

**PROMOTING POLICE
ACCOUNTABILITY
IN MILWAUKEE:**

**STRENGTHENING THE FIRE AND
POLICE COMMISSION**

POLICE ASSESSMENT RESOURCE CENTER

RICHARD JEROME, PC

JUNE 2006

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PROMOTING POLICE ACCOUNTABILITY IN MILWAUKEE: STRENGTHENING THE FIRE AND POLICE COMMISSION

EXECUTIVE SUMMARY

The City of Milwaukee retained the Police Assessment Resource Center (PARC) and Richard Jerome, PC to evaluate the structure, procedures, and practices of the Milwaukee Fire and Police Commission (FPC), and to make recommendations for improvement.

Established in 1885 by the Wisconsin Legislature, the FPC is the oldest police commission in the United States. While originally founded to bring civil service reform to the Police Department, over the years the Commission has also been authorized to exercise broad oversight over the Milwaukee Police Department (MPD). The FPC has the power to hire the Chief of Police, evaluate the Chief's performance, review any policy of the Department, approve all the MPD's rules, accept complaints from civilians about police misconduct and conduct trials on those complaints, and hear appeals from serious discipline imposed by the Chief.

Despite its broad powers, many community members in Milwaukee view the Commission as weak and ineffective. On the other hand, many officers perceive it as harsh and unfair. While some of this divergence of opinion is the norm for law enforcement oversight entities, we found many structural problems that undermine the good-faith efforts of the Commissioners and staff to effectively conduct police oversight. Our significant findings include the following:

- The FPC's citizen complaint process is badly broken. The FPC does no investigation of complaints, and if a complaint

does get to trial, the complainant has to present his or her own case. Few cases get to trial and even fewer result in sustained findings of officer misconduct. Of cases filed from 2000 to 2005, only eight of 437 complaints have gone to trial, and only two have been sustained. In 14 years (1992-present), there have been only eight sustained complaints, involving 10 officers. Citizens and officers alike are frustrated by long delays in the complaint process. The only part of the process that works is the conciliation procedure, which is successful in 10 percent of the cases filed.

- The Commission underutilizes its policy review powers, in part because it does not have sufficient staff resources and expertise. It does not analyze use of force or citizen complaint data from the MPD, identify patterns and trends, research best practices, document policy recommendations to the Police Department or the Department's responses, or draft policy papers and reports.
- The FPC's time-consuming responsibilities for recruiting, testing, hiring, and promoting MPD personnel necessarily detract from its ability to focus on police accountability and policy issues.
- The FPC has had insufficient contact with and input from the community. Part of this lack of outreach is due to the FPC's meeting structure and to insufficient staff.
- The decision several years ago to make the FPC part of the Department of Employee Relations has diminished the Commission's independence and stature, while budget cuts

have led to reduced staff resources and an inability to effectively exercise its oversight powers.

- Archaic statutory provisions and other problems lead to undue delays in hearing the appeals of officers subject to serious discipline.
- Allowing police officers fired by the Chief to continue being paid while their appeal is pending with the FPC, even if they have been indicted for criminal charges, is inappropriate. No other police department has this provision.

Significant changes must be made to provide the public with the effective police oversight it deserves. These changes are needed to improve police accountability, reduce incidents of police misconduct, and increase community trust in the MPD. Milwaukee, like most large cities in the United States, has a history of troubled relations between the Police Department and the African American community, and a similarly troubled relationship between the Police Department and Milwaukee's Latino population. These police-community tensions have increased in light of recent high-profile events.

We recommend a fundamental overhaul of the FPC. The most significant reform we recommend is to create a capacity to monitor the MPD within the FPC staff. An Independent Monitor would be appointed to the chief FPC staff position. Aided by several other staff members, the Monitor would review the MPD's citizen complaint and internal investigations to ensure thoroughness, fairness, and credible results. Under the leadership of the Independent Monitor, an enhanced policy and research staff would provide the FPC the support necessary to effectively and proactively exercise its policy responsibilities. Based on

its review of MPD procedures, practices, training, and tactics, the FPC should develop recommendations to improve MPD's investigations and policies, and should ensure that the MPD addresses those proposed reforms.

Our recommendations are based upon experiences in other cities that have led police reform experts to conclude that the monitor oversight model is best equipped to achieve systemic reforms and greater accountability in law enforcement agencies.

We are aware that many would like to disband the Fire and Police Commission and start from scratch. We disagree. The powers provided the FPC by state statute are greater than those likely to be granted a new oversight body by the Wisconsin Legislature. Our recommendations, therefore, are directed in large measure to creating the structure and capacity for the FPC to effectively exercise the powers it already has.

We recommend that the City seek necessary legislative changes to allow the 10 percent of civilian complaints currently brought to the FPC to be addressed by the Police Department (90 percent are already filed directly with the MPD), where they will be fully investigated in the internal affairs process, and then thoroughly reviewed by the Monitor. The MPD's internal affairs process, which currently sustains many more complaints than the broken FPC process, will become more credible and transparent when it is subject to the Monitor's audits and evaluation. The Monitor also will audit internally-generated Police Department investigations of misconduct and serious uses of force, including officer-involved shootings. Currently, none of these internal investigations are subject to outside oversight.

Additional significant recommendations call for removing the FPC from the Department of Employee Resources, spinning off the Commission's personnel-related functions to other City agencies, increasing the FPC's community outreach, providing for public comment at all its meetings, streamlining the disciplinary appeals process, ending pay for terminated officers, expanding the number of Commissioners to seven, and improving Commissioner training. We further recommend that these reforms and the quality of their implementation be evaluated in three years.

A number of our recommendations require statutory changes by the Legislature, but even if none of those were to occur, the overall thrust of our proposals can be implemented. Most importantly, assuming that the necessary budgetary authority is sought by the Mayor and approved by the Common Council, the FPC can take the necessary steps to transform its staff to the monitor model as early as November 2006.

The City of Milwaukee and its Mayor Thomas Barrett should be commended for taking the initiative to commission this review. While we have identified problems with the existing system of police oversight, we have also identified solutions that are realistic and attainable, and reflect best practices that are being used in other jurisdictions. With these reforms, Milwaukee has a true opportunity to better police-community relations and to implement effective police oversight and accountability.

Chapter One. Introduction

A. Purpose of Best Practices Review

The Police Assessment Resource Center (PARC) and Richard Jerome, PC, were retained by the City of Milwaukee to conduct an independent evaluation and review of the Milwaukee Fire and Police Commission (FPC). The goal of the project is to promote police accountability, build public confidence in the Commission and its oversight of the Milwaukee Police Department (MPD), and improve the relations between the Milwaukee Police Department and the community it serves.¹ The project was led by Oren Root, Deputy Director of PARC, and Richard Jerome.

PARC and Richard Jerome examined: the structure and composition of the FPC and its oversight authority; its policies and procedures for addressing citizen complaints and disciplinary appeal hearings; its efforts to review police policies and practices; and the community's perceptions and knowledge of the Commission's roles, responsibilities, and responsiveness. In conducting the review, we examined best practices in comparable jurisdictions to guide our recommendations for improving the Commission's work.

This report documents the strengths and weaknesses of the present Commission mechanism. We make concrete, practical recommendations to improve the Commission's operations, including legislative recommendations. The report includes an outline of a proposed schedule and actions for implementing the recommendations. Recommendations on the following topics are included:

¹ This report considers issues related only to the Police Department. The Fire Department was outside the scope of our engagement, as were the FPC's recruiting, testing, hiring, and promotion functions on behalf of the Police Department.

- Changes in the Commission’s organizational structure, oversight authority, and governance procedures
- Sweeping changes to the citizen complaint procedures, including improvements geared to seeing that meritorious complaints result in sustained findings and that the review process is efficient
- Greater efficiency in the Commission’s review of disciplinary appeals
- Improvements in the Commission’s efforts to review Police Department policies and practices
- Development of enhanced community outreach and education, including initiatives to increase public awareness and understanding of the Commission and of the Milwaukee Police Department’s policies and practices

This review is not being done in a vacuum. Milwaukee, like most large cities in the United States, has a history of troubled relations between the Police Department and the African American community. There is also a more recent, but similarly troubled, relationship between the Police Department and Milwaukee’s Latino population. The tensions in police-community relations have increased in light of recent high-profile events. These include the trial and not-guilty verdict for three police officers accused of beating Frank Jude, Jr., and the fatal shooting of Javier Prado by Officer Alfonzo Glover, Officer Glover’s indictment for first degree murder, and his suicide within hours of being released on bail. Much of the impetus for this project is the public’s view that the Fire and Police Commission has not played the role that it could, and should, in police oversight and accountability. Our report and recommendations have been drafted in light of this background, with the hope and expectation that implementing the recommendations will

strengthen the Commission's oversight of the police, improve police accountability and reduce incidents of police misconduct, thus increasing community trust in the Milwaukee Police Department.

B. The Purposes of Police Oversight

The goals for entities engaged in civilian oversight of law enforcement agencies include the following:

- To reduce misconduct by providing an objective review of citizen complaints and identifying improper behavior and ensuring appropriate discipline is imposed;
- To identify patterns of or trends in misconduct;
- To recommend or develop improvements in police policies, procedures, tactics, and training that will serve to increase police integrity and improve the performance of the police department;
- To help create systems that identify and address potentially problematic behavior before discipline is warranted;
- To increase public trust in the police and strengthen the relationship between the community and the police;
- To foster officer trust in the integrity and fairness of complaint investigations and the disciplinary process;
- To provide a forum for public concern and comment regarding the police department, and bring transparency and outside scrutiny to an agency often viewed as insular.

In determining whether the Commission's practices conform to national best practices, we have measured its policies, procedures, and practices against these general goals for oversight bodies.

C. Methodology of Project

Our evaluation of Milwaukee's Fire and Police Commission included a review of the Commission's history and authority, including Wisconsin Statutes 62.50 (Section 62.50) and other state laws relevant to police management and oversight, Milwaukee's City Charter and relevant ordinances, and studies or reports related to the Commission functions. The documents we reviewed included:

- The Commission's annual reports.
- Agendas and minutes of recent Commission meetings.
- Reports, data, and rules of procedure relating to the Commission's citizen complaint process, its disciplinary appeals hearings, and policy review.
- Relevant rules and standard operating procedures (SOPs) of the Milwaukee Police Department, most particularly relating to personnel complaints, use of force, and interaction with the Commission.

We made three visits to Milwaukee to conduct interviews and public meetings, as well as to review FPC files. We attended a Commission meeting, a Rules and Complaints Committee meeting, a conciliation conference, and a citizen complaint trial. We examined records of Commission conciliations, trials, and appeals processes, and reviewed a sample of complaint and disciplinary appeals files for a fuller understanding of how cases before the Commission are handled.

As part of our site visits, we met with and interviewed the FPC Commissioners and staff, past Commissioners, the Mayor, members of the Common Council, members of the state Legislature, the Director of Employee Relations, the City Attorney, and the District Attorney to

determine their views on the effectiveness of the Commission's structure and processes, their perceptions of the accountability fostered by the process, areas of accomplishment, areas that need improvement, recommendations for changes, and the need for amendments to Section 62.50 or the City Charter.

We also met with and interviewed the Police Chief, a Deputy Chief, the commander of the Professional Performance Division (PPD), patrol officers and supervisors, and union representatives. Among the subjects addressed were the Commission's oversight structure and processes, the FPC's and MPD's citizen complaint procedures and practices, use of force statistics and related audits, the MPD's disciplinary processes and other corrective action, the appeals process for cases involving suspensions of more than five days and terminations, the Commission's role and responsibility concerning police policy and procedures, and management oversight of police operations.

Just as important, we met with citizen stakeholders and members of community groups to assess the level of public satisfaction and confidence in the police, the Commission, and the oversight function. In particular, we met with members of the Milwaukee Commission on Police Community Relations (MCPCR),² representatives of the Urban League, NAACP, Urban Underground, Milwaukee Police Accountability Coalition, African American pastors who organized after the acquittal in the Jude

² The Milwaukee Commission on Police Community Relations was created as part of a mediation agreement between community groups, police unions, and the City, facilitated by the Department of Justice's Community Relations Service (CRS) in a series of meetings in 2004 and 2005. The MCPCR's mission "is to improve public/police relations in the City of Milwaukee by encouraging frank communications between the parties and by professionally addressing issues that have historically been sources of concern for the public and for the Department."
<http://www.ci.mil.wi.us/display/displayFile.asp?docid=11923&filename=/User/jdimow/Agreement052505.pdf>.

beating, and other representatives of the Latino and African American communities. The interviews focused on accountability issues and community members' views of Milwaukee's complaint processes, oversight of police policy and practices, the Commission's structure, how its members are selected, and the quality of those selections. We also held three public meetings (at the Latino Community Center, the Holy Redeemer Institutional Church of God in Christ, and a public hearing in Common Council chambers) and made two radio appearances on WMCS 1290 to gain additional public input.

This is not the first review of the FPC in recent years. A 1991 report conducted after the Jeffrey Dahmer murders recommended that a community-oriented policing plan be submitted to the FPC; police training incorporate community-oriented policing and diversity; the citizen complaint system be streamlined; and the FPC "expand its review of Police Department practice" and its public relations (including Spanish and Asian language guides). A 1994 report of the Wisconsin Advisory Committee to the U.S. Commission on Civil Rights noted problems with the FPC complaint process; lack of public information about MPD complaint dispositions; and lack of follow-up on the recommendations from the 1991 report.

Chapter Two. Summary of the Existing FPC System, and its Authority

A. History of the Fire and Police Commission

The Board of Fire and Police Commissioners was established in 1885.³ It is the oldest civil service authority in Wisconsin and the first police commission in the United States. The major reason why the Commission was established was to remove “cronyism” and politics from the hiring and firing of police and fire personnel. The Milwaukee Police Department was established as a full-time municipal police force in 1855. For the 30 years between 1855 and 1885, each time a new mayor was elected, he would fire the police chief and appoint a new chief. Police officers hired during a previous administration would resign; otherwise, they too would be fired. The new mayor would then hire new police officers.

The law that created the Fire and Police Commission gave the Board the authority and responsibility for setting employment standards for police and fire employees, for conducting police and fire examinations (employment tests), and for appointing the chiefs of the Fire and Police Departments. The Commission also had the final authority for removing the chiefs of the Fire and Police Departments. Over the course of the Commission’s existence, the authority and responsibilities of the Commission have expanded significantly, but the Commission’s responsibility over police personnel has continued. Police and Fire Department employees cannot be hired, promoted, or fired, without Commission approval.

³ Chapter 378 of the Wisconsin Laws of 1885. The source for the information in this section of the report is the 1985 Commemorative Booklet on the 100th Anniversary of the Fire and Police Commission. For a more detailed analysis of the legal development of the FPC and other similar commissions in Wisconsin, see Matthew Flynn, *Police Accountability in Wisconsin*, 1974 Wis. L. Rev. 1131.

The legislation establishing the FPC was modified in 1911 to add two new responsibilities: the authority to hear complaints of property owners, and the authority to hear appeals of disciplinary actions from Police and Fire Department members discharged, suspended or reduced in rank. An amendment in 1977 allowed the FPC to hear complaints from “any aggrieved person.” The 1977 legislation also gave the Commission the responsibility of conducting an annual policy review of the Police and Fire Departments. In 1984, an amendment gave the Board authority to prescribe policies and standards, and to author rules and regulations, for the departments. This rulemaking authority has been delegated by the Commission to the Fire and Police Chiefs.

B. Overview of the Commission and Its Functions

The Fire and Police Commission consists of five board members, including a chair and vice chair. They are appointed by the Mayor for five-year, overlapping terms, with one member appointed each year. The FPC has two committees: Rules and Complaints, which makes recommendations to the Board on FPC rules and whether to proceed with citizen complaints, and Policy Review. Meetings of the Board are held twice each month. The staff of the FPC, which is now combined with the staff of the Department of Employee Relations (DER), consists of an Executive Director, a hearing examiner, a part-time research analyst, five testing and examinations staff,⁴ two members of the Diversity office of DER who handle intake of complaints part-time, and an administrative assistant.

⁴ Three of the five staff involved in recruiting and testing split their time in varying proportions between FPC and DER work.

1. Personnel Functions

Commission functions include the recruitment and testing for entry level positions in the Police Department, and testing for promotional positions, such as sergeant and lieutenant. The Commission staff develops and administers written, oral, and physical ability tests, and reviews background investigations. For command-level positions that are not based on a competitive exam, such as deputy and assistant chief, the Police Chief nominates a candidate for Commission approval, usually after a Commission interview. The FPC also determines the qualifications for Police Chief when a vacancy occurs, solicits candidates, and selects the new Chief.⁵

2. Citizen Complaint Function

Any person may file a complaint with the Commission against a member of the Milwaukee Police Department. The complaint must identify a specific act that allegedly violates a department rule, and also must identify specific Police Department members. Individuals making a complaint fill out a complaint form and FPC staff provides a summary of the complaint to the Rules and Complaints Committee, which makes a recommendation to the Board whether the complaint should go forward or be dismissed. If the Board determines that it has jurisdiction over the alleged violation and the member accused, the FPC will attempt a “conciliation conference” where the complainant and the member will be encouraged to come to a mutual resolution. If conciliation is unsuccessful, the case may then go to a trial. The FPC does not conduct any investigation of the complaint prior to the trial.

⁵ The MPD Police Chief is appointed for a four-year term (reduced in 2001 by the Common Council from a seven-year term).

3. Disciplinary Appeals Hearings

If the Police Chief orders an officer's dismissal, demotion, or a suspension of more than five days, the officer may appeal that disciplinary decision to the Commission. Disciplinary appeals are heard by the Commission (or a panel of Commissioners) with procedural and legal issues addressed by an FPC hearing examiner. The Commission may sustain, modify, or reverse the Chief's action.

4. Policy Review and Rules

The FPC has statutory responsibility to conduct an annual policy review of the Police Department. It also has rule-making authority, but has delegated this authority to the Police Chief. Any new Police Department rule or a revision to an existing Department rule requires a Commission review and approval before it can be implemented.

Chapter Three. Structure and Staffing

A. Strengthening the FPC Versus Starting from Scratch

Few people in Milwaukee express support for the Fire and Police Commission. Communities of color and activists see the Commission generally as making decisions that favor the police. The Milwaukee Police Association, on the other hand, sees the Commission as biased against the police and too harsh in its treatment of officers. Part of this divergent criticism reflects the reality of oversight bodies. In every community where oversight of law enforcement exists, there will always be those who think the oversight agency is too lenient on officers and others who think it is too critical.

In Milwaukee, however, much of the dissatisfaction results from objective problems. As we will discuss in the Chapter 4, the FPC's citizen complaint process is badly broken. And, as we will discuss in Chapter 5, the disciplinary appeal process needs to be made considerably more efficient. As discussed in Chapters 6 and 7, in recent years, the Commission has only sparingly exercised its important authority to oversee policy and has eliminated most of its community outreach activities.

Notwithstanding the skepticism about the Commission, we conclude that the best way to achieve effective civilian oversight of the police in Milwaukee is to strengthen the FPC rather than to start from scratch. We come to that conclusion for three reasons. First, under the governing statute, the FPC has the capacity to be a strong oversight body. It has the power to hire the Chief of Police and to evaluate the Chief's performance. It may review any policy of the Department and

must approve all the rules of the Department. It hears the appeals from serious discipline imposed by the Chief.

Second, the Wisconsin Legislature has chosen to set the parameters for police oversight in cities around the state (Section 62.50 for Milwaukee and Wisconsin Statutes 62.13 for other cities). No one we talked to thought it remotely likely that the Legislature would be willing to create an entirely new police oversight body that had greater authority than set forth in the current version of the law.

Third, we have seen the creation of new civilian review boards and other oversight entities in a number of jurisdictions around the country, and their startup is often fraught with difficulties. These include obtaining the resources and expertise needed to manage a new agency, setting up systems and procedures, and establishing credibility in the community and with the police, when they often have widely different, and sometimes polar opposite, views of the police department.⁶

⁶ Some advocates for more effective police oversight in Milwaukee have proposed the creation of an elected civilian review board. A resolution introduced in the Common Council in 2004 called for an elected FPC from election districts, each of which would be composed of three aldermanic districts. Experience has shown that civilian review boards function poorly where individual members see themselves as representatives of a single point of view, whether that of the police or of aggrieved community members. Even without elections, such boards become polarized and spend large portions of their energy fighting with board members representing opposing points of view. Adding elections to this recipe for ineffectiveness would increase the polarization and lessen the chance of the board being able to function collaboratively and thus effectively. Interest groups would spend significant money and effort to elect representatives of their point of view, in districts likely to be supportive of that point of view. Already charged relations between the police and the community would be exacerbated by the influences of politics and money from interest groups on all sides. Therefore, we recommend *against* consideration of an elected civilian review board, which would be a serious step in the wrong direction.

Having determined that the FPC should be preserved, the question becomes how can it become an effective oversight body. The rest of this report recommends changes designed to achieve that result.

B. Strengthening the Commission’s Oversight of the Police Department

There are many reasons that the Fire and Police Commission has not realized its potential as a police oversight agency. Chief among these is that, despite sufficient statutory authority, the FPC and its staff are not structured to exercise broad enough oversight of the Police Department, nor do they presently have the capacity and resources to play an effective oversight role. In this chapter, we will discuss how the Commission should change the focus of its oversight activities, together with the structure and staffing needed to implement this more robust oversight.

Before discussing our recommended changes to the FPC’s structure and staffing, we discuss what over the past 15 years has been identified as the most effective way to exercise external oversight of law enforcement.⁷

⁷ See Samuel Walker, *THE NEW WORLD OF POLICE ACCOUNTABILITY* (2005); Merrick Bobb, *Citizen Oversight of the Police in the United States*, 22 ST. LOUIS U. PUB. L. REV. 151 (2003); Samuel Walker, *New Directions in Citizen Oversight: The Auditor Approach to Handling Citizen Complaints*, in *PROBLEM-ORIENTED POLICING* (Tara Shelley & Anne Grant eds., Police Executive Research Forum 1998); PolicyLink, *Community Centered Policing: A Force for Change* 78 (2001), at <http://www.policylink.org/pdfs/ForceForChange.pdf>; City of Sacramento Blue Ribbon Citizens Committee, *Report of the Blue Ribbon Committee on Selected Police Practices* (1998), at <http://www.cityofsacramento.org/cityman/report1.html#f6>.

1. Oversight, Civilian Review Boards, and the Monitor Model⁸

The 1960s gave rise to urgent calls for empowerment of communities of color by placing the police under scrutiny by civilian review boards with substantial membership of persons from racial and ethnic minorities. Advocates of civilian review boards argued that law enforcement agencies rarely conducted thorough and fair investigations of citizens' complaints or undertook substantial internal reform on their own. The solution, they contended, was to create an outside, civilian organization with significant or exclusive responsibility for the investigation and resolution of citizens' complaints.

Civilian review boards were formed in many cities and continue to function to this day, although, by and large, they have not fulfilled their proponents' expectations. Many review boards were enacted with very limited powers. While some boards were given authority to consider matters of policy and to make recommendations, few boards were given the resources to meaningfully exercise that authority. Also, board members' lack of training in police procedures, tactics, and strategy has prevented many review boards from effectively overseeing the police. Additionally, many review boards have lacked adequate staff, leading to a large backlog of unresolved cases. As a result, many review boards have had difficulty providing meaningful oversight.

The videotaped beating of Rodney King in 1991 by officers from the Los Angeles Police Department initiated experimentation with new forms

⁸ One of the anomalies of external oversight of law enforcement is that not one of the more than 100 entities exercising such oversight is the duplicate of the model followed in any other jurisdiction. In 2005, PARC published a *Review of National Police Oversight Models*, www.parc.info/pubs/index.html. In the report, PARC creates a new conceptual framework for analyzing oversight models. What we refer to here as the "monitor model" is termed the "evaluative and performance-based model" in the 2005 report

of police oversight. Several communities voluntarily appointed monitors or auditors who concentrated on systemic reform. In other instances, the United States Department of Justice or state attorneys general initiated investigations and litigation which resulted in the appointment of a monitor. These monitors issue public reports detailing the successes and failures of police departments in achieving widespread reform.

Effective civilian oversight must identify systemic failures, rather than proceeding solely on a case-by-case basis. Police reformers contend that until systemic problems of police culture and procedure are solved, police departments will continue to produce flawed and biased investigations. They further argue that the displacement of investigatory authority lets the police department off the hook and does little to inculcate internal accountability.

These reform advocates argue that the power to adjudicate wrongdoing and impose discipline belongs, at least presumptively, to the law enforcement agency in question. Without responsibility to adjudicate wrongdoing and impose discipline, senior executives in the law enforcement agency cannot be held accountable for dealing with police misconduct, and will simply blame the outside oversight body for its decisions. Unless the police are held strictly accountable up and down the chain of command for actively managing the risk of police misconduct, the self-protective habits of the police will not change. It is one thing to achieve a fair result in a given investigation; it is far more powerful to change police culture in general by requiring strict accountability.

There is increasingly broad agreement that law enforcement's business, in general, is the public's business, and therefore must be open and transparent. The privilege of the police to self-regulate comes

with an obligation to open fully the agency's records to public representatives such as monitors and oversight bodies.

The monitor oversight model (also known as the auditor model) is evaluative in the sense that the goal is to look at the Department in its entirety to make judgments over time regarding how well the Department minimizes the risk of police misconduct, identifies and corrects patterns and practices of unconstitutional and illegal behavior, and finds solutions to systemic failures. This oversight model is performance-based because it examines how individual officers perform, how supervisors and executives respond, and how the department as a whole manages the risk that its employees engage in unconstitutional or illegal behavior. Among the jurisdictions using some form of monitor model are Austin, TX; Boise, ID; Denver, CO; City of Los Angeles, CA; County of Los Angeles, CA; Portland, OR; Sacramento, CA; San Jose, CA, and Tucson, AZ.

A principal strength of monitor models is the ability to address systemic issues and to seek accountability within the police department for eliminating problems and abuses. As opposed to many civilian review boards, monitors are focused on systemic change more than on resolution of specific cases. Many do, however, also have the ability to require the police department to conduct additional investigation in specific cases, if they determine that the initial investigation was insufficient. For instance, the Denver Office of the Independent Monitor has full access to police department records, subpoena power, and the right to attend police interviews. The Monitor can conduct an independent investigation if he finds the departmental investigation insufficient. The Monitor in Austin and the Auditor's office in Portland have similar powers.

2. Creating a Monitor Model Within the FPC

While most monitor/auditor models function without a strongly empowered board or commission, a few are empowered, as the FPC is, to hire the police chief, review policy, process civilian complaints, and hear appeals from discipline.⁹ Since, as discussed above, the FPC has so many inherent strengths (even if it has not generally employed those strengths successfully in the past), it makes eminent good sense to marry the broad statutory strengths of the FPC with the effectiveness of the monitor model. A monitor's powers and functions are parallel in many important respects to the powers and functions of the "special investigator" called for by the coalition of African American pastors who are seeking greater police accountability following the Jude verdict.¹⁰

Two subjects need to be resolved to create a monitor model within the FPC structure: first, what is to be monitored; and second, how to accomplish the monitoring.

One subject to be monitored is civilian complaints. It is important to recognize, however, that no matter what sort of mechanism is being employed, it is rare for even 20 percent of complaints to be sustained, no matter how effective the complaint process is. A sustained rate of approximately 10 percent is more typical. While there are many reasons for the low sustained rate, insufficiency of the allegations and difficulties in proving the alleged violations are chief among those reasons. Therefore, while it is very important to monitor investigations of civilian complaints, to stop there is to miss significant opportunities.

⁹ The Los Angeles Police Commission is such a model, where the monitor is called the Inspector General.

¹⁰ See "Ministers Call for Action," Milwaukee Journal Sentinel, May 16, 2006, <http://www.jsonline.com/story/index.aspx?id=424085>.

In addition to citizen complaints, police departments, including the Milwaukee Police Department, initiate many internal investigations of misconduct, most often generated by a supervisor. In Milwaukee, there were more than 300 internal investigations in 2004 and more than 400 in 2005. A significant percentage of these cases involve charges such as use of excessive force and improper searches and seizures. Internal complaints have a much higher sustained rate. As is true for the Los Angeles County Office of Independent Review and the Denver Office of the Independent Monitor, internal complaint investigations would be an essential second area reviewed by the Monitor.

A third area to be monitored would be internal criminal investigations, which involve allegations of criminal misconduct by members of the Department. By the fact that the misconduct alleged involves criminal behavior, these investigations by definition involve serious matters.

A fourth area in the Monitor's jurisdiction would be the administrative (as opposed to criminal) investigations of officer-involved shootings, in-custody deaths, and other serious uses of force, regardless of whether a related complaint is filed. These cases elicit significant community concern, given that they may involve incidents resulting in loss of life. Investigations of officer-involved shootings and in-custody deaths involve three perspectives. The first is the criminal investigation that seeks to determine whether the involved parties, police and civilian, should be charged with a crime. Because of the broad leeway given police officers under the criminal law to use deadly force to defend themselves or others, officer-involved shootings rarely lead to criminal charges and even more rarely to convictions—not only in Milwaukee, but nationally. The investigation by the police from the criminal perspective

is reviewed by the District Attorney's office, and the work of the District Attorney would be outside the scope of the Monitor's authority.

The second perspective from which officer-involved shootings, in-custody deaths and serious uses of force are analyzed is administrative—i.e., whether the involved officers violated the department's policies and procedures and should therefore be subject to discipline. The third perspective is tactical—whether the involved officers followed their training and performed in a tactically sound way. The second and third perspectives—collectively referred to as the administrative investigation—will be subject to review by the Monitor.

Experience has shown that a focus on tactical and training issues is the most productive way to try to change police responses to critical incidents and to lessen the use of deadly force by the police. This is where the strength of the monitor model comes into play. The Monitor can both push behind the scenes to have the Police Department improve its policies and practices with the goals of lessening the incidence of uses of deadly force, and can shine public light on the need for such changes in a public report.

A fifth area of Monitor responsibility—which is discussed in detail in Chapter 6—would be to assist the FPC in its review of Police Department policies and practices.

Having established *what* Police Department processes will be monitored, we now turn to our recommendations on how the Fire and Police Commission should carry out the monitoring.

Monitoring should be conducted by a full-time staff, knowledgeable in law enforcement practices, particularly internal investigations of

wrongdoing and uses of force. The monitoring staff must also understand the principles of law enforcement oversight and be able to relate effectively with all who have a stake in law enforcement and oversight of the police—including, but not limited to, the residents of Milwaukee, the Police Department, the police unions, the Fire and Police Commission, relevant parts of City government, and the District Attorney’s office.

The monitoring work would be led and supervised by the “Independent Monitor,” an individual who would also fill the role of chief staff person for the FPC, now known as the Executive Director. The Independent Monitor would be assisted by a Chief Deputy Monitor and an Assistant Monitor who would share responsibility for the oversight of the four types of Police Department investigations discussed above: citizens’ complaints, internal departmental complaints, internal criminal investigations, and administrative investigations of serious uses of force and in-custody deaths. We recommend that the authority and functions of the Independent Monitor be established in an enabling ordinance passed by the Common Council. Several ordinances establishing monitors in other cities are included in Appendix 4 to this report.

The monitoring staff would review investigations at their inception, while they are proceeding, and at the conclusion of the investigation when the findings have been formulated. Monitoring staff would be empowered to observe interviews and make recommendations to Department investigators as the investigations proceed. Investigations would be reviewed for accuracy, thoroughness, fairness, and timeliness, while discipline would be reviewed for appropriateness and timeliness. The entire files of the Police Department—investigatory, personnel, and policy—would be available to the monitoring staff at all times. Unfettered access to all Police Department files, as the monitors have in Denver,

Portland and Los Angeles County—is critical to the success of the monitor model.¹¹

In the event that an investigation was found deficient in some way, the Police Department would be asked to rectify the problem. For instance, if a witness who should have been interviewed was not, the monitoring staff would initially request that the witness be interviewed and the findings, if already drafted, be reconsidered in light of the additional information. On a day-to-day basis, the monitoring staff would generally deal with supervisory personnel in the Professional Performance Division. But if a disagreement were to arise, the Monitor would have access to all the top managers in the Department, including the Chief.

Although the Monitor staff will audit and review investigations, conducting the investigation is the responsibility of the Police Department, under the direction of the Police Chief. We believe it will be helpful for the Monitor, the FPC, and the Police Department to develop protocols that specify the role and responsibilities of the Monitor and monitor staff in investigations.

Experience from other cities with monitors, such as Portland and Denver, has shown that the overwhelming majority of problems with the conduct of specific investigations are resolved either in response to a monitor's initial request or after further discussion inside the department. Provisions need to be made, however, for options if the Police Department, after the matter had been brought to the Chief's attention, were to fail to address the Monitor's requests to rectify

¹¹ In Denver, for example, the Monitor attends weekly meetings with the Internal Affairs command staff, gaining insights into case investigations as they proceed.

problems relating to a specific investigation. The Monitor and FPC would have the opportunity to use one or more of the following options.

First, the monitoring staff could be empowered to conduct a reopened investigation on its own with such assistance from the Police Department as it might request. Upon conclusion of the investigation, the monitoring staff would present its findings, and disciplinary recommendation, if any, to the Chief. Second, the Commission engages in a quarterly and annual review of the Chief's performance. Systemic investigatory problems should be addressed in these performance reviews. Third, if the failure to comply with the request concerning the proper handling of an investigation was a pattern, the Monitor not only could, but should, discuss the problem in the Monitor's next public report. Shining a light on the problem would provide information that would allow other parts of government and the community to bring their influence to bear to try to ensure that the problem does not recur.¹²

Finally, with respect to the conduct of an investigation, but *not* as to the findings of an investigation, the Monitor could ask the FPC to use its directive power to require the Police Department to rectify the problem in the investigation. Because, as is discussed more fully in Chapter 6, the FPC's directive power should be used only after consultation with the Chief, the FPC would solicit the Chief's view regarding the investigation. After hearing from the Monitor and the Chief, the FPC would determine whether to issue a directive to the Chief with respect to the investigation in question. If the Commission agreed with the Monitor, the Department would be required to reopen the investigation and follow the FPC directive.

¹² Good examples of the value of in-depth public reporting may be found in the reports of the Special Counsel who monitors the Los Angeles County Sheriff's Department, and of the San Jose Independent Police Auditor.

This last option ensures that the Department cannot stonewall the Monitor's objections. But if the relationship between the Monitor and the Department, particularly the Chief, is healthy, these procedures will never need to be invoked.

The monitoring process would also focus in a consistent way on the big picture, seeking to encourage systemic improvements in Police Department policies and practices. It would do this in two principal ways.

First, the FPC's research and policy staff would regularly obtain data and other information from the Police Department and would analyze that information in the Monitor's periodic reports and make recommendations for improvements as appropriate. As is discussed more fully in Chapter 6, the subjects that the FPC could address are as broad as the Police Department's areas of responsibility.

Second, the monitoring staff would identify patterns and trends in the citizen complaint and internal department investigations—both in the behavior that is the subject of investigations and in issues that recur in the investigatory process—and with the assistance of the research and policy staff, would address those patterns and trends with a view toward ameliorating the identified problems. Focus on problematic patterns and trends would take place both in the FPC's quarterly reviews of the Chief's performance and in the Monitor's public reports.

Recommendation 3.1: The Fire and Police Commission should reorganize its staffing and structure to institute a monitor model of oversight that will review citizen complaint and internal Police Department investigations and issue public reports on the quality and fairness of those investigations. The chief FPC staff person will

be designated the Independent Monitor. The Common Council should enact enabling legislation that establishes the Independent Monitor’s authority and functions. We also believe that protocols should be developed by the Monitor, the FPC, and the Police Department that specifically set forth the relationship between the Monitor and the Police Department, and the Monitor’s role in investigations.

C. The Independent Monitor Position

Until 1988, the Executive Director—then known as Executive Secretary—was selected and appointed by the Fire and Police Commission. Upon the eve of becoming Mayor that year, John Norquist persuaded the Legislature to institute a cabinet-form of government for Milwaukee’s executive branch. That legislation—now incorporated in Wisconsin Statutes 62.51 (Section 62.51)—gave the Mayor the power to appoint the Executive Director, subject to confirmation by the Common Council. Also as set forth in that statute, the Executive Director serves at the pleasure of the Mayor and until the end of that term of the Mayor, unless reappointed.

By providing that the Executive Director report to the Mayor and serve at the Mayor’s pleasure, the Executive Director has the incentive to be more attentive to the Mayor’s wishes and priorities than to those of the Commissioners. Under the present structure, the Commissioners have no formal role in the selection or retention or dismissal, if that were to occur, of the Commission’s chief staff member, who manages the work of the entire staff. As a full-time staff member to whom the rest of the staff reports, the Executive Director can play a large role in influencing the agenda of the Commission and the implementation of its goals and programs. Since the Legislature has deemed it appropriate to create an independent body to oversee the Police Department, that body should

have a staff that is responsive to it and has the appropriate incentives to support its work.

Recommendation 3.2: The Independent Monitor should report to the Fire and Police Commission. The Monitor should be appointed by the Mayor for a term of four years from a list of three candidates deemed by the Commission to be well-qualified for the post. The appointment should be subject to the confirmation of the Common Council. Removal of the Monitor during the four-year term should be only for cause as determined by the Commission.

Removing the Executive Director from the Mayor's cabinet and changing the post from serving at the pleasure of the Mayor will require deletion of the mention of this position from Section 62.51(1). The selection process and the terms of the Monitor's appointment may be established by a City ordinance.

As the chief executive of the City who is accountable to the voters, the Mayor should be held accountable for the selection of the person who serves as the FPC's chief staff member. For a post of the importance of the FPC's Monitor, the Common Council should play its "advise and consent" role. Unlike most staff appointments, however, we recommend that the Monitor report to the Commission rather than the Mayor. The Commission should therefore play the key role of identifying a qualified pool of three candidates from which the Mayor will make the final selection. It is important that the Commission make a determination that all the candidates it selects for the well-qualified list sent to the Mayor are people it believes can work effectively with the Commission, as well as fulfill all the job's responsibilities. Thus, both the Commission and the Mayor will share responsibility for selecting a well-qualified person to lead the FPC staff, subject to the Common Council's approval.

If the Mayor were to determine that none of the three candidates on the well-qualified list were suitable for appointment, the Mayor would inform the Commission that none of the three candidates was suitable and request a new list of three well-qualified candidates.¹³

In recommending a term of four years for the Monitor, subject only to removal for cause, we seek to create sufficient job security for a post that requires walking a fine line between groups holding strong opinions. Almost inevitably, some decisions made by the Monitor will cause upset in one constituency or another. The four year term and the protection that a Monitor receives by being removable only for cause are essential to attracting the best qualified candidates from around the country.

Recommendation 3.3: The Fire and Police Commission should conduct a nationwide search for a well-qualified Independent Monitor. The Independent Monitor should be either an attorney with substantial experience in criminal and/or labor law, or an individual with at least five years experience in police oversight, preferably with a relevant graduate degree. Knowledge of law enforcement, particularly of internal departmental investigation processes, is essential. The Monitor must possess impeccable integrity and be able to establish and maintain a high degree of credibility with all stakeholders. In Appendix 4, we have included the job descriptions for the monitor/auditor positions in Denver, Portland, and San Jose.

In light of the fact that the Monitor will need to function with professionalism and credibility with people of divergent points of view about policing and policing oversight, the FPC should involve

¹³ The selection process is in most respects the same as used by Albuquerque, New Mexico in selecting the Independent Review Officer, that city's monitor equivalent.

representatives of both the community and the police in the selection process.

D. Relationship with the Department of Employee Relations

Under the City's current administrative structure the Fire and Police Commission has become a part of the Milwaukee Department of Employee Relations (DER). While Section 62.51(1) makes the Executive Director of the FPC a member of the Mayor's Cabinet, reporting to the Mayor, the Executive Director of the FPC also reports to the Director of DER. The lines of authority over the FPC and its work have become so murky that even the best informed members of City government have a difficult time articulating what they are. Despite the ambiguities, the day-to-day reality is that the FPC Executive Director reports to the Director of DER. Moreover, the FPC does not control its own budget; DER does. The FPC staff has shrunk and those who remain are classified as DER employees.

The FPC was consolidated into DER in 2003 under Mayor Norquist, primarily for budgetary reasons. The underlying logic was based upon the correct factual premise that both agencies engaged in recruitment, testing for hiring and promotions, and other personnel and civil service functions. Because of the similarity of much of their activities, consolidation was seen as a way to achieve efficiencies in both staffing and administrative costs and a synergy on personnel-related functions. There is no evidence, however, that any consideration was given to what effects the merger would have on the independence and stature of the FPC. Despite the absence of consideration of the broader structural issues, the status of the FPC Executive Director position was

overtly considered. The Executive Director was to become the *Deputy* Director of DER.

In addition to staffing and administrative efficiencies, the architects of the consolidation hoped that the high morale of the FPC staff would increase the morale of DER staff. Presciently, the issue paper that advocated the consolidation recognized that the opposite might happen. In discussing the organizational cultures of the two agencies, the issue paper¹⁴ noted that downsizing of DER over a 10-year period had led to “stress ... apprehension ... poor productivity ... inefficien[cy] ... [and] lack of teamwork.” The issue paper continued:

On the contrary, the Fire and Police Commission has very high employee morale and satisfaction. The department operates as a team, with a delineated chain of responsibility [E]mployees feel valued and operate well as a team.

Combining these two organizations could have one of two effects: it could [r]educe morale for the FPC ... or it could increase morale for the DER staff....

Having only minimal contact with DER staff, we are unable to offer an opinion as to whether DER staff morale has changed for the better or the worse since the merger. We are able to say, however, that the merger has been severely detrimental to FPC staff morale.

As important as staff morale is, whether the FPC is effectively fulfilling its role to oversee the Milwaukee Police Department is far more important. On that score there is little doubt that the merger has negatively impacted the autonomy, stature, and effectiveness of the Commission. Almost every person to whom we spoke who voiced an opinion on the efficacy of the merger with DER—regardless of their

¹⁴ Issue Paper: Merging the Fire and Police Commission and DER Department: Employee Relations and Fire and Police Commission, by Jennifer Gonda (undated).

divergent views on most topics relating to the FPC and its work—believed that the consolidation has been a failure, primarily because it has deprived the FPC of autonomy and resources.

The perception of most stakeholders that the consolidation of the FPC into DER has weakened the FPC is corroborated by the facts. The Commission no longer controls its own budget, leading, not surprisingly, to shrinkage in its staff from 11 full-time and one part-time staff in 2002 to six full-time and one part-time staff in 2006. Those numbers, however, exaggerate the loss of personnel because DER employees now provide the staffing for equivalent of two full-time positions dedicated to FPC work. Taking that assistance from DER into account, the FPC has nonetheless had an effective cut in staffing of 26 percent since the merger.

The FPC also has had a loss in autonomy. This is not to say that the DER and its present Director have not endeavored to support and in some ways been quite helpful to the FPC (as opposed to the previous DER Director, who we were told was less supportive of the FPC and its mission). Nonetheless, the Wisconsin Legislature intended that the FPC be an independent body. That intent is subverted by embedding the Commission in a department that is subject to direct mayoral control. The loss of autonomy is most pronounced in making the FPC Executive Director a subordinate of the DER Director. The loss of an independent identity affects perceptions of the Commission, which causes it to lose stature in the eyes of the public. We are aware of no city with an effective police oversight mechanism that is embedded in an administrative department. It is not a model calculated to foster strong police oversight.

Recommendation 3.4: The FPC should be restored to full autonomy, with a budget and staff fully independent of DER. This change does not require legislative approval and should be accomplished as speedily as possible.

E. The FPC's Personnel-Related Functions

As discussed in Chapter 2, the Fire and Police Commission was originally created in 1885 to serve a civil service function, to end the complete turnover of Police Department personnel every time a new Mayor was elected. The personnel-related, civil service functions have evolved into substantial efforts to administer recruiting, testing, hiring, and promotion, as well as enforcing administrative requirements for personnel, such as those related to residency. For the Board itself, personnel-related matters occupy a substantial portion of its efforts, as reflected in the FPC meeting agendas.¹⁵

The transformation of the Commission into an effective law enforcement oversight body makes it desirable that its personnel-related functions be spun off to a different agency. The changes we are recommending in the structure and staffing of the FPC will change its principal focus to one of accountability by the police. The focus on accountability will be central to the efforts of the staff involved in monitoring, in policy and research, and in disciplinary appeals. The

¹⁵ One example is the FPC Board meeting we observed on April 20, 2006, which included time spent on reclassification requests, leaves of absence, appointments of an office assistant, mail processor and microcomputer services assistant, and promotions of heavy equipment operator, office assistant, and fingerprint examiner. Our review of the minutes of Board meetings shows that most of the time of FPC meetings is spent on promotions, appointments, examination issues, and minor personnel issues, including the approval of appointments of substitute crossing guards. The Board's time could better be spent on examining police policies and practices and addressing oversight and accountability.

personnel-related work of the Commission involves a significantly different focus, and requires different knowledge and experience.

As the FPC's chief staff person, the Independent Monitor must have experience in and knowledge about police internal investigations and other accountability processes. While it is possible that the person selected to be Independent Monitor will also have knowledge of recruiting, testing, hiring, promotions, and eligibility requirements, these are not areas of expertise that will be sought. Nor are these the areas of expertise that are key to the criteria for selection of FPC Commissioners. To have the Commission and the Independent Monitor supervise activities that are outside their core mission seems undesirable.

In addition, once the FPC has become an effective oversight agency, its accountability mission will not mesh well with its personnel-related function. This is not to suggest that the personnel-related functions are unimportant or of lesser importance. Quite the contrary, they are of critical significance. And because of their critical importance, they should not be an afterthought in an agency primarily devoted to significantly different work. Other than in Wisconsin, we are unaware of any police oversight bodies that also have the authority to handle personnel functions for the police department. Leaving the two disparate functions combined in one small agency inevitably detracts from the quality of both functions. The hiring function which we believe should be retained by the FPC is the hiring of the Chief of Police (and the hiring of the Chief Engineer of the Fire Department). Developing the criteria for a police chief selection and examining the backgrounds, philosophy and approaches of police chief candidates do in fact coincide with the FPC's mission and oversight responsibilities. We leave it to the City of Milwaukee to consider whether the FPC should retain the authority to approve command-level appointments at the MPD.

Recommendation 3.5: The personnel-related functions of the FPC should be spun off to another agency. The function of selecting the Chief of Police, however, should remain with the FPC. Because these personnel-related functions are provided for in Section 62.50, implementing this recommendation will require action of the Legislature. Since an analysis of the FPC's personnel-related functions was not part of our study, we take no position on whether the recruiting, testing, hiring, and promotion functions presently performed by the FPC should be placed in DER, in the Police Department, or divided between those two agencies. That determination will require further analysis by the City and the departments impacted by the changes. The City will also need to address whether the FPC should retain its function of approving high-level commanders in the Police Department.

F. Staff To Assist the Monitor

To create an effective monitor-model Fire and Police Commission will require significant additions to the staff. At present, only three full-time and one part-time staff members (the Executive Director, hearing examiner, administrative assistant, and part-time research analyst) are devoted to the police oversight functions of the Commission. They are assisted in the intake and conciliation of citizen complaints by two DER staff members who each spend approximately half their time on FPC functions. In effect, then, the FPC's police oversight functions are staffed by three full-time and three part-time staff members. Our analysis indicates that the revamped police oversight functions will require eight full-time and one part-time staff, a net increase of four full-time-equivalent positions.

Interestingly, at the time of the merger into DER, the FPC's staff devoted to the police oversight functions, as opposed to personnel-related

functions, totaled seven full-time and one part-time individuals. That almost-50-percent reduction in FPC oversight staff over the last few years is part of the explanation for the FPC's weak performance and lack of outreach to the community in the recent past.

The staff of the revamped FPC should include the following positions:

- Independent Monitor
- Chief Deputy Monitor
- Assistant Monitor
- Community Relations Manager
- Research and Policy Manager/Hearing Examiner
- Research and Policy Specialist
- Research and Policy Analyst (part-time)
- Paralegal
- Administrative Assistant

We have already discussed the role of the Independent Monitor at some length. The Chief Deputy and Assistant Monitors would assist the Monitor in the review of the citizen complaint and internal investigations conducted by the Police Department, including identifying patterns in police conduct and in the investigations of the complaints. The Chief Deputy and Assistant Monitors would be expected to have legal and/or police oversight backgrounds, but not necessarily the same degree of experience as would be required for the Independent Monitor.

The Community Relations Manager would be responsible for the FPC's outreach to the community, managing the conciliation process, conducting the conciliations (or supervising mediators conducting conciliations), supervising the intake of civilian complaints, and

supervising and participating in responding to the inquiries of civilians with pending complaints.

The Research and Policy Specialist and part-time Research and Policy Analyst would proactively obtain information from the Police Department that they would analyze and write about, both to assist the Commissioners in their reviews of policy and of the performance of the Chief and also for the FPC's periodic reports. The researchers would also obtain, analyze and write about information concerning patterns and trends identified by the monitoring staff. The research staff would produce public reports on specific policy issues in addition to the periodic reports of the FPC.

The Research and Policy Manager/Hearing Examiner would participate in and supervise the research and policy analysis functions of the FPC. This individual would also act as hearing examiner for the disciplinary appeals heard by the FPC and provide the necessary guidance and support to outside hearing examiners retained, as necessary, by the FPC to ensure the timely completion of disciplinary appeals.

The Paralegal would accept and refer to PPD civilian complaints received by the FPC, respond to questions from civilians with pending complaints, provide appropriate information and referrals to members of the public, perform the administrative tasks associated with the conciliation of civilian complaints, perform the scheduling and other recurring tasks associated with the disciplinary appeals process that do not require the experience of an attorney, and assist the Administrative Assistant with the general administrative tasks.

The Administrative Assistant would act as the assistant to the Monitor and would also provide general administrative support for the Commission. Because of the expanded size of the staff and the FPC's increased activities, the Paralegal would have to assume some of the general administrative tasks and the tracking of disciplinary appeals and civilian complaints.

Recommendation 3.6: The FPC staff should include three monitoring staff, three research/policy/hearing staff, a community relations manager, and two support staff. The search for an Independent Monitor should start as soon as possible, as identifying and bringing on the successful candidate may take a number of months.

G. The Commissioners

1. Expansion of the Size of the Commission

Assuming the necessary legislative approval can be obtained for the FPC to continue to hear disciplinary appeals in panels of three Commissioners, it would be desirable to expand the Commission membership to seven, from the present five. Expanded membership would allow broader representation on the Board which, in light of intense interest in the City in policing misconduct, would be a plus. Mayors Barrett and Norquist have shown appropriate concern for diversity in their appointments to the Board. The present Commissioners include two African Americans, one Latino, and one gay man. Continued sensitivity to broad representation on the FPC that reflects the City's diversity is essential to the credibility of the Commission. An expansion in Commission size would allow for broader representation and would allow the FPC to draw on a broader base of skills from its Commissioner members.

Expanded membership also would allow the work burdens to be spread among a greater number of Commissioners. At present, the most time-consuming part of the Commissioners' responsibilities is hearing disciplinary appeals and the occasional trial of citizens' complaints. Those proceedings are heard by panels of three Commissioners, who constitute a quorum of the five-member Commission and who thus are functioning as the full Commission, not a committee thereof. We recommend that the Legislature include specific authorization for panels of three Commissioners to hear and decide disciplinary appeals. Otherwise, a larger Commission would mean that a larger quorum of four members would be required to hear disciplinary appeals. The difficulties of getting four Commissioners together on a regular basis would be a sufficiently significant scheduling impediment that the increased size of the Commission would be counterproductive. Thus, we support an increase in the membership of the Commission *only* if the legislation authorizes panels of three Commissioners to hear and decide disciplinary appeals.

We do not support the proposals that some have made to either limit Commissioners to a term of shorter than five years, or to prohibit reappointment to a second term, or both. The proponents of those ideas contend that Commissioners lose touch with the community after more than two or three years, or one term, on the FPC. We, however, are more persuaded by the statements of several Commissioners that it took a substantial amount of time before they mastered the position and became fully effective on the Commission. We conclude that a Commissioner's knowledge and experience on the Board is more likely to be an asset than the liability. We nonetheless urge mayors to exercise the appropriate due diligence before re-appointing a Commissioner, to ensure that he or she retains a commitment to the values of citizen oversight, and has not become jaded and cynical.

Recommendation 3.7: Provided that the Commission is authorized to hear and decide disciplinary appeals in panels of three members, the Commission should be expanded to seven members. The Commissioners should continue to serve staggered five-year terms, which foster the right balance of experience and fresh perspectives. Expanding the number of Commissioners and authorizing panels of three to hear and decide disciplinary appeals would require amendment of Section 62.50.

2. Commission Membership

Opinion in Milwaukee is widely split as to the desirability of having retired law enforcement officers on the Commission. Proponents argue that the Commission needs more members who are familiar with policing and thus will be more knowledgeable about the issues that come before the Commission. Opponents say that retired law enforcement officers would be biased in favor of the police. While we do not assume bias, the fact that a retired member of the Police Department likely would know many of the officers whose conduct would be reviewed by the Commission should be recognized as making it harder to remain impartial.¹⁶ We believe this is a prudent way to avoid conflicts of interest and the appearance of conflicts. The same rule, however, would not apply to individuals who have been members of other law enforcement agencies. They could bring their knowledge of law enforcement without the possible entanglements of having been a colleague of an officer whose actions were being reviewed.

While the FPC does not presently have any Commissioners who are lawyers, we believe that is desirable to have at least one lawyer on the

¹⁶ In Denver, membership on the Citizen Oversight Board is prohibited for persons who have been members of the departments being monitored, or who have immediate family members who have been members of those departments. Revised Municipal Code, City and County of Denver, Chapter 2, Article XVIII, Sec. 2-378 (d).

Commission. Much of the Commission's work involves legal processes, and having a Commissioner with legal training would likely be helpful to all the Board members.

Several people we interviewed commented on the increasing difficulty in filling positions on the FPC. Some commented that 20 years ago some of Milwaukee's most talented citizens served on the FPC, but that the reduced public regard for the Commission made it more difficult to attract high-profile members. Several of those interviewed noted that the position of FPC Commissioner is particularly thankless, for a variety of reasons: decisions the FPC makes inevitably will be unpopular with one or another group with strong opinions on the issues; the FPC involves a great deal of time and work; and other boards, like the Sewerage Commission, pay considerably more than the \$6,600 annual stipend received by FPC Commissioners. The requirement for city residency was perceived as limiting the pool of well-qualified candidates.

We suspect that some well-qualified citizens may have been reluctant to serve in the recent past because the FPC more and more has come to be perceived as ineffectual. We are hopeful that the reforms we propose will make service on the FPC more appealing to Milwaukee's best and brightest citizens from all parts of the community. We also recommend that the City evaluate the compensation of FPC Commissioners in light of the compensation of commissioners on similar boards.

Recommendation 3.8: Steps should be undertaken to encourage talented citizens to serve on the FPC. Commissioners and their immediate family members should not be, or have been, members of the Milwaukee Police Department. Also, it is desirable that at least one Commissioner be a lawyer.

3. Orientation and Training of Commission Members

Civilian oversight of the police is definitely positive; however, it should be informed civilian oversight. Many we interviewed believe that the Commissioners need additional training and knowledge regarding policing.

We recommend that the following training be made mandatory for all FPC Commissioners. First, within six months of their appointment, Commissioners should enroll in and attend a Milwaukee Police Citizen Academy, which educates citizens about police procedures. The academy meets for three hours a week for ten weeks. Second, Commissioners should participate in patrol ride-alongs. We recommend that newly-appointed Commissioners participate in at least four ride-alongs in their first six months on the FPC. Commissioners also should be required to participate in ride-alongs during subsequent years of their service. We believe at least half of a Commissioner's ride-alongs should be in neighborhoods with the highest police-community tensions and rates of complaints.

Recommendation 3.9: Commissioners should attend the Police Citizen Academy shortly after appointment. They should also participate in police ride-alongs.

Commissioners told us that they received little training concerning FPC policies, standards, and practices, and MPD policies, standards and practices. Most Commissioners learned as they went along, and some commented that for the first year or two on the Commission, they thought they had not fully understood everything they should have. In light of the need for such training and its absence to-date, the FPC staff and Commissioners should develop a written training curriculum for new Commissioners. We recommend at least 15 hours of instruction by staff

and Commissioners (and possibly others) on relevant FPC and MPD policies and practices. Most importantly, new Commissioners should be fully conversant with the standards they are to employ in decision-making. If the standard is “a preponderance of the evidence,” for example, new Commissioner training should ensure that the standard is clearly and meaningfully understood.

Recommendation 3.10: FPC staff, in conjunction with the Commissioners, should develop an internal training program for new Commissioners that includes instruction on the policies and practices of the FPC and MPD.

Recommendation 3.11: As part of their initial training, Commissioners should also meet with representatives of the African American, Latino, Asian, and Gay/Lesbian/Bisexual/Transgender communities to hear their perspectives on the Police Department and police misconduct. Just as Commissioners should be knowledgeable about police perspectives, they should also be knowledgeable about the perspectives of those in communities whose members are overrepresented among victims of police misconduct.

Chapter Four. Citizen Complaints

A. The Present Broken Process

The FPC citizen complaint process is broken beyond repair. We talked to several hundred people in Milwaukee about the Fire and Police Commission, individually and in groups, over a three-month period. We did not find a single person, inside or outside the Commission, who stated that the complaint process was effective or even acceptable.¹⁷ The only part of the process that generated positive comments was the conciliation (or mediation) process. Notably, not only was conciliation the only part of the complaint process that was identified as working, but those supporting it also represented a broad range of divergent opinions on policing issues.

Civilian complaints in Milwaukee can be initiated with the Police Department, or with the Fire and Police Commission, or both. In most instances, civilians in Milwaukee choose to make their complaints to the Police Department. For the six years from 2000 through 2005, 4,741 civilian complaints were generated. Only nine percent (437) were initiated with the Fire and Police Commission.¹⁸ The remaining 91 percent (4,304) were initiated with the Police Department.

The FPC complaint process is structurally flawed in ways that make it very difficult for a citizen to establish a claim of misconduct, even if meritorious. The civilian is required at every stage to be able to articulate (sometimes in writing and sometimes orally) the claim of misconduct against the accused officer, generally without any

¹⁷ This criticism came from both community activists and from the police union, from Police Department members of varying ranks and from FPC Commissioners and staff.

¹⁸ The FPC also received nine complaints against Fire Department personnel in those six years.

investigative or representational assistance. Officers, on the other hand, are almost always represented by counsel. If the complainant does not specifically identify the misconduct alleged, as well as the officers who were alleged to have engaged in the misconduct, the complaint is often dismissed by the FPC.

The FPC does not help the civilian fill out the complaint form (though it will refer those who need such help to community organizations such as the NAACP). Moreover, there is no way that complaints can be made to the FPC other than by completing the written form. The FPC does not take anonymous complaints or complaints by phone, fax, or e-mail. If an individual calls the FPC with a complaint, that person will be mailed a complaint form, which must be completed and mailed back to the FPC.

While the citizen completes the complaint form setting forth the factual allegations, it is the FPC staff (or since the merger, DER staff) who choose the charges they believe are made out by the factual allegations. The selection of charges by staff is sometimes flawed and may lead to the dismissal of charges that might well have been sustained, had the correct rule violation been alleged. We examined several closed FPC files where we saw examples of failures to allege rule violations that were made out by the facts alleged by the complainant. We also saw this problem in the complaint trial we observed in April 2006.

The FPC has no investigators. If the case needs investigation, it is the complainant's responsibility to conduct the investigation on his or her own. There are some cases where the FPC determines that investigation is needed, and dismisses the case but refers it to the Police Department. This is often the case in complaints that allege potential

criminal violations. The Milwaukee Police Department, on the other hand, has 11 investigators in the Internal Affairs Section of its Professional Performance Division, which handles citizen- and department-generated complaints.¹⁹

Once a complaint is submitted and the FPC staff determine what charges they believe are appropriate, the staff present a summary of the complaint to the Rules and Complaints Committee, which makes a recommendation to the Board as to whether the complaint should be dismissed or proceed. Many complaints are dismissed at this stage for a variety of reasons, including lack of jurisdiction, lack of “prosecutorial merit,” the complainant’s unavailability, or “passivity” of the complainant. For those complaints over which the FPC Board determines it has “provisional jurisdiction,” the FPC has, as a policy matter, required that all complaints proceed to a conciliation conference. If the conciliation conference is not successful in resolving the case, the complaint may then proceed to an FPC trial after significant pre-trial procedures. Even in these situations, however, the FPC does not conduct any investigation.

A remarkably small number of complaints have actually made it all the way to an FPC trial. From 2000 to the present, there have been only ten complaint trials. There were no trials at all in 2000 and in 2002, and only one trial in 2001 and one trial in 2003. Eight of the ten trials in the past six years involved cases filed from 2000 through 2005.²⁰ By

¹⁹ PPD also has eight detectives in its Criminal Investigative Section, which handles internal criminal investigations.

²⁰ There are also 19 cases from 2003, 2004, and 2005 that are awaiting trial, and there will likely be additional 2005 complaints that are referred to trial as those cases progress. Data from prior years indicate, however, that many of the cases currently awaiting trial will not in fact be tried.

comparison, there were 44 trials on complaints filed from 1992 through 1999.

For the very small percentage of civilian complaints that do go to trial, the complainant must engage in a quite formal adversarial proceeding against the accused officer(s) who are virtually always represented by counsel. Moreover, cases routinely take two to three years to be brought to trial, in part because disciplinary appeals are given priority over trials of citizen complaints.

The results are troubling, and demonstrate the FPC's structural defects. Charges have been sustained against only two officers from complaints filed from 2000 to 2005, out of 437 complaints and eight trials held.²¹ For complaints filed from 1992 to 1999, charges were sustained in only six cases, against only eight officers,²² out of 550 complaints and 44 trials held.²³

In light of the facts that the FPC complaint process is structurally flawed and realizes almost no sustained results, and in light of the further fact that the overwhelming majority of complaints already are made to the Police Department, we recommend a significant change in the way citizen complaints should be addressed in Milwaukee.²⁴ We

²¹ One trial that was conducted in February, 2005 by the hearing examiner without Board members present is awaiting a determination by the Commissioners based upon their reading of the transcript and the hearing examiner's report.

²² The charges against one officer were later reversed on an appeal to the Circuit Court.

²³ Two of the 44 trials each resulted in two officers being found guilty. Thus, six of the 44 trials resulted in sustained findings.

²⁴ Much the same problems were discussed in "A Report to Mayor John O. Norquist and the Board of Fire and Police Commissioners" by the Mayor's Citizen Commission on Police Community Relations, October 15, 1991. That report, prompted by dissatisfaction with the poor police response to a call that, if handled correctly, would have saved a 14-year-old boy from being strangled by serial killer Jeffrey Dahmer, made

recommend that the small minority of complaints that have been processed by the FPC be referred to the Police Department where they will in fact be investigated by the Professional Performance Division. For cases filed from 2000 to 2005, the Milwaukee Police Department sustained 219 citizen complaints. With the addition of the Independent Monitor's review and audit of civilian complaints investigated by the Police Department, there will be a confidence-inducing check to determine whether the PPD process is thorough and fair.

The only aspect of the FPC complaint process that appears to have worked is conciliation. Of the 437 complaints filed with the FPC from 2000 to 2005, 45, or 10 percent, had been successfully conciliated by early in 2006.²⁵ After a successful conciliation, the charges against the officer are dismissed by the FPC.

Recommendation 4.1: The FPC complaint process should be discontinued. Civilian complaints made to the FPC should be referred to the Police Department for a thorough investigation and the results reviewed by the FPC's new monitoring staff. Even though the Police Department is now processing 90 percent of the civilian complaints made in Milwaukee, the literal language of Section 62.50 requires the FPC to process these complaints. While the current practice suggests that a legislative amendment may be unnecessary, we believe it would be prudent and recommend conforming the statute to the practice.

a number of recommendations for improving the FPC complaint system. Fifteen years later, with the problems not only not rectified but aggravated, we think that discontinuing the structurally flawed complaint system is the better option.

²⁵ Two of the nine complaints against members of the Fire Department had also been successfully conciliated.

B. The Revamped Complaint and Conciliation Processes

1. Intake

Under the recommended revision of the civilian complaint process, the 90 percent of complaints that were made to the Police Department will be resolved following current Police Department procedures except in three respects: (1) the Police Department will immediately notify the FPC of receipt of the complaint, with pertinent details; (2) the FPC monitoring staff will review the investigation and findings for accuracy, completeness, and fairness, and can take appropriate action if the requisite standards have not been met;²⁶ and (3) the case may be identified for conciliation, as discussed below.

Under the recommended process, the FPC will still be able to receive civilian complaints, but when it does, it will immediately refer the complaint to PPD for investigation and resolution. The Commission will also still be able to have other organizations, such as the NAACP, receive complaints on its behalf. Those complaints will likewise be immediately referred to PPD. It is desirable to make the intake of complaints as user-friendly as possible, in particular creating options for those who are reluctant to file their complaints directly with the police.

Recommendation 4.2: The FPC will continue to accept complaints of police misconduct from the public and may arrange, as it does currently, for community organizations to also accept complaints.

²⁶ The steps listed in items (1) and (2) above are similar to the manner in which complaints are reviewed in Austin and San Jose.

2. Conciliation²⁷

Within two business days of referring a complaint to the Police Department or of being notified of a complaint by PPD, the FPC will start the voluntary conciliation process. For a case to move forward in the conciliation process, both the FPC and the Police Department must agree that the case is appropriate for conciliation. Furthermore, both the complainant and officer must agree to participate in conciliation. If there is any disagreement or the case is determined to be unsuitable for conciliation, the PPD will proceed with the formal complaint investigation and resolution process. If a complaint is successfully resolved through conciliation, the charges against the officer would be dismissed and the complaint could not be considered in subsequent disciplinary proceedings.

Step one of the conciliation process would involve the FPC screening the case against a set of established criteria to determine whether the case is facially eligible for conciliation. The criteria, which the FPC will formulate in conjunction with the Police Department, will screen out cases where the nature of the allegation makes conciliation undesirable as a policy matter. For types of cases that the FPC and the Police Department determine are too serious to be subject to conciliation, the FPC and the Department are making a judgment that it is important that discipline and/or other corrective action be taken in such a case if the allegations are sustained. The FPC will promptly communicate its threshold eligibility decision to PPD.

²⁷ For a general discussion of mediation of citizen complaints, see Sue Quinn, *Citizen Complaints and Mediation*, in Citizen Oversight of Law Enforcement, ABA Section of State and Local Government (Justina Cintron Perino, ed.), 2006.

If the case is facially eligible for conciliation, the Police Department will determine in its discretion whether both the case and the officer are suitable for conciliation. One reason the Department might oppose conciliation is if the officer has a pattern of similar rule violations or allegations that make the possibility of a dismissal of a similar allegation undesirable.²⁸

Since the complaint process was initially begun by the complainant, the next step would be to seek the complainant's consent to participate in conciliation. If the complainant agrees, the consent of the officer will be sought next. If the officer agrees, the conciliation will take place. The entire process of determining eligibility and obtaining consent should take place in a short period of time so as not to unduly delay the investigation if it is to proceed.

The conciliation will be conducted either by the Community Relations Manager or by a trained mediator arranged for by the Community Relations Manager. The conciliation session should generally take place within 30 days of the complaint being made so that the investigation of the complaint will not be unduly delayed if the conciliation is not successful.²⁹ Both the officer and the complainant will be expected to agree that what occurs during conciliation is confidential and that what is said during the conciliation cannot be used in any subsequent proceedings. If the conciliation is successful, the complaint will be dismissed. If the conciliation is unsuccessful, or at any point either the complainant or the officer wishes to stop the conciliation process, the case will be referred back to PPD for a formal investigation.

²⁸ The police departments in Seattle and Pasadena, CA exclude some cases from mediation because of the officer's complaint history.

²⁹ This is the timeframe used by the Auditor's office in Portland.

Recommendation 4.3: The FPC should collaborate with PPD in establishing protocols for a conciliation process which will be administered by the FPC.

3. Police Department Investigation

A citizen complaint to the Police Department can be initiated by telephone or by a third party reporting what s/he has heard about alleged police misconduct. MPD SOP 3/450.05. This compares favorably to the requirement in Section 62.50(19) that the complaint not only be in writing, but be “duly verified.” If the complaint involves “minor, non-repetitive infractions,” it may be assigned to a supervisor in the officer’s chain of command. More serious infractions require a PPD investigation. MPD SOP 3/450.05.

The fact that there is investigative capacity in PPD and the fact that all but minor cases are fully investigated is a key advantage of having the complaints handled by PPD rather than the FPC. Complainants are not expected to investigate and prove their own cases, a daunting task for a civilian who may need evidence from other police officers. Even if an allegation is deemed to be minor and appropriate to be handled by the officer’s supervisor, the Police Department takes all complaints made to it, regardless of their apparent merit.

Another key advantage—which was evident from our review of FPC’s disciplinary appeals files—is that PPD is fully familiar with the Department’s rules and regulations. If a complaint’s allegations make out a particular rule violation, the correct rule would be cited in the charges—which we found too often was not the case with complaints processed by the FPC.

A third important advantage of the PPD investigations over the FPC process is that investigations are required to be completed within six months, unless the allegations included violations of the criminal law. In that case the criminal investigation must be completed first and the time spent on the criminal investigation does not count toward the six-month limit.

We have not examined PPD investigative files, as PPD's investigative work is outside the scope of the study we were retained to conduct. We thus are unable to speak to the thoroughness and integrity of those investigations. However, the audits and reviews that the FPC monitoring staff will conduct will examine those questions and will seek improvements if problems exist. What we do know is that, as of earlier this year, 219 of the 4,304 citizen complaints brought to PPD from 2000 through 2005 have resulted in sustained charges, while only two of 437 complaints brought to the FPC during the same period have resulted in sustained charges. (An additional 45 complaints brought to the FPC were successfully conciliated. No equivalent process currently exists at PPD for comparison.)

One of the most frequently voiced complaints of those who have lodged complaints against the police in Milwaukee is that after they make the complaint, they do not hear anything for long periods of time, if ever, about what is happening concerning their complaints. Setting requirements for communication that will be initiated by PPD and creating channels for complainants to make inquiries should be the subject of a comprehensive protocol between PPD and the FPC. One of the important responsibilities of the Community Relations Manager would be to ensure that complainants can promptly find out what is happening on their cases at any stage of the process.

Finally, if a complainant is dissatisfied with the outcome of a Police Department investigation, the complainant may request that the file of the investigation be reviewed by a member of the monitoring staff to determine whether there is anything further that can be done to try to sustain the charges. If new evidence becomes available or different avenues of pursuing the complaint present themselves, the FPC may request PPD to reopen the investigation. After this extra file review, the complainant may request a meeting by telephone or in person with the member of the monitoring staff who has conducted the extra review so that the complainant may learn what the member of the monitoring staff determined.³⁰

Recommendation 4.4: The FPC and PPD will establish a protocol on proactive communication with complainants while their complaints are being investigated and will develop procedures for answering complainants' inquiries. The FPC will develop a procedure for an extra review of a file when the complainant is dissatisfied with the result, for requesting a reopened investigation when appropriate, and for communicating with the complainant about the results of the extra review.

³⁰ Similar review processes are used in San Jose and Denver.

Chapter Five. Disciplinary Appeals Hearings

The FPC's work in conducting appeals of police department discipline garners public attention principally when the FPC is reviewing the appeal of officers discharged because of a high profile incident, such as the appeals of the officers involved in the Frank Jude beating. There has been significant public concern about the time that it takes to resolve appeals. The fact that fired officers continue to be paid during what is perceived as a prolonged appeals process has increased public dissatisfaction.

A. Procedures

A member of the Police Department can appeal discipline imposed by the Chief of Police if the discipline involves a suspension for more than five days, a demotion, or a discharge. When the Police Chief issues a disciplinary order against an officer, the officer has ten days to appeal the Chief's determination to the FPC. Section 62.50 (13).

After the FPC receives a notice of appeal from the officer, the Board must serve the officer with a notice of the time and place of the FPC appeal trial, which "may not be less than five days, nor more than 15 days" after the FPC's notice. Section 62.50 (14). The five-to-15 day "speedy trial" period for the appeal (set out in Section 62.50) is recognized by the Department, the union and the FPC as unworkable. Under the FPC's rules, officers are able to waive their rights to the five-to-15 day statutory timeline, so as to have sufficient time to prepare their case. All members do waive this trial deadline.

If department members waive their right to a five-to-15 day trial period, the FPC sets a more realistic schedule. A scheduling order is

issued setting a pre-trial conference within 30 days and a trial within 60 days. This schedule, however, is never kept. To start, there is a statutory right to an automatic adjournment of the trial, not to exceed an additional 15 days. Section 62.50 (16). This right has often been exercised by officers on the day before, or morning of, the hearing. A case may be set for trial, with witnesses subpoenaed, and the City's attorneys prepared for trial, but the trial is then adjourned. When this happens, a new date is set.

Disciplinary appeal hearings are given higher scheduling priority than citizen complaint trials. The FPC now schedules one appeal hearing per week, but it is considering scheduling two hearings a week to reduce the delays and the resulting backlog of appeals.

Appeals are conducted before a hearing examiner, who handles procedural and legal matters. Three Commission members sit as the finders of the facts.³¹ The accused officers are represented by union attorneys, and the Chief is represented by the City Attorney's office. Although Section 62.50 does not require it, the FPC applies the Wisconsin Rules of Evidence to appeal hearings, which has meant that statements and other evidence from the Police Department's investigation are generally not admitted into evidence; instead, the appeal hearing is equivalent to a full-blown trial.

The FPC Rules for disciplinary appeals state that the parties have two minutes for their opening statements and 60 minutes for each party to present its case. Rule XV, Section 12. Of course the actual trial takes

³¹ The FPC has also used a procedure whereby the hearing examiner hears the case and then the FPC Commissioners read his report and the transcript, and make their decision based on the record.

much more time, and can often last 10 to 12 hours. Some take several days.

Almost all appeals are heard by a panel of three members of the FPC. The full five-member Board has heard the appeals of only a few matters in the last 25 years, including termination of the officers involved in the Jude incident, the officers involved in the Jeffrey Dahmer matter, and the Ernest Lacy case in 1981.³² The FPC can sustain the discipline, reduce it, or increase it. If the Board sustains the violation, it then addresses the appropriateness of the penalty and examines a list of “comparable” discipline imposed in prior cases involving similar allegations. The hearing examiner writes up the decision of the FPC with findings of fact, and a Commissioner signs the opinion. After the decision is filed, the MPD officer has 10 days to appeal to Circuit Court, which can affirm, overturn or remand the case.

When there are pending criminal charges against the officer, the FPC defers the appeal hearing until the completion of the criminal case. While this is not required as a legal matter,³³ the City, as a policy matter, does not want to risk having the administrative appeal jeopardize the criminal proceeding.

Under the Wisconsin Fair Employment Act,³⁴ governmental employees—other than police officers, but including fire fighters—charged with a crime substantially related to the nature of their job can be suspended without pay. And, once discharged, no Wisconsin public

³² Ernest Lacy was a young African American who died while in police custody as a suspect in a crime he did not commit.

³³ See Franklin v. Evanston, 384 F.3d 838 (7th Circuit 2004).

³⁴ Wisconsin Statutes 111.335(b).

employees other than Milwaukee police officers are paid. Milwaukee is the only jurisdiction in Wisconsin (and apparently the only one in the country³⁵) where officers continue to get paid after they are discharged. This unique provision gives terminated officers a powerful incentive to extend the FPC appeal process for as long as possible.

B. Results of the Appeals Process

To assess the effectiveness of the FPC's disciplinary appeals process, we examined the data for the last five years of appeals. For the 132 cases of Police Department discipline subject to an appeal from April 2001 to February 2006, an appeal was filed in 120 cases.³⁶ The 12 cases in which an appeal was not taken all involved a suspension, not a discharge. In 29 cases, the appeal was withdrawn by the officer before an appeal hearing was conducted. Most of the withdrawn appeals occurred after the Police Chief reduced the length of a suspension, or as a result of a settlement agreement. Of the 120 cases in which an appeal was taken, the results were as follows:

³⁵ Representatives of the Milwaukee Police Association were similarly unaware of any other jurisdiction in the United States with such a provision.

³⁶ The number of cases is the number of discipline charges that resulted in a penalty of at least a suspension of more than five days. It is larger than the number of officers disciplined, as some officers were disciplined for multiple violations. For example, in 2001, there was one officer who was discharged for nine violations (Discipline Orders 2001-368 to 2001-376)

| Type of Discipline | Discharge | Suspension | Demotion | Total Officers |
|--|--------------------|--------------------|-----------------|------------------------------|
| Confirmed Penalty | 13 | 5 | 1 | 19 |
| Reduced Penalty | 4 | 2 | 1 ³⁷ | 7 |
| Resigned or Retired Before Trial | 13 | 3 | 0 | 16 |
| Not Guilty | 2 | 1 | 1 | 4 |
| Increased Penalty | NA | 0 | 0 | 0 |
| Withdrew Appeal | 4 ³⁸ | 25 | 0 | 29 |
| Still Pending Charge Dismissed by MPD | 12 | 4 | 1 | 17 |
| Charge Dismissed by MPD | 0 | 4 | 0 | 4 |
| Total | 48 (66 violations) | 44 (50 violations) | 4 | 96 officers (120 violations) |

As noted in the chart above, the FPC has reversed the Chief's discipline in only four of 96 cases, and upheld the Chief's decision to charge the officer, but reduced the discipline imposed, in only seven of 96 cases.

There were 12 FPC decisions appealed to the Circuit Court by officers. In each one, the Circuit Court affirmed the decision of the FPC, although in one case the FPC decision and the Circuit Court decision were reversed by the Court of Appeals, and the case is now before the FPC for a new trial.

³⁷ One officer was demoted from sergeant to police officer by the Chief. The FPC reinstated the member as a sergeant, but imposed a 60-day suspension.

³⁸ One of the officers withdrew her appeal after the discharge was changed by the Chief to a 120-day suspension.

We examined the time it takes for the FPC to rule on disciplinary appeals, from the time of the MPD's initial discipline order to the FPC's disposition of the appeal hearing. The shortest time period was 12 weeks, while the longest took three years and three months. More than one third of the cases took more than one year, including cases that were withdrawn before trial.

Our review indicates that the FPC's approach to appeal decisions is appropriate and consistent with legal requirements. Section 62.50 sets out the substantive standards for the Commission to apply in appeals and in complaint decisions. The Commission must determine that there is "just cause" to sustain the charge filed by the Chief. In making that determination, the Board is to apply the following standards (62.50 [17][b]):

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subdivision 3 was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

The "just cause" standards appropriately protect officers' due process rights. It is important to note, however, that the standard of proof in disciplinary appeals (as well as complaint hearings) is a "preponderance of evidence." Therefore, if the evidence indicates it is "more likely than not" that the violation occurred, the Board should sustain the charge. 62.50 (17)(a).³⁹

The FPC disciplinary appeals process upholds a greater percentage of disciplinary determinations than the arbitration and civil service systems in some other jurisdictions. For example, a recent study of the Chicago Police Board's actions in termination hearings in 2004 and 2005 found that of 29 officers discharged by the Police Chief, only ten of the firings were upheld by the Board. The Board sustained violations against 12 officers, but reduced the penalty to suspensions, and in seven cases found the officer not guilty of the charges.⁴⁰ For officers who were disciplined with a suspension of less than 30 days, 56 officers appealed the Chicago Police Chief's decision to the Board in 2004 and 2005. Of those appeals, the Chicago Police Board reversed or reduced the suspensions for 22 officers, almost 40 percent.

We recommend that disciplinary appeals hearings remain with the FPC.

³⁹ Matter of Owens, 362 N.W. 2d 171, 122 Wis. 2d 449 (App. 1984).

⁴⁰ See also Mark Iris, *Police Discipline in Chicago: Arbitration or Arbitrary*, 89 Journal of Criminal Law and Criminology, 1998.

C. Recommendations

While the FPC should retain its currently provided authority to conduct disciplinary appeals, several steps would help reduce the delays in the appeals process and make the process more efficient:

Recommendation 5.1: The FPC staff should hire a paralegal to process scheduling orders and to assist the hearing examiner in pre-appeals hearing procedures.

Recommendation 5.2: Change the statutory five-to-15 day deadline for disciplinary appeal trials. Everyone to whom we spoke about the appeals process acknowledged that the five-to-15 day deadline for trial is unworkable. The FPC Rules state that in cases where the statutory trial period is waived, a scheduling order shall be served setting a pre-trial hearing within 30 days, and a trial within 60 days of the scheduling order. Scheduling deadlines along these lines would be appropriate, or even a trial deadline within 60 days of the pre-trial hearing, providing the deadline is enforced. This change will require an amendment to Section 62.50.

Recommendation 5.3: The statutory automatic adjournment should be changed to a right to an adjournment for cause. Adjournments for cause should continue to be allowed to both the City and the officers appealing the charges. Currently, the automatic adjournment is used by the officer in almost every discipline appeal, creating unnecessary uncertainty and inefficiency in the scheduling of FPC proceedings. If the statutory deadline for trials is amended so that a more reasonable schedule is established for pre-trial proceedings and for trial, then the automatic adjournment will no longer be necessary or justified. This change would require an amendment to Section 62.50.

Recommendation 5.4: Sections 10 and 12 of FPC Rule XV should be changed to eliminate the language limiting opening statements to two minutes and the parties' case in chief to 60 minutes. These time limits are also unworkable. The language of the FPC Rule should provide that the Board may set time limits for each party as appropriate.

Recommendation 5.5: The FPC should continue its efforts to reduce its backlog of pending appeals and schedule appeals hearings more frequently. There are several ways that the FPC may be able to schedule disciplinary appeals hearings more quickly. The FPC is considering scheduling two hearings per week, as opposed to one hearing per week. One way this may be accomplished more easily would be to use special hearing examiners in addition to the current hearing examiner on the FPC staff. The FPC has made attempts to bring on special hearing examiners, with limited success so far. One successful effort to use a special hearing examiner occurred when retired Wisconsin Supreme Court Justice Jenine Gesky was assigned as the hearing officer for the appeals of the officers involved in the Jude assault. The City also might be able to recruit other retired judges, or county employees who currently conduct administrative employment actions for use as special hearing examiners. When the FPC begins scheduling appeals hearings twice per week, the City also will likely need to assign a second Assistant City Attorney to handle FPC appeals hearings.⁴¹ These changes would not require a statutory amendment.

⁴¹ Alternatives to the current single hearing examiner and single assigned Assistant City Attorney are needed to prevent the absence of one of these necessary actors—for vacation, illness, etc.—from halting the hearing of appeals until that person returns to work.

Recommendation 5.6: Section 62.50 should be amended so that police officers who are discharged by the Chief of Police will be terminated without pay during the pendency of their FPC appeal.

As noted above, there apparently is no other jurisdiction in the United States where officers who have been discharged continue to receive their pay until an appeal has been completed. Most police agencies have procedures for allowing the police chief to make determinations regarding whether officers should be suspended without pay during investigations of serious matters, even before a decision is made about whether the officer should be discharged. Certainly once the police chief decides to fire an officer, all law enforcement agencies, other than Milwaukee, terminate the officer's pay.⁴² It is particularly inappropriate for police officers who have been discharged based on facts that are also the subject of pending criminal charges to remain on the City payroll. Ending pay after termination would require an amendment to Section 62.50.⁴³

⁴² Making payment after termination even more anomalous, Section 62.50 does not provide the same benefit to members of the Milwaukee Fire Department who have been terminated.

⁴³ While a bill (Assembly Bill 599 [Rep. Toles]) was introduced in the 2006 legislative session to accomplish this goal, it did not pass.

Chapter Six. Policy Review

A. Function of Policy Review

As we noted in Chapters 1 and 3, one of the goals of police oversight is to go beyond the review of individual citizen complaints to assess trends or patterns of police misconduct, as well as to address community concerns about police policies and practices. Making recommendations on policy issues and identifying patterns of complaints or uses of force is a central role of citizen oversight.⁴⁴ A city's and a police department's responses to those recommendations then should be tracked and reported. The San Jose police auditor and the Los Angeles County Sheriff's Department (LASD) monitor are often cited as examples to emulate.⁴⁵ Subjects that have been addressed by LASD Special Counsel include: use of force training, early warning/identification systems, use of canines, risk management, officer-involved shootings, foot pursuits, and jail conditions.⁴⁶ Other oversight agencies to issue specific reports on police practices include: Philadelphia's Integrity and Accountability Officer (police discipline system, officer-involved shootings); New York City's Civilian Complaint Review Board (failure of

⁴⁴ See PolicyLink, *Community Centered Policing: A Force for Change* 78 (2001), note 2, at 80-81, <http://www.policylink.org/pdfs/ForceForChange.pdf>.

⁴⁵ The LASD Special Counsel uses various consulting experts for his reports, including a psychologist and sociologist, and active and retired police executives, among others, for his reviews. Recent San Jose Independent Police Auditor recommendations and police department responses can be found in <http://www.sanjoseca.gov/ipa/reports/04ye.pdf> and <http://www.sanjoseca.gov/ipa/reports/05MY.pdf>.

⁴⁶ Los Angeles Sheriff's Department, Special Counsel Merrick J. Bobb et al., *Eleventh Semiannual Report* (October 1999) (use of force training; canines), at <http://lacounty.info/11threport.htm>; *Thirteenth Semiannual Report* (December 2000) (medical care to inmates in the Los Angeles County Jails), at <http://www.parc.info/pubs/pdf/sheriffreport13.pdf>; *Fourteenth Semiannual Report* (October 2001) (officer-involved shootings), at <http://www.parc.info/projects/pdf/mbobb14.pdf>; and *Fifteenth Semiannual Report* (July 2002) (early identification system; canines), at <http://www.parc.info/projects/pdf/July02reporttext.pdf>.

officers to identify themselves when requested, execution of no knock warrants, and strip searches);⁴⁷ the Office of Police Complaints in Washington, D.C. (report on disorderly conduct arrests);⁴⁸ Seattle's Office of Professional Accountability (racially biased policing);⁴⁹ and Boise's Community Ombudsman (officer-involved shootings, tasers).⁵⁰

Our review of the FPC's work in this area has found that, while the FPC has broad power and responsibility for conducting policy review of the Police Department, it has not used these powers to their potential.

B. The FPC's Authority for Policy Review

The Milwaukee Fire and Police Commission has significant authority and responsibilities for policy reviews built into its enabling legislation, Section 62.50. These include:

62.50 (1m) Policy Review. The board shall conduct at least once each year a policy review of all aspects of the operations of the police and fire departments of the city. The board may prescribe general policies and standards for the departments. The board may inspect any property of the departments, including but not limited to books and records, required for a review under this section.

⁴⁷ See <http://www.nyc.gov/html/ccrb/pdf/nmshldanalysis.pdf>; <http://www.nyc.gov/html/ccrb/pdf/200104812pg.pdf>; and <http://www.nyc.gov/html/ccrb/pdf/stripsearchletter.pdf>.

⁴⁸ See http://occr.dc.gov/occr/frames.asp?doc=/occr/lib/occr/pdf/disorderly_conduct_policy_recommendation.pdf.

⁴⁹ See <http://www.cityofseattle.net/police/OPA/Docs/BiasedPolicing.pdf>.

⁵⁰ http://www.boiseombudsman.org/2006%20Inv%20Reports/05_0039%20Public%20Report.pdf; and <http://www.boiseombudsman.org/Ombudsman%20Special%20Report%20-%20Taser%20Study.pdf>.

62.50 (3) Rules. (a) The board may prescribe rules for the government of the members of each department and may delegate its rule-making authority to the chief of each department. The board shall prescribe a procedure for review, modification and suspension of any rule which is prescribed by the chief, including, but not limited to, any rule which is in effect on March 28, 1984.

62.50 (23) Duties of chief. The chief engineer of the fire department and the chief of police shall be the head of their respective departments. The chief of police shall preserve the public peace and enforce all laws and ordinances of the city. The chiefs shall be responsible for the efficiency and general good conduct of the department under their control. The board may review the efficiency and general good conduct of the departments. A chief shall act as an advisor to the board when the board reviews his or her department. The board may issue written directives to a chief based upon a review of the chief's department. The chief receiving a directive shall implement the directive unless the directive is overruled in writing by the mayor.

The Milwaukee City Attorney has issued recent opinions detailing the parameters of the Board's power to issue "directives" under 62.50 (23).⁵¹ These opinions state that the FPC's directives to the Police Chief are mandatory; they must be written; the only predicate for a directive is a "review;" the directive can relate to any matter relevant to the "general good conduct" of the department and is not limited to the deployment of Department personnel and resources; and that the directive process should be collaborative, given the statute's language that the chief shall act as an advisor to the Board when the Board reviews his or her department.

In addition to the FPC's annual policy review under 62.50 (1m), the Commission also conducts a performance evaluation of the Police Chief.

⁵¹Letter from City Attorney Grant Langley to FPC Executive Director Joseph Czarnezki, February 12, 2001; letter from City Attorney Grant Langley to Police Chief Arthur Jones, December 2, 2002.

This job performance review has been conducted for the last several years on a quarterly basis.

C. Recent Policy Reviews

1. Policy Reviews Listed in Annual Reports and FPC Minutes

We have reviewed the FPC's annual reports and minutes from 2000 to 2005. In its 2000 Annual Report, the FPC states that one of its strategic issues is to:

Ensure the quality of effectiveness of the Fire and Police Departments' policies, practices, and performances through appropriate utilization of the Board's oversight authority.

While each year the Annual Reports list a small number of policy reviews, these reviews do not suggest an "appropriate utilization" of the Board's oversight authority. They included:

- A review by Commission staff of quarterly "quality of life" citations (curfew, disorderly conduct, loitering, graffiti, littering, loud music, pedestrian violations, public drinking, and traffic violations), to examine the possibility of racial profiling (2000, 2001). The staff concluded in both years that the "results are thus far inconclusive."
- The Board formed a working group to address problems of noise and vandalism related to alcohol consumption by University of Milwaukee-Wisconsin students (2001).
- The Board created an Ad Hoc Committee on Cultural Diversity in 2001.

- The Policy Committee reviewed Police Department transfer policies after Chief Jones transferred a large number of officers in November 2001.
- In April 2003, the FPC appointed an Ad Hoc Committee to propose remedies to negative attitudes and behavior in the Police and Fire Departments towards their lesbian, gay, bisexual and transgender (LGBT) members.⁵²

There is one item that is particularly noteworthy. On December 3, 2002, the FPC issued a written directive to Chief Jones to “prepare a comprehensive written plan to reduce homicide and other firearms-related crime.” Chief Jones presented his plan to the FPC on January 9, 2003, which, according to the FPC annual report, included a Violent Crime Task Force and a Citizen Police Academy. This was the first and only directive that the FPC has issued to the Milwaukee Police Chief.

2. Quarterly Reviews

From at least 2000 to the present, the FPC has conducted quarterly reviews of the performance of the police and fire chiefs. We have reviewed the FPC’s request for data from the Police Chief prior to these reviews, and some of the responses sent by the Chief to the FPC. For the most part, these inquiries request crime statistics, budget information, and the number of uses of force and citizen complaints

⁵² The Ad Hoc Committee consisted of 16 members of the Departments, unions, and community at large, nine of whom were openly lesbian or gay. As noted in the Committee report, in addition to the Committee members, there was an anonymous advisory group of LGBT members of the Fire and Police Departments and their LGBT allies. The October 2003 Committee report identified problems of workplace harassment and the perception that the command staff tolerated a level of harassment. To address these problems, the Committee developed a “climate survey” to gauge Department members’ attitude toward LGBT members; proposed improved LGBT diversity training (both in-service and recruit training) in both Departments, and directed the chiefs to take a leadership role in implementing and enforcing Department equal opportunity policies.

against Department members.⁵³ In addition to these statistical requests, which are included in every quarterly letter from the FPC, several of the letters ask for additional information about specific programs or policy issues.

For example, the May 2004 letter stated that the Board may “wish to have an update on the new Gang Crimes Unit and how it will address gun seizures,” and that it “may wish to know if internal disciplines have now been decentralized and whether the proposed discipline matrix is now in place.” The August 2004 letter states that the Board “may wish to know if you plan to continue the focus on quality of life,” as well as the Chief’s “analysis of the latest murders and beatings that have been occurring in the City.” Other issues for discussion included the Chief’s proposed change to the burglar alarm policy.

Quarterly letters in 2005 requested information about an early intervention program; the Milwaukee Homicide Project; the status of MPD’s computer system; the verified burglar alarm response policy; the cultural competency program; and an update on MPD’s Directed Patrol Mission.

While the FPC’s Annual Reports state that the Board has developed “performance objectives” for the Chief and for the Department, these performance objectives are not listed. Nor does the Board report on whether the Chief and the Department have met any of those objectives.

⁵³ In the January 2003 letter to the Chief, the information requested from the Chief included: data on index crime rates and index crime clearance rates (index crimes are Part 1 crimes, listed in the FBI’s Unified Crime Reports); the number of guns confiscated, gun-related crimes and shootings; traffic citations, traffic crashes, and traffic and pedestrian deaths; “quality of life” citations; budgeted amounts and department spending for salaries and overtime; number of internal investigations; and “any other information which you believe would be of value to the Board during its policy review and review of the efficiency and general good conduct of the Police Department.”

Because the FPC's quarterly reviews are not held in open FPC meetings and their results are not reported, there is no way for the public to assess whether any policy issues have been addressed, or whether the FPC has held the Chief and the Department to account in terms of performance objectives.⁵⁴

D. Conclusions Regarding Policy Review

The FPC has made limited use of its policy review function. The bulk of its time has been spent on personnel issues, disciplinary appeals, and the complaint process. While the Commission has responsibility for policy review, it has not established a program of systematic monitoring or auditing of the MPD, analysis and study of MPD policies and procedures, or of trends in complaints or the MPD use of force. There have been very few in-depth studies of particular aspects of MPD operations, other than the work of the Ad Hoc Committee on Cultural Diversity and the Ad Hoc Committee on LGBT issues. While there have been quarterly reviews of the Police Chief's and the Police Department's performance, it is difficult to assess whether the reviews have led to any recommended changes. Instead, we find:

- No audits of FPC citizen complaints, nor any audit or evaluation of complaints received and investigated by MPD;
- While there has been a review of MPD diversity training (which we agree is critical), there appears to be no review and evaluation of any other training, including such issues as use of force, search and seizure, citizen interaction and communications skills, etc.;

⁵⁴ In addition, Section 62.50 grants the FPC the authority to make new rules for the Milwaukee Police and Fire Departments. The FPC has delegated this authority to the chiefs, but any new rules must be approved by the FPC.

- Limited collection and analysis of MPD use of force information, or evaluation of MPD's efforts to analyze its own use of force statistics;⁵⁵
- No evaluation of MPD risk management, although there have been inquiries regarding MPD's efforts to purchase and implement an early intervention system;
- No review of civil actions and tort claims relating to MPD actions;
- No surveys or focus groups of complainants after disposition of FPC complaints, to assess their satisfaction with the process; nor any surveys of or input from complainants who went through the MPD complaint process;
- No surveys of the public regarding attitudes and views of the Police Department and the FPC;
- There has been only one "directive" and only a few recommendations, with little tracking and documentation of responses;
- The only analysis included in the FPC's annual reports is that for the years 2000-2003, the FPC cites the "overall disciplinary action, termination, resignation, and citizen complaint rate for police and fire academy graduates in their first four years of service." For several reasons, these statistics are of little value. First, the Police and Fire Department statistics should not be combined; second, a more useful analysis would examine what kinds of behaviors generated these actions, and what could be done to improve those behaviors or better monitor them.

⁵⁵ In 1998 and 1999, FPC staff did a preliminary review of MPD officers' use of force incidents (from 1994-1998), with correspondence from the FPC to the Chief of Police seeking a response. MPD use of force statistics do not seem to have been reviewed since that time. The FPC staff indicates that one reason is that the data from MPD is in a different format and more difficult to analyze.

The FPC Commissioners are volunteers, and they are not appointed as experts on particular aspects of law enforcement operations. The Commission's staff and resources have not been organized effectively to accomplish the FPC's policy review function. This problem has been exacerbated by the decrease in staffing and resources of the FPC since 2003, but even before then, the FPC staff was not structured in such a way to effectively support documented and thorough policy review by the Commissioners.

E. Recommendations

Recommendation 6.1: The Monitor should work with the Commission to compile a list of areas to evaluate, and assist the Commission in developing its agenda on policy matters. Issues that should be addressed by an oversight agency would include: (1) Use of force reporting and investigations; (2) Use of force policies, including weapons issues such as Tasers; (3) officer-involved shootings, including shooting at moving vehicles and off-duty shootings; (4) risk management, accountability, and an early identification system; (5) review of police training, including Academy recruit, in-service and Field Training Officer (FTO) programs; (6) although under our recommendations, the FPC will not be doing individual officer hiring and promotions, the FPC still should be involved in policy issues regarding standards for officer hiring, promotions and retention; it also should have continued oversight over non-discrimination issues within the Department; (7) policing strategies and crime prevention (e.g., COMPSTAT systems, Community Oriented Policing and Problem Oriented Policing); (8) police-community relations, including continued work with the Milwaukee Commission on Police Community Relations (MCPCR);⁵⁶ relations with the Milwaukee Latino

⁵⁶ The mediation agreement creating the MCPCR identified the following issues and concerns "that may significantly affect public perception of the police department,

community, specifically issues relating to bilingual officers, translation assistance, and concerns about harassment of non-English speakers; (9) concerns about racial profiling; (10) police policy, practices and training regarding routine daily encounters, including police stops and questioning.

Recommendation 6.2: The Independent Monitor and staff should engage in research and review of police policies and patterns. The FPC staff should include a research and policy manager, a research and policy specialist, and a part-time research analyst. The Monitor and staff should present their analyses and findings to the Commission, and the Commission should incorporate these efforts in their reports.

Recommendation 6.3: The findings and recommendations from policy reviews and performance reviews should be documented, and should be provided to the Milwaukee Police Department in written correspondence. The FPC should then track the Police Department's responses to the recommendations and any Police Department actions taken.

including those Department policies and procedures that generate the greatest amount of controversy and/or citizen complaints:" police procedure; police training; police recruitment; community oriented policing and police/community interactions; youth relations; budget and programs. The agreement also created subcommittees on video camera equipment and use; cultural awareness/diversity and training; customer service; use of force – policy, procedures and equipment; and youth relations. <http://www.ci.mil.wi.us/display/displayFile.asp?docid=11923&filename=/User/jdimow/Agreement052505.pdf>. The specific issues identified in the MCPCR agreement should form the start of the FPC's policy review agenda.

Chapter Seven. Community Outreach

A. Importance of Outreach

One of the responsibilities of a police oversight entity is to publicize the citizen complaint process to the public and conduct outreach so that residents in the community are aware of how the oversight system works. Outreach also plays an important role in educating the public about police practices and procedures. The FPC should publicize its efforts and familiarize the public with its responsibilities. On this front, the FPC efforts are limited.

It is difficult to measure the public's awareness and understanding of the FPC role, other than through surveys and focus groups, which have not been conducted. Our sense from our site visits and public media is that many members of the general public know little about the FPC and what its responsibilities are. The fact that 90 percent of citizen complaints about police behavior go directly to the MPD, rather than to the FPC may reflect limited public knowledge of the FPC complaint process. Alternatively, it could reflect the opposite—knowledge of the FPC, but a lack of confidence in the FPC complaint process, given the extremely limited success of FPC complainants in obtaining sustained findings. Certainly, our meetings with community members suggest a public view of the FPC as ineffective, and some perceive the Commission as “captured” by the Milwaukee Police Department.

Public reports, at a minimum annually, are a significant tool in building an oversight agency's credibility. These reports should describe not only the activities of the oversight entity, they should also provide the public with a source of information on complaints trends or patterns, police use of force, and other police practices. Annual reports should be disseminated widely, certainly to the media outlets in the jurisdiction,

and should be posted on the websites of both the oversight agency and the police department. Examples of good periodic reports include those from the San Jose Independent Police Monitor, the Los Angeles Office of Independent Review, the Special Counsel to the Los Angeles County Sheriff Department, the Sacramento Office of Public Safety Accountability, and the District of Columbia Office of Police Complaints.⁵⁷

B. Current FPC Outreach Efforts

Prior to 2003, the FPC had two staff members whose role included public relations and community outreach. These positions were terminated for budget reasons after the FPC staff merged with DER, thereby eliminating most of the Commission's capacity for outreach. Except for publicity and outreach regarding Police Department recruitment and examinations, the FPC's outreach is mostly limited to the work of the Executive Director, who participates in meetings of the Milwaukee Commission on Police Community Relations, and engages in a limited number of visits to community groups, schools, and other events.

The FPC does have a website, www.ci.mil.wi.us/display/router.asp?docid=312, which includes web pages on the background of the FPC; FPC Board members; FPC Rules; Fire and Police Department job opportunities; FPC calendar and the

⁵⁷ See, e.g., reports from the San Jose Independent Police Monitor (www.sanjoseca.gov/ipa/reports/05ye.pdf); LASD Office of Independent Review (<http://laoir.com/reports/OIRFall05.pdf>, <http://laoir.com/reports/2005.pdf>); LASD Special Counsel (<http://www.parc.info/pubs/pdf/20th%20semiannual%20report.pdf>); Sacramento Office of Public Safety Accountability (http://www.cityofsacramento.org/cityman/pdfs/2005_OPASA_Annual_Report.pdf); DC Office of Police Complaints (www.policecomplaints.dc.gov/occr/frames.asp?doc=/occr/lib/occr/info/docs/Annual_Report_FY05_Final.pdf)

agenda for the most recent or upcoming FPC meeting; Annual FPC Reports and Annual Public Safety Reports; a guide to citizen complaints; the CRS Mediation Agreement creating the MCPCR; and the Report on Attitudes toward LGBT members of the Police and Fire Departments. Regarding citizen complaints, the website has a link to a “complaint inquiry,” which can be completed and submitted online, but this complaint inquiry is not a formal complaint. The FPC also prints hard copies of the guide to citizen complaints, and a brochure with background on the FPC, but it appears that since the staff retrenchment, dissemination of these publications is minimal.

Each year, the FPC publishes an Annual Report and a Public Safety Report. The FPC Annual Reports are slow to be prepared and are not particularly informative to the general public. The last one completed was the 2004 Annual Report, which was published on the website, but not printed in hard copy and disseminated. As noted in the previous chapter, the annual reports have limited information: the reports do not include any FPC policy recommendations and whether there were any MPD responses, and include only limited information regarding MPD actions related to accountability. The reports list aggregate statistics regarding complaints and their results, but do not provide information about any individual complaints. Nor do the reports include an analysis of any patterns or concerns regarding complaints, the reasons why complaints were dismissed, or the number and outcome of trials on complaints.

With respect to public meetings and input, FPC Board meetings are open to the public and public meeting notices are required, but as a general matter, there is no public comment period during FPC meetings. There appears to be very limited public attendance and public input at Board meetings. The FPC has held some meetings in the Milwaukee

neighborhoods in addition to City Hall, including a June 1, 2006 meeting at the Holy Redeemer Institutional Church of God in Christ, with presentations on Project Safe and Sound, and the Milwaukee Commission on Police Community Relations, as well as an overview of the FPC's functions. There was a public comment session following remarks from Fire Chief Wentland and Police Chief Hegerty.

C. Recommendations

Recommendation 7.1: The Board should include a public comment period on agendas for meetings. Another avenue for community concerns regarding police practices would be for the FPC to work with the Police Department to hold forums and meetings in the community on police-community relations. One of the functions of an oversight body is to allow the public to comment on the operations of the police department and broach concerns. While opening up meetings to public comment may result in some meetings becoming "gripe sessions," it can be a valuable opportunity for airing concerns and grievances. The FPC should allow public comment, but it can limit individuals' comments to a reasonable time period (some jurisdictions limit individuals to two minutes for comments) and restrict comments to those directly relevant to MPD and FPC activities.

Recommendation 7.2: The FPC should hold meetings in various community locations at least once every calendar quarter.

Recommendation 7.3: The FPC should hire a community relations manager, responsible for community outreach and public relations. The new features and functions of the Monitor would be just one area that should be disseminated to the public. The FPC should also review whether their outreach and publications are sufficiently accessible

to persons with limited English abilities, or whether Spanish-language versions should be available.

Recommendation 7.4: The FPC should improve its public reports to make them more user-friendly, substantive, and timely. Starting in 2007, the FPC should issue a mid-year report, as well as an annual report. The FPC should also issue policy reports when the Commission and the Monitor engage in policy review. The FPC's annual reports are an opportunity for the public to measure the performance and effectiveness of the FPC. To a great extent, the measure of an oversight agency's success will not be based on numbers (complaints reviewed, recommendations on policy made, etc.), but instead will be based on the impact of its efforts: has it been able to effect change in the police department; has it helped increase trust between the police department and the community? However, there are specific items on which the FPC should report, to provide some basis for assessing its impact. A list of these items is included in Appendix 3.

Recommendation 7.5: The FPC should coordinate with the MPD and undertake survey efforts to measure public awareness and recognition of the FPC's work, and to measure the public perceptions of the effectiveness and accountability of the Milwaukee Police Department. Such surveys have been conducted in Cincinnati, Seattle, New York City, Denver and elsewhere.⁵⁸

⁵⁸ "Police-Community Relations in Cincinnati," RAND Corporation 2005, www.rand.org/pubs/technical_reports/TR333/; "Assessing Police-Public Contacts in Seattle, Washington," Vera Institute of Justice 2004, www.cityofseattle.net/police/Publications/Special/VeraInstituteStudy.pdf; "The Processing of Complaints Against Police in New York City," Vera Institute of Justice, 1989; "Measuring Complainant and Officer Satisfaction with the Denver Police Complaint Process," Office of the Independent Monitor, 2006, www.denvergov.org/OIM/template325775.asp.

Chapter Eight. Full List of Recommendations

A. Recommendations⁵⁹

Recommendation 3.1: The Fire and Police Commission should reorganize its staffing and structure to institute a monitor model of oversight that will review citizen complaint and internal Police Department investigations and issue public reports on the quality and fairness of those investigations. The chief FPC staff person will be designated the Independent Monitor. The Common Council should enact enabling legislation that establishes the Independent Monitor's authority and functions.

Recommendation 3.2: The Independent Monitor should report to the Fire and Police Commission. The Monitor should be appointed by the Mayor for a term of four years from a list of three candidates deemed by the Commission to be well-qualified for the post. The appointment should be subject to the confirmation of the Common Council. Removal of the Monitor during the four-year term should be only for cause as determined by the Commission.

Recommendation 3.3: The Fire and Police Commission should conduct a nationwide search for a well-qualified Independent Monitor.

Recommendation 3.4: The FPC should be restored to full autonomy, with a budget and staff fully independent of DER.

Recommendation 3.5: The personnel-related functions of the FPC should be spun off to another agency. The function of selecting the Chief of Police, however, should remain with the FPC.

⁵⁹ The City will have to consider which of the changes it is instituting for the Police Department should also be applied to the Fire Department and how the recommendations of this report—that apply only to the Police Department—might be adapted to the Fire Department.

Recommendation 3.6: The FPC staff should include three monitoring staff, three research/policy/hearing staff, a community relations manager, and two support staff.

Recommendation 3.7: Provided that the Commission is authorized to hear and decide disciplinary appeals in panels of three members, the Commission should be expanded to seven members. The Commissioners should continue to serve staggered five-year terms, which foster the right balance of experience and fresh perspectives.

Recommendation 3.8: Steps should be undertaken to encourage talented citizens to serve on the FPC. Commissioners and their immediate family members should not be, or have been, members of the Milwaukee Police Department. Also, it is desirable that at least one Commissioner be a lawyer.

Recommendation 3.9: Commissioners should attend the Police Citizen Academy shortly after appointment. They should also participate in police ride-alongs.

Recommendation 3.10: FPC staff, in conjunction with the Commissioners, should develop an internal training program for new Commissioners that includes instruction on the policies and practices of the FPC and MPD.

Recommendation 3.11: As part of their initial training, Commissioners should also meet with representatives of the African American, Latino, Asian, and Gay/Lesbian/Bisexual/Transgender communities to hear their perspectives on the Police Department and police misconduct.

Recommendation 4.1: The FPC complaint process should be discontinued. Civilian complaints made to the FPC should be referred to

the Police Department for a thorough investigation and the results reviewed by the FPC's new monitoring staff.

Recommendation 4.2: The FPC will continue to accept complaints of police misconduct from the public and may arrange, as it does now, for community organizations also to accept complaints.

Recommendation 4.3: The FPC should collaborate with PPD in establishing protocols for a conciliation process which will be administered by the FPC.

Recommendation 4.4: The FPC and PPD will establish a protocol on proactive communication with complainants while their complaints are being investigated and will develop procedures for answering complainants' inquiries. The FPC will develop a procedure for an extra review of a file when the complainant is dissatisfied with the result, for requesting a reopened investigation when appropriate, and for communicating with the complainant about the results of the extra review.

Recommendation 5.1: The FPC staff should hire a paralegal to process scheduling orders and to assist the hearing examiner in pre-appeals hearing procedures.

Recommendation 5.2: Change the statutory five-to-15 day deadline for disciplinary appeal trials.

Recommendation 5.3: The statutory automatic adjournment should be changed to a right to an adjournment for cause.

Recommendation 5.4: Sections 10 and 12 of FPC Rule XV should be changed to eliminate the language limiting opening statements to two minutes and the parties' case in chief to 60 minutes.

Recommendation 5.5: The FPC should continue its efforts to reduce its backlog of pending appeals and schedule appeals hearings more frequently.

Recommendation 5.6: Section 62.50 should be amended so that police officers who are discharged by the Chief of Police will be terminated without pay during the pendency of their FPC appeal.

Recommendation 6.1: The Monitor should work with the Commission to compile a list of areas to evaluate, and assist the Commission in developing its agenda on policy matters.

Recommendation 6.2: The Independent Monitor and staff should engage in research and review of police policy and patterns. The FPC staff should include a research and policy manager, a research and policy specialist, and a part-time research analyst.

Recommendation 6.3: The findings and recommendations from policy reviews and performance reviews should be documented, and should be provided to the Milwaukee Police Department in written correspondence. The FPC should then track the Police Department's responses to the recommendations and any Police Department actions taken.

Recommendation 7.1: The Board should include a public comment period on agendas for meetings. Another avenue for community concerns regarding police practices would be for the FPC to work with the Police Department to hold forums and meetings in the community on police-community relations.

Recommendation 7.2: The FPC should hold meetings in various community locations at least once every calendar quarter.

Recommendation 7.3: The FPC should hire a community relations manager, responsible for community outreach and public relations.

Recommendation 7.4: The FPC should improve its public reports to make them more user-friendly, substantive, and timely. Starting in 2007, the FPC should issue a mid-year report, as well as an annual report. The FPC should also issue policy reports when the Commission and the Monitor engage in policy review.

Recommendation 7.5: The FPC should undertake survey efforts to measure public awareness and recognition of the FPC's work, and to measure the public perceptions of the effectiveness and accountability of the Milwaukee Police Department.

Recommendation 8.1: The Mayor and the Common Council should make the budgetary decisions and approvals necessary to fund an effective monitor-model FPC.

Recommendation 8.2: In its ordinance defining the Independent Monitor's powers and responsibilities, the Common Council should provide for an evaluation of the Fire and Police Commission, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms.

B. Potential Schedule and Action Plan

We propose the following action plan and schedule to implement the recommendations we have made. We divide the actions to be taken into three principal time periods: July to September, 2006; October to December, 2006; and January to June, 2007. For recommendations that require continuing action, we note when that action should start.

1. July to September, 2006

Obtain all necessary approvals from the Fire and Police Commission, the Mayor, and the Common Council to reorganize the FPC's structure and staffing, including making the FPC independent of the Department of Employee Relations.

The Common Council should pass an ordinance defining the powers and responsibilities of the Independent Monitor.

Consider which of the changes the City is instituting for the Police Department should also be applied to the Fire Department and how the recommendations of this report might be adapted to the Fire Department.

Determine how and by which department or departments the personnel-related functions of the FPC would best be fulfilled.

Formulate job descriptions for all staff members of the revamped FPC, including the Independent Monitor.

The Mayor and the Commission should agree that the Independent Monitor will report only to the FPC.

Plan a national search for the Independent Monitor.

The Mayor should follow this report's recommendations in filling the Commissioner position that becomes open in July.

Make the necessary plans to fulfill the recommendations for training of the Commissioners, including formulating the training for the new

Commissioner scheduled to be appointed in or about July, unless the current Commissioner whose term expires is reappointed.

Implement the continuing ride-along requirements for all Commissioners.

The Commission should amend Sections 10 and 12 of FPC Rule XV that restricts the length of opening statements to two minutes and the parties' case in chief to 60 minutes.

The Commission and its staff should schedule disciplinary appeals more frequently and take the other steps we recommend to reduce the backlog of appeals that do not require amending Section 62.50.

The Commission should begin scheduling meetings in the community on a quarterly basis.

The Commission should institute a public comment period as a regular part of its meeting agendas.

The Common Council should provide by ordinance for an evaluation in 2009 of the FPC, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms.

2. October to December, 2006

The Commission should conduct a national search for an Independent Monitor and send the Mayor the names of three well-qualified candidates.

The Mayor should appoint the successful applicant for the Independent Monitor position, and seek confirmation from the Common Council.

The other staff positions to be filled should be posted and the initial screening of candidates begun so that the Independent Monitor may select the needed staff without unnecessary delay.

Implement the recommendations relating to training for Commissioners not put in place in the prior calendar quarter, including attendance in a Police Citizen Academy by all Commissioners who have not previously attended the Academy.

The Independent Monitor should start making selections to fill staff positions.

The City should take the necessary steps to identify and work with sponsors of the legislation needed to implement this report's recommendations for amendments to Sections 62.50 and 62.51, specifically:

- Placing the FPC's personnel-related functions in one or more of the City's executive departments;
- Expanding the Commission to seven members;
- Providing that complaints may be made to the FPC or the Police Department, and that all complaints will be investigated and determined by the Police Department;
- Modifying the 5-15 day deadlines for disciplinary appeals to practical time periods;
- Eliminating the automatic adjournments in disciplinary appeal cases;
- Eliminating pay for officers after they have been terminated by the Chief of Police, unless those officers are reinstated and back pay is awarded; and

- Removing the Independent Monitor from the Mayor's Cabinet.

3. January to June, 2007

Seeking passage of the legislation needed to implement the recommendations of this report (the specifics of the needed legislation are noted above).

The Independent Monitor should finish making selections to fill staff positions.

FPC staff should draft appropriate outreach materials and should proactively reach out to all who have a stake in the work of the FPC, to educate as many as possible on the oversight functions and procedures of the FPC.

The Independent Monitor should work out protocols (for adoption by the FPC) with the Police Department for monitoring citizens' complaint investigations and internal investigations, for communication with citizen complainants, and for conciliation of citizens' complaints.

The Independent Monitor should implement the monitoring and conciliation processes for citizens' complaints being processed by the Police Department.

The Independent Monitor should identify issues that the FPC and its staff should evaluate, and should assist the FPC in setting its policy agenda.

The FPC's and its staff's findings from policy reviews and performance reviews should be provided to the Police Department in writing, and the Police Department's response to those findings should be tracked.

Issue 2006 Annual Report and any appropriate policy reports.

Implement the legislative changes that are enacted.

4. August-September, 2007

Issue a mid-year report on the activities of the FPC and its staff, in particular relevant oversight activities.

5. March, 2008

Issue a comprehensive, user-friendly, informative 2007 annual report.

6. March-June, 2009

Evaluate the new structure of the FPC and its staff, the need for structural improvements, and the effectiveness of the reforms implemented as a result of this report.

Most of our recommendations can be implemented by the City of Milwaukee and its agencies without approval from any other body. The only exceptions are the changes to Sections 62.50 and 62.51 which require action by the Legislature and the Governor. While these legislative changes are important and would significantly help the FPC become an effective oversight body, the rest of our recommendations can be implemented without any statutory changes. We therefore strongly recommend that the City and the FPC proceed to implement all of the recommendations that do not require legislative changes as soon as is practicable. If and when the statutory amendments are enacted, the City

and the FPC can implement the additional changes authorized by the Legislature.

If the Legislature declines to pass any of the recommended statutory changes, most of the reforms we propose can still be implemented. While the failure to enact the recommended statutory changes will require adjustments to some specific aspects of our proposals, most of our central and essential recommendations can and should be implemented by the City, even without legislative approval.

C. Budget Implications of Recommendations

We roughly estimate that the salaries and fringe benefits for the increased staffing of the FPC will cost an additional \$400,000 a year. We do not estimate the other costs involved, but note that the FPC will need its own office with the costs attendant to its restored independent status and sufficient funds to support all the additional functions it is assuming. We recognize that the City of Milwaukee faces very difficult budgetary challenges, but the need for police oversight is too compelling not to fund an effective process.

In the long-run, effective oversight saves money. In 1992, Los Angeles County hired a Special Counsel, Merrick Bobb, to monitor the Los Angeles County Sheriff's Department—which has 4,000 deputies on patrol, and runs the county's jails—in large measure to reduce the huge sums the county was paying for judgments and settlements for misconduct by deputies. While the County of Los Angeles paid out \$17 million in force-related judgments and settlements in 1995-96, it paid

out only \$6 million for such judgments and settlements in 2001-02.⁶⁰ While it cannot be claimed that the savings were exclusively the result of Special Counsel's monitoring, oversight played an important role in the savings.

In addition, perceptions of continued serious police misconduct negatively impact business, reducing the City's tax base and thereby costing many times what is needed to fund an effective FPC. In April 2006, following the acquittal of three off-duty police officers for the savage beating of Frank Jude, the Business Council, an affiliate of the Metropolitan Milwaukee Association of Commerce, wrote Mayor Barrett and Chief Nannette Hegerty stating that police misconduct particularly toward people of color damages the City and its image to the extent that talented young professionals decline to live in or move to Milwaukee.

Recommendation 8.1: The Mayor and the Common Council should make the budgetary decisions and approvals necessary to fund an effective monitor-model FPC. The needed funds should be included in the 2007 budget so that all the staffing changes can be implemented by January 2007. It would be highly desirable to appropriate some supplemental money for 2006 to allow the transition to the revamped Commission to begin this calendar year. At the least, funds should be found to establish the FPC's new office this fall so that the substantive work of the new monitoring staff is not impeded by logistical delays.

⁶⁰ Special Counsel Merrick J. Bobb and PARC, *16th Semiannual Report on the Los Angeles County Sheriff's Department*, at 109 (2003), <http://www.parc.info/pubs/index.html>.

D. Evaluation of the Revamped Fire and Police Commission

The recommendations in this report call for a significant revamping and strengthening of the Fire and Police Commission. Central to the recommendations is building a monitor model into the staff of the FPC. Based on our knowledge of the effectiveness of the monitor model in the jurisdictions which use it, we have confidence that the model, if appropriately implemented, will increase police accountability in Milwaukee.

Because of the importance of police oversight to the social fabric of this city, it is critical that the community be informed whether the reforms were effectively implemented. We recommend that an evaluation of the reforms and their implementation be conducted by an independent expert not later than June 2009, three years after the issuance of this report. Previous recommendations relating to the Fire and Police Commission were put on a shelf; Milwaukee cannot afford to repeat that mistake again.

Including a requirement for a future evaluation as part of the ordinance that defines the authority of the Independent Monitor would be the best way to ensure that the evaluation takes place, and ensure that the public learns how effective the reforms have been and whether further improvements are needed. When Albuquerque enacted an ordinance creating its police oversight system, the City Council wrote into the ordinance a requirement that, after the ordinance had been in effect for 18 months, the city should hire an independent consultant “to undertake a complete evaluation and analysis of the entire Police

Oversight Process, and recommend any necessary changes or amendments that would appropriately improve the process.”⁶¹

Recommendation 8.2: In its ordinance defining the Independent Monitor’s powers and responsibilities, the Common Council should provide for an evaluation of the Fire and Police Commission, the reforms adopted as a result of this report, and the effectiveness of the implementation of those reforms. We recommend that the evaluation be conducted by an independent expert and be completed not later than June 2009.

⁶¹ Albuquerque City Ordinance 31-1998. Albuquerque Code of Ordinances 9-4-1-11 (2004) currently requires that its police oversight system be evaluated by an independent consultant every four years.

APPENDIX 1

Qualifications of PARC and Richard Jerome, PC

The Police Assessment Resource Center and Richard Jerome are experts in police practices, auditing and evaluation, and police oversight. We have experience working with jurisdictions in formulating law enforcement policies, objectively assessing the internal affairs, citizen complaint and disciplinary systems of public safety agencies, and evaluating law enforcement risk management.

PARC is a non-profit organization that, in cooperation with police monitors, law enforcement executives, civic and government officials, and other interested constituencies, aims to strengthen police oversight so as to advance effective, respectful, and publicly accountable policing. PARC is the only organization working with local jurisdictions that is exclusively dedicated to police oversight issues. Based in Los Angeles and New York, PARC serves as an honest broker of information accessible to all who may be interested in police oversight and reform throughout the United States. PARC publishes the *Police Practices Review* newsletter that is widely read across the nation by police executives and those involved in police oversight and accountability.

PARC's President, Merrick Bobb, has served since 1993 as Special Counsel to the Los Angeles County Board of Supervisors, in which capacity he and PARC monitor the Los Angeles County Sheriff's Department (LASD), the fourth largest police agency in the United States. Deputy Director Oren Root, who heads PARC's New York office, supervises PARC's work with specific jurisdictions, such as accountability audits, the officer-involved shooting reports in Denver and Portland, Oregon, and the monitoring of the police department in Wallkill, New York.

Richard Jerome is the President of Richard Jerome, PC, a firm providing legal and consulting services specializing in police reform. Jerome is the Deputy Monitor and court-appointed Special Master for two police reform settlements in Cincinnati, which are designed to implement police reforms, over a period of five years, in the areas of police use of force, citizen complaints, risk management, training, and bias-free policing. From 1997 to 2001, Jerome served as Deputy Associate Attorney General, overseeing the work of the U.S. Department of Justice's Civil Rights Division and Community Relations Service. He coordinated the Department of Justice's efforts to promote police integrity and its responses to racial profiling, an issue on which he continues to work.

PARC and Richard Jerome have worked together on several oversight projects, including a review of the City of Albuquerque's police oversight mechanisms, and a review of the Portland Police Bureau's officer-involved shootings.

In its work across the country, PARC has acquired broad knowledge of the varied mechanisms for resolving complaints against the police and appeals by the police from discipline. In 2005, PARC completed a survey of U.S. oversight mechanisms, detailing the characteristics and procedures of 30 such entities from around the country. In the report, which categorized oversight bodies by the functional role they play, PARC traced the history of police oversight from the 19th century to the present. PARC's work requires that it keep current with legal and policy developments relating to oversight across the country. Richard Jerome's experience has similarly provided him with a broad perspective and detailed knowledge of police oversight in the United States. We have drawn on our expertise in this area, supplemented with research by PARC staff, to evaluate Milwaukee's

police oversight process and to make recommendations for improvements based upon our knowledge of what works in the oversight field.

APPENDIX 2

ACKNOWLEDGMENTS

PARC and Richard Jerome would like to thank the Commissioners and staff of the Fire and Police Commission, led by Chair Leonard Sobczak and Executive Director David Heard, for their cooperation and assistance throughout this project. The information they provided with a commendable lack of defensiveness and the documents they located for us were indispensable. Particular thanks go to Maria Monteagudo, Director of the Department of Employee Relations, who served as our principal liaison to City government and who was helpful in countless ways large and small throughout this review.

We are grateful to the many citizens, community leaders, and government and union officials of the City and County of Milwaukee who generously shared their knowledge and opinions with us. Without their insights this report would be seriously incomplete. Special thanks to Ramon Candelaria, Tyrone Dumas, and State Senator Lena Taylor for chairing the three public meetings we conducted.

We are appreciative of the assistance and invaluable information we received from Police Chief Nannette Hegerty, PPD commanding officer Capt. Mary Hoerig, and other members of the Milwaukee Police Department. City Attorney Grant Langley and his staff deepened our understanding of the legal provisions relevant to the Fire and Police Commission and provided helpful interpretations of the pertinent law.

The City of Milwaukee funded this project through generous grants from the Helen Bader Foundation and the Greater Milwaukee Foundation. We appreciate the funders' concern for effective police oversight.

Finally, we thank the City of Milwaukee and Mayor Thomas Barrett for the opportunity to conduct this review and to use our knowledge of police oversight to assist the Fire and Police Commission to more effectively serve all the people of Milwaukee in the years to come.

APPENDIX 3

ITEMS FOR FPC ANNUAL REPORTS

Citizen Complaints

- MPD complaints reviewed and audited by the Independent Monitor
- MPD complaint investigations reopened, or additional investigative efforts undertaken as a result of the Monitor's recommendations or direction
- Changes in MPD citizen complaint procedures or investigative procedures as the result of the Monitor's recommendations or reports
- Citizen complaints where the Monitor met with complainant to address complainant's concerns after an MPD investigation; concerns addressed by explanation and information provided by the Monitor, or by the Monitor seeking additional actions by MPD
- Cases conciliated by FPC staff or other trained conciliators; number of conciliations successfully resolved
- FPC's analysis of complaint patterns and trends
- Surveys of complainants to assess complainant's perceptions of fairness of the complaint process; surveys of MPD officers for their perceptions of the complaint process

Internal investigations and officer-involved shootings

- Internal investigations and serious force incidents reviewed and audited by the Monitor
- MPD investigations reopened or additional investigation conducted as the result of the Monitor's recommendation or direction

- Changes in MPD internal investigation procedures resulting from the Monitor recommendations

Disciplinary Appeals

- Results of disciplinary appeals
- Reduction in backlog of appeals
- Reduction in length of time between appeal filed and appeals hearing held
- FPC determinations upheld by Circuit Court

Policy Review

- Analysis of MPD policies, procedures and practices; particularly use of force, training, risk management issues
- Analysis of force statistics, including officer-involved shootings
- Tracking FPC recommendations on policy, tactics and training, and MPD's responses
- Policy recommendations accepted by MPD, or other actions taken by MPD in response to FPC recommendation

Outreach and Publicity

- Documentation of public forums and meetings with community groups
- Surveys of the public regarding knowledge of the FPC, public perception of FPC (surveys would not need to be conducted annually)
- Surveys of MPD officers regarding perceptions of the FPC
- Surveys of the public regarding perception of the MPD