



PN-PA-002-004

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA**

NAACP, ACLU, PBRP : CIVIL ACTION No. 96-CV-6045

V. :

CITY OF PHILADELPHIA : HON. STEWART DALZELL

**PLAINTIFFS' FIRST
MONITORING REPORT**

*** * ***

**COMPLAINTS AGAINST
POLICE**

SEPTEMBER 1997

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I. INTRODUCTION

In 1995, as the facts concerning the corruption and misconduct in the 39th Police District were fully emerging, several organizations formulated plans to bring a class action lawsuit in federal court to seek injunctive relief that would remedy the longstanding and recurring incidents and patterns of police misconduct in Philadelphia. These organizations, the NAACP, the Police Barrio Relations Project, and the ACLU, *retained counsel* experienced in this area and drafted a Complaint that addressed the various systemic issues of corruption and misconduct.

Prior to filing this action in court, counsel for the organizations submitted the Complaint to the City to determine if an agreement could be reached short of full scale litigation. The Mayor and Police Commissioner authorized an exhaustive discussion of all of the issues and, after six months of negotiation, the parties agreed to settle this matter under the terms and conditions of a comprehensive Settlement Agreement. This Agreement committed the Police Department of the City of Philadelphia to a number of significant reforms. The Agreement also recognized the importance of monitoring the policies and practices of the Department to ensure that these reforms were in fact implemented and to confirm that the Police Department used the information and new procedures detailed in the Agreement in the everyday workings of the Department. To achieve effective monitoring, the Agreement provided for the appointment of an Integrity and Accountability Officer and for monitoring by plaintiffs' counsel.

The Settlement Agreement was approved by Judge Stewart Dalzell on September 4, 1996 and its terms and provisions are subject to Judge Dalzell's jurisdiction. There has been

progress in achieving the preliminary goals of the Agreement. The Mayor has appointed a Task Force to study and make recommendations on structural and policy issues concerning corruption and misconduct. James B. Jordan, Esquire, has been appointed as the Integrity and Accountability Officer and has initiated several important studies of current police operations. A Use of Force Reporting Policy has been promulgated and is about to be made operational. There appears to be stricter supervision of narcotics officers and narcotic operations. The Department has instituted some changes in the operations of the Internal Affairs Division. In other areas covered by the Agreement, (e.g., computerization, employee enhancement, promotional policies) there has yet to be adequate movement. We look forward to total compliance in the coming year.

It should be understood that the Agreement will result in progressive change only if each of the provisions is fully implemented and the Department in fact effectively uses the information that is generated by the reforms. It will do little good to accumulate data concerning use of force, for example, if the Department does not seriously analyze the information and fully address any patterns or practices revealed that are contrary to law or Departmental directives. And unless the information concerning use of force is integrated into employee evaluations and considered with respect to supervisory accountability the purposes of the Agreement will not be realized.

It is too early to determine whether the reforms that have been instituted will produce the positive results anticipated by the parties. However, we have spent substantial time over the past year monitoring the Department's response and in reviewing documents and records in the areas that are the subject of the Agreement. We are auditing and reviewing Internal

Affairs investigations, firearm discharges, search and arrest warrant practices (particularly with respect to narcotics enforcement), and stops of pedestrians and automobiles to determine if proper practices and procedures are being followed. In addition, we have consulted with the City on a number of other issues, including computerization and hiring and promotional practices. We will carefully audit the new Use of Force reporting system.

We anticipate that our monitoring efforts will include informal discussions with City officials, review of documents and other data, and the issuance from time to time of reports detailing our findings and recommendations. This Report is the first to be issued and concerns Internal Affairs and the investigations of Complaints Against Police (CAPs), an area of police practice and management that is both critical to the reduction of police misconduct and to ensuring public confidence in the Department's efforts to secure accountability within its ranks.

Using Police Department computer data, as well as the files for the individual investigations receiving final review by the Police Commissioner in the First Quarter of 1997, plaintiffs will discuss the timeliness, quality and results of investigations, including the Department's follow-up. This Report will also examine the implications of the conduct found or alleged in the files reviewed. Finally, plaintiffs will offer recommendations for the City's consideration.

We note at the outset that the primary purpose of this audit is the identification of any IAD practices and procedures that are deficient or may need upgrading. We do not seek to assign fault to individuals; rather, the aim is to secure implementation and compliance with acceptable standards for investigation of civilian complaints. Many of the investigations that

we reviewed were adequately done. But, as we detail below, in our opinion, a significant number were flawed in one respect or another. We are told by the City and Mr. Jordan that there have been marked improvements in the quality of IAD investigations over the past 18 months. Because the investigations in some of the files we have reviewed began at an earlier time, the improvements may not be reflected in the investigation. On the other hand, the files that we reviewed were all approved by the Commissioner in 1997 and we would expect that any new procedures or other changes in policy for IAD would have been incorporated in these reviews.

It is plaintiffs' hope that efforts such as this, though critical in some respects, will complement the independent efforts undertaken by the Police Commissioner and the IAO, and the measures initiated by the Police and Law Departments for implementing the Settlement Agreement.

II. CITIZEN COMPLAINTS AGAINST POLICE

Internal Affairs Division (IAD) investigations fall into four categories: investigations initiated by citizen Complaints Against Police (CAPs), investigations initiated by persons within the Police Department (Internals), IAD monitoring of court proceedings against officers or investigations of officers by other agencies (Monitors), and Firearms Discharges. This report addresses the first category of IAD investigations, Complaints Against Police.

CAP investigations are usually initiated by persons completing a CAP form which is available at a variety of locations, including all Police Districts. Upon submission of these forms to a member of the Police Department, they are directed to IAD for the commencement of an investigation.¹ IAD investigates the more "serious" complaints. Allegations of lack of service by police officers, along with most allegations of verbal abuse by police, are generally investigated by the commanders of the district or unit from whence the conduct is alleged to have arisen.

By their nature, CAPs do not usually involve the most serious allegations of police misconduct. Incidents involving serious injury, outrageous conduct, or allegations of corruption will usually result in the Department initiating an investigation before a CAP is filed. Likewise, cases where there is an allegation of serious injury to the citizen, or an allegation of extreme misconduct by the officer, will frequently involve substantial criminal

¹CAP investigations may also be commenced by the forwarding of complaints from the City Solicitor's Office, the Police Advisory Commission (PAC), the Mayor's Action Committee, or various other offices and agencies.

charges against the civilian. In such a situation, a criminal defendant is not likely to file a complaint.² Additionally, there are some cases which will be brought directly as pre-suit claims for damages, or filed as law suits. As a consequence, CAPs do not provide a complete picture of the allegations of police misconduct in Philadelphia; however, they do provide a useful window on the interactions between the police and the citizenry.

Table 1: CAPs Per Year	
1990	493
1991	451
1992	385
1993	337
1994	437
1995	538
1996	577

The Department's data presented in Table 1 show that 577 CAPs were brought in 1996. This is an increase of 39 (7.2 %) over the previous year, and is 240 (71%) more than 1993, the year of the lowest number of CAPs this decade.

A. TIME TO RESOLUTION

In Executive Order 9-93, the Mayor directed that CAP investigations be completed within seventy-five (75) days, except for extenuating circumstances stated in the report and approved by the Commissioner or the Commanding Officer of Internal Affairs. § 2.e.³

²"Cover charges" may be lodged by the offending officer for the express purpose of converting a potential complainant into a criminal defendant.

³Pursuant to the Settlement Agreement the City has agreed to modification of Executive Order 9-93. Specifically, Section V.A.10 of the Response to Proposal States:

10. IAD should complete its investigation within 60 days unless extenuating circumstances are present...

City Response

(continued...)

Figure 1 demonstrates that the target set by the Mayor routinely is not met. Where the time frame is met, it is usually in the simple or straightforward case. The data indicate that of the 577 CAP investigations opened in 1996,⁴ 397 were completed by April of 1997,

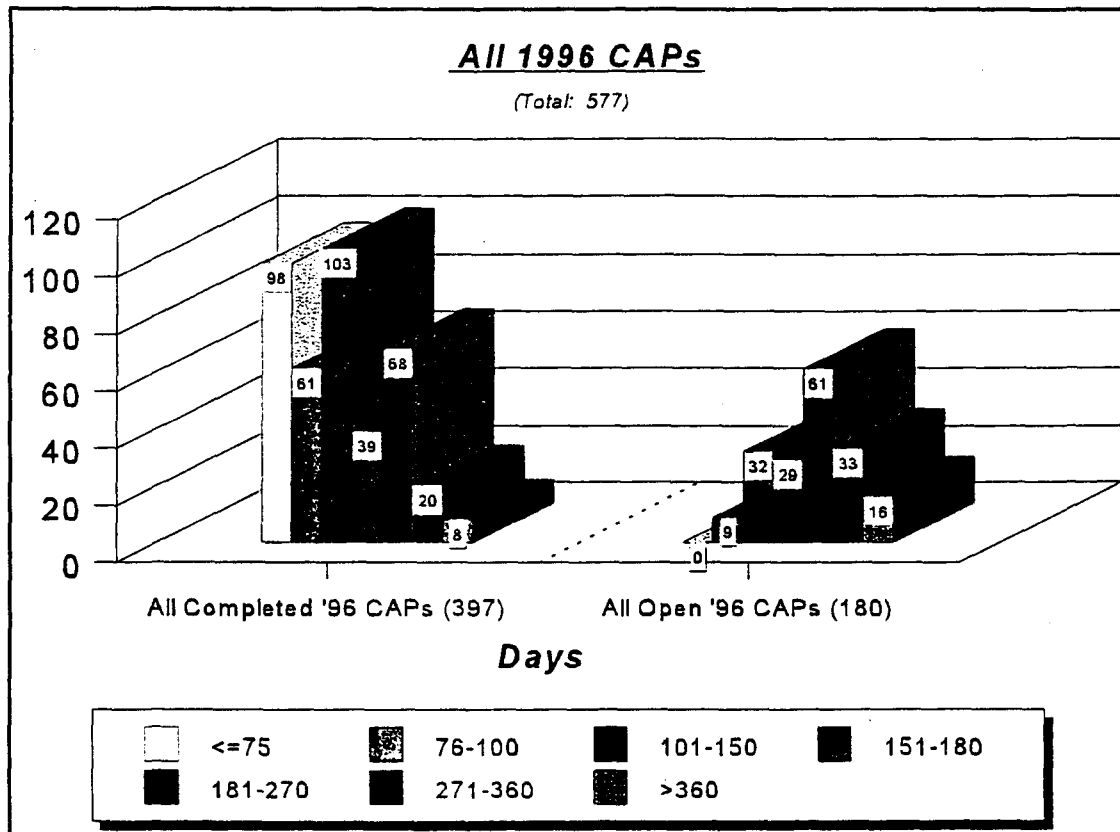


Figure 1

³(...continued)

The City accepts these proposals. The City agrees to amend Executive Order 9-93 to require the completion of LAD investigations within 60 days, with certain, specified exceptions to that requirement... Additionally, LAD investigators will be instructed to document any events that prevent them from completing these investigations in the time required.

⁴The Department's computer data indicate that the 577 CAPs in 1996 were logged as received at the average rate of between 2 and 4 per weekday. However, there are some notable spikes (9 on 4/30, 10 on 5/22), with a particularly heavy influx in late September and early
(continued...)

while 180 remained open. Only a quarter of the completed investigations (98 of 397) were concluded within the requisite 75 days. All of the 180 1996 investigations still open on March 31, 1997, were more than 75 days old, while more than three quarters (139 of 180) had been under investigation for more than 150 days, twice the time provided by the Mayor's Order.⁵

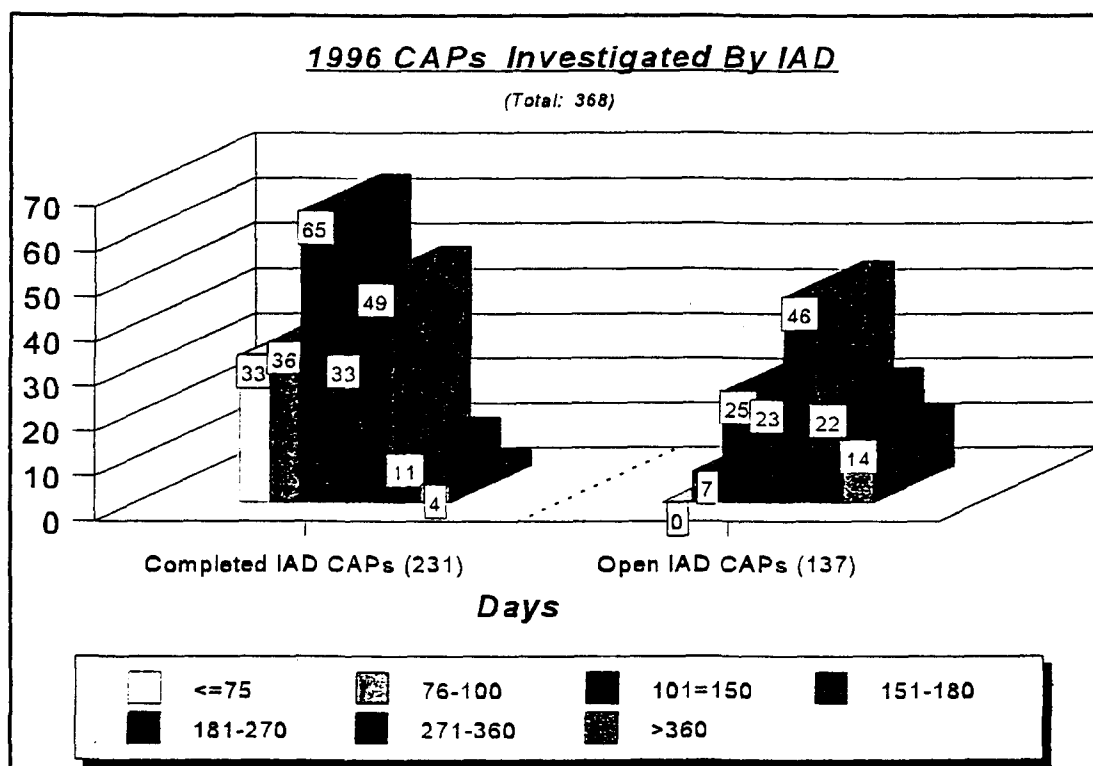


Figure 2

⁴(...continued)

October (11 on 9/26, 8 on 10/1, 10 on 10/7, 11 on 10/8, 10 on 10/11). Conversely, there are no CAPs logged as received between January 5th and January 17th, 1996, apparently due to the severe snowstorm that hit the City at that time.

⁵Plaintiffs' statistical analysis is based only on investigations of CAPs filed in 1996, the most recent complete year. However, it should be noted that among those CAP investigations
(continued...)

Plaintiffs further broke down these data to examine compliance by IAD investigators, as compared with compliance by district and unit commanders investigating the matters referred to them. The Department's computer records showed that two-thirds (235) of the 368 1996 CAP investigations assigned to IAD were completed by April of 1997, while 137 remained open. Only one in eight of the 231 investigations completed by IAD was concluded within the requisite 75 days, while about two-fifths (99) took more than 150 days to complete. Not one of the 137 open 1996 investigations was less than 75 days old as of March 31, 1997; indeed, three-quarters (105) were more than 150 days old on March 31st. See Figure 2.

As would be expected from the generally less complicated nature, the investigations assigned to district and unit commanders were being concluded more quickly. Figure 3 shows that 209 1996 CAP investigations were conducted at the district and unit level. Of this number, 166 were completed by April of 1997, while 43 remained open. Less than half (66) of the completed 1996 investigations were concluded within the requisite 75 days, while a quarter (38) took more than 150 days. None of the 43 open 1996 matters were less than 75 days old as of March 31, 1997, and three-quarters (34) had been open more than 150 days as of March 31st.⁶

⁵(...continued)

receiving final review by the Commissioner in the First Quarter of 1997 were one 1994 CAP and 16 1995 CAPs. The Department's computer data indicates that 32 (6%) of the 538 1995 CAP's were still open as of April 1997.

⁶Of the 98 CAP files provided by the City as having received final review by the Commissioner in the First Quarter of 1997, about one-third were these "less serious" verbal abuse and lack of service complaints assigned to the respective district/unit commanding officers for investigation.

Clearly the 75-day deadline set by the Mayor is either not attainable due to lack of sufficient staff and resources, or is routinely ignored.⁷

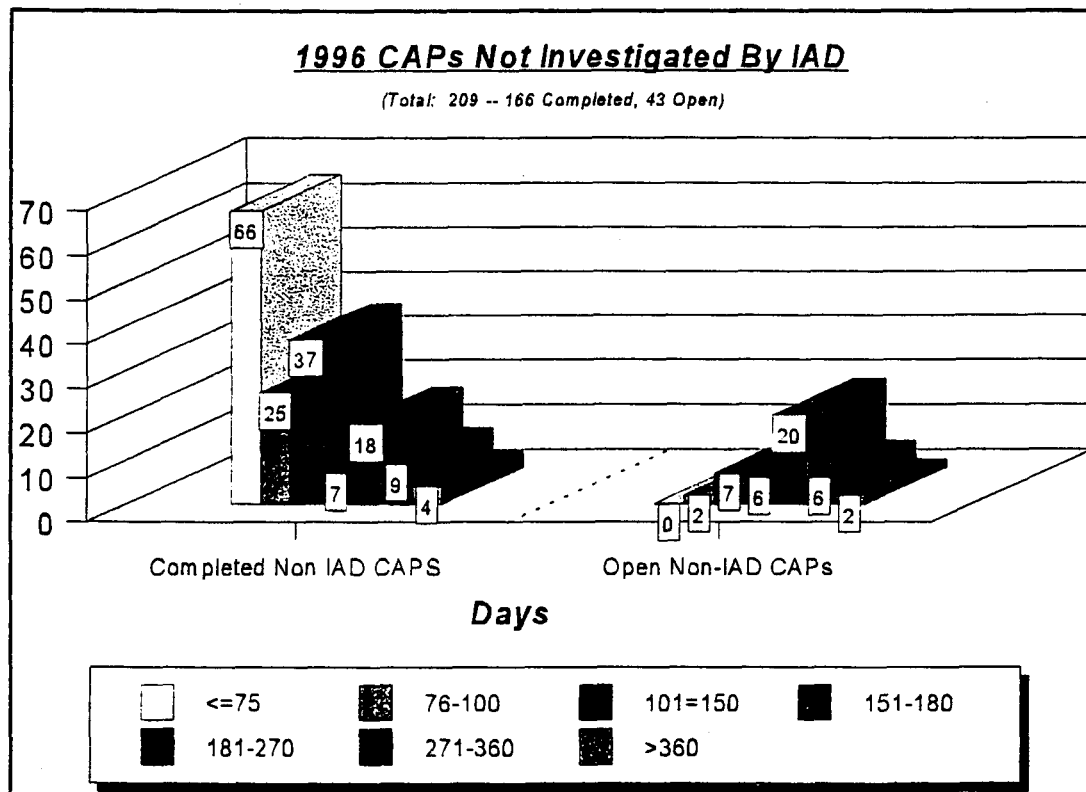


Figure 3

⁷Some examples of unacceptable delays: IAD 95c007 was a matter which did not come to IAD until a year after the incident, but IAD took another year before interviewing the involved officer, who at that point, two years after the disorderly conduct arrest, had no recollection of the incident. In IAD 95c015 the investigator apparently tried to call the complainant once a month for eleven straight months. Finally, in January of 1997, 13 months after the complaint was filed, a letter and a message delivered by police were sent to the complainant. In IAD 96c031, during an unexplained three month delay between the prompt interview of the complainant and the interview of the officers, the complainant and eye-witness moved, so they were not available to identify the offending officers' photos. The allegations were then declared not sustained due to lack of cooperation.

Despite the clear reporting and supervisory approval requirements contained in § 2.e. of the Mayor's Order and IAD Policy No. 20 § C.3, dated 8/2/96, the deadline is not mentioned in every case where it is exceeded.⁸ Where the 75-day rule is addressed, the reference usually consists of little more than a statement in the investigator's memorandum that the complainant and the officers were notified that the investigation would exceed 75 days. IAD has a form for notifying supervisors that an investigation will run beyond 75 days, with sections for explaining the reason and requesting a specific extension. Unfortunately, the form appears in the investigation file in a relatively small number of cases.⁹ Even where the file reflects more than a boiler-plate notification that the 75-day deadline is being exceeded, there is rarely an explanation of why the investigation could not have been completed in the time allotted.¹⁰

⁸Historically, significant delay was often attributable to the District Attorney's Office. However, with but a few exceptions (IAD 96c028 — 4 ½ months, IAD 96c037 — over 60 days), DA delay no longer appears to be an issue. To the contrary, according to IAD Complaint Routing Slips found in most files, DA review usually appears to result in declination of prosecutorial interest in one day. Whether there should be concern about the apparent brevity of the DA review process cannot be addressed by plaintiffs at this time, but will be the subject of future inquiry. IAD Policy No. 15 — IAD and District Attorney's Office Coordination, amended 4/3/97, requires that "[a] record [] be maintained of investigative material and the date it was submitted to the District Attorney's office for review and disposition." An earlier version of the Policy does not contain this language, and plaintiffs did not note descriptions of materials forwarded to the DA in any of the files reviewed.

⁹If the form is being used, but not routinely placed in the file, this practice is contrary to § 2.e of the Mayor's Order.

¹⁰IAD 96c063 — Exceeding 75 days due to "serious and complex" nature (however, investigation was not really complex, and there was an unexplained four month gap of inactivity between the prompt interview of the complainant and the interview of the non-target police officers). But see, 96c037 — Explaining problem with interviewing complainant and 60 day review by DA.

In none of the files where notice was given is there any indication of either meaningful supervisory review of the extension, or supervisory feedback on the circumstances which engendered the request. We think it unlikely that the delay routinely accepted in IAD investigations would be tolerated if these same investigators were assigned to a detective division investigating criminal allegations.

The worthy aspiration to timely investigations into citizen complaints reflected in Executive Order 9-93 remains largely unrealized. Unless the problem is addressed, it will only become more acute under the agreed upon reduction of time for CAP investigations from 75 to 60 days.

B. QUALITY OF INVESTIGATIONS

Plaintiffs' counsel numbers among its members attorneys with extensive experience in criminal defense and in reviewing IAD files. Their experience in reviewing IAD investigations over the years provided a basis for comparison in evaluating the quality of the current investigations. Additionally, counsel reviewed much of the literature in this area, including Internal Affairs' own materials, in assessing the investigations.¹¹ Although counsel are not trained police investigators or administrators, they did attempt to utilize their experience and other resources when reviewing the investigation files.

¹¹A helpful reference is Law Enforcement Administrative Guide/Manual, Lou Reiter & Associates, 1993. Mr. Reiter, a former Deputy Chief in the L.A. Police Department, is a private consultant frequently retained by the City of Philadelphia Law Department in its defense of police misconduct cases.

In addition to that experience and the previously mentioned resource materials, counsel also relied on Section V.C.6-9 of the City's Response to Plaintiffs' Proposals, which was incorporated into the Settlement Agreement.¹² That section states:

[Proposal V.C.]

6. Where appropriate, IAD investigations should expand beyond the specific allegations filed against an individual officer and focus on patterns of corrupt activity of that officer or officer's squad.

7. Canvasses for witnesses should occur as soon as possible after receipt of a complaint, and all witnesses, including the complainant and any police officers should be interviewed as soon as possible in the investigation. Interviews should be taped and transcribed unless the witness refuses to do so. If not taped, all interviews should be reduced to writing and signed by the witness. All original notes should be maintained. IAD should not engage in group or pre-interviews with police officers before recording their official statements. IAD should insist that the statements be given in full by the officers, not by their lawyers.

8. IAD investigators should offer a complainant the opportunity to be interviewed in the first instance at the complainant's residence or other convenient non-police site. Reasonable notice should be given of the interview. IAD investigators should make all reasonable efforts not to interfere with the work schedules of complainants. Section I, Part B, 2d paragraph of E.O. 9-93 must be strictly enforced to ensure a properly functioning interpreter system.

9. In assessing the evidence, there should be no automatic preference concerning an officer's testimony. Rather, all available evidence shall be evaluated based on a "preponderance of evidence" standard.

¹²As previously noted, some of the investigations reviewed were fully or substantially complete prior to the September 4, 1996 signing of the Settlement Agreement, while many others underwent substantial investigation subsequent to September 4th. However, whatever the time period of the investigation, the City states in its responses to proposals that many of the programs and practices sought were already in use. Moreover, the files reviewed by plaintiffs were subject to final action by the Department after January 1, 1997, at which point the agreement had been in force for over four months.

City Response

The City agrees with these proposals in substance. The City agrees that Internal Affairs must conduct its investigations thoroughly and objectively, without artificially limiting its review of allegations to the scope of the complainant's understanding of police activity. The Commissioner's effective administration of his personnel depends upon the breadth and quality of information made available to him by departmental units, such as Internal Affairs, that are responsible/or reviewing specific instances of officers' alleged misconduct. Moreover, the utility of this process requires it to be as convenient as possible to the citizens, whose participation is essential. The policy of the Internal Affairs Division has always been to assess each complaint against a preponderance of evidence standard. In the past eighteen months, and particularly since the transfer of new personnel into IAD, Internal Affairs investigators have received specialized training from internal and external agencies (e.g., the City law Department, the Federal Bureau of Investigation) designed to emphasize their responsibility to ensure the integrity of police officers. Trainers have instructed, and will continue to instruct, IAD investigators to expand their investigations beyond the specific allegations brought by a complainant. The Police Commissioner also recognizes that the interests of both the citizen and the officer are best served when witnesses are located and interviewed as soon as possible after the investigator is assigned to a complaint. Therefore, all witnesses are to be interviewed as early in the investigation as possible. We agree to re-emphasize to IAD investigators that their duty is to supply complete, impartial information to the Police Commissioner...

1. Investigations

Initially, plaintiffs note that the quality of the investigations conducted by IAD reflect improvement over the comparatively weak investigations reviewed in previous years. Although improvement is still necessary, more thought, investigative energy and creativity are now evident in these investigations than in the past.¹³ Plaintiffs are further heartened by the IAO's description of improvement in investigations completed in the last year.

¹³Examples of solid investigations include IAD 95c009, discussed in § II.D., and IAD 96c017, where the investigator doggedly and creatively tracked down an eye-witness.

Nonetheless, rigidity of procedure and routine, failure to follow leads or take obvious measures, and a tendency to view the case only from the officer's perspective, result in too many inadequate investigations.¹⁴

For example:

- IAD 96c023 An allegation of physical abuse and false arrest arising from a vehicle investigation. A neighborhood survey for witnesses was not conducted until four months after the interview of the complainant. No indication of any efforts to locate the eye-witness after complainant says he has not been in touch with the witness for some time. Two other officers apparently responded to the scene, but neither was interviewed for this investigation.
- IAD 96c029 Allegations of physical and verbal abuse during truancy stop and robbery investigation of two brothers. Both are taken in, one is released, while the other is charged with a summary weapons offense (knife). Police officers say they received a call over Police Radio for the robbery of a fish store, describing two black males. The Police Radio Computer Assisted Dispatch (CAD) indicates the call was for three Hispanic males. The IAD investigator suggests the CAD might have a typographical error. Though there was plenty of time to get the radio tape before it was erased, the investigator did not do so. Even if he did not realize the need for the tape at the beginning of investigation, if the investigator believed there might be a "typo," why did he fail to check the paperwork (75-48 (incident report) or flash information) from the fish store robbery?
- IAD 96c042 Claims of false arrest and harassment of people outside of bar, ticketing of cars and the disorderly conduct arrest of a bartender. The complaints involve

¹⁴The fact that an investigation is discussed in this or any other section does not necessarily mean that the investigation was weak, over all, that the supervisory review was otherwise inadequate, or that the conclusions were improper. Rather, the file is simply being offered to illustrate the specific points related to the particular section of this report. A proper result based upon a flawed investigation, or unsoundly explained, is still an embarrassment to the process. Likewise, the fact that some allegations may be sustained, or some discipline imposed, does not absolve the Department if the result is to minimize or ignore other culpable conduct.

Police Officer A, but she was never interviewed. This unexplained and seemingly improper investigative decision is contrary to Executive Order 9-93 which says each investigation *shall* include an interview of the police officer against whom a complaint is lodged. § 2.b.¹⁵

In identifying investigative flaws and inadequacies in their *post facto* review, plaintiffs have performed a function similar to that which must be demanded of Police Department supervisors. Such careful review is precisely the function which should have been performed by the various police executives who reviewed the investigations. Accordingly, if our criticisms are valid, the fault lies at least in the past with the Captains, Inspectors, Chief Inspectors, and Deputy Commissioners who reviewed these files and failed to identify the inadequacies in the investigations. If these supervisors do not point out flaws in investigations, they leave the integrity of the investigations open to question, and they forsake the opportunity to educate their investigators and to improve the quality of future investigations. Likewise, we believe it is the responsibility of these administrators to perform these duties with a healthy skepticism. See § II.C.2.

Other cases with apparent investigatory problems which were not identified or addressed by the various supervisors are set forth in Appendix A.

2. Investigator Conclusions

Police management expert Lou Reiter, cautions:

Whoever is assigned the investigative responsibility should not be held accountable for making conclusions, findings or recommendations. **They should be fact-finders only.** Requiring them to reach final judgments

¹⁵This failure to interview the subject officer was clearly apparent at the highest level of review, as the Commissioner's letter does not contain the usual line about the officer denying the allegation.

can bias the investigative effort and focus their orientation early on to the final outcome. [Emphasis in original]

Reiter, Law Enforcement Administrative Investigation Guide/Manual, 1993, Ch. 3, Commentary. In the previous section we discussed problems in the collection of information. There are also problems in the IAD investigators' reporting and analysis of the information gathered during CAP investigations. Our review suggests that this very important element of fact-finding -- reporting and analysis -- continues to be an area where investigators need firm guidance and feedback from their supervisors.

All CAP investigations contain a Memorandum to the Commissioner. Historically, and pursuant to IAD Policy No. 20 -- Preparation of the IAD Investigation Report, dated 8/2/96, each Memorandum includes an "Analysis" section which routinely "point[s] out corroborations and inconsistencies" and contains conclusions as to "[t]he credibility of witnesses - are they independent," and "any other information that is RELEVANT to the allegation." (Emphasis in original). This enables the front-line investigator to organize the information for command review, and to express his/her opinions regarding the parties and the evidence. However, the investigators must scrupulously avoid supporting an opinion with selective recitation of the evidence or disregard of contrary evidence.

For example:

IAD 95c001 Complainant, the uncle of decedent, was an eyewitness to the homicide. He alleges that he was physically abused by Homicide detectives inside the Homicide Unit at the Police Administration Building. No one really addresses the fact that the complainant's injuries, as confirmed by his doctor — nose tenderness, headaches, ear pain, bloody discharge from his ear — appear consistent with his allegations. Investigator seems to focus on the inconsistencies he detects in complainant's statements, without considering what his motive might be. Why would this complainant lie? He was not a suspect in a criminal matter, he was a witness, and he continued cooperating

with IAD even though the investigation dragged on for years. The investigator's skepticism only seems to run to the complainant, not to the detectives.

IAD 96c018 This CAP presents an allegation of physical abuse during an arrest. Complainant claims he was hit with a gun by an off-duty officer. There were lacerations to the complainant's cheek and head, and multiple eyewitnesses who said the officer hit the complainant and his cousin with a gun. Some described blows while complainant was handcuffed. The officer feebly explained that he was attacked and then accidentally struck the complainant and his cousin with the gun during the course of the struggle. There was no effort to obtain medical advice as to whether officer's explanation was consistent with injuries. (Compare 95c003, 95c005, 95c011, where Medical Examiner was consulted as to the veracity of complainants' versions of injuries). The investigator also failed to mention the presence of the defensive injuries to the complainant's arm, which injuries appear to refute the officer's claim of accidental striking.¹⁶

Other examples of apparent problematic conclusions by investigators are described in Appendix B.

3. Narrow Investigations

The Settlement Agreement states: *The City agrees that Internal Affairs must conduct its investigations thoroughly and objectively, without artificially limiting its review of allegations to the scope of the complainant's understanding of police activity.* (Response to Proposal V.A.6.). In the files reviewed by plaintiffs there are a number of instances of failure

¹⁶The officer received a seven day suspension for conduct unbecoming an officer and neglect of duty -- 2 days for punching the complainant in the shoulder after uniformed officers arrived on the scene; and 5 days for "[Y]ou were off duty and in civilian clothes when you were verbally and physically attacked by two males who knew you as a police officer. During the course of this incident you struck one of the males, [X], with your gun. This is in violation of Directive 10, ... which states, 'a firearm will not be used as a club.'"

of investigators to follow where the investigations lead, or failure to address the conduct of other officers where such conduct is implicated by the investigation.

For example:

IAD 95c004 Complaint of false disorderly conduct arrest and blowing smoke in complainant's face at the district. There is no discussion of the apparently unjustified arrest of the second person at the scene. He was not the complainant, but he was interviewed. Additionally, although a fair reading of the investigation demonstrates that the officers escalated this confrontation, this aspect of the incident is not discussed.

IAD 96c023 Allegation of physical abuse and false arrest arising from a vehicle investigation. Officers are inconsistent regarding the chain of events, yet there is no mention of this inconsistency, let alone discussion of the significance. This was a citizen complaining to the police about the police investigation of his wife's car. What right did police have to demand identification and to frisk him? According to one of the officers, the disorderly conduct arrest was not until after complainant went into his house. What right did the police have to order the complainant out of his house and, when he refused, what right did they have to go in and get him? None of these issues are discussed in the investigation or conclusion.

Other examples of failures to follow where the investigation points, or to examine the conduct of all the officers involved are set forth in Appendix C.

4. Coding

A related problem is found in the Department's coding of complaints. This seemingly simple process can result in precisely the "artificial limiting" the Department agreed to avoid. In a number of cases, the outcome is dictated in part by the Department's own coding or description of the complaint.

In IAD 96c034, the complainant's description of the officer's conduct when she allegedly failed to yield right of way to him, clearly makes out more than just verbal abuse;

the described intentional swinging of the police car toward complainant's car is an attempt at physical intimidation. However, the designation of the incident as verbal abuse resulted in the incident being investigated as a less serious matter by the District Commander, instead of IAD. Moreover, it may well be that the District Captain's failure to even mention the physical part of the allegation in his Memorandum to the Commissioner was a result of his focus on the incident as coded.¹⁷

Coding issues can also present problems for the Department's record keeping and information retrieval.¹⁸ The Settlement Agreement provides: "17. No personnel should be promoted without review of the information in the database [of IAD complaint information] ... 18. Using the databank ... IAD should annually supply each district commander with a report conveying the number of complaints and charges filed against officers of the district ...". In response the City accepted the proposals, while noting "... *an officer's background and IAD history has always been taken into account with respect to promotional decisions.*" V.C.17. Where the coding is inaccurate or incomplete, however, the efficacy of these reviews is greatly diminished.

¹⁷The other possibilities are that the omission was an oversight or an intentional effort to subtly minimize the incident in reliance upon a review process which does not always read the supporting documents as thoroughly as might be hoped.

¹⁸Inconsistency in coding or characterization also appears to arise in dispositions of investigations. In both IAD 95c013 and IAD 96c019 the complaint was "withdrawn." In 95c013 the Commissioner's 1/17/97 letter states that the "allegation of abuse and threats are *not sustained* and classified as withdrawn." However, in 96c019 the Commissioner's 3/21/97 letter states: "[Y]ou later withdrew your complaint, therefore the officers are *exonerated* of any wrongdoing." Emphasis added

For example:

IAD 95c005 is a complaint of physical abuse relating to the alleged improper use of handcuffs. The IAD computer printout¹⁹ for this case makes no mention of handcuffs, but the same document shows a prior case involving the officer which is coded "PA - Cuffs tight, Arms twisted." Because of the different coding, no one reviewing the computer summary would know that the officer in question had two hand-cuff complaints lodged against him. Similarly, IAD 95c015 is the complaint of a cab driver who describes a scenario of physical abuse and false arrest for disorderly conduct. However, IAD described this complaint as "harassment."²⁰

IAD 96c040 involved allegations of physical and verbal abuse, and the false arrest of a tow truck driver. Yet, the false arrest does not appear on the IAD computer printout in the file. See § II.F.1, Table 6. IAD 96c022 involves allegations of a serious neglect of duty, evidencing a lack of appreciation for the seriousness and potential for danger present in domestic violence cases. Coding the CAP as "Lack of Service" minimizes the officers' failures, which resulted in the escaped abuser being free to retaliate and harm the complainant.

¹⁹In some cases there is more information buried in the IAD computer databases, however, the printouts referred to here are the ones typically retrieved by IAD in the course of an investigation, and made part of the file. These same sort of "payroll number inquiry" printouts are provided to commanding officers of newly assigned personnel so that this information "can be utilized by supervisors as a frame of reference for monitoring performance and supervising the individual." IAD Policy No. 22, dated 11/5/96.

²⁰See also, 96c043, where allegation is Verbal Abuse and Lack of Service, but the Verbal Abuse does not appear in the officer's IAD printout, only the Lack of Service.

IAD 96c059 is a less serious incident, which nonetheless illustrates the effect coding can have on the outcome of an investigation. An officer conducting a vehicle stop left his car door open for a extended period, blocking traffic on a narrow street. When the complainant honked his horn, the officer allegedly took his time closing the door and was rude to the complainant. Though this complaint was coded as verbal abuse, an allegation which was not sustained, the citizen was really complaining about the officer's lack of courtesy and general attitude. The investigation seems to support these complaints. Thus, had the allegation been accurately coded as conduct unbecoming an officer, it would likely have been sustained.

5. Corroboration

The consolidated Settlement Agreement states: *[Proposal]9. In assessing evidence, there should be no automatic preference concerning an officer's testimony. Rather all available evidence shall be evaluated based on a "preponderance of the evidence" standard. [Response] ...The policy of the Internal Affairs Division has always been to assess each complaint against a preponderance of evidence standard...* However, virtually every letter from the Commissioner where the allegation was not sustained refers to corroboration — either lack of corroboration by “independent” witnesses of the complainant’s allegations, or “independent” corroboration of the police officer’s version of the event. Unfortunately, what constitutes corroboration appears to be infinitely fluid, while the question of a witness’ “independence” all too often appears to turn on who the witness supports.

For example:

- IAD 96c045 Complainant was stopped on a weekend night on South Street for allegedly running a red light. During the course of the stop the officer allegedly became upset that the complainant declined her request for his social security number.²¹ The complainant claims that he was then given a second ticket (careless driving) for insisting that his social security number was private. The officer and her fellow officers confirmed all of complainant's description of the incident — with the exception of the retaliatory circumstances of the second ticket. Although the passenger in the complainant's car confirmed all of the complainant's allegations, including the retaliation, the complaint was not sustained because the passenger was not considered an "independent" witness.²²
- IAD 96c051 Police stopped a group of young black males, allegedly for investigation of curfew violations and causing disturbance. Complainant claims that the officer was told that his finger was injured, but that the officer nonetheless twisted it, then cuffed him and put him in the police car during the investigation. The verbal abuse allegation is sustained, but the Commissioner's letter states there is "no supporting evidence to [sic] your allegation of physical abuse." Apparently the three young men who were with complainant, who all corroborated his version of the events, do not qualify as "supporting evidence." The Commissioner's letter also states that the medical evidence corroborates that the pre-existing injury was healed.

²¹ Section 7 of the Privacy Act of 1974, Pub. L. 93-579, Historical Note, 5 U.S.C.A. § 552a (West 1977), provides:

(a)(1) It shall be unlawful for any Federal, State or local government agency to deny any individual any right, benefit or privilege provided by law because of such individual's refusal to disclose his social security account number.

...

(b) Any Federal, State or local government agency which requests an individual to disclose his social security account number shall inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority such number is solicited, and what uses will be made of it.

A Social Security number was also requested of the tow-truck driver in IAD 96c040. Appendix F.

²² Though none of the allegations were sustained, the officer was counseled for responding to the complainant's statement that he was going to contact the Mayor about her conduct by stating: "Say hi to Ed," which statement it was concluded was disrespectful of the Mayor.

This is contrary to the medical records from early the next morning, which clearly state that the finger is “grossly edematous”,²³ “swollen” and “unable to bend.”

See Appendix D for further examples.

6. District/Unit Investigations

The flaws identified above appear even more often in the investigations conducted at the district or unit level. Possible explanations for this result may be: investigations being handled by persons who do not have the necessary training, lack of adequate detachment, or coding/designation resulting in significant matters being erroneously identified as less serious (See § II.B.4 — Coding).

In IAD 96c016 the complainant alleges lack of service (failure to adequately investigate) in connection with the suicide of her husband. Because this was a lack of service complaint, it was assigned to the detective division in question. However, the commanding officer’s delegation resulted in the interview of the complainant being done by another detective in the unit, apparently a colleague of the same rank as the subject detective. To insure confidence in the investigation, a supervisor should have conducted this interview. The Commanding Officer’s memorandum to the Commissioner says that the complainant recanted her disappointment with the subject detective’s service, citing her emotional state at the time, and that she has since accepted that the death was a suicide. However, the actual signed interview includes no indications of such sentiments. The memorandum also states,

²³Dorland’s Medical Dictionary defines *grossly* as “visible to the naked eye” and *edematous* as “The presence of abnormally large amounts of fluid in the intercellular tissue spaces of the body.”

per Detective H. (apparently referring to a different interview), that the complainant was satisfied with the investigation and wishes to drop the complaint. No such statement is to be found in the file. In the analysis section the Detective Captain states "upon re-interview, [complainant] stated that she was distraught at the time of the incident and is now satisfied with the investigation." There is no record of any such interview in the file. Nor is there any indication of the date when the alleged re-interview(s) occurred.²⁴

Other examples of deficient district/unit conducted investigations are set forth in Appendix E.

C. POST-INVESTIGATION REVIEW

1. SUPERVISORY REVIEW

The Memorandum to the Commissioner in each investigation, whether handled by IAD or by a district/unit commander, contains a conclusion section written by the Inspector commanding the Internal Affairs Division.²⁵ This conclusion sets forth IAD's findings on the allegation(s), summarizes the reasons for the findings, and makes a recommendation or referral. As plaintiffs' counsel has learned, the cover to cover review of CAP investigation files can be time consuming. Assuming supervisory review at a rate approaching the receipt of new CAPs, the IAD Commander must review and author conclusions for an average of

²⁴The IAD supervisor reviewing the file (and others) did not note the apparent discrepancy. This should raise concern about the degree to which reviewers are going beyond the memorandum portion of the investigation file. See § II.C.1.

²⁵The Memorandum for each investigation conducted by IAD is signed by the investigator and an Internal Affairs Captain.

two CAPs per each non-holiday weekday. Done right, this review is a time-consuming process. When added to review of the other categories of IAD investigations, along with all the other duties of a Division Commander, the work load must be overwhelming. Burdensome though the task may be, the need for thorough supervisory review of CAP files cannot be overstated. Unfortunately, there are problems at this level of review:

a. *Failure to identify inaccuracies in the investigators' memoranda and inadequacies in the investigations.* Because some of the inaccuracies and inadequacies are significant, plaintiffs have great concern as to whether the routine review of the file by the IAD Commander includes adequate examination of the supporting documents. A thorough review is essential at this stage, because it is this Commander who is writing the conclusion of the investigation. Obviously, the Commander's failure to identify significant inaccuracies in the investigator's memorandum undermines the validity of his determination in the case. Such failure has far broader implications for the integrity of the investigation process, due to the danger of reinforcing the investigator's behavior (whether intentional or inadvertent) by failing to educate him/her regarding the need for impartial fact-finding. Likewise, by identifying investigative inadequacies a supervisor will be able to enhance the quality of future investigations through feedback and training.

An example of a file where supervisors should have been dissatisfied with the completeness is found in IAD 96c032:

Allegations of false arrest, physical and verbal abuse, and lack of medical treatment following a stop on radio call of man with a knife. Complainant had multiple knife wounds. The Memorandum summary of the interview of the eye-witness does not indicate police contact causing complainant to drop to his knees. However, in the actual interview the witness specifically states that the officer hit the complainant above the calf, causing him to drop to his knees. Complainant agreed to take a

polygraph, but was never given one. Officers claim the complainant was taken to the hospital but refused treatment. They claim they documented this refusal by putting the complainant in the wagon and returning to the emergency room to have the doctor sign a 48 (75-48 -- Incident Report). This document disappeared. The complainant describes no such first trip, nor was he ever asked about this alleged first trip to hospital. The investigation discloses neither a check of hospital logs to verify the first trip, nor an investigation to ascertain the identity of the doctor who allegedly signed the 48 on the refusal of treatment. All of this raises a number of questions regarding the veracity of the alleged first trip to the hospital. The investigation accepted the police version at face value, without any effort to corroborate or otherwise investigate. The missing 48 should have sent up a red flag. Additionally, the times seem too short. Though the three locations (scene, hospital and detective division) are fairly close, the time to remove the prisoner, take him into the hospital, see a triage nurse/doctor, have prisoner refuse treatment, put prisoner back in the wagon, have the officer return to hospital to have the doctor sign a 48 indicating refusal of treatment, then head for North Detectives, is in conflict with the 12 minute time period reflected in the Police Radio records.

Further examples of investigations where reviewing supervisors failed to identify significant inadequacies or inaccuracies are found in Appendices A and B.

b. *Lack of skepticism.* There are a number of instances of officer conduct, or explanations for conduct which should give a police administrator pause.

For example:

IAD 95c001 Complainant, the uncle of decedent, was an eyewitness to the homicide. He alleges that he was physically abused by Homicide detectives inside the Homicide Unit at the Police Administration Building. No one really addresses the fact that the complainant's injuries, as confirmed by his doctor — nose tenderness, headaches, ear pain, bloody discharge from ear — are consistent with his allegations. The investigator seems to focus on the inconsistencies he detects in the complainant's statements, without considering what his motive might be. Why would this complainant lie? He was not a suspect in a criminal matter, he was a witness to his nephew's murder, and he continued cooperating with IAD even though the investigation dragged on for years. The Investigator's skepticism only seems to run to the complainant, not to the officers.

IAD 96c041 Allegation of pointing of gun during daylight investigation of burglary alarm. The investigator's questioning of complainant is accusatory, skeptical, rude and repetitive. Complainant's allegation that the nature of the incident was

race related was not mentioned in the memorandum. Clearly, the officers overreacted: this was a burglary alarm to a business address at 2:45pm on a Friday afternoon, with no sign of forced entry. Even the officers' version demonstrates an overreaction which could have easily escalated into a tragedy. At a minimum, there is no apparent justification for the IAD Commander's determination of exoneration, as opposed to declaring the allegations not sustained. The complainant insists he identified himself, his hands were not in his pocket, and he was holding a folder. The officers say the complainant's hand was in his pocket, he did not identify himself and he had no folder. Because the complainant was truly innocent and was properly on the premises of the restaurant, where he is the chef, the IAD Commander must ask whether complainant would have been acting in the suspicious, non-cooperative manner described by the officers?

IAD 96c057 Complainant stopped for littering (feeding birds) and given a warning. The officer put the complainant's car keys on the roof during the stop and did not hand them back when complainant requested them at the end of the vehicle investigation. The complainant commented on the officer's attitude, at which point the departing officer returned to issue the citation after all, and ended up arresting complainant for disorderly conduct. The Inspector concluded that there was no disorderly conduct until the officer escalated the [concluded] vehicle investigation into a disorderly conduct arrest. However, there was no discussion of the retaliatory nature of the ticket and the allegations were declared not sustained.

Further examples of problems with supervisory review are described in Appendix F.

Even if the IAD Commander concludes that the Department is unable to take any administrative action, due to a true lack of corroboration, ambiguity in policy, or for other reasons, this does not mean that he should not express his doubts and concerns. Failure to comment on what he, in his experience, believes to have happened, or to express his concerns about credibility and propriety of conduct, has a ripple effect.

When, as happens in most cases, the individual officer's commander reviews the investigation with the him/her, the officer sees no criticism. In cases where criticism is warranted, the officer may believe he/she got away with something, or he/she may continue the inappropriate conduct out of ignorance. In either case, the improper behavior is

reinforced. Likewise, when the file is reviewed up the administrative ladder, it is unlikely that another supervisor will pick up the IAD Commander's baton. This particular administrator is the keystone in the CAP investigation process. The duty must include a mandate to make fair comment.

2. COMMISSIONER²⁶

The Memorandum in each IAD investigation file is addressed to the Police Commissioner. This Memorandum (per IAD Policy No. 20) serves as the investigative report for all IAD investigations. All the investigation files are reviewed by the Commissioner or his designated Deputy Commissioner. Additionally, § 6.d. of Executive Order 9-93 requires the Commissioner to give notice of the disposition of the complaint to, among others, the complainant. Except for extenuating circumstances the notice is to be given within twenty days of the Commissioner's receipt of the investigation file. § 6.e. In the cases where the Commissioner determines that no misconduct has occurred, the Commissioner's notice shall include a summary of the investigation's finding and reasons for the Commissioner's actions.

²⁶It is apparent that many of the functions of the Commissioner in the CAP review process are performed in whole or in part by designees. Plaintiffs acknowledge the many duties of the Commissioner and demands on his time. Because the extent of the Commissioner's input may be time limited, his role in the CAP process may be performed by others. If there is a need for greater involvement by the Commissioner, plaintiffs are confident that he will recognize that need in the course of his examination of the process under the Agreement and take appropriate steps. Therefore, the references to the Police Commissioner in this section refer generically to the functions being performed at this top level in the chain of command, whether by the Commissioner himself, or by a Deputy Commissioner or other designee.

Unfortunately, it appears from the timing and content of the Commissioner's notification letters that the duty is regarded as little more than an unpleasant task, to be dispatched as painlessly as possible, though not quickly. Almost without exception, the Commissioner's notices are virtually form letters stating: 1) the allegation could not be sustained due to lack of independent witnesses; 2) the complained of conduct was in compliance with Department policy or law; or, less frequently, 3) the allegation was sustained and "appropriate" discipline has been imposed.

For example:

IAD 95c007 alleges an improper disorderly conduct arrest. The Commissioner's April 9, 1997 letter to the complainant states that the officer denied the allegations. This is incorrect. Due to the two year lapse (see footnote 7), the officer had no recollection of the arrest or the incident.

In IAD 96c035 an off-duty officer whose private vehicle was cut off, pulled up next to complainant to give him a lecture. The complainant ignored the off-duty officer, who then cut in front of the complainant's vehicle to issue him a citation. The Commissioner's letter states that the officer received a reprimand for a violation of the Motor Vehicle Code and placing himself in danger. However, this is misleading: The Vehicle Code violation for which the officer received a reprimand was his issuance of a traffic citation when not in uniform.

IAD 96c062 is a complaint about a parking ticket. The complainant was told to move her double parked car. She did so, and asked the officer if the new space was "OK." The officer said no, she asked why, he said "leave it there." The officer then returned and issued

a ticket a short time later. The Commissioner's letter states "Officer [J] was correct in issuing you the ticket and in an attempt to avoid a verbal confrontation, you may have perceived that parking at that location was permissible." Clearly anyone would have believed that the officer saying "leave it there" was permission. Under those circumstances, a ticket was certainly inappropriate.

The Settlement Agreement provides (§ V.A.11):

Proposal

11. IAD should forward its findings to the Police Commissioner who should provide the complainant with a written statement of the official determination.

City Response

The City accepts this proposal and notes that this practice is already in place. Upon the completion of an IAD investigation the Commissioner sends, via certified mail, a letter to the complainant explaining the official determination of the complaint, and the reasons underlying the determination.

This provision was intended to ensure a full and accurate report to the complainant. The Commissioner's letter is the Department's final and public word on the allegations which have been brought. If his officers were wrong, this is the Commissioner's opportunity to inform the involved citizen what the Police Department has done about it. If, on the other hand, there was no impropriety, this is the Commissioner's opportunity to explain what he has concluded and how he reached that conclusion. By failing to make these letters meaningful communications, we believe the Commissioner fails to adhere to the Executive Order and the Agreement, and relinquishes an opportunity to demonstrate his responsiveness to the citizens he serves.

Moreover, there are very few cases among the 1996 CAPs finalized in the first Quarter of 1997, where the Commissioner's letter was issued within the 20 days required by § 6.e. of the Mayor's Order. Of the 76 such files containing Commissioner letters, only six issued within 50 days of the completion of the investigation,²⁷ while more than half (40) issued over 100 days after completion of the investigation.²⁸

Plaintiffs realize that every case is different, and that there can be delays between the completion of the investigation and the Commissioner's letter which are beyond the Commissioner's control (*e.g.*, proceedings before the PBI or intermediate supervisory review). However, the overall picture is one of unnecessarily delayed complainant notification. When responses to CAPs routinely reach citizens six months to a year after filing, it is not difficult to imagine the skepticism with which a complainant will regard the results.

²⁷Two of those 76 files do not have the completion date entered into the Department's computer records.

²⁸Neither the Department's computer data, nor the files themselves, indicate when an investigation reaches the "Commissioner." Likewise, the date of the Commissioner's letter is not recorded in the computer database. Therefore, plaintiffs have used the Department's computer data for the date the investigation is marked completed and manually obtained the dates of the Commissioner's letters from the files. The time from when the file is sent to the Deputy Commissioner until the issuance of the Commissioner's letter is somewhat shorter. 4 under 50 days, with 33 over 100 days after being sent to the Deputy Commissioner. However, this data is less useful because the Department's database shows no "DEPUTYDATE" for 27 of the 76 files containing Commissioner letters.

D. DISCLOSURE IN CRIMINAL PROSECUTIONS

In the majority of the CAP investigations there are also underlying criminal or traffic prosecutions of the complainant, or someone associated with the complainant. The existence of these prosecutions places a special duty on the Police Department — a duty to disclose to the prosecution, for ultimate disclosure to criminal defendants, any information, including impeachment material, which supports a claim of innocence or a lesser degree of guilt.²⁹ Such exculpatory information is known as Brady material, after the United States Supreme Court case which enunciated the principle.³⁰

Previously undisclosed Brady material does not surface often in the course of IAD investigations, but when it does, IAD should be sure to comply with its constitutionally mandated duty to identify and disclose this material. As Lou Reiter notes: “...[I]nformation and evidence which may support a complainant or other civilian in any subsequent criminal matter must be preserved. It is both professional and ethical that the police agency make available this exculpatory evidence regardless of its impact on the criminal prosecution.” Reiter, § 7.2.

A particularly stark example of this problem can be found in IAD 95c009:

The file reflects that at about 8:45pm, on October 17, 1995, two patrol officers received a complaint of four black males selling drugs near 13th and Allegheny. While *en route*, the officers stopped to conduct a vehicle investigation, finally reaching the scene at

²⁹Kyles v. Whitley, 514 U.S. 419 (1995). See also Jean v. Collins, 107 F.3d 1111 (4th Cir. 1997); McMillian v. Johnson, 88 F.3d 1554 (11th Cir. 1996).

³⁰Brady v. Maryland, 373 U.S. 83 (1963).

about 9:30pm. At that time, the officers state they observed two such males on the corner. No drug sales or other conduct suggestive of criminal activity is observed by the officers. As the officers approached, the males departed, whereupon the officers gave chase. The two officers became separated. Officer A, claims that he pursued the male he was chasing down a nearby street, and observed him enter a residence. The officer advised police radio of his location and that he was entering the premises.³¹ Whether the officer used force or simply pushed on a partially open door is in dispute. It is undisputed that the officer's entry was illegal. Once in the home, Officer A surprised a middle-aged couple, their daughter, and her infant, all of whom were watching TV. It is disputed whether the young man in question was also on the couch at that point. After checking upstairs and downstairs, Officer A returned to the living room where he grabbed the young man who, incidentally, was the son of a Deputy Philadelphia Police Commissioner. A struggle ensued, the precise nature of which is disputed, other officers arrived, police batons were drawn and the young man was subdued. A search of the young man's person, and the house, produced no controlled substances, or any other indicia of drug activity. Nevertheless, the young man was arrested for assault on the officer — the officer claimed to have been punched and bitten on the hand

³¹In a further unfortunate turn of events, the officer was mistaken as to his location -- by one block. Police Radio proceeded to put out an "assist officer," the highest priority alert, for the incorrect address. In response to the "assist" numerous officers arrived at this incorrect location, and kicked in the door, greatly surprising the unsuspecting family preparing for bed. These events are set forth in IAD 95c008, which was initiated as a result of a CAP filed by the surprised mother. Taken together these two files also demonstrate the need for considering the policy and training implications raised by IAD investigations. Here, the officer who called in the wrong address did not request an "assist." Rather, the radio operator took it upon him/herself to put out the "assist," thereby assuring the *en masse* forced entry at the erroneous address, and exacerbation of the situation in the incident which gave rise to IAD 95c009. Due to reassignment of 95c008 within IAD, the complainant was not contacted until nearly nine months after the incident. Her lack of interest at that point should not have come as a surprise.

— and resisting arrest. Outside the young man was hoisted by his belt and launched into the back of a Police Emergency Patrol Wagon (EPW).

The woman of the house and the young man each filed a CAP, which resulted in a ten month investigation. The outcome of that investigation was that an allegation of Officer A using profanity (verbal abuse) in the home was sustained, based upon the testimony of the residents of the home, despite Officer A's denial. The allegation of physical abuse of the young man in the home was not sustained, even though the investigation concluded that there was no lawful basis for the officer to enter the home or to attempt to seize the young man. The not sustained decision was based upon Pennsylvania case law that there is no right to use force to resist an arrest, even if it is an unlawful arrest.³² The allegation of physical abuse by belt launch into the EPW was sustained, because it was confirmed by neighbors who witnessed the event. At some unknown point during this thorough investigation, the clearly diligent³³ IAD investigator took the photos of Officer A's bitten hand to the Philadelphia

³²IAD should be very cautious about making blanket interpretations of the law. While IAD is correct that there is no general right to use force to resist even an unlawful arrest, there are two important *caveats* of which police officers need be aware. First, a person subjected to an unlawful arrest may not be convicted of the crime of resisting arrest. Commonwealth v. Biagini, 655 A.2d 492, 497 (Pa. 1995). Second, though a person does not have the right to use force in response to an illegal arrest, "the law will contemplate physical resistance to a police officer [] when the officer unnecessarily uses unlawfully excessive or deadly force which triggers the right of self-defense." Id. at 499. Thus, it may well be that such legal opinions are better left to the City's Law Department.

³³Although no drug charges were brought, the IAD investigator's comprehensive investigation showed that: 1) at the time they gave chase, and thereafter, the police officers observed absolutely no indicia of illegal activity which would warrant a stop; 2) the young man, along with a co-worker, had punched out at his job at a nursing home far from the scene at 9:02pm; and 3) SEPTA confirmed, as the young man described, the train that dropped him was at the Broad & Allegheny station at 9:30pm. As this investigation points out, this young man could not have been one of the drug dealers identified in the 8:47 Radio Call. If the

(continued...)

Medical Examiner's Officer. There a Forensic Pathologist concluded that the marks were not consistent with a human bite, rather the linear marks were consistent with that which would occur when struck by a baton or stick. In other words, the Deputy Philadelphia Medical Examiner concluded that Officer A was not bitten on the hand as he claimed, rather, his injury was probably the result of *friendly fire* from one of his fellow officer's batons.³⁴ This piece of indisputable Brady material was known to the IAD investigator and his Captain by August 28, 1996, when they both signed the Memorandum to the Commissioner.

Nonetheless, nearly four months later, this young man, went to trial for criminal assault on Officer A (maximum sentence: 20 years). Though deprived of the Deputy Medical Examiner's opinion that the hand injury was not the result of a human bite, defense counsel secured a jury acquittal on all charges. But this result does not absolve the Police

³³(...continued)
investigation has a flaw, it is that the sworn testimony from the October 24, 1995 preliminary hearing on the criminal charges was not obtained from the Court or the DA and made part of the investigation file.

³⁴The investigation file indicates that the facts disclosed by the investigation were reviewed with a senior member of the District Attorney's Special Investigations Unit, the unit charged with prosecuting police corruption and misconduct, on or about June 5, 1996. We are unable to determine from the IAD file whether the Deputy ME had rendered his opinion at that point and, if so, whether that opinion had been communicated to the Special Investigations ADA. However, it is clear that the trial ADA was in communication with IAD and had access to the IAD file. This is demonstrated by the fact that the District Attorney's Office turned over a copy of the defendant's own statement to IAD in the course of discovery. Additionally, the aforementioned Special Investigations ADA wrote defendant's counsel in the criminal matter on May 1, 1996, advising that due to the attorney's failure to produce his client for an interview by IAD, the District Attorney's Office was proceeding with its evaluation of the allegations brought by the complainants, without waiting any longer. Thereafter, the defendant did present himself to IAD and gave a statement on June 3, 1996, despite the felony charges he was facing.

18 Pa.C.S. 4906, Obstruction of the Administration of Law 18 Pa.C.S. 5101 and Official Oppression 18 Pa.C.S. 5301), the punishment seems grossly insufficient.³⁹

Though the information only became known to IAD after the court proceedings were concluded, the fact remains that, as a result of a known police fabrication, a citizen paid a fine and has a traffic offense on his record.⁴⁰ There is no evidence that the Department took any action to right the wrong wrought by its officer's concoction.⁴¹

³⁹The officer's admission only came after the DA reviewed the facts of the case, and declined prosecution on September 5, 1996, clearing the way for IAD to compel the interview of the officer under Departmental administrative regulations. Thus, the admission could not be used against the officer in a criminal prosecution. This procedure is consistent with existing legal requirements and 5th Amendment protections enjoyed by all citizens, including police officers. There does not appear to be any such bar to investigation and, if warranted, a perjury prosecution of Officer A in IAD 95c009.

⁴⁰In IAD 96c057 (see § II.C.1.b.) the IAD Commander concedes that the elements of disorderly conduct were not present. As a result of the CAP the officer was given training on the elements of disorderly conduct. Because the complaint coding did not include false arrest, only physical abuse, the Commissioner's letter does not even address the illegal arrest allegation. The complainant entered a pre-trial diversion program (ARD) which avoided her receiving a conviction, but she still has an FBI record for the arrest, and should she ever be arrested again, she will not be eligible for ARD, having used her one opportunity on this false arrest.

⁴¹This investigation is also significant for its failure to address the conduct of the second officer, the recorder. See § II.E.3.

E. A WINDOW ON THE DEPARTMENT

The following areas need the Department's special attention:

1. DISORDERLY CONDUCT ARRESTS AND VEHICLE VIOLATIONS

The summary offense of disorderly conduct⁴² is used by some officers as both a weapon to punish and a shield to cover their own misconduct.

For example:

IAD 96c065 Allegation of false arrest by an off-duty officer (her sister, also an off-duty officer, another sister and the first officer's boyfriend were also involved) following a parking bumper thumper dispute at 3am. Police responded to an "assist officer" call, but the incident was over and the complainant and her two sisters were up the block, walking away by the time the first of the uniform officers arrived. One of the responding officers stopped the complainant and her sisters and took them back to the scene. All three were arrested for disorderly conduct, allegedly because they created a disturbance, as demonstrated by the neighbors gathering on their porches. Might not all this have had something to do with the eight (8) police vehicles brought to the scene, in response to the assist? The Lieutenant on the scene states that 10 neighbors came out after her arrival, and hers was not the first police car on the scene. In response to IAD questioning an officer who says he was one of the last on the scene, but who arrived before the Lieutenant states: "Everything was pretty quiet when I got there. Q. Were any neighbors out when you arrived? A. A few people were looking out there (sic) doors." The second officer on the scene stated: "There were two or three white

⁴²A summary offense, as distinguished from a crime, is any offense designated as a summary, or where the maximum term of imprisonment is not more than 90 days. 18 Pa.C.S. § 106(c). Generally, persons arrested on summary offenses in Philadelphia are taken into the police station, issued a citation, given a court date and released. These cases are frequently resolved at the initial appearance before a Municipal Court Trial Commissioner, by the payment of a fine, usually under \$100. Persons who choose to contest the citation, are given a trial date before a Municipal Court Judge. Persons who appear without counsel are not entitled to the appointment of counsel, although it is the practice of some judges to appoint an attorney from the Defender Association. A defendant in a summary case may not be incarcerated if he/she was not represented by counsel. Summary convictions before a Municipal Court Judge may be appealed to the Court of Common Pleas for a new, non-jury, trial. Disorderly Conduct may be a misdemeanor if the intent is to cause substantial harm or serious inconvenience, or if the actor persists after reasonable warning or request to desist, otherwise it is a summary. 18 Pa.C.S. § 5503.

Department.³⁵ The failure of so many trained officers to guarantee that this Brady material was disclosed, raises serious questions.³⁶ Likewise, the circumstances of this case raise questions as to whether there are effective procedures in the Department and the District Attorney's Office to effectuate Brady disclosure.³⁷

IAD 96c053, a much less serious incident, also demonstrates the need for an IAD policy on disclosure of exculpatory information:

When a traffic light turned red as he traversed an intersection, a bicyclist cut off by an EPW expressed his displeasure by uttering a pair of linked expletives. The police officer driver observed the complainant's mouthings in his rear-view mirror and, divining the nature of the communication, stopped the bicyclist. Thereafter a confrontation occurred, the details

³⁵Interestingly, though the investigator's memorandum is dated August 28, 1996, the Complaint Investigation form reflects the conclusion of the investigation (Job Out) on October 31, 1996, 371 days after the initial complaint and the date of the jury's acquittal. This is either an extraordinary coincidence, or the investigation was being held pending the outcome of the trial. The section of the file's cover page indicating review and approval by the Inspector Commanding IAD was initially signed this same date, October 31st, then this date was crossed out, and the approval date was changed to February 18, 1997. Approval on the cover page by the Chief Inspector commanding the Internal Investigations Bureau ("IIB," the Bureau containing IAD), is dated February 21, 1997. The file does not appear to contain any mention of the trial, the testimony presented, or the result.

³⁶Contrast IAD 96c018, where an off-duty police officer is alleged to have gotten into a dispute with two persons. The complainant alleges that the officer struck him and his cousin with a pistol, while they were handcuffed. The officer claims that he pulled his gun for his protection and in the course of a struggle, may have accidentally struck them with his gun. Some eye-witnesses interviewed by IAD disputed the police officer's version of the events, and supported complainant's. Defense counsel for the complainant, who was acquitted in a jury trial on charges of assaulting the officer, confirms that this Brady material from IAD was provided by the District Attorney. The co-defendant was convicted of lesser charges.

³⁷The defense attorney also states that the statements taken from numerous police officers by IAD, including the 11 page statement Officer A gave to IAD on August 9, 1996, as well as the IAD statements of the officers who joined Officer A inside the home, were never turned over to the defense in discovery. If the Department fulfilled its obligation by turning these statements over to the prosecutor, then it was the DA's duty to provide them to the defense.

of which differ between the officer (joined by his partner, the vehicle's "recorder") and the bicyclist. It is undisputed that the required incident report 75-48 was not prepared by either officer, that no call was placed to Police Radio relating to the stop, and that the second officer (the recorder) did not record the incident in the patrol log, as required by police policy. Nonetheless, the driver officer did subsequently issue the bicyclist a traffic citation for disregarding a red light. This citation was not delivered on the scene, but was prepared later and mailed to the bicyclist, contrary to police policy. The alleged reason for not issuing the ticket on the scene was that there was a person in the back of the EPW being transported to the Police District on a Disorderly Conduct arrest.³⁸

After a conviction in Traffic Court, the complainant appealed to the Court of Common Pleas, where he agreed to a plea bargain to a lesser offense, in order to avoid the points against his driver's license.

During the investigation the Police Officer driver admitted that he did not observe the traffic offense for which he had issued the citation. The Police Board of Inquiry found the officer guilty of a violation of 4.20 of the Disciplinary Code, Neglect of Duty, for failing to hand complainant his copy of the citation, for which the officer received a reprimand and training on safety and sensitivity. Considering that the officer admitted fabricating the traffic violation, conduct which constitutes a violation of numerous criminal statutes (Unsworn Falsification to Authorities 18 Pa.C.S. 4904, False Reports to Law Enforcement Authorities

³⁸This person, a potential witness, was neither identified nor interviewed as part of the investigation.

females on one end of the block on the north side [the officer and her sisters]. There were three black females and [Officer 1] down the other end of the block. I guess people not involved were out on their porches, I don't know who they were, just watching. Q. How many people were actually involved in the disturbance when you arrived? A. When I arrived the disturbance was over. They weren't arguing with each other they were separated. A. Were any neighbors out when you arrived? A. There were a couple here and there out on the porches." A number of the other responding officers do not even remember any neighbors being out. The citation prepared by the first officer to arrive, states "... after which responding police arrived on the scene arrested the three females still being disorderly on the scene." This assertion is false, as everyone agrees, including the citing officer, that the complainants were walking down the block and the incident was over, when he took them into custody and brought them back to the scene, where they remained in the back of his police car, as ordered by the Lieutenant who had also responded. The off-duty officer was exonerated on the allegation of false arrest. The arrest process involved the Lieutenant presenting the options to the off-duty officer, stating that it was the officer's call, and telling the off-duty officer that she (the officer) had to be the arresting officer. Additionally, the officer who wrote the citation stated, when asked who decided to arrest the females: the two off-duty officers were supposed to arrest them. It must also be noted that the Lieutenant told IAD that all involved smelled of alcohol. Despite the presence of all the uniformed officers, including a Lieutenant, the decision was placed in the hands of the involved off-duty officer, who the supervisor on the scene concluded had been drinking.

In USA v. Michael McDermott, Cr. No. 97-505-M (E.D.Pa. 7/30/97) (Dalzell, J.), the Court noted that "Emphatic or vulgar expression of one's discontent with an official's actions, while distasteful to the ear and offensive to the ego, are not — standing alone — 'obscene' under the First Amendment and therefore without constitutional protection." Slip Opinion, p.9.

Similarly, in Commonwealth v. Gilbert, 674 A.2d 284 (Pa. Super. 1996), the Pennsylvania Superior Court held that a person on a public street who shouted out his opinion that police conduct was improper, could not be found guilty of disorderly conduct. Judge Beck pointed out that the evidence "proved only that the arresting officer was annoyed

by [the] expressing of disagreement with the police intention to tow the car. Nothing in the record supports the inference that [the man] acted 'with intent to cause [or risk] a public inconvenience, annoyance or alarm ...'"⁴³ The Court went on to note :

...[O]ur Supreme Court has made clear that the crime of disorderly conduct "may not be used to punish anyone exercising a protected First Amendment right." ... [The] right as a citizen in a democracy to disagree with a police officer is not unprotected. "The freedom of individuals verbally to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state." ...

Although, the CAP files reviewed show that the Department has not always been willing to accept this proposition, plaintiffs are encouraged by the Commissioner's issuance of a computer message read to all officers, followed by the Training Bureau's October 21, 1996 release of a firmly worded review of the law of disorderly conduct, quoting much of the case law set forth herein. Plaintiffs are hopeful that the next CAP audit will demonstrate that these training efforts, coupled with a commitment to impose strict discipline for such abuse of arrest power, will have impressed upon police officers that "the disorderly conduct statute must not be used as a catchall or dragnet for prosecution of conduct that is uncivil, annoying or irritating."⁴⁴

⁴³See also, Commonwealth v. Coon, 695 A.2d 794 (Pa.Super. 1997), where the Court noted that the offense of disorderly conduct required proof that a person "specifically intended to cause serious public inconvenience or substantial harm to the public, or that appellant persisted in disorderly conduct after a reasonable warning or request to desist was made."

⁴⁴The files also demonstrate that the officer's frequently claim that a crowd is gathering or neighbors are being disturbed as a basis for making a disorderly conduct arrest. As the Court in Gilbert makes clear, such disturbance must be "unreasonable noise [] 'not fitting or proper in respect to the conventional standards of organized society or a legally constituted community.'" Plaintiffs submit that reasonable officers, and police administrators, can easily conclude that the conduct alleged in the files reviewed: arguing with police outside of a Delaware Avenue cabaret on a Saturday night; challenging a police officer's use of physical force and intimidation to assist

(continued...)

For examples of disorderly conduct arrests and traffic incidents, see Appendix G.

2. ASSIST OFFICER

Assist Officer calls result in officers converging on a scene with the understandable concern that another officer is in danger. Such emotionally charged circumstances can easily result in precipitous or adrenalin driven conduct, which might not otherwise occur, as may have happened in the recent tragedy on Snyder Avenue. Additionally, the presence of so many officers, in such a show of force, can sometimes cause the disturbance or escalate the very situation which is sought to be avoided. From a purely administrative point of view, assist officer calls take numerous officers away from their other duties.

For example:

IAD 95c009 Officer who called in the wrong address did not request an "assist," he simply advised Police Radio that he was entering a location in pursuit. However, according to the transcript of the radio transmissions, the incident took on a life of its own and became an "assist" without anyone actually declaring it one. The "assist" assured the *en masse* forced entry at the erroneous address (IAD 95c008), and exacerbated the situation in the incident which gave rise to IAD 95c009. See § II.D. for a complete description of this matter.

IAD 96c065 Allegation that off-duty officer made a false arrest (her sister, also an off-duty officer, and another sister were also involved) following a parking bumper thumper dispute at 3am. Police responded to an "assist officer" call, but the incident was over and the complainant and her two sisters were walking away. One of the responding officers stopped them and took back to the scene. All three were arrested for disorderly conduct. No one discusses what role the eight police vehicles, rushing to the scene, lights ablazing, may have had on the neighbors gathering (the alleged basis for the disorderly conduct arrest), or the propriety of the "assist officer" call.

⁴⁴(...continued)

a private "repo" men, in one's own driveway; or a bartender not jumping to obey police orders and arguing with the officer in front of the bar door, are not the sort of unreasonable "noise inconsistent with neighborhood tolerance or standards," contemplated by the courts.

3. CODE OF SILENCE

The Code of Silence,⁴⁵ that cops don't tell on cops, may take two different, equally invidious forms. The first involves actively helping to cover up misconduct, the second is to see no evil, hear no evil and speak no evil. Though the files reviewed do not evince the fictitious town in *Cop Land*, or Brooklyn's 70th Precinct, there can be no doubt that the Code of Silence has practitioners in the Philadelphia Police Department.

For example:

- IAD 96c027 When interviewed by IAD, the detective who was the original assigned investigator on the arrest of a young retarded man by an off-duty police officer stated that he had concluded at the time of the incident that the off-duty arresting officer's version was not credible. However, it does not appear that the detective ever noted this conclusion in his paperwork, advised his superiors, or otherwise made his beliefs known. (See Appendix D, for complete description of incident).
- IAD 96c028 An off-duty officer stopped a truck in the middle of State Road and arrested his brother at gun point, claiming he was being stalked and threatened. The officer failed to mention to the assigned detective that the defendant was his brother, however, the detective noticed the same last name and questioned the officer, who admitted relationship. Nowhere does the file reflect that the detective reported the incident to IAD, or other appropriate entity.⁴⁶ Also, the detective left it to the police officer to make sure that his brother (the complainant) was released. The result was that the complainant continued to be incarcerated for a further three hours, while the off-duty officer went to court to obtain a protective order.
- IAD 96c053 Police Officer admitted that he did not observe the traffic offense for which he had issued a traffic citation. (See § II.D.). The partner of this officer, the recorder in the vehicle, is the officer who was responsible for preparing the

⁴⁵Also known as the "Blue Wall," "Blue Veil," or the "Thin Blue Line."

⁴⁶There is also no evidence to suggest that the detective's superiors (a sergeant and a lieutenant) took any action upon their review of the detective's routine investigation report. Instead it appears that it was the filing of the CAP a few days after the incident which commenced an investigation that ultimately resulted in the arrest of the officer.

48 and calling the stop into police radio. His failure to do so was in violation of police policy, but no mention is made of him. Moreover, his *concentrating on the paperwork* explanation for not observing the incident, and his acquiescence in the after-the-fact issuance of the ticket should raise "code of silence" concerns in the police administrators reviewing this file. The file also contains no comment on the tale spun by the recorder in describing the actual stop of the complainant, which version is irreconcilably at odds with the descriptions of both the driver and the complainant.

IAD 96c064 Despite denials of the officers, the Inspector of IAD concluded that the complainant was indeed made to park his car to sober up and told he couldn't leave until after 3am, the end of the officers' shift. This conclusion is supported by independent witnesses (occupants of the other vehicle in the collision) and the fact that the complainant could not have known what time the officers were off, if they did not tell him. The conclusion means that there was also a tacit finding that the officers lied in an official investigation to conceal their own and each other's misconduct. However, no such charges were pursued.

Though not technically part of "the Code," the problem of officers lying to conceal their own conduct is obviously a related matter that should be of paramount concern to the Department. IAD 95c009, discussed at length in § II.D., presents an officer who apparently lied about being bitten on the hand.

IAD 95c010 involves an off-duty officer who lied to police on the scene about having insurance, and who later lied to IAD about whether a supervisor responded to the scene of the incident.⁴⁷

IAD 96c026 presents a situation where IAD sustained an allegation of verbal abuse based upon the corroboration of an independent witness. There is no discussion of the

⁴⁷This officer was found guilty by the PBI and was suspended for 16 days by the Commissioner. The charges included making a false statement in response to an official departmental investigation.

officer's denial that the witness was even present. The PBI found the officer guilty of the verbal abuse and a two-day suspension was imposed.

In IAD 96c066 the investigation concluded that the officer's presence at Domestic Relations Court for a female friend's "protection," was a preplanned event, not the coincidence he claimed. Though the only conclusion from this finding is that the officer lied in an official investigation, no such charge is leveled, and no discipline is sought. See Appendix H, for other Code of Silence related incidents.

4. RACE

A variety of factors, including complicated demographic questions, make it impossible to reach any conclusions about racial issues from the data currently available. Another of these possible factors is the constriction of the pool of involved officers due to failure to adequately investigate the conduct of officers who are not directly named by complainants. See § II.B.3. However, in the interest of completeness, plaintiffs are including the racial data contained in Departmental computer records. It will then be for the Department to determine whether any flags should be raised by the data, how to evaluate the data, and what if any significance the data has.

The Department's computer data indicate that more than half the 577 CAPs were brought by African Americans (327, or 56.7%). Over a fourth were brought by Whites and about one in ten were brought by Latinos.⁴⁸

⁴⁸ Race Not Indicated 12
 Asian 5 (0.8%)

(continued...)

CAP complainants are African Americans about one-half (½) the time. Four categories of CAPs make up the vast majority of the 577 CAPs. Table 2. The disproportionate percentage of African Americans who complain of physical abuse, as compared to whites, and relatively speaking, the opposite trend for verbal abuse, are areas that warrant further study by the Department.

Table 2: 1996 CAPs -- Majority Categories by Race			
	African American	Latino	White
Harassment (35)	19 (54%)	4 (11%)	11 (31%)
Lack of Service (99)	52 (52%)	12 (12%)	33 (33%)
Physical Abuse (221)	132 (60%)	25 (11%)	51 (23%)
Verbal Abuse (120)	54 (45%)	12 (10%)	47 (39%)

A similarly disproportionate number is found in the area of allegations of false arrest and improper detention. As table 3 shows, the category "Other" appears to demonstrate a high number of African American initiated CAPs. Examination of the largest sub-category within "Other" -- false arrest/detention — demonstrates that over three quarters of these allegations involve African Americans. See § II.F.1. For further discussion of sub-category false arrest.

⁴⁸(...continued)

African American	327	(56.7%)
Latino	63	(10.9%)
O (other?)	4	
White	166	(28.8%)

Table 3: Race Breakdown of 1996 CAPs Coded "Other"			
	Afr. Am.	Latino	White
Others (88)	61 (69%)	9 (10%)	14 (16%)
False Arrest/Detention (43)	33 (77%)	2 (4.6%)	5 (12%)

Finally, table 4 illustrates the Department's data on IAD findings for the 1996 CAPs, broken down by race.

Table 4: 1996 CAP Findings By Race			
IAD Conclusion Type	African Am.	Latino	White
Multiple Findings	5 (2.2%)	0	2 (1.6%)
Departmental Violation	8 (3.6%)	0	5 (4.1%)
Partially Sustained	8 (3.6%)	4 (9.5%)	5 (4.1%)
Sustained	13 (5.8%)	3 (7.1%)	10 (8.2%)
Not Sustained	98 (44%)	15 (35.7%)	49 (40%)
Exonerated	21 (9.4%)	6 (14.3%)	15 (12.4%)
Unfounded	41 (18.41%)	5 (12%)	17 (14%)
Withdrawn	3 (1.3%)	1 (2.4%)	7 (5.8%)
Referred	4 (1.8%)	1 (2.4%)	2 (1.6%)
Frivolous	6 (2.7%)	1 (2.4%)	2 (1.6%)
Several Findings	16 (7.2%)	6 (14.3%)	7 (5.8%)
Total	223	42	121

Plaintiffs reiterate that there is insufficient data from which to draw any conclusions on issues of race, and it would be premature to draw any conclusions about the effects of race on police behavior or the Department's investigation of CAPs. Plaintiffs anticipate a further examination of racial issues following completion of their Reports on all the types of IAD investigations, and their survey of police 75-48's.

F. STATISTICS

1. The CAPs

The Department's computer data for 1996 indicate that the 577 CAPs were coded in seven categories. Table 5.

Plaintiff's then examined the cases categorized as "Other." The Department's computer data for the 88 CAPs categorized as "Other," (Table 6) show that nearly one-half (43) involve allegations of

false arrest or illegal detention. These figures suggest that there is a sufficiently significant number of false arrest/illegal

Table 5: 1996 CAPs By Department Codes		
	Number of CAPs	% of Total CAPs
Abuse of Authority	9	1.5%
Criminal	5	0.8%
Harassment	35	6.0%
Lack of Service	99	17.1%
Other	88	15.2%
Physical Abuse	221	38.3%
Verbal Abuse	120	20.7%

detention cases⁴⁹ to warrant designation as an independent category. Lumping these serious allegations into an “Other” category does not allow the Department to adequately identify and track these complaints.⁵⁰

Table 6: Breakdown of 1996 CAPs Coded As “Other”		
Allegation	Number	% of “Other”
False Arrest/Illegal Detention	43	48.8%
Misc.	7	7.9%
Perjury	3	3.4%
Physical Abuse	1	1.1%
Property Damage/Taken	8	9.1%
Search Related	9	10.2%
Threats	4	5.5%
TVRs	8	9.1%
Weapon Pointed	5	5.6%

Table 7 provides a breakdown of CAPs filed in 1996, by IAD conclusion. There does not appear to be a reason for having separate categories for “Multiple Findings” and “Several Findings.” In fact, the term “Several Findings” does not appear in either the March 5, 1992

⁴⁹The 43 “Other” false arrest/illegal detention complaints comprise 7.5% of all the 1996 CAPs.

⁵⁰CAPs alleging false arrest/detention also appear under the arguably “less serious” categories of Harassment (2 CAPs) and Abuse of Authority (2 CAPs). Of the 221 CAPs coded as Physical Abuse, 26 also include allegations of false arrest/detention.

or April 3, 1997 versions of IAD Policy No. 8 -- Classifications. Additionally, the line between cases coded "Partially Sustained," as opposed to "Sustained," seems somewhat blurred. It may well be that there is also no reason for a "Partially Sustained" category, as

it is rare that every single allegation in a CAP is ever sustained. Plaintiffs suggest that the Department evaluate these disposition codes, and determine whether either consolidation or clearer delineation is needed to eliminate the apparent inconsistency in result codes.

Table 7: 1996 CAP Conclusions		
IAD Conclusion Type	# of CAPs	% of CAPs
Multiple Findings	7	1.2%
Departmental Violation	15	2.6%
Partially Sustained	17	2.9%
Sustained	28	4.9%
Not Sustained	166	28.8%
Exonerated	42	7%
Unfounded	64	11.1%
Withdrawn	11	1.9%
Referred	8	1.4%
Frivolous	9	1.5%
Several Findings	30	5.2%
Open	180	31.2%

2. The Officers

The Department's computer data indicates that the 577 CAPs brought in 1996 involved allegations against 703 officers.⁵¹ Because of multiple CAPs against certain

⁵¹As is more fully set forth in § II.B.3., plaintiffs believe that the Department's accounting in this regard is below what the actual figure should be, due to failure to expand the (continued...)

officers, the number of individual officers is actually 624. Of this number 69 (11%) were the subject of two or more CAPs in 1996 (61 had 2 CAPs, 7 had 3 CAPs, 1 had 5 CAPs). Of the 624 Officers, about one-in-ten (60) have been the subject of five or more CAPs in the course of their careers (21 had 5 CAPs, 14 had 6 CAPs, 12 had 7 CAPs, 7 had 8 CAPs, 5 had 9 CAPs, 1 had 10 CAPs). One-in-eight of the 624 officers who were the subject of CAPs in 1996 (77) had, during their career, been the subject of five or more Internal Affairs investigations, of all types. About one-in-20 (30) of those 624 officers had been the subject of seven or more Internal Affairs investigations during their careers.

Table 8: 1996 CAPs By Police District			
District	CAPs	District	CAPs
1st	15	15th	21
2nd	17	16th	26
3rd	17	17th	26
4th	13	18th	13
5th	7	19th	30
6th	18	22nd	16
7th	11	23rd	19
8th	13	24th	21
9th	19	25th	39
12th	20	26th	29
14th	28	35th	40
		39th	30

⁵¹(...continued)
allegations to include other officers whose conduct is implicated by the investigation.

As can be seen from Table 8, certain Districts originate dramatically⁵² higher numbers of CAPs. However, due to difference in geographical size, population size, nature (residential, commercial, industrial, park, etc.), number of officers assigned and other demographic characteristics, plaintiffs are not able to draw any conclusions from this raw data, at this time.

Plaintiffs also used the Department's data on the officers identified as involved in CAPs to search for patterns between numbers of CAPs and length of service.⁵³ Figure 4. Because plaintiffs do not have figures for the distribution of officers by length of service, as of December 31, 1996, it is difficult to draw specific conclusions about the relationship between CAPs and tenure as a police officer. However, two aspects of the data raise questions warranting further inquiry: the high number of CAPs involving officers on the job two years or less, and the apparent spike of CAPs against officers with six years of service.⁵⁴

⁵²The data for Table 8 was gathered from the Department's "Complaints" database, rather than from the "Officer" database. However, even when adjusting the Officer database data to account for multiple officers in a CAP, it appears that the figures for each district were similar. The one area of variation may lie in the fact that 34 of the 703 officer listings in the Officer database involved off-duty officers. It appears that CAPs involving off-duty officers rarely arise in the officer's District of assignment.

⁵³The data in Figure 4 represents 700 incidences of officers subject to CAPs. Three officer incidences do not appear on the graph because the Department's computer data do not indicate their length of service. Additionally, as discussed above, because some officers were the subject of multiple CAPs in 1996, the actual number of distinct individual officers is 624. Thus, for example, though there were 106 officer incidences for those on the job six years, the number of discreet officers is actually 92. Because the Department's data indicates the length of service at the time of the complaint, there are a few instances of discreet officers appearing in more than one length of service category. For example, Officer B was the subject of two CAPs in 1996: under IAD 96c071 he is shown as having six years on the job, while under IAD 96c038, he is listed as having been on the job seven years. This apparent discrepancy is due to the anniversary of his appointment to the force falling between the two complaints.

⁵⁴ For a discussion on patterns of police officers' loss of idealism and academy
(continued...)

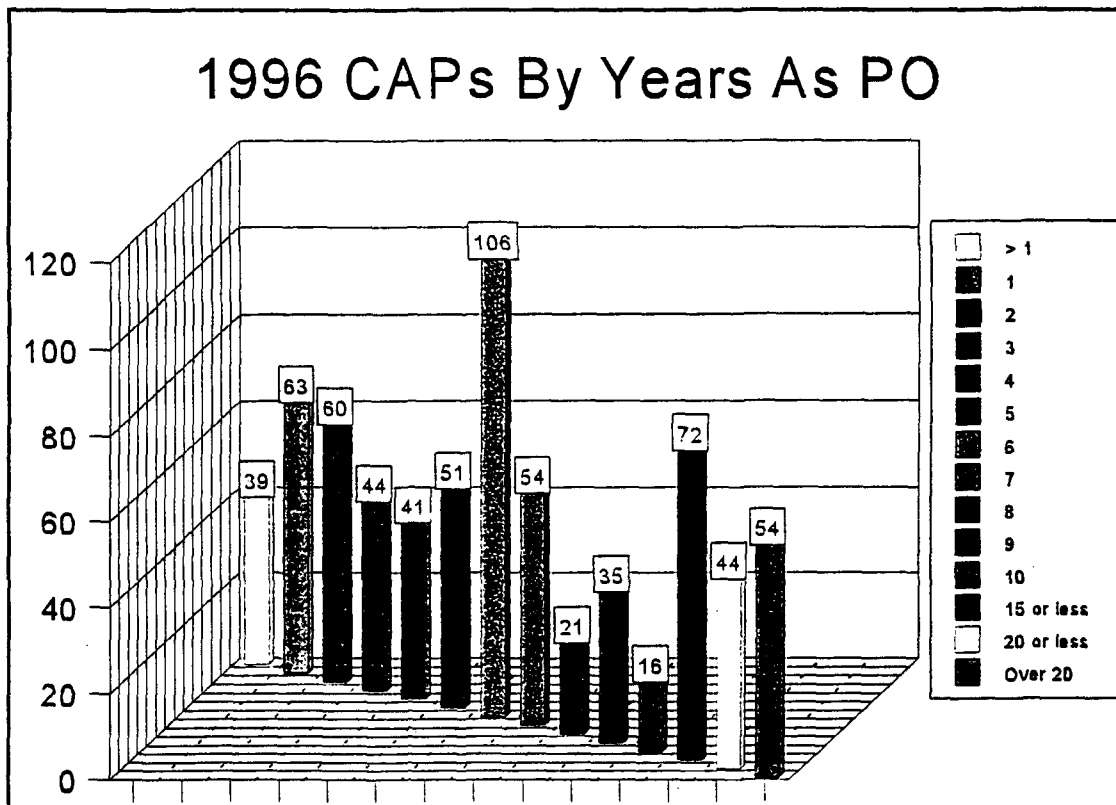


Figure 4

⁵⁴(...continued)

discipline, and development of cynicism, see Niederhoffer, Arthur, Behind the Shield, Garden City, NY: Doubleday, 1967); and Bennett, Richard R., and Theodore Greenstein, "The Police Personality: A Test of the Predispositional Model," Journal of Police Science and Administration 3:439-45 (1975).

IV. RECOMMENDATIONS

1. **Time of Investigation.** Mayoral Executive Order 9-93, as modified by the Settlement Agreement, already contains the procedures for assuring timely completion of investigations and notice to complainants of the results. What is now needed is a commitment by IAD supervisors, backed by the authority and example of the Commissioner. The investigations reviewed for this report indicate that the Mayor's deadlines are not mere bureaucratic burden. Prompt investigation is essential for locating witnesses, preserving evidence, and preserving testimony before memories fade.
2. **Staffing and Resources.** If the delays in conducting and completing investigations are the result of staffing shortages, or a lack of other resources, this is unacceptable. The Department must commit sufficient personnel and support to IAD to insure that investigations are performed in a prompt and thorough manner.
3. **Investigation Procedures.**
 - A. **Coding.** The Department should develop clear, practical guidelines to assure that the assigned designation codes accurately reflect the allegations made, and that there is consistency in the way in which codes are assigned.
 - B. **Testimony.** When there is a preliminary hearing, trial or other proceeding where there is testimony taken relating to a matter which is the subject of an investigation, the assigned investigator should obtain the transcripts.
 - C. **Radio Tapes.** The process of notification to IAD of a CAP should be expanded to include notification to Police Radio, with a request that all relevant radio tapes (including 911 calls) be identified and preserved. While it will not always be possible to obtain the relevant radio tapes, whether due to delay in bringing of complaints, or due to lack of adequate timely information, such a routine effort will insure that this important evidence is available in a greater number of cases.
 - D. **Doctor/Medical Examiner Interviews.** These interviews should be treated the same as any other interview. If not taped, they should be recorded verbatim. Investigator's summaries are highly questionable when they routinely fail to reflect what information has been provided the doctor or ME, so as to establish the basis for any opinions. Also, they present the risk of the lay investigator's interpreting, or misinterpreting, the medical opinions and terminology.

- E. **Withdrawals.** The Department has taken the appropriate position that a complainant's desire to withdraw the complaint will not terminate the investigation. However, the availability of a formal withdrawal should be eliminated. When a complainant expresses a desire to withdraw, he/she should be encouraged to cooperate with the investigation and should be informed that the investigation will continue. In all situations where a complainant seeks to withdraw, the issue should be explored with them to insure that the desire is not the result of fear or intimidation (whether real or perceived.) Additionally, a withdrawal should never serve as the basis for a finding. The conclusion should be based upon the information disclosed by the investigation, without regard to the withdrawal of a complaint.
- F. **Pre-typed Interviews.** The use of pre-typed, fill in the answer forms for interviews conducted away from IAD may be appropriate in certain circumstances. However, investigator's should be encouraged to consider the answers given and to make any follow-up inquiries reasonably suggested by the interviewee's responses.
- G. **Efforts to Contact Witnesses.** Investigators need to understand that efforts to contact witnesses are not a discreet task, to be performed within one short time period, then abandoned. Where an investigation remains open for other interviews or inquiries, the investigator should continue efforts to locate and interview witnesses. Investigators should also be encouraged to take advantage of the numerous available resources to locate witnesses for whom the investigator does not have a good address. Investigators must not put artificial, arbitrary deadlines in their contact letters, because such deadlines will dissuade persons who, for whatever reason, can or do not make contact within the prescribed period.⁵⁵
- H. **Re-interview of Complainants and Witnesses.** Because of the need for clearance by the District Attorney, the subject police officers are almost always the very last persons to be interviewed. In most cases, the officer's version of events, as well as information obtained during the course of the investigation, will generate subjects requiring further inquiry to be made of complainants or witnesses. The routine questioning of officers as to the complainant's version, without the complainant's or witness' response thereto, undermines the appearance of impartiality which citizens have a right to demand.

⁵⁵Proofs of mailing for certified letters should bear the post office seal.

- I. **District Investigations.** A particular person within the district/unit should to be designated to conduct the CAP investigations referred by IAD, under the supervision of the Commanding Officer. A logical choice would be the Administrative Lieutenant (or equivalent in units without such a position). This person should undergo training by IAD to assure that proper procedures and techniques are employed in these investigations. Having a trained person, with regular responsibility for such investigations, will enhance the likelihood of much needed consistency and thoroughness of investigations, and will somewhat reduce the problem presented by colleagues or immediate supervisors conducting interviews of or about police officers.
- J. **Interpreters.** The adequacy and availability of interpreters appears to be a problem for Internal Affairs. However, plaintiffs understand that this matter is the subject of ongoing discussions between the Department and the Police Barrio Relations Project. These discussions have resulted in an agreement by IAD to attempt to use Philadelphia Court interpreters, when available, and trained volunteers at other times. While this is an appropriate interim response, the long-term solution must be for the Department to amend IAD Policy No. 18 § 2.d., allocate sufficient funds and enter into a contract with a professional interpreting service, and to implement its agreement to record all interviews.
- K. **Notice to Complainants.** If the twenty day time period for Commissioner notification set forth in Executive Order 9-93 is impractical, the Order should be amended to reflect a reasonable time, and that time period should be routinely followed. The Department should also prepare a booklet for distribution to all complainants when they file a CAP. This hand-out should describe the various steps in the CAP investigation process, including, but not limited to: What will be expected of them as complainants; standard time periods for investigation and review; the spectrum of possible results; and the disciplinary process and options, if the allegation is sustained. Such a booklet is already being used by the Los Angeles Sheriff's Department and has been recommended to the Los Angeles Board of Police Commissioners by the Inspector General. The hand-out should also provide the complainant with phone numbers for contacting IAD.
- L. **Witness Credibility.** In furtherance of its agreement that *there should be no automatic preference concerning an officer's testimony. Rather all available evidence shall be evaluated based on a "preponderance of the evidence" standard.* (Response to Proposal V.A.9), the Department should eliminate the requirement of "independent corroboration." Rather, the testimony of all witnesses, police and civilian, should be evaluated using the traditional standards for such an analysis: Each witness' intelligence, motive and state

of mind, and demeanor or manner; the witness' ability to observe the matters which he or she has described, and whether he or she appears to have an accurate recollection of those matters; any relation each witness may bear to either side of the case; the manner in which each witness might be affected by the investigation; and the extent to which, if at all, each witness is either supported or contradicted by other evidence. Inconsistencies or discrepancies should be weighed to consider their effect, whether they pertain to a matter of importance or an unimportant detail, and whether the discrepancy results from innocent error or intentional falsehood.⁵⁶

- M. **Complainant/Witness Contacts.** Because an unfortunate result of delay is sometimes an inability to locate complainants or witnesses who have moved, the CAP form should be amended to include secondary contact addresses and phone numbers. In the interim, District officers and others who assist in the preparation of, or accept completed CAP forms, should request this information and note it on the form. Likewise, CAP investigators should routinely obtain secondary contact information, and request that complainants and witnesses notify the investigator of any changes of address.
 - N. **Legal Opinions.** When an investigation presents an issue requiring a legal conclusion or interpretation of relevant case law, IAD investigators should consult with Police Counsel or other members of the Law Department.
 - O. **Findings.** The categories "Multiple Findings," "Several Findings" and "Partially Sustained" need to be reexamined and modified or better defined. In order to provide meaningful information, the definitions must be clear, and they must be applied in a consistent fashion.
- 4. **Training Bureau/Research and Planning.** A copy of all completed investigation files should be sent to the Training Bureau and the Research and Planning Unit. These two entities have the expertise and orientation to identify and address training or policy issues which may be raised by CAP investigations, but which may not be readily apparent to other supervisors. Additionally, these two entities may be best able to track or identify trends that warrant a Departmental response.
 - 5. **Supervisory Review of Investigations.** We believe there has been insufficient review at the IAD Command and Commissioner level. It may be that the burden on the Commanding Officer of IAD is unreasonable, and the initial responsibility for preparation of the conclusions in investigations should be placed on, for example, the IAD Captains. Whatever the solution, only a commitment to even-handed, comprehensive review can insure the integrity of the CAP investigation process.

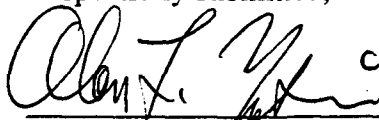
⁵⁶See Devitt, Blackmar and Wolff, Federal Jury Practice and Instructions, § 73.01

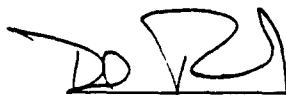
6. **Disorderly Conduct Arrests.** Because of the lower level of Departmental, prosecutorial and judicial scrutiny given summary disorderly conduct arrests, they are easily open to abuse. The Department should immediately begin tracking and investigating all allegations of retaliatory or punitive disorderly conduct arrests. Whenever the suggestion of such an arrest is raised in a CAP, it should not be assigned to a district commander, but should be investigated by IAD. The Department should also establish a procedure for heightened supervisory review of summary citations. Most importantly, the Department, perhaps in a cooperative effort with the Police Advisory Commission, should establish a system for identifying possible retaliatory or punitive disorderly conduct arrests which are not the subject of CAPs and conduct mini-investigations into a sampling of those arrests.⁵⁷
7. **Assists.** “Assist Officer” calls result in officers converging on a scene with the understandable concern that another officer is in danger; such calls play an essential role in officer safety. However, the emotionally charged circumstances can easily result in precipitous or adrenalin driven conduct which might not otherwise occur. Additionally, the presence of so many officers, in such a show of force, can sometimes cause the disturbance or escalate the very situation which is sought to be avoided. Further, assist officer calls take numerous officers away from their other duties and, as the recent tragic death of a pedestrian and his infant son demonstrate, assists present a danger for vehicle accidents. For all these reasons, the Department should be concerned about erroneous use or abuse of the assist officer call. The Department should, therefore, establish a system for identifying and tracking assists, including spot checks of the circumstances behind apparently “unfounded” assists. Such a study may enable the Department to identify ways to reduce erroneous or improper assists.
8. **Code of Silence.** No mere rule can obliterate the Code of Silence. However, serious investigation into even the hint of cover-up, no matter how seemingly insignificant, along with swift, sure and severe punishment is essential to the attack this syndrome. Plaintiffs look forward to seeing evidence of such efforts in their next CAP audit. It is also to be hoped that the field associates program, along with proactive investigations by the Department, and the other measures being pursued by the Department under the Agreement will be effective.

⁵⁷We have also detailed situations where traffic tickets (TVRs) were used in a punitive or retaliatory fashion. § II.E.1. Accordingly, the Department should track and review all allegations of retaliatory or punitive issuance of TVRs. All CAPs which raise the possibility of punitive traffic/parking citations should also be investigated by IAD, rather than the district/unit commander.

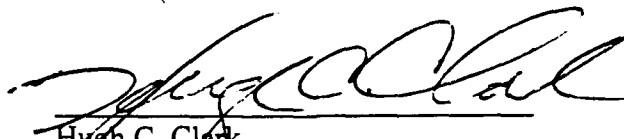
9. **Written IAD Brady Policy.** In any IAD investigation, whether conducted by IAD or by a district or unit commander, where criminal, summary or traffic charges have been filed against the complainant, the investigators and supervisors should promptly disclose to the District Attorney's Office any information, facts, evidence or other material that is of an exculpatory nature, or which would impeach any aspect of the prosecution's case. Because the police investigators will not necessarily know the full details or theories of the prosecution's case, they should promptly disclose to the District Attorney any information that could conceivably be considered exculpatory or impeaching. IAD Policy No. 20, § D., relating to the analysis section of the Memorandum, should be amended to require an investigator to indicate that he/she has considered whether the investigation presented any disclosure issues, and, where appropriate, what steps were taken to comply with that constitutional obligation.
10. **Supervisory Responsibility.** Consistent with the Settlement Agreement, the Department, through the IAD investigation process, should evaluate the responsibility of supervisory personnel for incidents of abuse, and where appropriate impose discipline.

Respectfully submitted,


Alan L. Yatvin


David Rudovsky


Stefan Presser


Hugh C. Clark

Appendix A — Investigative Inadequacies

- IAD 95c001 Complainant, the uncle of decedent, was an eyewitness to the homicide. He alleges that he was physically abused by Homicide detectives inside the Homicide Unit at the Police Administration Building. Family members who were allegedly witnesses did not respond to the IAD investigator's letters, the first of which appear to have been sent nine months after the initial complaint and interview of complainant, and a year after the incident. No indication that investigator(s) ever attempted to contact the witnesses through the complainant, whose cooperativeness is demonstrated by his coming in to IAD three times for interviews and to review photos, and who told the investigator he could produce his niece through her lawyer. Although the investigation took 1 3/4 years to complete, the investigator stated in his letters to the witness that if the witnesses did not contact IAD within 5 or 10 days, he would assume they did not wish to cooperate in the investigation. There was only one such effort to contact the witnesses; about a year before the investigation was even concluded. One witness failed to keep an appointment with internal affairs, but of four other witnesses, there was no evidence of return receipt in the file (also the mailing slips were not stamped by the post-office.) Moreover, three of the witnesses may well have been put off by the fact that the salutation to their letters was not in their name. Instead Ms. M., Ms. M and Mr. M., were each addressed "Dear Ms. R".
- IAD 95c002 A bike messenger illegally riding her bike on Chestnut Street was subsequently arrested for disorderly conduct. The focus of the interview of complainant was on what she could have done to avoid the problem and arrest. Also, interviews of witnesses appear aimed at exculpating officers (What to you is excessive force? How do you think this could have been avoided? Can you be a little more specific about how she was resisting?). Investigation doesn't address the fact that the apparent refusal of the officers to let the bicyclist lock up her bike led to her reaction.
- IAD 95c006 Investigation into multiple allegations of harassment brought by a police officer's ex-wife (who was herself alleged to have been harassing her ex-husband). Numerous witnesses had to be interviewed. Investigator claims no cooperation from complainant's attorney, but as investigator certainly knows, the attorney's principle practice is representation of police officers in IAD investigations and before the PBI, through the Fraternal Order of Police. IAD did a handwriting analysis of a document the complainant says she received, to see if she wrote the document herself, but never sought a handwriting analysis of her officer ex-husband, to see if he was the author. The complainant was convicted at trial in connection with some of the matters which were the subject of this investigation.

- IAD 95c011 Complainant alleged that the officer broke his arm during the course of handcuffing. The interview with the treating physician was not in a question and answer (Q & A) form. Documents indicate that the IAD officer apparently prepared the written statement, then faxed it to the doctor for a signature. No written statement or Q & A from either of the two doctors from the Medical Examiner's Office. What were they shown, what were they told, and precisely what did they opine? File only presents the IAD investigator's lay interpretation.
- IAD 95c012 Minor involved in a dispute with his mother. Claims responding police physically abused and threatened him after he left the premises. The complainant was interviewed a few days after the incident, but there are no questions about his alleged injuries. In fact, there are no follow-up questions whatsoever. The entire interview of the complainant consists of "...tell me in your own words ..." and complainant's short narrative. The IAD investigator failed to order the radio tape, though she had timely notice of the possible relevance of the radio tape to the investigation.
- IAD 96c017 Alleged physical abuse during a narcotics arrest, but substances proved not to be illegal. The investigator only interviewed police witnesses regarding police officer's story that complainant injured himself by hitting his head on the bars. No efforts made to interview any non-police (prisoners) who may have been in cell room at time in question. Distinct lack of healthy skepticism regarding the officer's version of the events.
- IAD 96c021 Complaint to Police Advisory Commission (PAC) of punch in face. Complainant interviewed by PAC in Montgomery County Prison. IAD tried to reach complainant at a two year old address, sent a letter to that old address, and made a call the Montgomery County Prison. No check with parole officer or effort to contact complainant through his mother. A police delivered message and a certified letter (unclaimed) were sent to the eye witness. Two phone messages left for the attorney (also a fact witness) were followed by a "certified" letter. All the letters say IAD will use the interview which was given to the PAC if no contact within two weeks. All efforts to contact complainant and witnesses were during a one week period, then nothing else, though investigation is open for another five months. The medical examiner confirmed that the injuries were consistent with a punch to face. The investigator failed to check the Computer Assisted Dispatch (CAD) to confirm times and information given Police Radio.

- IAD 96c024 The statement of the eye-witness (friend of complainant) was pre-typed questions, with responses written in long-hand. It is hard to imagine that any factual recitation by a witness would not generate any follow up or clarification questions. Certainly the interviews of the officers indicated such follow up and clarification questions.
- IAD 96c025 Allegation of a parking ticket which was never put on the car, by an officer who owed the complainant money for some car repair work. The complainant alleges that he saw the officer behind him on the day the ticket was issued. The officer says he just issued a routine double parking ticket. Although the investigator's memo indicates the officer did not even know the car belonged to the complainant, this issue is not broached in the officer's interview. There is no indication that the investigator checked with police radio to see if the officer did a vehicle check when he issued the ticket. If he did so, then the officer's claim that he did not know the ownership of the vehicle would be false.
- IAD 96c030 Juvenile Complainant says he was slammed into a wall in the 19th Police District roll-room. Officers say the complainant was not taken into the 19th, they only stopped there to drop off the stolen car and pick up a property receipt while the complainant stayed in the police vehicle in the lot. However, complainant drew a picture of the 19th District roll-room which seems to be fairly accurate. The investigator suggests that maybe the complainant saw the 19th District roll-room when he picked up the CAP form at the 19th. However, the investigator did not question the complainant about this possibility, nor did he pursue his theory by interviewing the 19th District officer who prepared the CAP form with the complainant.
- IAD 96c039 Allegation of false drug arrest and verbal abuse. Three efforts to contact complaint during a two week period in July, then nothing else, though investigation open for 3 ½ more months.
- IAD 96c063 Allegation of physical and verbal abuse by complainant who was taken to district following a vehicle stop; alleges slapped in district. The only effort to reach the eyewitness appears to be a certified letter, no 48 message sent,⁵⁸ no follow-up efforts. Pre-typed interviews of the police officers with no follow-up questions based on responses given. Investigation states that officers did not inform police radio of their actions, but the Radio tape was not preserved, though ample time to do so. The complainant was interviewed

⁵⁸This is a procedure used by IAD, whereby an officer from the police district in which the witness resides is sent to deliver a message, often written on a 75-48, requesting that the witness contact the IAD investigator.

within ten days of the incident, within three days of filing the complaint, but the police officers in the District, potential witnesses to the physical abuse, were not interviewed until nearly four months later. No explanation or logical reason for such delay.

IAD 96c067 Police Officer in his car in the lot at the Adam's Mark Hotel, watching TV, allegedly waiting to go to lunch with a friend. Sees a car with lights on and questions complainant, a passing hotel employee about it. A confrontation occurs during which the complainant alleges the officer pulled his gun. The Officer called security. It is clear from the investigation that the investigator suspects the officer is moonlighting doing security for the hotel. However, he never asks the officer who the alleged luncheon date was, so he can corroborate the officer's explanation for his watching TV in the parking lot.

IAD 96c068 Complainant claims harassment of his customers by neighborhood police at his arcade, 6th & Snyder. Officer states this is a problem area for gambling on the corner. The efforts to reach the complainant were August/September calls and a certified letter to the store which IAD knew had been shut down July 30, 1996. Further, the letter was not even sent until seven weeks after the CAP was filed, and the certified mail card was never returned. No apparent effort to ascertain new/other address for CW. 7½ months later the Commissioner's letter goes to the same address the file reveals has been bad since 7/30/96. When interviewed, the police officer tells the investigator that the complainant "hangs" at 7th street and that the officer sees the complainant at Police Athletic League (PAL) meetings. Yet, no effort by IAD to follow-up on this information.

IAD 96c069 Complaint of ransacking of home during search for complainant's son. In connection with his credibility analysis, the Investigator twice mentions complainant's 78 day delay in filing the CAP, but never asked the complainant about the delay when interviewing her. Also, the complainant used the Spanish CAP form, but there was no inquiry as to whether language was a factor in any delay.

Appendix B — Investigator's Conclusions

- IAD 95c001 Complainant, the uncle of decedent, was an eyewitness to the homicide. He alleges that he was physically abused by Homicide detectives inside the Homicide Unit at the Police Administration Building. No one really addresses the fact that the complainant's injuries, as confirmed by his doctor — nose tenderness, headaches, ear pain, bloody discharge from ear — appear consistent with his allegations. Investigator focuses on the inconsistencies he detects in complainant's statements, without considering what his motive might be. Why would this complainant lie? He was not a suspect in a criminal matter, he was a witness to his nephew's murder, and he continued cooperating with IAD even though the investigation dragged on for years. Investigator's skepticism only seems to run to the complainant, not to the officers.
- IAD 95c002 Arrest of bike messenger. In his summary, the IAD investigator states "The medical records obtained by the assigned indicated that she was treated four days after the incident and made no mention of a cause of the injury." However, the actual medical records say: "Patient states she was handcuffed -- sustained injury to right wrist." (Some abbreviations in original).
- IAD 95c003 Arrest for disorderly conduct at an illegal block party. Investigator accepts ME's assertion that the undisputed injury is not consistent with a punch, because other injuries would be expected. But the ME is not asked whether other injuries would also be expected if, as the officer claims, the complainant was thrown against a wall while cuffed behind his back and unable to break the fall with his hands.
- IAD 96c020 Allegation of physical abuse and false arrest by police officer during the repossession of a truck by private "repo" men. Alleged that officer took the complainant's keys and made critical comments about busy police officers and people who don't pay their bills. Although the investigation is complete, the investigator goes into a dubious analysis of whether the complainant was pushed or thrown against the truck. The officer received a reprimand for failing to prepare an incident report (75-48).
- IAD 96c023 Allegation of physical abuse arising from a vehicle investigation. The officers give inconsistent accounts of the chain of events, but the investigator makes no mention of the inconsistency, let alone a discussion of the significance.
- IAD 96c029 Allegations of physical and verbal abuse during truancy stop and robbery investigation of two brothers. Both taken in, one released, other charged with summary weapons offense (knife). No discussion of the inconsistency

between the two officers' versions of the frisk and taking into custody of the brother who was just a bystander. One officer says this brother had a dent-puller in his hand, the other officer says the youth was patted down for the officers' safety, at which time the dent puller was retrieved.

IAD 96c030 Juvenile Complainant says he was slammed into a wall in the 19th Police District roll-room. Officers say the complainant was not taken into the 19th, they only stopped there to drop off the stolen car and pick up a property receipt while the complainant stayed in the police vehicle in the lot. However, complainant drew a picture of the 19th district roll room which seems to be fairly accurate. Investigator explains picture by saying maybe the complainant saw the 19th District roll room when he picked up CAP form at the 19th. However, the investigator did not question the complainant about this, nor did he check with the 19th District officer who prepared the CAP form with the complainant.

IAD 96c046 An off-duty officer got a parking ticket. He confronted the Parking Authority officer. Subsequent involvement of bike officers and alleged intimidation by the responding sergeant. Investigator claims a witness provided independent corroboration of the police version. However, an examination of the investigation file discloses that there is no formal interview with, or statement by, the so-called corroborating witness, a woman who was working in a nearby deli. Instead there is simply a single sentence in the investigator's "neighborhood survey." There is no indication, what the alleged witness was doing, what her vantage point was, what part of the incident she saw, what officers she saw (there were 4 involved at various times) and it appears that the entire incident was played out over the course of an hour. This absence of a formal written statement for such a significant witness is unheard of in IAD investigations.

IAD 96c047 Allegation of physical abuse during course of arrest. One of the allegations involves the manner in which the teenage defendant, who had hit the officer and was subdued by a punch to the face from the ex-boxer officer, was placed in the police vehicle.⁵⁹ A witness says the defendant's feet, which were hanging out of the car, were kicked in. The investigator then goes to great pains to describe the demonstrated actions as a lifting motion of the defendant's feet with the officer's feet, to put the defendant's legs in the car before closing the door. Even if accurate, no discussion of what approved police procedure this "lifting" evidenced.

⁵⁹The subduing of a suspect with a punch to the face is also found in IAD 96c021. Neither file contains a discussion of whether this is an appropriate police technique.

IAD 96c048 Complainant is a passenger on his motorcycle which is stopped for running a red light, and other traffic offenses. The officers' explanation of speed, traffic, no pursuit and ease of keeping up do not make sense. However, the investigator does not discuss the numerous inconsistencies in the two officers' versions, while taking pains to point out an inconsistency between the complainant and the driver about when the bike's papers were provided to police.

Appendix C — Narrow Investigations

- IAD 96c028 Officer arrested his brother at gun point in the middle of State Road. The officer, who claimed he was being stalked and threatened, initially failed to mention that the complainant was his brother. No examination of the conduct of the detective, who failed to make sure that the complainant was released, once he determined that there was no basis for the arrest. By leaving it to the officer, who obviously had a problem regarding the complainant, the detective caused the complainant to remain illegally incarcerated for an additional three hours.
- IAD 96c033 Allegation of threats and harassment by an on-duty officer at the business of complainant, regarding a much earlier purchase with which officer was dissatisfied. The officer got into argument, then left and sent a second officer in with a message for the complainant to meet him after work behind Crazy Eddie's to straighten out the problem. Clearly the second officer compounded the problem by communicating the message. Under these circumstances how could any citizen view the situation as anything other than threats and intimidation by the officers. The second officer should have been disciplined, as well.⁶⁰
- IAD 96c046 Allegation of physical and verbal abuse by a police Sergeant responding to a call involving a Parking Authority officer issuing a ticket to an off-duty officer. Why was the off-duty officer told to leave by the Sergeant? Why didn't IAD question the off-duty officer about where he was coming from, in light of the allegation that he was intoxicated? No examination of the conduct of the bike officers in their apparent attempt to get a fellow officer's parking ticket fixed.
- IAD 96c063 Allegation of physical and verbal abuse by complainant who was taken to a police district following a vehicle stop. The officers say they caught the complainant at Lancaster & Preston, but waited to pull him over at a "safer" location, because this corner has a beer distributorship. Complainant allegedly did not have ID or vehicle documents. The stop was at about 11pm, call to police radio for a complaint number was at 11:13. Police Radio gave the officers vehicle information (no wants) and confirmed the car was registered to complainant. Nonetheless, the officers took the complainant to

⁶⁰As to the initial officer, PBI panel divided 1-2 in favor of not guilty on the allegation of a violation of § 1.45 of the Disciplinary Code -- Rude or insulting language or conduct offensive to the public while on duty. The Commissioner declared the officer guilty and imposed a reprimand.

the district allegedly for further investigation and because a crowd was gathering. The two persons in the vehicle were sent on their way on foot, no names or information was taken from them. Also, the 75-48 makes no mention of the crowd or a reason for transporting complainant, only notes complainant verbally hostile. Each officer gave three tickets, for a total of 6. The investigation didn't even examine the question of why the complainant was taken in. The explanation is unacceptable on its face.

Appendix D — Corroboration

- IAD 96c017 Allegation of physical abuse during a narcotics pedestrian stop. Officer states that he saw exchange of money and a bag, and that bags were thrown down as the police approached. Suspects taken in, substance tested, but was not controlled. Suspects released without being charged. The allegations of physical abuse and false arrest are not sustained because no independent eye-witnesses corroborate the complainant. However the investigator did a very good job in tracking down the other person arrested through the alias he gave police. Though he used an alias and has prior drug arrests, he corroborated the complainant. In light of the nature the witness's corroboration and the manner in which he was located, how can complainant's version be so easily dismissed? Even if the allegation cannot ultimately be sustained, the stated reason of no independent witness is misleading. Troubling that there was an alleged unnumbered "48" (incident report) supposedly corroborating the officer's claim that complainant was banging his own head in the district cell-room, and even more troubling that it disappeared inexplicably. Why no control numbers? How did all the carbons disappear? Assuming it is believed that there was such a document and that it disappeared, is an unnumbered 48 the approved method to record self inflicted injuries?
- IAD 96c024 Two incidents. Arrest for gun in car with alleged physical abuse, and an allegation of physical abuse during a subsequent vehicle investigation. Allegation of 6/19/95 false arrest was declared unfounded based upon conviction. The physical abuse on the 2nd occasion was not sustained, even though it was corroborated by a friend of complainant. IAD also claims that complainant's wife's version conflicted with the complainant's. However, it appears that the only conflict relates to time and manner of arrival of a 2nd officer. This does not appear to be a material point, especially since everyone, including the officers, acknowledge that the both the wife and the 2nd officer were present.
- IAD 96c027 A mentally retarded young man, who to this day continues to be incompetent to stand trial, was involved in a physical confrontation arising from a traffic stop by an off-duty police officer (civilian clothes, private vehicle). The allegation that the officer struck the defendant could not be sustained because his grandmother, who the defendant was taking to the hospital, was not deemed to be an independent witness. This result was reached even though

a trash truck driver was able to dispute certain relevant aspects of the physical scene of the underlying vehicle violation and the officer initially failed to cooperate in the IAD investigation.⁶¹

IAD 96c046 An off-duty officer got a parking ticket. He confronted the Parking Authority officer, saying didn't you see the FOP sticker? After identifying himself as a Police officer, he then called over some bicycle patrol police officers who attempted to intervene of the off-duty officer's behalf. The complainant explains that he cannot void the ticket. The bike officers then call for a Sergeant, who complainant alleges is verbally abusive and physically menacing. The complainant went to a payphone to call for a Parking Authority supervisor. The dispatcher confirms parts of the complainants version of subsequent events, including that the complainant asked the dispatcher to stay on the phone until a supervisor arrived because he was in fear of the Sergeant. During the course of the incident the complainant urinated in his pants from fear. Complainant's supervisor confirms that upon his arrival, the Sergeant said he did not like the complainant's attitude, that he had ordered the complainant not to leave, admitted he may have brushed against complainant in an effort to get him out of the way of oncoming traffic. During the course of the incident, the Sgt. told the off-duty officer to leave. Neither the dispatcher, nor the Parking Authority Supervisor are deemed corroborating witness. Instead, the allegations are declared not sustained, based upon an alleged independent witness' corroboration of the police version. However, an examination of the investigation file discloses that there is no proper interview of the so-called corroborating witness, a woman who was working in a nearby deli. The "corroboration" is in the unusual form of one sentence in the investigator's "neighborhood survey." There is not formal interview of or statement by the witness. The one sentence summary gives no indication what the witness was doing during the incident, what her vantage point was, what part of the incident she saw, or what officers she saw (there were 4 involved in this incident, which it appears was played out over the course of an hour).

IAD 96c048 Complainant is a passenger on his motorcycle which is stopped for running a red light, and other traffic offenses. The officers claim that they handcuffed both the passenger and the driver, and took them into the district for

⁶¹The officer was charged with making a false statement regarding the position of the trash truck. However, the PBI concluded there was sufficient variance among the witnesses (including two witnesses not interviewed by IAD) and that the issue was not of significant importance to the case, and recommended a not guilty finding which was adopted by the Commissioner.

investigation because they did not have all the documents for the bike (though no indication it was stolen) and because a crowd was gathering (even though investigation indicates that two officers who responded in an EPW were told everything was under control, and resumed patrol after a minute or so). Although the complainant's version is confirmed by his companion, and certain other circumstances, while the officers contradict each other, and their conduct is cast into doubt by some of the other evidence and circumstances, the allegations are not sustained because there is no independent corroboration.

IAD 96c050 Complainant who was on a restricted road at the airport complained about an officer's sarcastic comment about the signs being in English and his issuance of tickets for registration and insurance, which she initially had trouble locating, but which she says the officer refused to examine once she located them. Commissioner's letter says the independent witness, a parking employee, corroborates that the complainant failed to provide her vehicle's documents on request. However, an examination of the file discloses that this is directly contradicted by the statement of the witness, who confirms that the complainant appeared to be trying to locate her papers. Also, it appears inconsistent that the Department will regard an airport parking employee who apparently has regular contact with the airport police officer an independent witness, while passengers in cars (IAD 96c045) or a group of companions (IAD 96c051) are not deemed sufficiently independent witnesses for the purposes of corroborating a complainant's allegations.

IAD 96c052 Police officer banged on the roof of a car blocking traffic while waiting to park near 4th & South. Afterwards, complainant's wife (an attorney) alleges that she approached the officer at corner to complain and a verbal altercation occurred. When the complainant (also an attorney) attempted to intervene, the officer grabbed him and held his arm behind his back as he escorted complainant to the sidewalk. The officer then issued the complainant a traffic citation. Notwithstanding the statement of complainant and his wife, and the undisputed after the fact issuance of the citation, the Commanding Officer of IAD concluded that the officer intended to issue the citation all along, but was unable to do so or communicate his intention due to his need to direct traffic at 4th & South. Apparently the complainant's wife is not acceptable corroboration of complainant, as the Commissioner's letter states the allegation is not sustained because there are no independent witnesses.⁶²

⁶²Complainant was found guilty in traffic court, then not guilty on appeal to the Court of Common Pleas.

- IAD 96c060 Complainant attempting to make complaint about an underlying matter, complains that the desk officer in the district was not helpful. Commissioner's letter says there was no independent witness or supporting evidence. However, the investigation file discloses that complainant's fiancé corroborated her version, and another officer who was approached by the fiancé confirms the witness' observation that the desk officer was not trying to be helpful.
- IAD 96c061 Complainant claims that officers who came to his house to assist in serving a court order relating to a child custody dispute were rude and disrespectful. The Commissioner's letter states that the complaint is not sustained because there is no supporting evidence to corroborate the allegations and "further revealed that both officers acted in a professional manner, this stated by independent witness on scene." The so called "independent" witness was the adverse party in the custody dispute. Not mentioned in the letter is the other, arguably independent witness — a neighbor who confirms complainant's testimony that the officers beat on his door with what he called a nightstick and the witness called a "Billy" (black leather, small, looked heavy). The officer denied using any object on the door.
- IAD 96c066 Complainant and his estranged wife were at Family Court for a counseling session. Complainant got into a dispute with an on duty police officer who was on recess from a court appearance at the Criminal Justice Center. The officer stated that he was a friend of the wife and was there "for her protection." Court personnel instructed the officer to leave. The fact of the confrontation is undisputed, only the details of what occurred. The Commissioner's letter states that the police officer's version is corroborated by two independent witnesses, a Court security officer and a Ms. X. A review of the file demonstrates that the "independent" Court officer, who knew the police officer from his frequent appearances at the Courthouse as a witness and who was chatting with the officer at the entrance prior to the confrontation, was not present at any point during the confrontation. The other "independent" witness, Ms. X, was the sister of the complainant's estranged wife, and an admitted friend of the police officer, whose relationship with complainant was indisputably antagonistic. The officer received a warning not to involve himself in private domestic matters on City time.
- IAD 96c067 Police officer in his car in the lot at the Adam's Mark Hotel, watching TV, allegedly waiting to go to lunch with a friend. The officer sees a car with lights on and questions complainant, a passing hotel employee about it. A confrontation occurs during which the complainant alleges the officer pulled his gun. The Officer called security. Both the Commander of IAD and the Commissioner say the officer is corroborated by other witnesses. However,

examination of the file demonstrates that the witnesses impeach each other. *E.g.* The security guard, who has known the officer for years, says the complainant was being held by the officer, while a female employee says there was no physical contact.⁶³

⁶³The complainant's description of the officer's gun does not match the gun carried by the officer.

Appendix E — District Investigations

- IAD 96c025 Allegation of a parking ticket which was never put on the car, issued by an officer who owed the complainant money for some car repair work. The complainant alleges that he saw the officer driving behind him on the day the ticket was issued. The officer says he just issued a routine double parking ticket. Although the investigator's memo indicates the officer did not even know the car belonged to the complaint, this alleged statement is not found in the officer's interview. There is no indication that the investigator checked with police radio to see if the officer did a vehicle check when he issued the ticket (a common practice). If he did so, then the officer's claim that he did not know the ownership of the vehicle would be proven false. During the course of the investigation the complainant "withdrew" the complaint. As discussed in §IV.3.D., all withdrawals should be of concern to the investigator. However, this withdrawal is particularly troubling, in that the original CAP form stated that the Officer, when contacted directly by the complainant, had originally agreed to pay the \$48 for the ticket.
- IAD 96c031 Allegation of verbal abuse when officers called to dispute over restaurant tab at the Hard Shell Cafe. Why did it take approximately three months after filing to identify and interview the officers? Why was there a "final" memo before the officers were interviewed? At the time of the interviews of the officers, the investigator knew that there was an issue about the identity of the involved officers, and complainant said he could pick out a photograph, so why didn't the investigator present him with a photo array close in time to the original interview? By the time the case was sent back to the investigator for further action, the complainant and the other possible identifying eye-witness had moved and could not be located. Also, the investigation narrowed identity down to three African American male officers, but there is no discussion in the investigation as to which (if any) of the three officers fit the physical description set forth in the CAP. This investigation was declared not sustained due to lack of cooperation. Why? The allegation was supported by an eye-witness, so should have been sustained. The mere fact that the identity of the officer is unknown, does not mean the allegation is not sustainable. Also, the description of "lack of cooperation" is inaccurate. The delay of the investigator resulted in his losing track of the complainant and the witness.
- IAD 96c038 Allegation of verbal abuse of mother in connection with arrest of juvenile. No cooperation by complainant, but investigation does not appear to include review of paperwork for the underlying arrest. Additionally, since the CAP specifically named Lieutenant J. as one of the officer's involved, what was he doing interviewing the police witnesses as part of the investigation?

- IAD 96c044 Allegation of failure to arrest following a scuffle with a neighbor. The investigator did not interview witnesses because, he claims, the issue of the altercation was irrelevant, since the officer had no duty to enforce the stay away order and did not witness the altercation, so as to permit an arrest. This is a non-response. There was an allegation of assault which might be pursued by detectives, or be the subject of a private criminal complaint, yet the police officer did not get any information from witnesses or, apparently, even speak with them.
- IAD 96c049 Complainant says he was verbally abused by an officer for allegedly lying about his involvement in a motor vehicle accident. Complainant claims that the accident occurred while his girlfriend was driving, he only drove the car off the median to the gas station. The investigator claims the eyewitnesses' contradict complainant, but this is not an accurate characterization. The witnesses do not claim to have seen actual accident, only complainant driving into station. Transporting police officers claim that the complainant said he was going to make a complaint to get the officer fired. If this really happened, why didn't they report the threat, so it would be memorialized? No real effort to reach complainant's former girlfriend. The interviews are summarized.
- IAD 96c056 Complaint of lack of service and verbal abuse by officer responding to alleged assault by a neighbor. The interview of complainant's wife, by the Captain, was done with the complainant's assistance as a translator. The officers were re-interviewed after the complainant was interviewed.
- IAD 96c058 Complaint of lack of service and verbal abuse in connection with surrender of complainant's son. Complainant asked for the phone number for IAD in the district but was not advised about the complaint procedure. Once circumstances were more fully explained to him, the complainant was satisfied. Complainant states he made audio tapes, including a tape of his request for information about IAD, but the investigator never requested the tapes and never opened a separate investigation file on the complaint issue.
- IAD 96c059 Police officer left his car door open during a vehicle investigation, thereby preventing complainant motorist from passing on the narrow street, then Police Officer had a bad attitude when complainant honked his horn. The complainant was not interviewed until 3 months after the filing of the complaint. No explanation for the delay. Also, no mention made of the sparse 48 for the underlying vehicle/pedestrian stop.

Appendix F — Supervisory Review

- IAD 95c001 Complainant, the uncle of decedent, was an eyewitness to the homicide. He alleges that he was physically abused by Homicide detectives inside the Homicide Unit at the Police Administration Building. No one really addresses the fact that the complainant's injuries, as confirmed by his doctor — nose tenderness, headaches, ear pain, bloody discharge from ear — appear consistent with his allegations. Investigator focuses on the inconsistencies he detects in complainant's statements, without considering what his motive might be. Why would this complainant lie? He was not a suspect in a criminal matter, he was a witness to his nephew's murder, and he continued cooperating with IAD even though the investigation dragged on for years. Investigator's skepticism only seems to run to the complainant, not to the officers. The IAD Commander does not note any of these problems.
- IAD 95c002 A bike messenger illegally riding her bike on Chestnut Street was subsequently arrested for disorderly conduct. This appears to be another example of supervisory review which does not include examination of the original documents. The investigator mischaracterized the medical records, stating: "The medical records obtained by the assigned indicated that she was treated four days after the incident and made no mention of a cause of the injury." However, the actual medical records say: "Patient states she was handcuffed -- sustained injury to right wrist." (Some abbreviations in original) Overall this appears to be a close case. Why did the IAD Commander exonerate, rather than declare not sustained?
- IAD 95c005 Complaint of physical abuse relating to use of handcuffs on a person being taken into custody on a mental health matter. The firefighter witnesses confirm that though emotionally disturbed, the complainant did not begin to act out until the officers tried to handcuff her. Why did she need to be cuffed? Why was the allegation unfounded? It appears there should have been a sustained violation of Directive 136. V., which appears to prohibit use of mechanical restraints on persons with mental health problems, given the facts as recounted by the firefighters. Additionally, the evidence seems to support the allegation that the officers caused the problem by escalating the situation. Looks like, at a minimum, some retraining in dealing with mentally ill persons is needed here.
- IAD 95c013 Allegations of abuse and threats in a missing teenager investigation, where the officer involved, who was the assigned investigator, was related to the complainants. This case raises the recurring question about the propriety of the Department even having a withdrawal mechanism. Here the complainants withdrew the allegations on 2/3/96. As a result of the withdrawal, "the allegations of abuse and threats are not sustained and

classified as withdrawn," per the 1/17/97 letter from the Commissioner. However, the eye-witnesses here clearly confirm the verbal abuse. Thus, allegations that are apparently sustained by the investigation appear in the Department's records, including the officer's IAD history, as withdrawn. The reasons for withdrawal should always be of concern to the department, but especially so in this case where there is a family relationship between the complainant and the officer. Officer was counseled, but not as to her poor judgment in twice becoming involved in investigations where she was related to the parties.

IAD 96c017 Allegation of physical abuse during a narcotics pedestrian stop. Officer states that he saw exchange of money and a bag. Bags thrown down as police approached. Suspects taken in, but were released without being charged, when testing of the items seized proved they were not controlled substances. The physical abuse and false arrest are not sustained because no independent eye-witnesses corroborate the complainant. However the investigator did a very good job in tracking down the other person arrested through the alias he gave police. Though he used an alias and he as prior drug arrests, he corroborated the complainant. In light of the nature the witness's corroboration and manner in which he was located, how can complainant's version be so easily dismissed. Even if the allegations cannot ultimately be sustained, the declaration of no independent witness is misleading. Troubling that there was an alleged unnumbered 48 supposedly corroborating the officer's claim that complainant was banging his own head, and even more troubling that it disappeared inexplicably. Why no control numbers? How did all the carbons disappear? Assuming there was such a document and that it disappeared, is an unnumbered 48 the approved method for making a record of self inflicted injuries? Yet there is no discussion about the circumstances surrounding this mysterious 48, and the questions it raises. See IAD 96c032, for another disappearing 48.

IAD 96c020 Allegation of physical abuse and false arrest by police officer during the repossession of a truck by private "repo" men. Alleged that officer took the complainant's keys and made critical comments about busy police officers and people who don't pay their bills. Although the investigation is complete, the investigator goes into a dubious analysis of whether the complainant was pushed or thrown against the truck. The allegation of physical abuse was not sustained, but neglect of duty (apparently failing to prepare a 48 and failing to take complainant to hospital when he started to suffer chest pains) was sustained and PBI imposed a reprimand. The Commissioner concurred. On the undisputed facts, there is no apparent reason for the failure to sustain the physical abuse. The officer had no right to take the keys from complainant, there were no legal grounds for commencing a disorderly conduct arrest (complainant was in his own driveway, no indication of anyone being

disturbed, or crowd gathering). Where force of whatever degree flows from an officer's illegal conduct, the force is impermissible, and a physical abuse count should have been sustained, along with an illegal detention.

- IAD 96c023 Allegation of physical abuse and false arrest arising from vehicle investigation. A neighborhood survey for witnesses was not conducted until four months after interview of the complainant. No indication of any efforts to locate eye-witness after complainant says not in touch with him. Two other officers apparently responded to the scene, but neither was interviewed for this investigation. Each of the subject officers have multiple prior complaints of physical abuse and each have two open investigations. Officers are inconsistent regarding the chain of events, yet there is no mention of this inconsistency, let alone discussion of the significance. This was a citizen complaining about the police investigating his wife's car. What right did police have to demand his ID and to frisk him? According to one of the officers, the disorderly conduct arrest was not until after complainant went into his house. What right did the police have to order the complainant out of his house, and when he refused, what right did they have to go in and get him?
- IAD 96c024 Two incidents. Arrest for gun in car with alleged physical abuse, and an allegation of physical abuse during a subsequent vehicle investigation. Allegation of 6/19/95 false arrest was declared unfounded based upon conviction. The physical abuse on the 2nd occasion was not sustained, even though it was corroborated by a friend of complainant. IAD also claims that complainant's wife's version conflicted with the complainant's. However, it appears that the only conflict relates to time and manner of arrival of a 2nd officer. This does not appear to be a material point, especially since everyone, including the officers, acknowledge that the both the wife and the 2nd officer were present.
- IAD 96c036 Complaint of perjury by a detective. Detective told father of juvenile robbery defendant that delay in the arrest was due to the photo imaging machine, (which creates the photo array) being out of service. So, as a result, an array was shown to the witness at a later date. The complainant claims the detective testified in court that the photos were shown the night of the incident by another detective. The complainant is probably mistaken as to the detective's testimony, but how can the Commander of IAD say the detective testified accurately, when he never reviewed the testimony? Having failed to review the testimony here, the exoneration is highly questionable.
- IAD 96c040 A tow truck operator, the son of a police officer, claims improper tickets and false arrest. The original stop by the officer was because the car being towed did not have a license plate. An allegation which was not even mentioned by

the officer in either the summary citation or the 48, both of which were prepared by the officer. The manner in which this already dubious traffic stop allegedly escalated to a disorderly conduct arrest is not credible. The IAD Commander does not even discuss the disorderly conduct arrest in his conclusion.

IAD 96c046 An off-duty officer got a parking ticket. He confronted the Parking Authority officer, saying didn't you see the FOP sticker? After identifying himself as a Police officer, he then called over some bicycle patrol police officers who attempted to intervene of the off-duty officer's behalf. The complainant explains that he cannot void the ticket. The bike officers then call for a Sergeant, who complainant alleges is verbally abusive and physically menacing. The complainant went to a payphone to call for a Parking Authority supervisor. The dispatcher confirms parts of the complainants version of subsequent events, including that the complainant asked the dispatcher to stay on the phone until a supervisor arrived because he was in fear of the Sergeant. During the course of the incident the complainant urinated in his pants from fear. Complainant's supervisor confirms that upon his arrival, the Sergeant said he did not like the complainant's attitude, that he had ordered the complainant not to leave, admitted he may have brushed against complainant in an effort to get him out of the way of oncoming traffic. During the course of the incident, the Sgt. told the off-duty officer to leave. Neither the dispatcher, nor the Parking Authority Supervisor are deemed corroborating witness. Instead, the allegations are declared not sustained, based upon an alleged independent witness' corroboration of the police version. However, an examination of the investigation file discloses that there is no proper interview of the so-called corroborating witness, a woman who was working in a nearby deli. The "corroboration" is in the unusual form of one sentence in the investigator's "neighborhood survey." There is no formal interview of or statement by the witness. The one sentence summary gives no indication what the witness was doing during the incident, what her vantage point was, what part of the incident she saw, or what officers she saw (there were 4 involved in this incident, which it appears was played out over the course of an hour). Why was the off-duty officer told to leave. Why didn't IAD question him about where he was coming from, in light of the allegation that he was intoxicated. No examination of the conduct of the bike officers in their attempt to get a fellow officer's ticket fix. Also, the IAD Inspector failed to pick-up on the fact that there is no formal interview with, or statement from, the so-called corroborating witness.

IAD 96c052 Police officer banged on the roof of car blocking traffic while waiting to park near 4th & South. Afterwards complainant's wife alleges that she approached the officer at corner to complain and a verbal altercation occurred. When the complainant (an attorney) attempted to intervene, the officer grabbed him and

held his arm behind his back as he escorted complainant to sidewalk. The officer then issued the complainant a traffic citation. Notwithstanding the statement of complainant and his wife, and the undisputed after the fact issuance of the citation, the Commanding Officer of IAD concluded that the officer intended to issue the citation all along, but was unable to do so or communicate his intention due to his need to direct traffic at 4th & South.

IAD 96c066 Complainant and his estranged wife were at Family Court for a marital counseling session. Complainant got into a dispute with an on duty Police Officer who was on recess from a court appearance at the Criminal Justice Center. The officer stated that he was a friend to the wife and was there "for her protection." Court personnel instructed the officer to leave. The fact of the confrontation is undisputed, only the details of what occurred. The Commissioner's letter states that the Police Officer's version is corroborated by two independent witnesses, a Court security officer and a Ms. X. A review of the file demonstrates that the "independent" Court officer, who knew the police officer from frequent appearances at the Courthouse as a witness and who was chatting with the officer at the entrance prior to the confrontation, was not present at any point during the confrontation. The other "independent" witness, Ms. X, was the sister of the complainant's estranged wife, and an admitted friend of the police officer, whose relationship with complainant was indisputably antagonistic. The IAD investigator concluded that officer's presence was a preplanned event. So the officer lied when he said he was going to lunch there and just happened to see his friends going thru metal detector. Yet, neither the IAD Commander nor the Commissioner make any mention of this apparent lie in an official investigation.

Appendix G — Citations: Disorderly Conduct, Traffic and Parking

- IAD 95c004 Complaint of false disorderly conduct arrest and blowing smoke in complainant's face at the district. There is no discussion of the apparently unwarranted arrest of the second person. He was not the complainant, but he was interviewed. Additionally, although the investigation demonstrated that officers escalated this confrontation, this aspect of the incident is not discussed.
- IAD 95c014 Complainant alleges that she was falsely cited, falsely arrested and subject to physical abuse, all arising from a parking infraction at the post office. The independent witnesses appear to corroborate the officer. The investigation and review are appropriate. However, one must wonder whether there was anything the police officer could have been done here to avoid this parking situation getting so out of control. The arrest and criminal conviction of a 43 year old woman, with no prior record, is an unfortunate result from a parking citation.
- IAD 96c020 Allegation of physical abuse and false arrest by police officer during the repossession of a truck by private "repo" men. There were no legal grounds for commencing a disorderly conduct arrest (complainant was in his own driveway, no indication of anyone being disturbed, or crowd gathering).
- IAD 96c025 Allegation of a parking ticket which was never put on the car, by an officer who owed the complainant money for some car repair work.
- IAD 96c027 A mentally retarded young man, who to this day continues to be incompetent to stand trial, was involved in a physical confrontation arising from a traffic stop by an off-duty police officer (civilian clothes, private vehicle).
- IAD 96c035 An off-duty officer whose private vehicle was cut off, pulled up next to complainant to give him a lecture. The complainant ignored the off-duty officer, who then cut in front of the complainant's vehicle to issue him a citation. The complainant was wrong on the traffic conduct, but what was the officer thinking? The Commissioner's letter states that the officer received a reprimand for a violation of the Motor Vehicle Code and placing himself in danger. However, this is misleading: The Vehicle Code violation for which the officer received a reprimand was his issuance of a traffic citation when not in uniform.
- IAD 96c040 A tow truck operator, the son of a police officer, claims improper tickets and false arrest. The original stop by the officer was because the car being towed did not have a license plate. An allegation which was not even mentioned by the officer in either the summary citation or the 48, both of which were

prepared by the officer. The manner in which this allegedly escalated to a disorderly conduct arrest is not credible.

- IAD 96c042 Claim of false arrest and harassment of people outside of bar, ticketing the cars and disorderly conduct arrest of bartender. Why was the ticketing complaint found frivolous? The investigation showed that the "No Parking" signs were so faded that they had to be replaced shortly after this incident. Also, the disorderly conduct seems like it was created by the police officer's handling of the situation.
- IAD 96c045 Complainant was stopped on a weekend night on South Street for allegedly running a red light. During the course of the stop the officer allegedly became upset that the complainant declined her request for his social security number. (See Privacy Act, 5 USCA § 552a note). The complainant claims that he was then given a second, punitive, ticket for careless driving. The officer and her fellow officers confirmed most of complainant's description of the incident — with the exception of the retaliatory circumstances of the second ticket. The passenger in the complainant's car confirmed all of the complainant's allegations.
- IAD 96c050 Complainant who was on a restricted road at the airport complained about an officer's sarcastic comment about the signs being in English and his issuance of tickets for registration and insurance, which she initially had trouble locating, but which she says the officer refused to examine once she located them. Commissioner's letter says the independent witness, a parking employee, corroborates that the complainant failed to provide her vehicle's documents on request. However, an examination of the file discloses that this is directly contradicted by the statement of the witness, a parking attendant, who confirms that the complainant appeared to be trying to locate her papers.
- IAD 96c052 Police officer banged on roof of car blocking traffic while waiting to park near 4th & South. Afterwards complainant's wife (an attorney) alleges that she approached the officer at corner to complain and a verbal altercation occurred. When the complainant (also an attorney) attempted to intervene, the officer grabbed him, held his arm behind his back as he escorted complainant to sidewalk. The officer then issued the complainant a traffic citation. Notwithstanding the statement of complainant and his wife, and the undisputed after the fact issuance of the citation, the Commanding Officer of IAD concluded that the officer intended to issue the citation all along, but was unable to do so or communicate his intention due to his need to direct traffic at 4th & South.

- IAD 96c053 Bicyclist who cursed at officer who cut him off was given a citation for running a red light. The officer admits that he did not see the conduct for which he gave the citation. Additionally, the citation was not issued on the spot, but was mailed to the complainant later. See complete discussion of this incident in § II.D.
- IAD 96c054 Allegation of verbal abuse during a vehicle incident, when complainant was told to move illegally parked vehicle, then a disorderly conduct arrest for cursing. Even under the officer's version, what is the crime? (See § II.E.1). Also, the officer's version of the incident is not consistent with the described of the incident in the citation prepared by the officer. There should be a concern that the citation was embellished in an effort to establish the legal elements of the violation.
- IAD 96c055 Allegation of verbal abuse and improper ticket arising from a flat tire on I-95. Complainant pulled over to the left shoulder, where a good Samaritan stopped to help her change the flat. The Philadelphia Highway Patrol officer arrived and directed complainant to pull to the right shoulder, while he stopped traffic. As complainant returned to her car, the Samaritan pointed out that the tire was completely flat and driving on it might ruin the tire and the rim. When the complainant went back to the officer to point this out, she alleges he became enraged. The officer claims he had to order her to pull to the right shoulder 11 times. As the Samaritan changed the tire on the right shoulder, the officer issued the complainant a ticket for failure to obey police directions.
- IAD 96c057 Complainant stopped for littering (feeding birds) and given a warning. The officer left the car keys on the roof and didn't give back to the complainant. The complainant commented on the officer's attitude, at which point the departing officer returned to issue the citation, and ended up arresting complainant for disorderly conduct. The Inspector concluded that there was no disorderly conduct until the officer escalated the [concluded] vehicle investigation into a disorderly conduct arrest. No discussion of the retaliatory ticket.
- IAD 96c063 Allegation of physical and verbal abuse by complainant who was taken to district following a vehicle stop, alleges slapped in district. The officers say they caught the complainant at Lancaster & Preston, but waited to pull him over at a "safer" location, because this corner has a beer distributorship. Complainant allegedly did not have ID or vehicle documents. The stop was at about 11pm, call to radio for a complaint number was at 11:13. Police Radio gave the officers vehicle information (no wants) and confirmed it was registered to the complainant. Nonetheless, the officers took the complainant to the district allegedly for further investigation and because a crowd was

gathering. The two persons in the vehicle were sent on their way on foot, no names or information was taken from them. Also, the 75-48 makes no mention of the crowd or a reason for transporting complainant, only notes complainant verbally hostile. Each officer issued three tickets, for a total of six.

IAD 96c064 Complainant alleges he left a Delaware Avenue club after having a few beers; he says he was not intoxicated. Complainant was involved in a collision in front of the club at 12:30am. Officers at the location investigated and allowed the occupants of the other car to leave. Complainant states he was told to park his car across the street and sober up there until 3am (the end of the officers' shift). The complainant stewed for a while, then approached officers. He was arrested for disorderly conduct. Coded as physical and verbal abuse, but this is a false arrest, too. The Inspector of IAD concluded that the complainant was made to park the car and told he couldn't leave until 3am.

Appendix H — Code of Silence

- IAD 95c070 Allegation of lack of service in the investigation of an incident in a Legion Hall. Why was this declared unfounded? Contrary to the statements to IAD, the responding officers' 48 indicates that the off-duty officer confirmed that a bottle was thrown. This corroborates the complainant's version of the assault, establishes grounds for a warrantless arrest by any of the officers. It also appears to establish that the off-duty officer lied in an official investigation.
- IAD 96c046 An off-duty officer got a parking ticket. He confronted the Parking Authority officer, saying didn't you see the FOP (Fraternal Order of Police) sticker? After identifying himself as a Police officer, he then called over some bicycle patrol police officers who attempted to intervene on behalf of the officer. The complainant explained that he cannot void the ticket. The bike officers then called for a Sgt., who complainant alleged was verbally abusive and physically menacing. Why was the off-duty officer told to leave by the Sgt.? Why didn't IAD question the off-duty officer about where he was coming from, in light of the allegation that he was intoxicated. No examination of the conduct of the bike officers in their apparent attempt to fix a fellow officer's parking ticket.
- IAD 96c049 Complainant says he was verbally abused by the officer for allegedly lying about driving vehicle a vehicle during an accident. During the course of the accident investigation, complainant was found to have an outstanding scofflaw warrant. He was taken into custody on this warrant. The transporting officers claim that complainant said he was going to make a complaint to get the officer fired. If this really happened, why didn't they report it, so the threat would be memorialized?
- IAD 96c065 The circumstances of this disorderly conduct arrest and the investigation are discussed at length in § II.E.1. The first officer on the scene stopped the complainant and her sisters as they were walking down the block, put them in the back of his car and transported them back to the scene. At the direction of his Lieutenant, the three women remained locked in the back of the police car while the matter was discussed among the officers, and the Lieutenant. The three women were then transferred to a wagon and taken into the police station. Nonetheless, the uniform officer states in his citation: "... after which responding police arrived on the scene arrested the three females still being disorderly on the scene."

