

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

NAACP, Philadelphia Branch, et al. :
Plaintiffs

C.A. No.

v.

CITY OF PHILADELPHIA,
Defendant

NAACP ACLU PBRP v. City of Philadelphia



PN-PA-002-001

SETTLEMENT AND MONITORING AGREEMENT
AND STIPULATIONS OF THE PARTIES

I. Jurisdiction of the Court and Waiver of Answer to Complaint

A. Jurisdiction. It is agreed among the parties that the Court has jurisdiction of this matter and that the named plaintiffs have standing to institute this lawsuit. The Court shall retain jurisdiction of this matter to adjudicate any issues or matters specifically identified in this Settlement and Monitoring Agreement and Stipulation of the Parties (the "Settlement Agreement and Stipulation").

B. Response to Complaint. The parties waive the requirements of Rule 12 with respect to an Answer or other Motion or Response to the Complaint. Defendant City of Philadelphia denies all substantive allegations set forth in the Complaint. The parties have settled this matter pursuant to the terms and conditions set forth below.

C. Court Approval. Upon the Court's approval of this Settlement Agreement and Stipulation, the parties shall proceed to implement and monitor the Settlement Agreement and Stipulation. The parties agree that the Plaintiffs may file an Amended Complaint for injunctive and declaratory relief at any time to and including one year from the expiration of the monitoring period as set forth in Section VI hereof. The Court retains jurisdiction of this matter.

II. Settlement Agreement

The parties have settled this case under the terms and conditions of the attached City of Philadelphia's Response to Plaintiffs' Proposals for Reforms within the Philadelphia Police Department (the "Response"). Defendant City of Philadelphia agrees to implement the policies, practices and procedures detailed in the Response pursuant to the terms and conditions set forth in that document.

III. Monitoring and Reporting Requirements

A. General Reporting

1. On a quarterly basis, the City of Philadelphia, through the Police and Law Departments shall provide a detailed report on the compliance by the City and the status of each of the provisions of the Response. The City may provide any documents it deems appropriate with the Quarterly Report.

2. In the Quarterly Reports, the City shall state whether any audits, studies or other reports or reviews of the subject matter area have been conducted by or for the Police Department. Said reports shall be provided as part of the Quarterly Report subject to any claims concerning confidential information. If the parties are unable to agree on disclosure, the matter shall be submitted to the Court for adjudication.

3. The Court shall adjudicate any claim of confidentiality raised by the City of Philadelphia with respect to the monitoring and reporting process.

B. Documents to be Provided by City of Philadelphia

1. All studies, reports and audits written or compiled by the Integrity and Accountability Officer (the "IAO") in conjunction with the responsibilities of the IAO detailed in the Response.

2. Quarterly reports on the implementation of the computerization of documents and records as detailed in the Response, with periodic access (and copying if necessary) to the data bases and computerized data to determine incidents of force, to track the response to citizen complaints, review the search warrant process, and to monitor other areas of conduct subject to the Response.

3. All new Directives, Commissioner Memoranda, Training Bulletins, or Assist Officers.

4. All new regulations or procedures for the Internal Affairs Division ("IAD") and the Ethics Accountability Division ("EAD").

5. Final determinations of the Commissioner on IAD investigations as reported on Form 75-8, with access where necessary to the IAD, FBI and Firearms Discharge Review files and data bases to monitor IAD and firearms investigations. See Response, at pages 14-15 (computer data base for IAD investigations).

6. All use of force reporting documents as detailed in the Response. See Response, at pages 18-20.

IV. Attorney Testimony

A. The parties agree that they will not subpoena or otherwise compel testimony and that the City will not otherwise present evidence regarding the opinions of any attorney who has participated in the negotiations, drafting or monitoring of this Settlement Agreement and Stipulation (including the Response) in any case in any court with respect to (a) the issue of the City's compliance with the Response, (b) the adequacy of the Response in addressing issues of police misconduct, or (c) municipal liability based on a theory of deliberate indifference to unconstitutional or otherwise improper police policies or conduct.

B. If any of the named attorneys is requested (informally or by subpoena) to testify in any of the areas delineated in IV(A), the attorney will move to quash said subpoena and will only testify if ordered to do so by a court of competent jurisdiction.

V. Fees and Costs

A. Plaintiffs waive all attorneys' fees and costs for all work done for the period, August 1995 to the date of the entry as a Court order of the Settlement Agreement and Stipulation.

B. The City shall pay attorneys' fees and costs for the period of monitoring of the Settlement Agreement and Stipulation on terms and conditions agreeable to the parties. Any disagreements on the requests shall be submitted for adjudication to the Court.

VI. Monitoring Period

A. The parties shall monitor compliance with the Settlement Agreement and Stipulation for a period of two years to commence on the date of the entry of the Settlement Agreement as a Court order.

B. As to any provision of the Settlement Agreement and Stipulation that is not implemented within the two year monitoring period, the monitoring period shall extend to one year beyond the date of actual implementation. Any dispute as to the implementation of provisions of the Settlement Agreement and Stipulation for purposes of this provision shall be submitted to the Court for its adjudication.

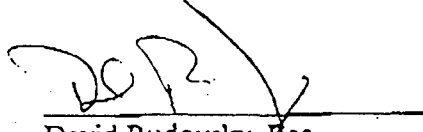
C. At or before the termination of the two year monitoring period, either side may move the Court to extend the period for good cause shown.

D. As provided in Section I(C), the plaintiffs may file an Amended Complaint and litigate the issues raised in said Complaint at any time to and including one year from the

expiration of the Monitoring Period (including any extension under Sections VI(B) or (C) hereof).



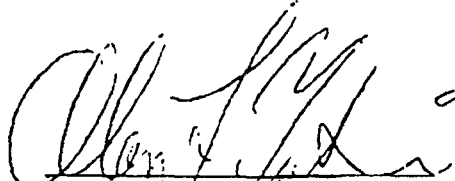
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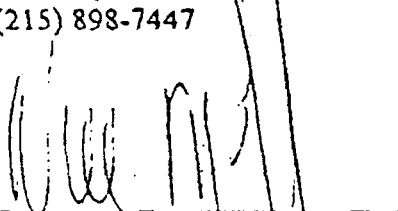
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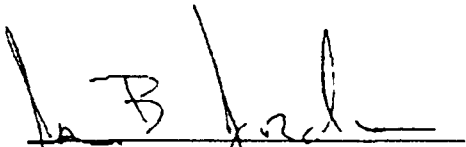


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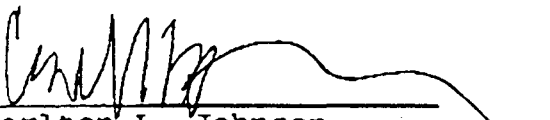


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ATTORNEYS FOR DEFENDANT CITY OF PHILADELPHIA

NAACP AND POLICE-BARRIO RELATIONS PROJECT

v.

CITY OF PHILADELPHIA

CITY OF PHILADELPHIA'S RESPONSE TO
PLAINTIFFS' PROPOSALS FOR REFORMS WITHIN
THE PHILADELPHIA POLICE DEPARTMENT

The City of Philadelphia (the "City") hereby submits the following responses to plaintiffs' proposals for reforms within the Philadelphia Police Department.

In general, the City has found plaintiffs' proposals to be constructive and helpful. In many respects, plaintiffs' proposals build on reforms already begun under the leadership of Police Commissioner Richard Neal. In other respects, plaintiffs' proposals represent legitimate and advisable extensions of Commissioner Neal's reform efforts. There is, in reality, much in common between Commissioner Neal's reform program and plaintiffs' proposals.

Consequently, as the following specific responses make clear, the City is prepared to accept most of plaintiffs' proposals and to diligently pursue their implementation. Two general caveats are necessary, however:

First, the City continues to disagree with the characterization of some that its Police Department is systemically corrupt and that the Department has been ineffective in policing itself. The City continues to believe that public claims of systemic corruption and the alleged ineptness of the variety of ethics and accountability functions performed by the Philadelphia Police Department are exaggerated. This is not to say that additional improvement is not possible and necessary. It clearly is, as evidenced by Commissioner Neal's new anti-corruption program and the City's willingness to commit itself to plaintiffs proposals.

Second, while the City is committed to full implementation of a comprehensive anti-corruption program, there are a variety of significant legal impediments that may block or delay implementation of certain proposals. The sources of legal limitations include the Philadelphia Home Rule Charter, the United States and Pennsylvania Constitutions, Pennsylvania statutory law, including Act 111, Civil Service Regulations, the collective bargaining agreement between the City and the Fraternal Order of Police ("FOP"), and other sources of law. The City's commitment to continued reform encompasses a commitment to vigorously oppose any legal challenge to programs it endorses in this response.

I. Establishment of an Independent Commission to Study Police Corruption and Misconduct in the City of Philadelphia.

Proposal:

For the reasons stated in City Council's Resolution of December 7, 1995 we believe it is imperative that an independent commission with adequate staff and subpoena power investigate the past and present operations of the Police Department relative to issues of misconduct and corruption of police officers. The Commission should evaluate current policies and procedures and should submit recommendations for reform necessary to enhance the training, supervision and discipline of officers within the Department.

City Response

The City agrees with this proposal in substance and proposes the formation of a Police Corruption Task Force. While not finalized, the Mayor's current view of such a Task Force is as follows:

The Task Force would have fifteen members, appointed by the Mayor and the Council President, consisting of law enforcement professionals and persons with knowledge about the law enforcement system. Unlike the Police Advisory Commission, the Task Force would not have subpoena power, nor would it examine specific incidents of alleged misconduct or corruption. (The Police Advisory Commission, of course, would retain its authority in these areas.) Rather, the job of the Task Force would be to review systemic issues such as the Police Department's recruitment methods and procedures; its training techniques and curriculum; its policies and regulations governing situations with potential ethical problems; the methodology of the Internal Affairs Division; the Department's record of internal discipline; and the impact of the collective bargaining and arbitration process on these issues. The Task Force envisioned by the Mayor would have a limited term of, perhaps, 12 to 18 months to complete its work and report to the Mayor and the Council President. By its enabling order, the Task Force would have the assistance of the staff of the Police Advisory Commission, the Law Department, and selected members of the Headquarters Investigations Unit of the Philadelphia Police Department.

The City envisions that as a major initial project, the Task Force could examine the structure and operation of the Internal Affairs Division. The Task Force also could be charged with analyzing other proposals made by plaintiffs, including the proposals to increase the minimum age for police recruits, to broaden pre-employment screening, and to conduct validation studies of the predictive dimensions of job performance.

II. Integrity and Accountability Officer

Proposal:

A. On the assumption that the Police Advisory Commission continues to function with adequate funding and staffing to ensure appropriate external monitoring of practices and policies of the Police Department, the Department should create a permanent position of an Integrity and Accountability Officer (hereinafter IAAO). [This official would function as an Inspector General, but we do not use that title to avoid confusion with the existing City position of Inspector General.] The IAAO would report directly to the Commissioner and should assess and audit the Department's hiring, training, supervision and disciplinary policies and procedures as they relate to the control and detection of misconduct or corruption in the Department.

B. The IAAO should have sufficient staff and resources and direct access to Department records and personnel to enable it to operate as an effective monitor of anti-misconduct and anti-corruption policies and practices in the Department.

C. Among the specific responsibilities that should be assigned to the IAAO:

1. Monitor, audit and review the operations of IAD and EAB;
2. Undertake studies to assess the quality of the Department's misconduct and corruption controls.
3. In conjunction with IAD, establish an early warning system and/or an at-risk officers list that involves reviews of citizen complaints, use of force reports, and other information to determine, based on past performance, which officers are likely to engage in abusive conduct toward civilians or engage in corrupt activities and to establish a system of retraining, psychological reevaluation and intensive supervision for these officers.¹
4. Monitor the Department's use of pro-active anti-corruption, anti-misconduct investigatory techniques, including use of undercover officers, field associates and sting operations.

D. IAAO and the Commissioner should develop policies that hold Commanders and other high officials accountable for preventable misconduct or corruption of officers under their command. Commanders and supervisors should be sanctioned where they fail to control or prevent misconduct and should be honored where they demonstrate commitment to integrity.

¹ The May, 1992 IAD Report, "Strategies and Action Plans" sets forth a comprehensive "at-risk" officer policy. It should be fully implemented and monitored for effectiveness.

*this proposal in substance, and will create a new position of Integrity and
er to be responsible for assessing, auditing, and/or reviewing Departmental policies,
ns Bureau Operations, and specific investigations. The City agrees that an official
would be most effective if required to report directly to the Police Commissioner,
must and will be provided with sufficient staff and resources.*

*Accountability Officer's essential responsibilities would include monitoring Internal
D) and Ethics Accountability (EAD) functions and reviewing particular
ure general departmental compliance with Departmental policies and procedures
with Mayoral Executive Order 9-93 (MEO 9-93). Duties would also involve
is, and critique of corruption controls, as well as identification of corruption hazards
t.*

*High officials in the Department must continue to be held accountable for
act or corrupt activity by officers under their command. The City also supports the
warning," "at-risk" policy, and the Police Department has developed such a policy
City is committed to pursuing implementation of the "at-risk" policy in the
tration and in a pending grievance arbitration.*

III. Police Advisory Commission.

Proposal:

The Police Advisory Commission should be maintained and strengthened. While control of misconduct and corruption must ultimately be the responsibility of the Commissioner, the Advisory Commission should continue to investigate specific cases and systemic problems, provide a forum for the public, and issue recommendations for change in Department policies and regulations. Funding for the Commission should be increased to allow for effective discharge of its responsibilities.

City Response

The City agrees that maintenance of the Police Advisory Commission is important to strengthening the public confidence in Police Department activity and oversight. The City is committed to the continued operation of the Police Advisory Commission, and to assist the Commission by providing appropriate training, as detailed in the Police Commissioner's Response to the Police Advisory Commission dated April 29, 1996, a copy of which is attached. While the City has received no request for additional funding from the Police Advisory Commission, we would certainly be prepared to consider and evaluate the merits of any such request, as we do with any department or commission.

IV. Police Department Records and Documents: Computerization, Indexing and Access

Proposal:

- A. Computerization of Significant Documents. The standard police paperwork, forms, and other documents (e.g., 75-48s, 75-49s, search and arrest warrants) should be entered into a computer database so that records can be retrieved by (a) individual officer, (b) district, special unit or squad, (d) time period (e.g., by year), (e) informant (arrest and search warrants), or other significant categories. The database should allow for adequate cross-referencing by officer, squad, time period, etc.
- B. Computerization of citizen complaints, internal investigations (such as IAD, EAB, use of force, and firearms discharge), use of force reports, vehicle pursuits, lawsuits alleging violations of civil rights, judicial findings of misconduct in criminal cases and other related categories. This database should be indexed and be retrievable by officer, complainant, type of complaint (e.g., excessive force, false arrest) district, unit, time period, with adequate cross-referencing to other officers involved in specific incidents.
- C. Development of procedures to ensure protection of privacy of officers and citizens whose identities appear in the database and to ensure that the "fields" of information are consistent with the provisions of paragraphs A and B.

City Response:

The City agrees with these proposals in substance. The City agrees that these recommendations would improve the Police Department's ability to monitor the activities of its officers and, specifically, the officers' interactions with citizens. The City offers the following plan for implementation:

A. To broaden its information management systems, the Police Department is preparing a Request for Proposal (RFP) that will be submitted for bidding on a computer program upgrade. This incident-tracking proposal will computerize most 75-48 and all 75-49 reports (Complaint/Incident Reports and Investigation Reports, respectively) and is part of the Department's multi-million dollar Information Technology Strategic Plan. The Department plans to fully implement this system within the next 24 months. This new computer system will improve the ability of the Department, and of the Integrity and Accountability Officer, to track officers' activity in accordance with this proposal.

The Department also instituted a Search Warrant Tracking System in October 1995. The Search Warrant Tracking System is a computerized method allowing the Police Department to follow the path of a search warrant from the time of the blank document's release from the Police Warehouse to the time it is executed and filed. The system is a technological tool that allows managers to review and analyze the use, preparation, and execution of search warrants. It also creates audit trails and data from which independent reviews of search warrant can be performed. The system will enable police supervisors to fulfill more efficiently the oversight responsibility established by Directive 7 (Search Warrants). The Integrity Control Office (ICO) of the Internal Investigations Bureau will also be able to utilize the information available from the Search Warrant Tracking System to perform audits and critiques of selected units.

B. The Police Department recently purchased a sophisticated computer imaging system that has extensive storage and retrieval capabilities.² At the completion of the storage process for the 39th District litigation, for which the system was purchased, the Department will begin storing EAD and IAD information in this system consistent with the recommendations in this section.

² A description of this system is attached.

V. Recommendations Concerning IAD [to Amend Executive Order 9-93]

Proposal:

A. Conduct of Investigations

1. All police personnel must promptly and professionally accept and notify IAD of all citizens' complaints regardless of their apparent merits and/or the sources of the complaint. There should be no discretion in the officer or official who accepts the complaint to handle the matter informally without referral to IAD. IAD should ensure compliance with this mandate by random interviews of complainants and through the use of undercover personnel.

City Response

The City agrees with these proposals in substance. As a result, the City has already begun to examine the structure and operation of IAD and to revamp the Division to increase its effectiveness. The City envisions this process as an appropriate project for the planned Police Corruption Task Force (see Section I, supra.)

In the interim, the City agrees that these recommendations will help prevent district police personnel, with a potential interest in "protecting their own," from discarding complaints against officers before Police Department supervisors become aware of them. Additionally, the City agrees to review the informal adjudication procedure to ensure that complaints are truly being adjudicated, rather than cast aside. If this manner of resolution is not appropriate, or the person is still not satisfied, the formal complaint process remains available. The City also agrees that the Police Department will institute "quality controls" similar to those recommended in this section, and will implement a system of random follow-up to ensure that the procedures specified in MEO 9-93 are being followed. Consistent with the recommendations of the Delaware Valley Citizens' Crime Commission IAD report of 1992, some formal complaints (e.g., lack of service, verbal abuse) are referred to the district level for investigation and resolution; IAD will continue to keep a record of any such referral.

In addition, the Police Department currently adheres to the mandate of MEO 9-93, which expanded the ability of citizens to make complaints to outside agencies and organizations, such as City Council, the Black Clergy, and other groups. The Police Department surveys City and non-City departments monthly to assure that sufficient copies of the complaint form are available.

Proposal:

2. Copies of complaints should be directed to designated personnel in the City law department, the District Attorney's Office and the IAAO.

City Response

The City accepts this proposal.

Proposal:

3. IAD should investigate (as opposed to "monitor") all cases where an officer has used significant force (as defined in section VII) or is accused of criminal conduct, violations of civil rights, perjury, intentional cover-up of misconduct, or corruption, or where a pattern of misconduct or corruption is alleged. Detectives or other investigative personnel shall not be involved in these investigations, and when they become aware that their an investigation involves these issues, they should immediately turn the matter over to IAD.

City Response

The City agrees with this proposal in substance. Where an injury sustained by a citizen results in the hospitalization of the citizen, IAD will conduct an active investigation. In addition, the force-reporting requirements attendant to the use of a blackjack, baton, pepper spray, or firearm will trigger an investigation into most injury-producing uses of force. IAD's redefined responsibilities in these circumstances will complement its existing duty, in instances where corruption or a pattern of misconduct is alleged, to investigate rather than "monitor" an investigation of the allegations.

Proposal:

4. IAD should recruit and utilize undercover officers and field associates, with particular emphasis on corruption-prone districts or squads, to gather information on corruption and misconduct within those districts and squads. Proactive measures should be employed where reasonable suspicion exists that officers or officials within the Department have committed criminal acts or serious violations of Department Regulations or Directives.

City Response

The City agrees with these proposals in substance. As part of his "Ten Step Integrity Plan," the Police Commissioner has developed a "field associates" program in which officers are recruited to serve as the "eyes and ears" of Internal Affairs investigators, reporting any corruption or misconduct that they witness or suspect.

The Field Associate Program is designed to attract both current personnel and police recruits into the program. Organized, maintained, and managed by EAD, the program expects the field associates to report corrupt activities, suspicious or unethical conduct, or any instance in which improper actions are being taken by members of the Police Department. Information gathered from these unique sources will be given to EAD for further pro-active investigation, referred to IAD, or provided to the appropriate Detective Division. The Department has endeavored to ensure the confidentiality of the program by arranging confidential interview and debriefing sites and by conducting thorough background investigations on field associates.

Proposal:

5. IAD should give high priority to any officer's report concerning excessive use of force or criminal behavior on the part of fellow officers. To encourage officers to report misconduct or corruption, IAD should establish a hot-line for the receipt of anonymous complaints from officers. Officers should be encouraged to identify themselves, but where they do not an investigation should ensue where circumstances so warrant. The Department should commend, support, and protect officers who truthfully report misconduct or corrupt activities of other officers.

City Response

The City agrees with these proposals in substance. The City agrees that one of the most effective methods of discouraging police misconduct is to create an atmosphere in which ordinary patrol officers who take affirmative steps to uncover and disclose misconduct are rewarded for doing so. The Police Department will implement plaintiffs' proposals by reinforcing, through enhanced training for all personnel, existing Police Department policies in this area.

The priority with which the Police Department views the reporting of improper conduct by fellow officers is illustrated by the existence of three separate, written policies on the subject, Police Directives 114,³ 127, and Commissioner's Memorandum 89-1 (Whistle-Blower's Law). The training is to be conducted by the Advanced Training Unit for Police Supervisors, and by IIB personnel for police officers. The expanded Integrity Training is part of the Police Commissioner's "Ten Step Plan" on Integrity, and includes instruction to recruit officers about the corruption "opportunities" an officer faces and advice on the appropriate reaction to such opportunities. In addition, to encourage internal reports of police misconduct, EAD has, since its formation, placed signs throughout police facilities identifying a phone number personnel can contact to report corruption. Officers who report misconduct in this manner are not required to identify themselves. As an added measure, the Police Commissioner has since February 1995, assigned IAD lieutenants to work with each police district as a resource and conduit for the reporting of improper conduct. IAD Headquarters is also manned on a 24-hour basis. Efforts are made to protect the anonymity of officers who make such reports. Officers whose truthful reports of police misconduct or corruption result in the apprehension of other officers for prohibited activities will receive official commendations from the Police Commissioner.

Proposal:

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

³ Directive 114 is currently under revision, and amendments are anticipated to expand the information available to the police officer.

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.

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 for 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 if 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.

In addition, the Police Department is developing a plan by which to implement the taping and/or transcription of interviews. A Police Department survey of other jurisdictions was recently completed, and the results of that survey will be used in developing a policy requiring the verbatim memorialization of witness interviews.

Proposal:

10. IAD should complete its investigation within 60 days unless extenuating circumstances are present. Investigations of probationary officers should be completed in a time frame that for final case disposition within the probationary period.

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complaints, and for identifying the reasons for such patterns. Included in this special monitoring should be a review of any non-departmental employment of the officers and a review of the work of and relationships with that officer's partner(s).

16. Regardless of the outcome of a complaint, where appropriate under the circumstances, supervisory personnel should counsel and, if necessary, require retraining of the officer.

17. No personnel should be promoted without review of the information in the database set forth in paragraph 14. While frivolous or completely unfounded should be disregarded, the Department should consider the substance of the allegations of "not sustained" complaints.

18. Using the databank set forth at paragraph 14, IAD should annually supply each district commander with a report conveying the number of complaints and charges filed against officers of the district which shall permit a comparison of its performance against all other districts.

19. All complaints and investigations should be maintained for at least 15 years, with provisions for the separate maintenance of frivolous or completely unfounded complaints. A summary record of complaints and dispositions should be permanently maintained.

City Response

The City accepts these proposals. The computerization process will enable the Department to accomplish many of the objectives suggested. The City notes, however, that an officer's background and IAD history has always been taken into account with respect to promotional decisions.

VI. Supervision/Monitoring of Narcotics Squads and Details

Proposal:

Supervision

- A. All officers assigned to narcotics squads, any special narcotics investigation, or any district-based detail significantly involved in drug enforcement should receive special integrity review and training prior to this assignment.

City Response:

The City accepts this proposal and notes that it reflects the current policy of the Police Department. Currently, all personnel assigned to narcotics in the Special Investigations Bureau (SIB) must undergo a separate transfer review and background check. They also receive 40 hours training by SIB personnel at the beginning of the assignment.

Proposal:

- B. All police records and other paperwork generated by narcotics officers should, in accord with the computer database system described in Section V, be maintained by officer and by unit.

City Response:

The City accepts this proposal.

Proposal:

- C. There should be periodic reviews and audits of the following aspects of the work of narcotics squads by a ranking supervisor who shall be held accountable for his or her supervision by the IAAO:
 - 1. The relevant paperwork of narcotics officers, including applications for search and arrest warrants, 75-49s, reports concerning drug raids or other searches and seizures of drugs or related items, surveillance records, and records pertaining to informants.
 - 2. The search and seizure activities of all squads, including random interviews with subjects of searches, informants, and others with knowledge, to determine whether officers are adhering to rules and regulations concerning searches. In particular, the audits should cover probable cause requirements, directives regulating execution of warrants, use of force and compulsion during searches, and treatment of individuals in places searched. The audits should also include pedestrian and vehicle stops, arrests for possessory offenses, and charges of resisting arrest, to determine whether patterns of illegal police activity are developing.

3. All affidavits in support of search or arrest warrants prior to their submission to a judicial officer.

4. The use of informants and the enforcement of Directive 15. This should include regular review and interviews of informants to determine whether they are being used according to Department policy and whether allegations in warrant applications or testimony concerning their past activities are accurate. Further, copies of warrants and other related paperwork that relate to specific informants should be placed in the informant's file.

5. All investigations, arrests, searches (raids), in which (a) abuse is alleged, (b) the search or arrest warrant fails to disclose evidence or persons subject to the search, or (c) other information provides grounds to believe that improper police actions may be involved.

D. There should be regular proactive use of field associates and undercover officers to monitor, investigate and report on any corrupt or illegal actions of narcotics officers.

E. There should be use of "sting" operations wherever misconduct is suspected and as a preventive device.

F. Requests should be made to all judges and prosecutors to report all cases of suspected perjury or serious misconduct to the Police Commissioner (applicable to all police officers).

G. There should be regular transfer of all narcotics officers and supervisory officials.

City Response

The City accepts these proposals.

VII. Issues Concerning Use of Force

Proposal:

- A. Review of Current Use of Force Directives and Regulations to ensure that the Department authorizes only that level of force that is reasonably necessary and which a properly and fully trained officer would use for the protection of the officer, suspect, and the public in given circumstances. Consistent with these directives, the Department should adopt specific written disciplinary regulations for the violation of use of force directives and regulations.
- B. Except in extraordinary circumstances (e.g., undercover officers who cannot carry firearms), no legitimate police purpose is served by the practice of authorizing or permitting officers to carry or use blackjacks, slappers, or similar weighted striking devices. Except with specific written authorization of the Police Commissioner, no officer should carry, possess, or store in any department facility or locker any such device.
- C. Promulgation of Use of Force Reporting Requirements.
 1. There should be formal reporting requirements for any use of force beyond verbal commands or the physical hand contact that is used incidental to normal police search, arrest or detention practices. Reporting formalities and the investigation that should follow will depend on the type of force that is at issue. Reportable force includes:
 - Use of chemical sprays or electronic shocking devices;
 - Use of impact devices and techniques, such as batons, nightsticks, fists, and feet;
 - Drawing, display, or pointing of firearms;
 - Use of canines in incidents in which canines come in contact with suspects or other civilians;
 - Use of potentially lethal martial arts techniques and holds, such as carotid control holds, bar arm holds, and other neck grips;
 - Discharge of firearms;
 - Use of any other degree of force resulting in visible or reported injuries to suspects or other persons;
 2. "Low level" use of force, e.g., physical force such as that which is used to overcome minor resistance where there is no injury and no complaint of pain or injury by the suspect, would be subject to a check off type of reporting, but not to a separate investigation unless a supervisory official determines that an investigation is necessary under the circumstances.

3. Where "significant" force is used, formal reporting and investigation should be required. Significant force includes situations where injury occurs from the force used, the suspect complains of pain or injury or hospital care is required, regardless of the officer's denial of use of force, the use of any special weapon or device (e.g., taser, mace, pepper spray, firearm or baton), causes or is claimed to cause any injury or pain to the suspect, or death follows contact with the police.
 4. Significant force cases should require detailed reporting by the officer(s) involved and the immediate documentation and investigation of the incident by either an immediate supervisor or by IAD, depending on the nature of the incident. In all such cases, investigating supervisors or assigned IAD personnel should state their conclusions and recommendations concerning the propriety of the force used. When such cases are investigated by immediate supervisors, their reports shall be reviewed and endorsed, positively or negatively, by the supervisors' commanding officers.
 5. Where formal reporting and investigation is required the investigation shall be contained in a Use of Force Document that includes all of the investigatory materials. There should be specific directives with respect to the type of investigation to be conducted and time frames for completion.
 6. In conjunction with the computerization and integration of police reports and documents outlined in Section IV, the Use of Force documents should be indexed by officer, type of force (e.g., shooting), district, unit and year of occurrence. Further, a review mechanism should be established to determine whether there are trends in the use of force in the Department or in various districts or units.
 7. Use of Force history should be a factor in evaluations, assignments, promotions, psychological counseling, and any early warning system or at risk officer assessments that are established by the Department.
- D. Any special weapon, technique or device should have its own separate training and monitoring. In addition, training and disciplinary programs and directives should be developed in specific areas, detail impermissible uses of force. For example, the proper use of handcuffs should almost never result in injuries to the wrists or nerves in the hands. Specific penalties for violations of use of force directives should be developed.

City Response

The City accepts these proposals in substance and agrees that the Police Department will implement additional reporting requirements or expand existing requirements. The reporting forms, and criteria and procedures for investigation, shall be finalized and implemented within 45 days of the Court's approval of this agreement. The Department is prepared to take every necessary measure to ensure that officers do not abuse their law enforcement privileges by physically abusing the citizens they serve. Indeed, the collective bargaining agreement permits the imposition of appropriate sanctions in cases in which excessive or improper force is employed.

The Police Department intends to use computer technology to track use of force information. The purpose of collecting such information will be to monitor, review and analyze for appropriate response (retraining, discipline, policy revision, etc.). In addition, the information will continue to be reviewed in connection with decisions regarding assignment and promotion.

VIII. Racial and Other Bias in Law Enforcement.

Proposal:

A. There should be specific and detailed training with respect to equal treatment of citizens, promulgation of disciplinary regulation for racially biased police work, and serious and sustained diversity and cultural awareness training in the Academy and on a regular periodic basis for all officers, supervisors and administrative officers.

B. A Deputy Commissioner should (1) monitor police records and complaints as they involve minorities and allegations of racial discrimination, (2) act as a liaison to representatives of minority communities and to officials in the Department dealing with race related issues, and (3) monitor programs with respect to hiring and promotion of minorities.

C. There should be a comprehensive review of police department policies and practices such as discretionary pedestrian and vehicle stops that have the potential for racially biased law enforcement. All pedestrian and vehicle stops should be recorded on 75-48s or other reporting forms even if the stop does not yield information, detention, evidence or an arrest. Each document must state the reason for the stop, for any police action taken (e.g., frisk, search, questioning), and the race of the person(s) stopped.

The Department should review and audit, on a regular basis, the patterns of these stops to determine whether impermissible racial factors are involved. Individuals identified on the police reports, but against whom no charges have been made, should be contacted on a random basis to determine if the police conduct was justified and to examine any possible racial patterns.

D. Individual officers' and supervisors' files (as computerized) should contain any allegations or findings of racial bias. In addition, the records of stops, searches, arrest and civilian complaints in the files should be periodically reviewed to determine whether racial bias or patterns are evident. In this audit process the Department should randomly interview individuals who were stopped, but were not charged with any criminal conduct.

City Response

The City accepts these proposals.

IX. Recruitment, Screening, Field Training and Psychological Support

Proposal:

- A. Raise the minimum entry age to 21 years of age.
- B. Plan for imposition of a minimum education requirement of 2 years of college or military service equivalent, with programs for fulfilling this requirement made available to recruits.

City Response

The City views these proposals as meriting further study and will review the feasibility of implementing them. A change in Civil Service regulations would be required to raise the minimum age for Police Officer applicants. The Police Department acknowledges that college education is valuable but also recognizes that many individuals qualified to be police officers who do not have, and cannot afford to obtain, a college education are nonetheless capable of performing the essential duties of a police officer in a professional manner. The requirement of a college education, additionally, could result in disparate impact against minorities and consequent litigation. The Department has a vested interest in ensuring that employment opportunities for Philadelphians are available and that the Department can attract Philadelphia citizens who are familiar with the various neighborhoods and communities that exist in the City. Nonetheless, the City's ability to comply with this proposal may be subject to its collective bargaining obligations under Act 111.

Proposal:

- C. The Department's pre-employment screening should include interviews of persons who have personal knowledge of the applicant as to the applicant's potential bias regarding race, gender or sexual orientation, and as to proclivity for unnecessary use of force. All investigations should be completed before the appointment of the applicant to the Police Academy.

City Response

The City agrees with these proposals in substance. The City agrees, to the extent possible, to use the interview process to determine these characteristics, to the extent the listed factors are ascertainable through interviews. In addition, the Police Department will review other pre-employment screening activities already undertaken, to determine whether those practices are sufficiently informative to enable the Department to hire the best-qualified candidates. To assist in determining an applicant's fitness for a law enforcement position, the Background Investigations Unit (BIU) does perform in-depth background checks, including interviews with employers, family, and neighbors. While specific questions about views on race and other matters are not asked, the questions are structured to elicit as much background information as possible.

The City was recently sued over police recruit requirements, and the relationship between this lawsuit, and other efforts of the City to improve police recruitment, and these proposals must be explored. The City suggests that this issue is appropriate for review by the proposed Police Corruption Task Force.

Proposal:

D. The Department should conduct validation studies of the predictive dimension of job performance, especially as related to issues of bias and excessive use of force.

City Response

The City is willing to discuss the utility of validation studies. The Police Department is concerned that arbitrary determinations that "predictive factors" suggest a person's incompatibility with a law enforcement position would result in litigation. The City suggests that this issue is appropriate for review by the proposed Police Corruption Task Force.

Proposal:

E. Extend the probationary period to 18 months. Probationary officers should receive systematic training on use of verbal skills, recognition of use of force situations, and cultural awareness.

City Response

The City is willing to review the feasibility of increasing the length of the probationary period for police officers. The City's ability to comply with this proposal may be affected by its collective bargaining obligations under Act 111. The City accepts the proposal with respect to training.

Proposal:

F. Field training officers should be used to train probationers, and these officers should be given special training with respect to integrity and use of force and issues.

City Response

The City accepts this proposal. The Police Department agrees that the Field Training Officer position is worthwhile. The City's ability to comply with this proposal may be affected by its collective bargaining obligations under Act 111.

Proposal:

G. We endorse the recommendations of the Police Advisory Commission's Police Stress Report (June, 1995) and urge their full implementation. Officers should have psychological services available, with necessary confidentiality protections. Officers observed with symptoms of stress should be referred to counseling and psychological services.

City Response

The City agrees with these proposals in substance. The City agrees that officers should have psychological services available with necessary confidentiality protections, and that officers who have symptoms of "stress" should be referred for psychological counselling and services. The City further notes that its response to the Police Advisory Commission's report of June 1995 details the steps taken

by the Police Department before the PAC's report and the ongoing improvements by the Police Department that had been completed. For example, the Department's Employee Assistance Program offers counselling and can coordinate private counselling (paid by contract benefits) for employees. The Police Department also has a policy for psychological services and referrals. The Department employs a stress counselor to help the Department handle stress related issues, including training and procedures. In addition, as noted in response to the PAC's report, the City gives police recruits nearly six days of physical and mental health training directed at improving their own well-being. This training includes an overview of the Employee Assistance Program.

The Employee Assistance Program was initiated in the late 1960s and has continued to evolve since its inception. The program is staffed by police officers who have at least a Master's Degree in counselling-related fields. A Stress Manager was hired in June of 1995 to review the EAP process and the operating environment of the Department, and to work with the Commissioner to develop programs and initiatives to enhance the well-being of the officers.

The City believes the Police Department's response to the PAC's June 1995 report addresses the concerns raised by the PAC. A copy of the response is enclosed.

X. Police Integrity Training and Education

Proposal:

Introductory Note: We endorse the recommendations of the IAD, Strategies and Action Plan (May, 1992), Sections III and IV on Ethical Training, and urge their implementation. The recommendations that follow overlap in some instances with that Report.

A. The Department should require in-service integrity training for all officers at regular intervals.

B. The Department should require special integrity training workshops for all newly promoted supervisors and commanders that focus on their personal responsibility and accountability in corruption matters and how they can prevent and identify corruption-related problems.

C. Integrity training should focus on "code of silence" issues and should make clear the Department's condemnation of failure to report serious misconduct by other officers. Police should be provided with confidential means of reporting corruption or misconduct. Disciplinary regulations should seek to enforce the principle that the wilful cover-up of serious misconduct by others will be treated as seriously as the misconduct itself.

D. Integrity training should deal with the problem of police perjury, particularly in the context of testimony concerning arrests, searches and seizures. Training should emphasize the rejection of the notion that the "ends" of convicting a guilty defendant justify perjury.

E. Academy and in-service training should make clear the types of police-civilian confrontations that generally should not lead to the use of force, but which are often mishandled, thereby creating unnecessary physical contact. For example, where civilians request or demand an officer's name or badge number, are insolent, threaten to sue, act in a contemptuous fashion, or bait the officer. Verbal skills that can be used to defuse incidents should be emphasized. Further, police personnel should be warned that false "cover" charges (e.g., resisting arrest, assault on an officer) will be investigated and sanctioned.

F. Police Academy and In-Service Integrity courses should include presentations or real evidence of corruption such as tape recordings, video recordings, and other material evidence gathered in internal investigations.

G. Police Academy and In-Service Integrity training should include personal or recorded presentations by former police officers convicted or dismissed from the Department because of misconduct. A central message should be the devastating consequences of corruption on these officers, their families, and the Department as well as the importance of reporting corruption.

H. Police Academy and In-Service Integrity training should also focus on deterrence, including the likelihood of detection, certainty and severity of sanctions for serious misconduct and corruption, as well as penalties for those who fail to report it.

City Response

The City accepts these proposals. The City's position on these issues is outlined more fully in the Commissioner's "Ten Step Plan," a copy of which is attached.

XI. Promotion, Assignment and Transfers

Proposal:

A. A computerized evaluation grid should be established for each officer containing, in addition to current evaluation data, information relating to (1) uses of force, including use or attempted use of deadly force, (2) the information in the IAD databank as set forth in V, para. 14, (3) commendations and other positive factors reflecting integrity and ability to resolve incidents without force, (4) civil claims filed against the officer or City related to police misconduct, and (5) discrimination in law enforcement activities based on race, gender or sexual orientation. This information should be used for promotion and assignment decisions.

City Response

The City accepts the recommendation that the listed factors be used as evaluation guidelines in promotion and assignment decisions, but it does not believe a computerized grid would be of additional assistance in making promotional decisions. Again, the City emphasizes that an officer's background and IAD history has always been considered as part of promotional decisions. With enhanced computerization, the Police Commissioner will have more immediate access to information about an officer's IAD, PBI, and personnel history, as well as civil lawsuits in which officers are participants either as parties or witnesses. Retraining issues are part of the Commanding Officer's review of IAD reports concerning members of their command.

Proposal:

B. Administrative assignments should not be used simply to transfer a problem officer from one division to another. Rather, commanding officers should enroll such an officer re-training or counseling program. If that program is unsuccessful, consideration should be given to an assignment that will not place the officer in the position of repeating the inappropriate conduct. Placement in a less-preferred district should not be used as punishment. Finally, if an administrative transfer is necessary, an explicit statement as to any appropriate assignment limitations should be included with the transfer.

City Response

The City agrees with these proposals in substance. The City's ability to implement these proposals may be subject to the outcome of the Act 111 proceeding.

Proposal:

C. The assignment policy for patrol officers should require periodic, mandatory rotations in a manner designed to increase ethnic and gender diversity among districts, and to expose officers to a broad variety of experiences.

D. Consider creation of position of Master Patrol Officer as recommended by Tucker Commission.

City Response

The City accepts these proposals. The City notes that the suggestion in paragraph C is already part of the Department's transfer policies. The establishment of a Field Training Officer classification, a position similar to that of Master Patrol Officer, is an issue in the upcoming Act 111 proceeding with the FOP and the City's ability to comply with this proposal may be subject to the outcome of the Act 111 proceeding.

XII. Community Policing Policy

Proposal:

The Department should have a system-wide implementation of community policing policy. The concept of community policing -- service to the public, crime prevention, integration of police work with other anti-crime community efforts, and building a system of trust and cooperation with civilians--should guide the overall guidelines and policies of the Department.

City Response

The City accepts these proposals.

City Response

The City accepts these proposals. The City agrees to amend Executive Order 9-93 to require the completion of IAD investigations within 60 days, with certain, specified exceptions to that requirement. Additionally, the City agrees that investigations of probationary officers be completed for disposition within the probationary period, where possible. The current probationary period is 11 months: 5 months of Academy training and the remainder after initial assignment to the Department. IAD attempts to complete investigations of probationary employees prior to the end of the probationary period. The Police Department agrees that if a complaint is filed within 75 days of the end of the probationary period (the time for investigation specified in MEO 9-93), IAD will be required to complete the investigation process before the probationary period ends. The Commissioner's office will develop and implement a system to track complaints against probationary officers to ensure compliance with these requirements. The City is also willing to contemplate expanding the probationary period, as discussed in Section IX. (E), *infra*. Additionally, IAD investigators will be instructed to document any events that prevent them from completing these investigations in the time required.

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.

Proposal:B. Procedures Governing Case Disposition⁴

12. All founded complaints should be followed by appropriate sanctions by the Commissioner. To ensure fairness and consistency, guidelines should be established for specific ranges of sanctions based upon the nature of the infraction, the officer's background, including founded complaints. For certain serious offenses (e.g., those amounting to criminal offenses such as perjury, aggravated assaults, tampering with evidence) or the intentional or knowing failure to report criminal or serious misconduct of a fellow officer, mandatory sanctions should be established.

⁴ We have substantial questions regarding the role and operation of the Police Board of Inquiry in the hearing and resolution of citizen complaints. Because we do not yet have all of the pertinent information regarding PBI, we do not make any recommendations as to its continued operation or its procedures. We will make such recommendations as soon as possible.

City Response

The City agrees with these proposals in substance. The City agrees that founded complaints must be sanctioned and that guidelines be in place to ensure consistency among sanctions, and notes that the recommended practice already exists.⁵ The collective bargaining agreement between the City and the FOP allows the City to discipline officers for "just cause," a standard allowing for a reasonable amount of management discretion in imposing discipline. Additionally, the Police Department's Disciplinary Code sets forth a list of offenses and guidelines for penalties which incorporates the concept of "progressive discipline," i.e., more serious sanctions in some cases for repeat offenders. The establishment of widespread mandatory penalties contravenes past police administrative practices and well-established disciplinary principles of labor arbitration. Revision of the police disciplinary code is at issue in the upcoming Act 111 proceeding with the FOP, and the City's ability to comply with recommendations concerning discipline may be subject to the outcome of the Act 111 proceeding.

An outline explaining PBI procedures is attached.

Proposal:

13. The Police Commissioner's disposition of each civilian complaint should be forwarded to the City Law Department, the IAAO, and if there is probable cause to believe that the misconduct constitutes a crime, to the District Attorney or United States Attorney.

City Response

The City accepts this proposal and notes that its current practice is to forward each complaint against police to the District Attorney's office for review prior to completion of the investigation. Additionally, all City agencies forward allegations of criminal conduct by police officers to external law enforcement agencies.

Proposal:C. Post-Hearing Policies and Procedures.

14. The Department should record in computerized form all civilian complaints, civil and criminal charges, and the disposition for each officer. The databank should consider fields for the following information: the officer's name, badge number, rank, assignment, name of each complainant or litigant, a description of the nature of each complaint or legal action, the resolution of each complaint or legal action, and Department sanctions.

15. Supervisory personnel shall be held responsible for the performance and integrity of those under their command. District Commanders and other designated supervisors should be held accountable for monitoring the performance of officers who accumulate a disproportionate number of

⁵ Many of the proposals in this document are already followed within the police department. To the extent that existing practices can be improved by plaintiffs' proposals, the City is in agreement that it will try to do so.

