1,500.00 in combined arbitration fees.

[120] Philadelphia Home Rule Charter § 7-201.

[121] Id. § 7-201; see also id. at Annotation 1 ("The major function of the Civil Service Commission is to serve as an appellate tribunal in cases involving employees against whom disciplinary action by dismissal, demotion or suspension has been taken.").

[122] Id. § 7-303.

[123] See "Six-Month Analysis of Civil Service Cases–June 2000 to December 2000."

[124] MOLR Report.

[125] Id.

[126] Winebrake Testimony at 26-27.

[127] Id.

[128] Grab Testimony at 124; see also Burton Testimony at 91-92 (explaining that officers often cannot attend PBI hearings due to scheduling conflicts).

[129] MOLR Report.

[130] Timoney Testimony at 85.

[131] Burton Testimony at 95.

[132] MOLR Report.

[133] Winebrake Testimony at 19; Grab Testimony at 109-10.

[134] Winebrake Testimony at 21-22.

[135] Fed. R. Civ. P. 26(f).

[136] Fed. R. Civ. P. 42(a).

[137] Jarin Testimony at 58-59.

[138] Burton Testimony at 96.

[139] See cases described in supra note 119.

[140] Philadelphia Home Rule Charter § 7-303.

[141] Id. § 7-201.

[142] Id. § 7-201 (Annotation 3)

[143] 656 A.2d 83, 89 (Pa. 1995).

[144] Id. at 89-90.

[145] Id. at 90.

[146] Pennsylvania State Police v. Pennsylvania State Trooper's Ass'n, 741 A.2d 1248, 1251 (Pa. 1999).

[147] See, e.g., City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 728 A.2d 1043 (Pa. Commw. Ct. 1999); Township of Hellam v. Hellam Township Police Officers' Ass'n, 722 A.2d 740 (Pa. Commw. Ct. 1998); Pennsylvania State Troopers' Ass'n v. Pennsylvania State Police, 718 A.2d 1288 (Pa. Commw. Ct. 1998); City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 717 A.2d 609 (Pa. Commw. Ct. 1998); Pennsylvania State Police v. Pennsylvania State Troopers Ass'n (Rodney Smith), 698 A.2d 688 (Pa. Commw. Ct. 1997), aff'd, 741 A.2d 1248 (Pa. 1999); City of Philadelphia v. Fraternal Order of Police, Lodge No. 5, 677 A.2d 1319 (Pa. Commw. Ct. 1996); Fraternal Order of Police Haas Memorial Lodge No. 7 v. City of Erie, 668 A.2d 241 (Pa. Commw. Ct. 1995).

[148] Mr. Jarin suggested that the standard utilized for appeals of grievances under Act 111 was essentially nonsensical and that the rationale for utilizing this standard had been misapplied: "Applying [the] same standard to a grievance arbitration makes no sense. That wasn't part of any quid pro quo. There has to be some ability for both sides to go to a court and say this arbitrator was just completely off base, not that it was close . . . but completely off base and that there's certain awards, and we have seen them, that are so outrageous that they violate public policy, defy logic and should be overturned[.]" Jarin Testimony at 62.

[149] See id. at 60-65; Grab Testimony at 111-12, 125.

[150] Timoney Testimony at 54-56.

[151] For the record, the Task Force notes that it is not alone in advocating that the Betancourt standard of review be expanded. Both the Pennsylvania League of Cities and Municipalities (PLCM) and the Pennsylvania State Association of Township Commissioners (PSATC) have designated the revision of Act 111 as legislative priorities for this year. See http://www.plcm.org; http://www.plcm.org/PSATC/PSATC.htm.

[152] Pennsylvania State Police v. Pennsylvania State Trooper's Ass'n, 741 A.2d 1248, 1253 (Pa. 1999) (Castille, J. concurring).

[153] Id. at 1254 (Nigro, J. concurring).

[154] Executive Order 8-93 §§ 1-2.

[155] See, e.g., Young v. Rendell, Civ. A. No. 95-6109, 1995 WL 596164 (E.D. Pa. Oct. 5, 1995); Fraternal Order of Police, Lodge No. 5 v. Pennsylvania Labor Relations Board, 727 A.2d 1187 (Pa. Commw. Ct. 1999).

[156] PAC Fiscal Year 2000 Report at 3 [hereinafter, "PAC FY 2000 Report"].

[157] Executive Order 8-93 § 4(f)(3).

[158] Id. § 4.

[159] Id. § 4(b).

[160] Letter from Hector W. Soto to JoAnne Epps 1 (July 3, 2001) (on file with the Task Force).

[161] Id. at 2.

[162] Id.

[163] Id.

[164] Id.

[165] Executive Order 8-93 § 4(d).

[166] Id. § 4(f).

[167] See generally PAC Regulations (effective Dec. 4, 1998); see also id. §§ II (meetings and hearings); III (conduct of public hearings).

[168] Id. § II(B).

[169] PAC FY 2000 Report at 13.

[170] PAC Regulations § II(D).

[171] Id. § III(B).

[172] Id. § III(C).

[173] Letter from Hector Soto to JoAnne Epps 2 (July 3, 2001) (on file with the Task Force); see also Soto Testimony at 16-18.

[174] Id.

[175] Letter from Hector Soto to Deputy Commissioner Norris 2 (Feb. 21, 2001) (on file with Task Force).

[176] Id.

[177] See NAACP Settlement Agreement and Attachments, dated September 4, 2001.

[178] Id.

[179] Id.

[180] Ceisler Testimony at 81-82.

[181] See, e.g., Fed. R. Civ. P. 60(b).

[182] Ceisler Testimony at 106.

[183] Id. at 108, 114.

[184] Id. at 83; see also First & Second Reports of the IAO.

[185] General Order 7595.

[186] PAC FY 2000 Report at 13, 14.

[187] Id. at 14; see also Soto Testimony at 14-15.

[188] Soto Testimony at 13-15.

[189] Timoney Testimony at 27-30.

[190] Id. at 28.

[191] Id. at 28-29.

[192] Id. at 30-33.

[193] A recent study by the United States Department of Justice titled "Citizen Review of Police: Approaches and Implementation" offers additional support for our conclusions. This study, provided to us by Mr. Soto, was published in March 2001 and examined in detail the civilian oversight systems in nine jurisdictions: Berkeley, California; Flint, Michigan; Minneapolis, Minnesota; Orange County, Florida; Portland Oregon; Rochester, New York; St. Paul, Minnesota; San Francisco, California; and Tucson, Arizona. While we do not necessarily believe that these nine jurisdictions are necessarily comparable to the Philadelphia system (we note that there was no review of any of the largest jurisdictions in the country, such as Chicago, Baltimore, Dallas, Los Angeles, New York, Philadelphia, or Los Angeles, and only one of the jurisdictions is even on the East Coast), the Report does identify four broad categories of civilian review that offer some insights into the advantages and disadvantages of the Philadelphia system. In the first model, citizens investigate allegations of police misconduct and recommend findings; in the second model, police officers investigate allegations and develop findings while citizens review and recommend that the chief or sheriff approve or reject the findings; in the third model, complainants may appeal findings established by the police or sheriff's department to citizens, who review them and make their own recommendations and findings; and in the fourth model, an auditor investigates the process by which the police or sheriff's department accepts and investigates complaints and reports on the process to the department and to the

public. Report at vii, 6-9. The PAC, as it currently functions, would fall into the first model. Although there are advantages to this system, as the Justice Department's Report notes, while this type of system can "help reassure the public that investigations of citizens are thorough and fair," this system tends to be very expensive and the "investigations model typically has no mechanism for soliciting the public's general concerns about police conduct." Id. at vii; see also Frazier Report at 10-11 (finding that the consolidation of internal auditor functions with outside civilian review bodies is the most successful oversight model).

[194] Soto Prepared Statement at 2.

[195] Id. at 3.

[196] In making this recommendation, we make no parallel finding that every investigation of a civilian complaint is adequately or properly investigated internally, but we simply do not see a practical way in which the PAC's complaints about the Department's reactions to its recommendations on discipline in individual cases can be accommodated.

It is for this reason that we do not adopt many of the thoughtful proposals recommended by Mr. Soto in his prepared testimony. Although detailed in Appendix D to this document, we note that most of the recommendations pertain to difficulties that the PAC has had in its investigatory efforts. For example, Mr. Soto recommends that the Commission be solely responsible for investigating all complaints originating with it and that it have access to closed DA criminal investigative files just as do the IAD investigators. While we do not doubt that adoption of these recommendations would make it easier for the PAC to conduct individual investigations, in light of our conclusions that the PAC should no longer be engaged primarily in such individual inquiries, we do not adopt these proposals.

[197] While we expect that the newly constituted entity will largely define its own agenda, one possible area of inquiry might be an analysis of the relationship between significant settlements and other adverse findings in civil rights cases and internal disciplinary actions by the Department.

[198] We note that one of the options Mr. Soto presented to the Task Force with which we do agree is that "the jurisdiction of the Office of Integrity and Accountability should be expanded to allow it to work on joint ventures with the Commission." Prepared Statement at 10, rec. 9.

[199] See Jordan Testimony at 54-57 (noting that IAO has persistently suffered from inadequate resources).

[200] Soto Prepared Statement at 4.

[201] This section of the report is based primarily upon an interview of Mark O'Connor, Hiring Services Manager, City of Philadelphia Personnel Department, that was conducted on October 25, 2001 by Task Force staff.

[202] In developing the examinations, the Department examines the job description for the position and determines the salient features of the work. For example, because sergeants are required to handle large volumes of paperwork, the sergeant's examination has questions pertaining to frequently used forms. In contrast, lieutenants are required to deal with complex disciplinary issues, and that examination is weighted to address matters such as progressive discipline.

To generate the questions for the test, the Personnel Department draws upon information from Police Directives, investigation textbooks, crimes codes, and other materials. Although the Department is not involved in preparing test questions, these materials are reviewed by the Police Department to ensure that that they are current and appropriate. Once the Department has finished its review and provided feedback, the Personnel Department creates questions based upon the materials in the source list. The Personnel Department publishes a bibliography at least ninety days before the testing date to give candidates time to study for the examination. If the bibliography differs from the previous test administration, the bibliography must be published 120 days before the examination.

[203] Testimony of Capt. Charles Bloom at 85 (Sept. 25, 2001); Norris Testimony at 68.

[204] Makadon Report at 10-11.

[205] Testimony of Capt. Arthur Grover at 111 (Sept. 25, 2001).

[206] The current two-tiered rating system of "satisfactory"/"unsatisfactory" is mandated by Civil Service Regulations §§ 9.02322, 23, and by Article XX, subsection A, of the Collective Bargaining Agreement, which provides:

> the performance rating system shall provide satisfactory and unsatisfactory ratings only. In order to qualify for a promotional examination, a police officer will be required to have an overall satisfactory rating.

Thus, a change in the performance evaluation system can be accomplished only through collective bargaining, or, if necessary, binding arbitration.

[207] In this regard, the Task Force understands that, in the past, raters were given the option of utilizing the classifications of satisfactory, unsatisfactory, outstanding and superior. See Cooney Testimony at 110.

[208] This training is known as "MPO," or Municipal Police Officer's training.

[209] Bloom Testimony at 91-92

[210] Pre-Promotional Training Curricula.

[211] Id.

[212] Bloom Testimony at 92-93; Cooney Testimony at 94-95.

[213] See POSIT Curriculum. The various sections of this course include:

- Role of the First Line Supervisor
- Total Quality Leadership
- Team Building
- Sexual Harassment
- The Legal Aspects of Appraisal
- Standards of Performance
- Managing Performance
- The Creative Supervisor
- Performance Based Supervision Workshop: The Marginal Employee
- Supervisory Styles
- Current Trends and Their Impact
- Subordinate Styles
- Discipline

[214] See POLEX Curriculum. The various sections of that course include:

- Evolution of Management
- Executive Responsibility
- Counseling Employees / Handling Problem Employees
- Human Behavior in Organization / Motivation and Career Development

- Decision Making
- Problem Solving
- Planning
- Groups: Stages and Dynamics
- Decision by Consensus
- Quality in Policing
- Leadership
- Leadership in the New Workplace
- The Quantification of Quality
- Protecting the Organization Through Better Management
- Administrative Liability Issues
- A Risk Management Workshop
- Leading Those Who Supervise
- Managing the Stress of Leadership
- Executive Planning and Decision Making
- Managing the Change Process
- Renaissance Leadership

[215] Cooney Testimony at 94.

[216] Id.

[217] Id. at 94-95.

[218] Id.

[219] Bloom Testimony at 93.

[220] Id.

[221] Id.

[222] In making this recommendation, the Task Force is not suggesting that the Department should cease efforts to obtain education grant money. Rather, the Department should commit itself to fund continuing education for supervisors year in and year out, regardless of whether it obtains outside grants. Only then will the Education & Training Bureau be able to offer supervisory continuing education in the consistent and timely fashion that is needed.

[223] Cooney Testimony at 95-98.

[224] Timoney Testimony at 28-29.

[225] Id. at 30.

[226] Cooney Testimony at 101-102.

[227] See e.g., Frazier Report at 11-13. Of course, this recommendation, if accepted might lead to additional grievances from the FOP. We hope, however, that the FOP would recognize this step as one that might actually assist its officers in the successful development of their careers.