



**City of Philadelphia**

**INTEGRITY AND ACCOUNTABILITY OFFICE  
PHILADELPHIA POLICE DEPARTMENT**

**FIRST REPORT**

**NOVEMBER 1997**

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**I. INTRODUCTION**

In September 1996 the City of Philadelphia entered into a wide-ranging agreement settling reform litigation instituted by the National Association for the Advancement of Colored People, the American Civil Liberties Union, and the Police-Barrio Relations Project. This litigation followed, and was prompted by, the joint federal-city investigation into corruption and misconduct in the 39th District of the Philadelphia Police Department prior to 1992, which resulted in the conviction of six corrupt former members of the Department, and led to the

overturning of more than 150 criminal convictions and the expenditure of millions of dollars to settle lawsuits brought by individuals whose civil rights were violated. In the Settlement Agreement, the City committed to undertake numerous reforms designed to improve police accountability, reduce the potential for police corruption and misconduct, and enhance the confidence of the people of Philadelphia in the integrity and fairness of their Police Department.

Among the initiatives called for in the Agreement were the creation of a permanent Integrity and Accountability Office, to monitor, audit, and make recommendations for improving the Police Department's anti-corruption and anti-misconduct programs and policies. In October 1996 James B. Jordan, Chair of the Litigation Department of the City Solicitor's Office, and supervising counsel for the City in the litigation arising from the 39th District corruption investigation, was asked by Mayor Edward G. Rendell to head this Office. In order to assist newly-appointed City Solicitor Stephanie Franklin-Suber during the transition in the Law Department, Jordan did not formally begin his position as the Integrity and Accountability Officer (IAO) until January 6, 1997. At that time Ellen H. Ceisler, an attorney and former prosecutor, joined the office as Special Assistant to the IAO.

## **II. OVERVIEW OF THE INTEGRITY AND ACCOUNTABILITY OFFICE**

### **A. MISSION**

Pursuant to the terms of the Settlement Agreement, the IAO has a broad mandate to independently analyze and critique accountability and corruption control policies, to identify systemic deficiencies that give rise to or permit corruption and misconduct within the Police Department, and to make recommendations for change. The IAO is responsible for monitoring and auditing departmental policies, practices and operations as they relate to the detection and control of misconduct or corruption in the Department. The IAO has access to all Department records and personnel necessary to effectuate the broad duties of the Office, with the exception of certain types of confidential records such as those maintained by the Employee Assistance Program.

At the direction of the Mayor, the IAO, working in coordination with the Law Department, has primary responsibility for assuring compliance by the City with the terms and commitments of the Settlement Agreement, and for reporting regularly and directly to the Mayor on the progress of implementation. To assist the IAO in meeting these responsibilities, the Mayor has established an Executive Committee, headed by Chief of Staff Gregory S. Rost and comprised of First Deputy Managing Director Joseph Martz, Deputy Chief of Staff John Estey, Deputy Mayor

for Communications Kevin Feeley, and Budget Director Dean Kaplan.

We emphasize that the independence of this Office means that our analyses, critiques and recommendations are solely our own. Our report should not be read as necessarily expressing the policies or positions of the government of the City of Philadelphia, or the opinions, views or beliefs of the Mayor, the Police Commissioner, the City Solicitor, or any other official of the City of Philadelphia.

## **B. INITIAL OPERATIONS**

We spent a significant portion of our first months familiarizing ourselves with the overall operations of the Philadelphia Police Department, including its policies and organizational structure, and have studied the Department's history of prior corruption problems and its response to them. We have also researched and analyzed police reform efforts underway in law enforcement agencies in other jurisdictions, most notably the Los Angeles Sheriff's Department, the Los Angeles Police Department, and the New York Police Department. These jurisdictions have experienced integrity and corruption scandals which prompted in-depth investigations into the operations, policies and practices of their respective departments. We have the distinct advantage of being able to review these jurisdictions' various reform proposals and programs to evaluate their successes and failures in institutionalizing corruption and misconduct controls. To the

extent that these reform initiatives appear effective, we are evaluating how to integrate such models into the Philadelphia Police Department.

We have also established a working relationship with the Police Corruption Task Force, appointed in January 1997 and chaired by Arthur Makadon, Esquire. The members of the Task Force are all persons with experience in law enforcement and the criminal justice system. The Task Force has formed six working subcommittees which are responsible for examining specific issues related to police integrity and corruption. We are serving as liaison between the Task Force subcommittees and the Police Department, to streamline access to necessary information, documents, and personnel and to coordinate the projects of this Office and the Task Force.

We have been gratified by the cooperation and assistance we have received from various ranking members throughout the Philadelphia Police Department. Despite this cooperation, we have been concerned that we would encounter reluctance from some Police Department personnel to provide the information and cooperation necessary to fulfill our obligations under the Settlement Agreement, or insistence upon first going through an arduous, time-consuming chain of command review and approval process. Such problems have hampered officials in other cities with police oversight responsibilities similar to ours. Discomfort with releasing information or speaking freely about issues is not surprising in light of the paramilitary structure, insulated culture, and territorial protectiveness inherent in many large police departments. To insure that we are

not confronted with these obstacles, the Executive Committee has been directed by the Mayor to assist us, if necessary, in obtaining the full cooperation of the Police and other City departments and agencies.

While we have confronted obstacles and delays over the past several months, we do not regard these difficulties as insurmountable problems either on our part or on the part of the City or the Police Department. This Office is new and unique, and it was to be anticipated that problems would arise. We are confident that our concerns in this area will be addressed in the appropriate fashion, so that this Office can fulfill its intended role.

### **III. AUDIT OF THE INTERNAL AFFAIRS DIVISION OF THE PHILADELPHIA POLICE DEPARTMENT**

#### **A. INTRODUCTION AND METHODOLOGY**

Our first major project has been an evaluation of the operations of the Police Department's Internal Affairs Division (IAD), with an initial focus upon the investigation of citizen Complaints Against Police (CAPs). IAD and the Ethics Accountability Division (EAD), which is mandated to conduct more proactive investigations into corruption and misconduct, form the core of the Internal Investigations Bureau (IIB).

We intend to monitor the operations of the IIB on an ongoing basis, and subsequent reports will focus on other aspects of the Bureau's operations. The reason for this emphasis is obvious. IIB is charged with the responsibility for conducting investigations into police misconduct. IAD focuses on matters arising from citizen complaints and from internal complaints. Internal complaints are investigations initiated at the request of the Commissioner, or from information received from other sources, including police department personnel, other law enforcement agencies, and anonymous informants. IAD is also responsible for investigating all incidents of police shootings, and for conducting random drug tests of sworn personnel. As noted, more complex matters requiring broader, proactive approaches are referred to EAD.

Thus, IIB plays a central role in the Police Department's efforts to uncover corruption and misconduct, and should play a central role in preventing these evils. We believe that IIB can and should act as a key quality control instrument for the Department. Its investigations provide a wealth of information regarding potential and real problems throughout the Department, and can and should be utilized to identify areas where improvement is needed.

In conducting this and future audits, we are guided by certain principles. First, as has been emphasized by United States District Court Judge Stewart Dalzell, who is charged with overseeing the City's compliance with the Settlement Agreement, the key purpose of the implementation of the Agreement is to enhance the confidence of the people of Philadelphia in the Police Department. Thus, we are evaluating operations not just from the standpoint of effectiveness or efficiency, but also with an eye to how the public's perception of the Department is affected, and how it can be improved.

Second, we agree with and are guided by the argument made by Professors Fyfe, Greene et al. that the evaluation of police performance is a difficult task that is often poorly done because of over-reliance on quantitative measurements of things such as response time, numbers of calls answered, or citations issued, rather than qualitative assessments of how well the police are doing their job. As they note:

Operations researchers and professional program monitors consider an evaluation measure *valid* only when it accurately reflects the extent to which a goal has been accomplished. By that simple standard, most quantitative measures of police performance are invalid because they do not measure how well police meet their responsibilities of protecting life, rights and property and preserving

order. Instead, these quantitative measures typically tell only how *often* or how *quickly* police did certain things.

A fuller understanding of whether police have done everything possible to protect life, rights, and property and preserve order--either generally or in specific circumstances--requires the use of *qualitative* measures.

....response time indicates little about whether police have satisfactorily dealt with a complaint of a noisy party. Instead, we should ask the complainant whether the noise was quelled and whether he or she was satisfied with whatever action the responding officers took. Just as the medical profession does not measure surgeons' job performance by counting the number of sutures they sew or determining how quickly operations are completed, the police should rely only secondarily on quantitative measures of job performance. In medicine and policing, the best measure of job success is whether the people involved did everything reasonably possible to address the problem or correct the condition they confronted.

Police Administration (5th Ed., 1997), p. 46

Third, we will always make every effort to understand issues and problems, and propose solutions, from the viewpoint of the officer on the job, daily facing the enormous difficulties of policing a large city. As we see it, our job is to find and recommend ways to minimize misconduct and corruption, and to enhance accountability at every level, so that good officers will not be tainted by corruption in any form. We believe that our police officers deserve the best possible Police Department, and hope to play a role of some value in reaching that goal.

In conducting our initial audit of IAD, and in ongoing audits relating to IAD, EAD, the discipline and evaluation system, and management accountability, we have developed an operational methodology that is crafted to be an effective and reliable means to lead us to an understanding of important issues and problems.

We have learned, as have others in similar roles in other cities, that Police Departments cannot be successfully audited by traditional methods that rely solely upon following trails of paper and files. For a variety of reasons, police departments in large cities have developed informal, undocumented procedures and policies that hinder evaluation and understanding by anyone other than an experienced "insider." The difficulty an "outsider" then faces is determining where and to what extent the realities of police management and operations diverge from the official policies and procedures.

During the course of our initial audit, we quickly realized that we could read files, policies, procedures, and other documents, produce reports summarizing and analyzing those records, and have no reason to suspect that we were providing anything of value to anyone. We also see no need to undertake a report of the scope of the Philadelphia Police Study Task Force (the Tucker Commission Report). Our experience to date informs our opinion that, although it was issued in 1987, many of the analyses, critiques and recommendations contained in the Tucker Commission Report continue to have extraordinary validity.

For these reasons, we have attempted to combine our study of written records with a determination to listen to and learn from many present and former members of the Philadelphia Police Department, experts in law enforcement, and members of the government and the public, including both advocates for and critics of the Philadelphia Police Department. Additionally, we believe it is essential to meet with and observe patrol and commanding officers at every level

throughout the Department to better understand the realities of their jobs. This field work is a critical component of our overall methodology. In view of the difficulties inherent in auditing an institution as historically closed to outsiders as any large police department, we believe that this multi-faceted approach is the most viable way to ascertain the nature and scope of problems and to develop workable solutions.

We have been extremely gratified to find men and women in the Department willing to discuss issues and problems with us in a frank and open manner. To whatever extent either the "code of silence" is still part of police culture, or a fear of retribution is in the minds of those who speak with us, such inhibiting factors have been overcome by many willing to work with us, and we express our appreciation for their cooperation.

## **B. OVERVIEW OF THE INTERNAL AFFAIRS DIVISION**

Under the leadership of IIB Chief Inspector John Maxwell and IAD Inspector John Norris, and with the support of Commissioner Richard Neal and Deputy Commissioner George Craig, IAD has over the past year undergone organizational and operational restructuring. These and other changes have resulted in a

dramatic improvement in the quality of IAD investigations, particularly with respect to CAPs filed by citizens. While this report points out areas in which improvements can be made, there unquestionably has been significant progress. Even the plaintiffs in this case, whose recent first Monitoring Report notes that much work remains to be done, acknowledge that "the quality of the investigations conducted by IAD reflect improvement" over investigations conducted in prior years.

There are now five investigative teams, each headed by a Captain, and each responsible for investigations within specific geographic areas that coincide with the nine police divisions. Each team covers two police divisions, with the exception of a single team assigned to the East division, an area marked by high crime and drug activity.

This new organizational structure enables each team to identify misconduct and corruption problems and patterns in each division. By limiting the geographic areas in which a team works, IAD hopes that its investigators will acquire expertise in local corruption and misconduct conditions and develop productive, trusting relationships with the commanders of local districts. This is a reform goal envisioned by section V. A(6) of the settlement agreement, and we will continue to monitor the effectiveness of this new organizational structure.

As of September 1997, IAD sworn personnel are assigned as follows:

SURVEILLANCE UNIT	13
DRUG SCREENING UNIT (Conducts random drug screening tests of sworn personnel)	9
SHOOTING TEAM (Conducts investigations of all firearms discharges)	6
CITY SOLICITOR'S OFFICE (Investigates claims/suits against City not initially investigated by IAD)	3
ADMINISTRATIVE FUNCTIONS	6
INVESTIGATORS	54 plus 5 captains

As of July 1997, there were a total of 566 investigations outstanding. A breakdown of these investigations is as follows:

CAP INVESTIGATIONS BY IAD	265
CAP INVESTIGATIONS BY DISTRICT COMMANDERS	117
INTERNAL INVESTIGATIONS (INTERNALS)	137
POLICE SHOOTINGS	37
MISCELLANEOUS POLICE SHOOTINGS	4
DRUG SCREENING INVESTIGATIONS	6

Police Department Directive 127, which sets forth comprehensive procedures for investigation of citizen complaints, provides that the Department "shall publish semi-annual statistics disclosing the number of complaints filed, the nature

of the complaints, and their disposition." The reports for January and July 1997 provide valuable statistical information on IAD investigations. While reflecting a basic consistency over the past year, the reports note a very slight increase in citizen complaints in the first six months of 1997 (329 vs. 310), and an important increase in internal investigations (130 vs. 104).

We also note that while the January report identifies the number of investigations, including CAP investigations, that have been outstanding for more than 100 days, this information is not contained in the July report.

### **C. IAD FACILITIES**

In conducting our evaluations of IAD operations, we have visited IAD headquarters at 323 Race Street on many occasions. The building manifests unsightly signs of deterioration. For years IAD personnel have had to confront uncomfortable, overcrowded working conditions, and have not in the past been provided with an adequate, computerized information system.

At present, IAD investigators have virtually no privacy, a necessity for conducting interviews and meeting witnesses, especially in sensitive matters. Private offices or cubicles would better permit the thoughtful work necessary to conduct complex investigations. IAD is required to share the building with other divisions of the Department, whose personnel it may be (and has been, in at least

one instance) required to investigate. There are two small interview rooms which are insufficient to accommodate the interviews IAD conducts on a daily basis, further contributing to the backlog problem. IAD has no separate reception area, which would provide much needed security and better serve citizens who come to the facility to file complaints or give statements. There is a lack of adequate facilities for records storage. IAD personnel do not have an integrated computer system, which is essential to conduct efficient, thorough investigations. Investigators rely upon a hodge-podge of computer systems which are cobbled together, sometimes at the personal expense of the investigator. Despite these inadequate working conditions and resources, and the difficult job IAD investigators have within the Police Department, we are impressed with the level of commitment and energy most bring to their work.

We have reviewed the concerns discussed in this report regarding IAD, and similar concerns regarding facilities and resources for EAD, with appropriate City officials, and have been advised that for the past year the City has been negotiating for the leasing of new or rehabilitated office space for IAD, EAD and other police operations. In addition, the Mayor has committed to upgrading the computer system at IAD using funds soon to be available from a federal grant. These steps are part of the City's efforts, within the confines of the City's budget, to improve working conditions by upgrading IAD and EAD headquarters.

We are fully cognizant of the constraints upon the budgets of the City and of the Police Department, of the millions of dollars expended by the Rendell

Administration to renovate and repair police facilities neglected for years, and of the poor condition of some district station houses and other police facilities. However, we are convinced that the City should give priority to providing a more satisfactory working environment for this critical component of the Police Department. Apart from the physical and logistical problems created by these working conditions, we are concerned that they may unintentionally send a negative signal about the role of IAD throughout the Department. We believe that IAD, and indeed every unit in the Internal Investigations Bureau, should be viewed as elite divisions within the Police Department, where only the best and brightest are assigned. Providing the men and women of this Division with a decent, comfortable place to work, and the necessary resources and technology to do their job effectively and efficiently, will send an unmistakably clear message about the critical importance of IIB throughout the Police Department.

We further suggest that improving the physical facilities at IAD would give citizens a better sense that their complaints are being taken seriously. Experience here and in other cities teaches that most complaints are destined to be not sustained. Even though we believe that this is inevitable and appropriate, it can result in a perception by the individual that his or her case is being treated perfunctorily. Improving the facilities in which IAD carries out its vital functions can be of value in enhancing citizen confidence in the integrity of the Department.

We are encouraged by the assurances we have received in this regard, and will continue to monitor and report upon the City's progress on these issues.

#### **D. AUDIT OF CAP INTAKE PROCESS**

IAD receives complaints against police in various ways. Citizen Complaint Reports (form 75-561) are completed by citizens at Police Districts throughout the City and delivered to IAD. IAD receives complaints via telephone calls to one of the twenty-five lines currently in use at IAD. There is no central hotline dedicated for complaints. IAD personnel receiving a complaint by telephone are responsible for taking the information to the Division Inspector; the standard form designed for intake of these complaints is not always utilized. At the Inspector's discretion, a "white paper" is prepared, which is simply a typed version of the facts received. The complaint is then administratively processed and assigned to an investigator. IAD also receives complaints by mail and by citizens filing complaints at IAD headquarters. Complaints are also directed to IAD by the Commissioner, the Ethics Accountability Division, the Police Advisory Commission, citizen interest groups, public officials, or other law enforcement agencies.

The majority of CAPs are initiated by citizens who submit a completed 75-561 form. In Police Directive 127, which tracks Executive Order 9-93, the Department has established a system to insure that all complaints which are submitted to the Department are investigated or monitored by IAD. Pursuant to Directive 127, IAD is the central control repository for the distribution of 75-561 forms. IAD is required

to maintain the IAD Citizen's Complaint Log, which is a master list of all pre-numbered 75-561 forms and of the locations to which they have been assigned.

Each police district is responsible for maintaining its 75-561 forms in numerical order. When a complaint is given to a citizen, the district supervisor is required to enter the following information into the district's Citizen Complaint Report Log (Form 75-615a): the 75-561 number, the date and time issued, the name of the person who received the complaint form, and the name of the supervisor who released the complaint form. The district supervisor is also required to complete a separate 75-48 for each complaint, and to enter pertinent information in the separate Citizen Complaint Log (Form 75-579). If the citizen takes an uncompleted form, the District will not know whether a complaint has actually been filed unless IAD notifies the District and requests a District Control (DC) number. This suggests that consideration should be given to developing a more specific tracking system to insure that complaints are not simply "lost" at the district level, a problem we understand has been encountered in other jurisdictions. Although in our audit we found no direct evidence to indicate that the problem exists here, the dilemma, of course, is that if complaints are effectively "lost" it is difficult for the auditor to find them.

When a completed complaint is submitted to a police district, the Operations room supervisor is responsible for obtaining a DC number, preparing an incident report (75-48), a skeletal Investigation report (75-49), and notifying IAD. IAD then issues an investigation control number to the district supervisor, who records that

number on the 75-561 along with the date and time of IAD notification and name of IAD personnel who was notified. Besides maintaining control of the 75-561 released by IAD, this process also insures that the Districts handle the complaint in a timely manner.

To evaluate the integrity of the systems established by Directive 127, we conducted an audit of the complaint intake process. In one day we made unannounced visits to thirteen Police Districts throughout the city and asked to inspect copies of their unused 75-561 forms, Citizen Complaint Report Logs, and the 75-579 Citizen Complaint Log. We then compared these findings with the IAD central Citizen's Complaint Log to determine whether the Districts were properly maintaining and distributing their Citizen Complaint forms.

Our audit included a review of each District's Citizen Complaint Log, currently maintained in each operations room. These logs contained entries dating back six months to a year, and thus we are unable to comment on the record keeping practices prior to this time period.

Our audit revealed overall compliance with Directive 127. Every District had sufficient copies of the Citizen Complaint forms available, and most were maintained in numerical order. Every District had complaint forms available in several languages. While each District complied with the recording requirements for 75-561 forms released to citizens, we found that nearly every District had an average of two to three forms unaccounted for (one District was missing 4) and log entries that were not in numerical sequence. While these irregularities hindered

the auditing process, they were not widespread enough to warrant serious concern. We recommend that the Commissioner periodically emphasize the importance of strict adherence to Directive 127.

We did find, however, that as a matter of current practice, if a citizen comes into the District to make a complaint that a supervisor deems minor, and the citizen does not request a 75-561 form, there may be an attempt to service that citizen's problem at the District level. In these circumstances, there may be no written recording of the complaint or the action taken. Not one district supervisor we spoke to during our audit was familiar with the 75-579 Citizen Complaint Log. Each district supervisor has individual policies for the recording of informal complaints on 75-48's. Most of the supervisors indicated that they would complete a 75-48 only if the complaint seemed "serious." However, there is no uniform definition of serious. This does not reflect the process envisioned in Section V. A(1) of the Settlement Agreement, nor does it address the potential problem of District personnel "protecting their own" by discarding, ignoring, or underestimating the seriousness of complaints. Furthermore, the 75-48s that are (or should be) generated as a result of informal complaints are not filed separately from all other 75-48s generated by the Districts, which further complicates the process of identifying the types of "informal" complaints being received.

We do not necessarily criticize a District supervisor's assessment of the advantages of addressing certain citizen complaints in this fashion, nor do we question whether an informal complaint resolution process is warranted under

certain circumstances. In fact, we agree that many of the complaints received at the Districts are appropriate for informal resolution, and that this can provide a satisfactory means of redress for the complainant. However, we are concerned that certain patterns and problems of misconduct will not become apparent, or caught at an early stage, if there is no objective review or recording of all complaints and their resolutions.

It is certainly not our intent to impose unduly burdensome record keeping requirements on District supervisors. However, to allow for appropriate auditing to insure the integrity of this "informal" complaint process, where citizens do not request a complaint form, we recommend at a minimum that the district supervisor complete a 75-48 form for each such complaint, that legible copies of such forms be maintained in a separate file, and that the appropriate information be entered on the 75-579 Citizen Complaint Log. Even complaints regarded as minor must be examined at a centralized, headquarters level if the Department is to be able to identify systemic problems. For example, one complaint of discourtesy on each shift in each district throughout the City may not appear significant to an individual district supervisor. A Chief Inspector or Deputy Commissioner (or IAO) aware of such a trend could however identify the problem and recommend training and other solutions to ameliorate it.

As part of our audit we also reviewed in detail the 99 complaint forms filed in January and February 1997. Four complaints were by the same person relating to the same alleged incident, so three of those complaints were disregarded, giving us

a total of 96 complaint forms for analysis. Our review of what we believe to be a fair sample of complaints suggests that:

- Because the complaints are filled out by citizens, a significant number are lacking in important details, and probably in accuracy in a number of cases. Thus, although we reviewed and catalogued 99 complaints, not all contain information we were tracking (e.g., race, gender, age). For this reason, the numbers set forth below will vary.

- Sixty-three forms contained information reflecting the date of the incident giving rise to the complaint. We found that the majority (51%) were filed within a week of the incident, and another 27% within a month. Despite the promptness of many filings, the existing backlog prevents IAD from responding with comparable efficiency. As noted elsewhere in this report, we are concerned that this inability to respond with reasonable promptness increases citizen dissatisfaction with the process, is unfair to officers facing complaints that remain open for a protracted period, and hinders effective management response where the complaint has merit.

- Of the 91 forms in which the origin of the complaint was indicated or discernible, we found that 42% (40) were obtained by complainants from a District police station, 37% (34) were filed directly with IAD, 9% (eight) originated with letters to police or government officials, four were obtained from the Mayor's Action Center in City Hall, four originated with the Police Advisory Commission, and one was prepared with the assistance of the Police-Barrio Relations Project.

We understand the concerns underlying the policy of having the citizen fill out the bulk of the complaint form, but believe consideration should be given to having trained personnel at IAD and non-police sites conduct a fuller intake interview at the time the complaint is filed. Such an approach, which is followed in the most routine criminal case, should yield clearer and more thorough information at the very beginning of the investigation, and could assist IAD in assessing the seriousness of the complaint and in allocating the appropriate resources to the investigation. In particular, we recommend that consideration be given to establishing a central intake process at IAD headquarters, with a dedicated hotline telephone number staffed during regular business hours by an experienced, trained interviewer, to obtain where possible a more complete initial statement of the facts and circumstances giving rise to the complaint. To assist the investigator, and to improve the capacity to audit the intake process, consideration should be given to recording the call (with the knowledge and consent of the citizen) as is done with calls to 911.

- The complaint forms reviewed reflect that 66% of the complainants are black, 24% white, and 7% Hispanic. With respect to the races of officers who are the subject of the complaints, the information available from the forms indicated a near equivalency of minority versus non-minority; 34 were described by the complainant as white, 28 as black, and 10 as Hispanic.

- The age of the complainant was available in 89 forms; in 55 (62%) the complainant is 30 or older.

- With respect to gender, 74 of the complainants or victims were male, and 23 female; 76 of the officers complained of were male, but only 15 female.

## **E. AUDIT OF CAP INVESTIGATIONS**

As part of our evaluation of IAD operations, we conducted an intensive review of all CAP investigations that were completed by IAD during the months of December 1996 and January 1997. We each read the 67 investigative files completed during this period, conferenced them together at length, and reviewed selected cases with IAD commanders. Since this initial study, we have reviewed almost three hundred additional investigations completed by IAD, and will continue to monitor and report on CAP investigations on an ongoing basis.

Our primary purposes in this audit were to evaluate the process by which IAD conducts CAP investigations for thoroughness and for evidence of the Division's stated commitment to fairness and impartiality, to attempt to identify systemic problems and practices giving rise to citizen dissatisfaction, and to recommend possible solutions. Review of IAD investigations of citizen complaints provides not only a way of assessing citizen perception of the department, but of equal importance, provides critically valuable insight into potentially serious problems of police misconduct, and apparent deficiencies in training, supervision and accountability. By monitoring all IAD investigations on an ongoing basis, we hope

to be able to identify trends of misconduct as they emerge, and make recommendations to address any problem before it becomes pervasive and costly.

While the Internal Affairs Division has been criticized in the past, it is our opinion that the quality of CAP investigations has dramatically improved over the past year.

Virtually all of the investigations we reviewed in our initial audit, including those conducted by or under the supervision of District Captains, appeared to be thorough, professional, and unbiased. Most investigators make significant efforts to locate and interview all civilian and police witnesses to the alleged complaint, and to obtain relevant records and documentation necessary to evaluate the complaint. We found cases in which investigators and supervisors looked beyond the face of the complaint to determine whether conduct violated departmental policy and proper police practices, and cases in which supervisors recommended training or counseling even where discipline was not warranted. Except for a handful of cases which we have brought to the attention of the IAD management team, we felt that conclusions were reasonable and consistent with the evidence.

Our subsequent and ongoing review of CAP investigations has revealed even further improvement in both the quality of the investigation and the sophistication of the recommendations made by the IAD command team. Over the past four months we have seen emphasis placed on the importance of insuring that members of the Department cooperate fully and truthfully with IAD investigators. We have identified investigations which were pursued because of

the seriousness of the allegation even though the complaint was withdrawn. We have also found greater importance given to claims of verbal abuse and rudeness, as well as recommendations for training and counseling where the investigation reveals the need for them, even where the allegations are not sustained. This dramatically enhanced use of the citizen complaint process to identify and correct problems meets not only the goals set forth in the Settlement Agreement, but the standards of good police administration.

Indeed, it is our confidence in the quality and thoroughness of IAD's investigation of citizen complaints that allows us to make recommendations to streamline the process which are discussed more fully later in this report.

Despite these positive findings, we did identify several areas warranting concern, two relating to the performance of the investigations by IAD and review within the Department, and four underscoring problems revealed by the complaints and investigations that call for further study.

## **1. INVESTIGATION BACKLOG**

As of March 31, 1997, IAD had an investigative inventory of over 600 cases; as noted, by July this had been slightly reduced to 566 outstanding investigations. Only one of the CAPs we reviewed as part of our initial audit was completed within the 75-day limit required by Executive Order 9-93. The majority of the CAP investigations were not completed for a significantly longer period of time; in fact, we reviewed a number of investigations that were not finished until well over a

year, and in one instance, not for several years. Additionally, the investigation completion date does not take into account the ensuing disposition/disciplinary process which results in further delays in the final resolution of the investigation.

These factors underscore what we have found to be the most pressing challenge facing IAD--its crushing backlog of cases, and the resultant delay in completing investigations. While this backlog has many probable causes, including a steadily increasing number of CAPs and internals IAD is required to investigate, we believe that a significant cause of the backlog is the improved quality and thoroughness of investigations, by both IAD investigators and by District Captains (who conduct investigations where the only allegation is lack of service or verbal abuse), and extensive supervisory review of those investigations. Many IAD investigations, particularly the internal investigations and police shootings, are complex and time consuming, and implicate issues of critical concern to the Department and the public.

Further exacerbating this backlog are inherent staffing constraints. IAD regularly loses experienced investigators to retirement, promotions or transfers. These seasoned investigators are at times replaced with personnel who require extensive training and close supervision. We are concerned also that, as can be the case with any manager in this government working under the constraints of a stringent civil service system, IAD commanders may recognize problems with the abilities and work habits of a limited number of its investigators, but be reluctant to request transfers unless and until they are guaranteed suitable replacements. Such

concerns are heightened at a time when politicians, press and the public are calling for an increased uniformed presence on the street. Finally, investigations are also delayed because of scheduling conflicts with the various lawyers who may become involved, and due to review of certain cases by prosecutors from the offices of the District Attorney or the United States Attorney.

The delays created by this backlog have widespread negative implications. The delays are unfair to the officers against whom investigations are pending, as even minor charges of improper conduct remain unresolved. The backlog decreases public confidence in the Department as months elapse without any resolution of complaints. Finally, extensive delays threaten to adversely impact the integrity of the investigation process itself as evidence and witnesses can be lost to time or indifference.

Both the Commissioner and the IAD management team are extremely sensitive to the seriousness of the backlog issue. Recommendations to reduce the backlog have been submitted to the Commissioner by IAD commanders and are currently under review. We have begun discussions with IAD commanders on other methods for reducing the backlog which we have formulated based upon our findings from our audit of completed CAP investigations, including the following:

- The format in which investigations are written can be unnecessarily repetitive and time-consuming. In our initial review we found many instances in which the investigation summary, which is usually quite lengthy, was frequently a verbatim recitation of the various witness statements and interviews. The analysis

portion was often a repetition of the investigation section. Such repetition risks becoming a substitute for meaningful analysis of the evidence, can obfuscate the real issues, and wastes valuable time for both the investigators who must type these lengthy reports and those who must review them.

We have discussed with the IAD command staff suggestions for a more efficient and meaningful format for reporting investigations. IAD management has expressed a sincere interest in improvement on this issue, and in past months the investigation and analysis summaries have become more concise.

- Approximately 20 of the 67 cases involved situations where complainants either failed to cooperate in the investigation or willingly withdrew their complaint. Additionally, there were numerous cases where the initial investigation quickly established that the allegation was meritless, or that the complaint was retaliatory. In these cases, as required by executive order and police directive, IAD still conducted lengthy investigations. Investigators interviewed numerous civilian and police witnesses, no matter how minor a role they played in the incident, and conducted neighborhood surveys, no matter how clearly spurious the complaint. In our view, requiring full scale investigations in these situations diverts valuable resources from more serious, complex matters and contributes to the large backlog and concomitant delay.

We recommend that serious consideration be given to developing an expedited investigation and review process for CAPs involving complainants who willingly withdraw their complaint or fail to cooperate in the investigation, or

where the investigation quickly reveals that the claim is meritless, and there is no evidence of any attempt to discourage the complainant from proceeding. To maintain the integrity of the investigation process and the confidence of the public, stringent guidelines and criteria should be developed for those CAPs which may be appropriate for expedited review and disposition.

- IAD sends virtually all investigation files to the District Attorney's Office for review to determine whether prosecution of the officer is warranted. An investigation can be delayed, sometimes for a significant period of time, while IAD investigators await this review. The vast majority of cases are declined for prosecution. IAD and officials from the District Attorney's Office are currently discussing a streamlined review process which IAD believes would affect nearly 60% of IAD's investigations, and could help reduce the backlog. We recommend that these discussions continue and, if feasible, that a more streamlined, meaningful review process implemented.

## **2. INVESTIGATION DISPOSITIONS**

Once an IAD investigation is completed and approved by the IAD command staff, there begins a lengthy review process through the Department's chain of command. The file is first reviewed by the Deputy Commissioner for Special Operations, and then by the Deputy Commissioner who oversees the bureau to which the officer is assigned. The file works its way down through the appropriate bureau's Chief Inspector, Inspector and Captain. The Captain makes a

recommendation as to whether disciplinary or other action should be taken against the officer involved. If formal disciplinary action is recommended, the Captain prepares the appropriate form (75-18) and the file returns up the chain of command for review by the Inspector, Chief Inspector, Deputy Commissioner, and Commissioner, who either approves or revises the Captain's recommendation by direct action, or sends the case to the Police Board of Inquiry, an interdepartmental panel charged with conducting hearings on disciplinary matters. The PBI's determination is reviewed by the Commissioner, who either approves or revises the PBI's recommendation.

After this stage of the disciplinary process is complete, the file is returned back down the chain of command for review at the various levels, and finally to the Captain for implementation of the approved disciplinary course of action.

This review process is cumbersome and lengthy. If anyone along the chain of command is unavailable for any reason, the disposition process is delayed. If anyone along the chain of command has any question or concern about the investigation, the file is returned to IAD for review or further investigation, again delaying the disposition process.

We have spoken to management personnel in the Department who believe that, while the current disposition process is unwieldy, it is valuable because it enables supervisors to remain informed of misconduct occurring within their respective areas of authority. We have seen little evidence that suggests that any significant number of investigations are in fact questioned, or returned to IAD for

further investigation, by those in the chain of command. Furthermore, there are certainly more efficient ways to keep management apprised of misconduct problems in the Department.

To facilitate the disposition of CAP investigations, we recommend that the current disposition process be re-evaluated. We recommend that consideration be given to establishing a standing review panel that would include officials from the Department's operations, management, and integrity bureaus who would review the investigations for thoroughness, and make disciplinary recommendations to the Commissioner where appropriate. Such an approach would improve efficiency and uniformity in the investigation disposition process, and could ameliorate concerns about potential inconsistencies within the Department's disciplinary system.

### **3. RUDENESS, DISCOURTESY, AND VERBAL ABUSE**

Thirty-one of the CAPs we reviewed contained claims of some type of verbal abuse. Of these CAPs, only a single allegation was sustained. From January 1992 to May 1997, IAD received approximately 823 CAPs alleging some form of verbal abuse. Of these, approximately 250 of the complaints were sustained.

It is important to put these numbers in context. During this same five year period, there were approximately 27 million contacts between Philadelphia police and the public. It is also fair to concede that allegations of this type of abuse are difficult to prove. Most of the claims arise out of an otherwise routine vehicle or

pedestrian stop, and thus only the complainant and officer are witnesses. The investigation invariably boils down to the complainant's word against the word of the officer. In these cases, application of the preponderance of the evidence standard generally results in findings of not sustained or unfounded. The one CAP investigation we reviewed as part of our initial audit in which the verbal abuse allegation was sustained involved an off-duty officer who engaged in a physical and verbal altercation with a teenager in view of several witnesses, including police officers.

In reaching our preliminary assessment that this is an issue warranting scrutiny and concern, we recognize that Philadelphia police have an estimated five million interactions with citizens during the course of a year, that the number of complaints filed is only a slight proportion of that total, and that some complaints are filed in less than good faith and on occasion for a retaliatory purpose. It is also true that citizens do not always file complaints following unpleasant encounters with police. Thus, it is important to scrutinize those complaints that are filed to determine whether broad patterns of conduct exist. One bad encounter with one officer can undermine the efforts of all other members of the force to communicate professionalism and courtesy. When this problem extends to even a small percentage of the department, it is a constraint on the department's efforts to serve the public.

Some of the CAPs we reviewed revealed that an officer's use of profanity or other hostile, aggressive conduct often escalated tensions in what could and should

have remained a relatively minor incident. We also reviewed a number of cases where citizens provoked officers by improperly challenging the authority of an officer, or by themselves engaging in insulting, rude, and obnoxious behavior. In these situations, a relatively insignificant police/citizen encounter resulted in a formal complaint, a time-consuming investigation, a possible stain on the officer's performance record, and a further deterioration of police/community relations.

It is arguable that the issue of "bad attitude" could be regarded as trivial. We believe, however, that the impression left by such negative encounters—even though founded incidents are statistically few and far between—can have important and far reaching consequences for the Police Department. Efforts at meaningful and effective community policing are doomed to failure if there is a perception of tense, hostile relations between the public and police, regardless of the actual number of reported or sustained complaints. Mistrust of the police diminishes public willingness to cooperate with or assist police in their efforts to combat and solve crimes. The same citizen who feels ill-treated can become a juror in civil and criminal actions involving the police.

In discussions with members of different ranks in the Department, the recurrent and prevailing response is that this "attitude" is necessary to maintain control and authority on the streets. We are mindful of the extraordinary dangers and tensions inherent in the officer's job, and of the need for police to maintain control and authority. Further, we acknowledge that our review is a limited one, and we are certain that the majority of officers do not engage in this type of

behavior. We suggest, however, that conduct such as resort to profanity in what should be routine encounters with civilians not suspected of serious criminal behavior is evidence of lack of control and authority, and signals a lack of proper training in how to effectively assert authority.

#### **4. ILLEGAL STOPS AND DISORDERLY CONDUCT ARRESTS**

One potentially serious problem that does emerge from our review of IAD investigations to date is one long complained of by counsel for the plaintiffs--the stopping, temporary detention and frisking of citizens without appropriate legal basis, and the improper arrest, generally on the charge of disorderly conduct, of persons who do not cooperate to the extent desired by the officer.

We must first emphasize Police Commissioner Neal's concern regarding this problem, and commend the steps he has taken to address it. In October 1996 Commissioner Neal directed the Department's Training Bureau to prepare and distribute an Assist Officer bulletin which described in detail the elements of the crime of disorderly conduct, emphasized that the rights of citizens must not be violated, and explicitly stated that this charge must not be used "for the prosecution of conduct that is uncivil, annoying or irritating." This was followed in April 1997 by a teletype to all commanding officers articulating the standards that must be met in vehicle and pedestrian investigations, and emphasizing the rights of citizens to be free from unwarranted police intervention. We also note the valuable role played by the Law Department's Civil Rights Unit in calling attention to problems

that become evident in the course of defending the Police Department.

Furthermore, the evidence we have gleaned from our finite review of civilian complaints must be interpreted with caution in assessing the scope of the problem. In many cases we found a disorderly conduct arrest was not only appropriate, but was necessitated by wrongful behavior of the defendant in the face of commendable restraint by the officer.

However, it is our responsibility to focus upon the cases which reveal potentially serious problems which, if not addressed, will undermine citizen confidence and respect for the police.

With these caveats, these cases raise a number of troubling questions. Illegal and unconstitutional police intervention in these cases inevitably causes citizen distrust, burdens the prosecutors and the court system with unwinnable cases, and costs taxpayers monies in verdicts and settlements of civil rights claims that could be better spent in any number of ways. We also need to question the impact of such incidents on police resources and deployment. In each of the cases that troubled us, the police-citizen confrontation escalated into a situation requiring the time and attention of a significant number of other officers and, in at least one instance, placed officers in physical danger.

We will continue to monitor IAD investigations raising this issue, and note that plaintiffs' counsel are conducting an audit of vehicle and pedestrian stops by police that will hopefully provide additional information and insights into the nature and scope of the problem, and provide a basis for considering what, if any

additional measures must be taken, including additional training and enhanced supervisory accountability, to address the problem. Consideration should also be given to initiatives such as an analysis of the impact of unjustifiable arrests for disorderly conduct and similar offenses on the operations of the Courts and the District Attorney's Office.

## **5. PREPONDERANCE OF THE EVIDENCE STANDARD**

While our audit revealed a significant improvement in the quality of CAP investigations, we did find a few cases which suggested a possible investigative bias in favor of the accused officer, particularly where the complainant and the officer were the two main, if not only, witnesses to the alleged misconduct. We are aware of the concern that the Department continues to adhere to an unwritten practice that in such situations the "tie goes to the officer," but also note the firm commitment of the IAD command staff to eliminate any appearance of bias.

Fundamental fairness to the police officer requires that a complaint be proven by a preponderance of the evidence, which is the standard properly applied by IAD. This means that any "tie" should go to the officer, just as it goes to the defendant in a civil lawsuit; no police officer should be penalized merely on the uncorroborated but contested word of a complainant. However, despite this proper standard of proof, members of the public should not be made to feel that their word will never be accepted.

A small number of investigations that caused us concern contained

additional evidence, apart from the conflicting statements of the citizen and officer, which could be interpreted to bolster the complainant's version of the events and shed doubt on the officer's version of the same incident.

Since raising this concern with IAD during our initial audit, we have found that greater care is being taken to assess all relevant circumstances surrounding an incident giving rise to a citizen's complaint. These cases persuade us that at this time IAD is not simply looking at police-citizen encounters as swearing contests where the complainant has to overcome the officer's word, but instead that IAD is conducting meaningful and thorough investigations designed to learn the truth, not to appear to favor one party or another.

## **6. OFF-DUTY POLICE ACTION**

Seven of the 67 CAPs we reviewed involved off-duty police officers engaged in some sort of altercation, confrontation, or potential abuse of authority with a citizen. The majority of these investigations were sustained, or resulted in findings that the officer committed some departmental violation. Our ongoing review of CAP investigations reflects basically the same pattern.

The issue of improper conduct and abuse of authority by off-duty police officers has been a significant problem for the Department, and a costly source of liability for City government. The Department is in the final stages of developing a formal policy to address this problem, and we believe that its long-delayed implementation will reduce complaints and lawsuits relating to off-duty

misconduct.

## **F. ETHICS ACCOUNTABILITY DIVISION**

As part of our overall review of the Department's Internal Investigations Bureau, we have also begun an examination of the operations of the Ethics Accountability Division (EAD). EAD was established in 1984 by Mayor's Executive Order 6-84 in the aftermath of a federal government corruption probe of the Department which resulted in the convictions of numerous police officials including a deputy commissioner, a chief inspector, a captain, and several lieutenants.

EAD's mandate is to identify and eliminate organized and ongoing corruption and large scale felony level activity by members of the Department. EAD's investigations by their nature are often complex, protracted, covert, personnel intensive, comprehensive in scope, and sometimes dangerous. In order to effectively undertake investigations of this nature, EAD will utilize a variety of investigative techniques and equipment including, but not limited to, electronic and physical surveillance, net worth investigations, proactive targeted integrity tests, and other standard investigative practices.

While we have been impressed with the commitment, energy, and creativity members of this unit bring to their work, we are concerned that a variety of factors and circumstances inhibit EAD's ability to effectively carry out its mandated

responsibilities.

Our examination of EAD is ongoing, but in light of the sensitive and confidential nature of the work of the division we believe it appropriate to first raise our concerns internally, and to work with the Mayor, the Executive Committee, and the Commissioner and others within the Police Department to understand, assess and address those concerns. We anticipate issuing an appropriate public report on EAD after that review process has been completed.

#### IV. CONCLUSION

In our first report, we have referred to certain problems regarding the structure and function of this Office which must be addressed if we are to meet our responsibilities under the Settlement Agreement. We have also made several recommendations regarding IIB operations which need to be reviewed and discussed with all interested parties, including the Commissioner, the Department's command staff, counsel for the plaintiffs and the City, and, where appropriate, the Fraternal Order of Police. Some recommendations would require amendment to Executive Order 9-93, and others could be subject to the provisions of the collective bargaining agreement.

As we continue to conduct audits and examine a wide range of Departmental policies and practices, we expect to make more specific and concrete recommendations for improving the integrity and accountability functions in the Police Department. We intend for these audits, reports and recommendations to raise fundamental questions about the role, responsibilities and operations of the Police Department, and hope to provoke debate about whether the Department can better succeed in its stated mission of protecting and serving the public.