

ROADMAP TO REFORM

STRENGTHENING THE ACCOUNTABILITY MECHANISMS OF THE SAN FRANCISCO POLICE DEPARTMENT

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Mark Schlosberg
Police Practices Policy Director
American Civil Liberties Union
of Northern California

Introduction*

The recent indictments of high-ranking officers in the San Francisco Police Department have brought into the spotlight both the Department as a whole and the mechanisms that exist for holding police accountable for misconduct. The media, elected officials, and members of the public have not only focused on the merits of the charges against the individual officers involved, but have begun to examine all aspects of how the Department deals with police misconduct cases. What has been uncovered is a series of breakdowns in the accountability mechanisms.

On its face, San Francisco has some of the strongest accountability mechanisms in the country. It has an extremely strong Office of Citizen Complaints, which investigates all complaints by members of the public against police officers. Not only is this office staffed entirely by non-police officers, but also is extremely independent and supported by a City Charter, which ensures adequate staffing levels. The San Francisco Police Department is also overseen by an all civilian Police Commission that has the power to set policy for the Department and mete out discipline in cases of serious misconduct.

Notwithstanding these strengths, the system is not working in a number of areas. From officers failing to cooperate with the Office of Citizen Complaints to Management Control's failure to act on their cases; from an inadequate early intervention system to a culture that is unsupportive of whistleblowers; and from a lack of disciplinary action to a Police Commission that is unwilling to adequately address issues of public concern, the system is breaking down.

On March 11, District Attorney Terence Hallinan announced that he was dismissing the criminal charges against Chief Earl Sanders and Assistant Chief Alex Fagan who had been charged with conspiring to obstruct the investigation into the Union Street incident. From the beginning, the ACLU has cautioned against a rush to judgment as to the guilt of the officers who had been charged. It was, and remains, irresponsible to assume guilt on the basis of an indictment.

Still, although the District Attorney has chosen not to pursue the criminal charges against the Chief and Assistant Chief, other high-ranking officers remain under indictment and serious questions remain. Why were critical investigative steps not taken immediately following the alleged assault by the three off duty police officers? Why were investigators not given easy access to cell phone and other police records? Why was the lead investigator transferred from the case? Are administrative charges against the officers being investigated and pursued? Who will conduct such an investigation?

The evidence has yet to be released and the answers to these questions remain unclear. It is not the purpose of this report to focus on the specifics of the investigation into the Union Street incident. Rather, this report addresses broader problems within the

* Thanks to police practices interns Ronnie Lin and An Tran for assisting with research for this report.

Department and outlines the changes that need to be made to build effective accountability systems. These changes include:

- Modernizing, improving, and expanding the Department's Early Warning System to include factors such as use of force, civil claims, resisting arrest charges, and violations of individual's constitutional rights as automatic triggers to intervention.
- Adopting strong whistleblower protections to protect officers who report on misconduct and advocate for changes in departmental policy.
- Creating automatic triggers of disciplinary investigations for officers who are found by a court to have violated a defendant's constitutional rights or who have civil claims filed against them.
- Re-evaluating the criteria and procedures for officer promotion including the role of sustained complaints for serious misconduct and substantial payments stemming from lawsuits over misconduct in making promotion determinations.
- Imposing suspensions for officers who fail to cooperate with investigations of the Office of Citizen Complaints.
- Requiring regular and public reporting by the Department on the status of citizen complaints that have been sustained by the Office of Citizen Complaints but are pending at the Department.

In the wake of the indictments and of publicly reported failures of oversight, confidence in the police has plummeted. It is critical that policymakers respond to this heightened concern by strengthening accountability systems and restoring public confidence that police misconduct will be taken seriously and dealt with appropriately. Acting Assistant Chief Heather Fong recently expressed willingness to consider reform when she stated "hopefully we'll become even stronger because out of controversy we have to learn our lessons, and we become stronger and work closer together – so that's the hope I have for San Francisco and the Police Department."¹ The Department does have an opportunity to become stronger, if it commits adopting significant reforms.

This report is divided into two sections. Section one analyzes the areas in which accountability mechanisms are failing. Section two provides a roadmap to reforming the system, with concrete steps that should be taken to improve police accountability in San Francisco.

¹ Jaxon Van Derbeken and Jim Herron Zamora, "Acting Head Cop Speaks Out," *San Francisco Chronicle*, March 6, 2003.

I. Breakdown in Accountability

Breakdown 1: Lack of Leadership

Strong leadership is essential to engendering a culture of accountability within a police department. Without a culture that clearly requires accountability and emphasizes that misconduct will not be tolerated, accountability mechanisms, no matter how strong, will be undermined. As former deputy sheriff and Professor Douglas Perez has written, “without providing positive models of behavior by his or her own actions, and within the organizational culture itself, police chiefs run the risk of having all other behavioral control approaches become ineffective.”²

From the beginning of the investigation into the Union Street incident, there has been a complete lack of leadership displayed both by Chief Sanders and Mayor Brown. Both the Mayor and the Chief’s public statements regarding the incident and the ensuing investigation, represent a “police can do no wrong” attitude that encourages the cutting of corners, creates the perception of a double standard, and undermines – both externally and within the Department – the credibility of the system.

Just three days after the Union Street incident, Mayor Brown, without having all the evidence and before the conclusion of any investigation into the alleged assault characterized it as “mutual combat,” stating “if there is mutual combat and all of us admit we were there and all of us admit we participated, there is no crime scene to investigate.”³ Further, following the grand jury indictments, and again, without seeing the evidence, Mayor Brown went on the offensive, attacking the grand jury indictments and comparing District Attorney Hallinan to former Whitewater independent counsel Kenneth Starr.⁴ Rather than assure San Franciscans that the allegations of misconduct would be taken seriously, Mayor Brown chose instead to rally the troops telling officers at Northern station that they all should be “absolutely offended” by the indictments.⁵

Chief Sanders has taken a similar approach. Shortly following the incident at Union Street he compared critics of the early investigation to those who vilified Jesus Christ.⁶ A police chief must send the message that misconduct will be taken seriously. The apparent irregularities in the investigation raise important questions, and the Chief should have made it clear that this incident would be fully investigated. Condemning those who criticized the investigation sends the message that the Department brass will protect their own rather than investigate and punish misconduct.

² Douglas W. Perez, *Common Sense About Police Review*, 1994, p. 201

³ Jaxon Van Derbeken and Susan Sward, “Mayor, Chief Soft Pedal Cop Fracas,” *San Francisco Chronicle*, November 23, 2002.

⁴ Rachel Gordon, “Brown’s Reputation on the Line. Indictments Put Mayor on Edge – and Defense,” *San Francisco Chronicle*, March 1, 2003.

⁵ Jaxon Van Derbeken and Rachel Gordon, “Reprisals Feared If Cops Keep Jobs,” *San Francisco Chronicle*, March 2, 2003.

⁶ Jaxon Van Derbeken and Susan Sward, “Mayor, Chief Soft Pedal Cop Fracas,” *San Francisco Chronicle*, November 23, 2002.

Further, the Police Commission’s failure to immediately suspend all of the officers under criminal indictment – including the Chief – pending the resolution of the criminal charges, simply served to highlight the lack of accountability. The officers under indictment should have all been immediately suspended by the Commission, not as a punitive measure, but because officers are regularly suspended when criminal charges are pending. Such measures are necessary to ensure that officers who may have engaged in criminal conduct are not on the job until those serious issues are resolved, and to maintain the credibility of the Department in the eyes of the public. As Former Mayor Art Agnos has commented:

They’re under indictment, and they’re being returned to the scene of their alleged crime – their offices. They are accused under our criminal justice system of the crime of a cover-up...and they are told, ‘Go back to the offices where the evidence may lie (and) direct and manage people in the department who may be called to testify against you. It all adds up to chaos that threatens the mission of the department.’⁷

It is virtually unprecedented for a Chief facing criminal charges to not be suspended. In fact, the ACLU conducted research on cases over the last ten years where sitting police chiefs were indicted, and we were unable to find one instance where the chief was not suspended pending the outcome of the criminal charges. According to former San Jose Police Chief Joseph McNamara, by not suspending the Chief and other top officials immediately, the Commission’s action represented “a departure from procedures followed by other agencies” and threatened to “create a nightmare of charges of favoritism when rank-and-file officers are accused in future cases.”⁸

Studies show that a perception among the rank and file of favoritism and uneven discipline leads to unethical behavior and corruption.⁹ A lack of leadership on some very key issues has already resulted in breakdowns in other areas of accountability. Without a renewed commitment to accountability from the Mayor, the Police Commission, and the Chief, the situation in the Department will only deteriorate further.

Breakdown 2: Non-Compliance With the Office of Citizen Complaints

The Office of Citizen Complaints (“OCC”) is one of the strongest civilian oversight agencies in the country; however, it is still dependent on officer cooperation to function effectively. The San Francisco City Charter¹⁰ and Departmental General Order (“DGO”) 2.04 require officers to cooperate with OCC investigations including submitting

⁷ Lance Williams, “The Mayor’s Reaction: He Protects His Friends, Feuds With the DA,” *San Francisco Chronicle*, March 3, 2003.

⁸ Joseph D. McNamara, “Justice For All,” *San Francisco Chronicle*, March 4, 2003.

⁹ Neal Trautman, “The True Solutions to Workplace Corruption”

¹⁰ San Francisco City Charter, Article IV, section 4.127 (“In carrying out its objectives the Office of Citizen Complaints shall receive prompt and full cooperation and assistance from all departments, officers and employees of the City and County. The director may also request and the Chief of Police shall require the testimony or attendance of any member of the Police Department to carry out the responsibilities of the Office of Citizen Complaints.”)

to interviews on request and completing member response forms – questionnaires about events. Unfortunately, non-compliance with the requirements of DGO 2.04 have skyrocketed in the past two years, undermining the ability of the OCC to perform its function.

The OCC refers cases of officer non-compliance to the Management Control Division (“MCD”) within the Police Department. Management Control then makes findings on these cases and the Department determines discipline. Data obtained from the Office of Citizen Complaints demonstrates an increase in officer non-compliance.

Cases of Officer Non-Compliance Referrals and Rate of Sustained Cases

Cases/Rate	1999	2000	2001	2002
Non-Compliance Referrals	N/a	27	88	63
Sustained Rate	80%	96%	40%	55%

Source: Office of Citizen Complaints

In year 2000, the OCC referred only 27 cases of officer non-compliance to MCD¹¹. That number increased three-fold in 2001 to 88 cases¹² and remained at over twice the 2000 level in 2002 with 63 cases.¹³ Of the 63 cases of non-compliance in 2002, 29 were for officers who failed to appear for an interview, 25 were for officers not filling out member response forms, not filling them out completely, or not filling them out truthfully, and 7 were for commanding officers that failed to serve officers with notice of their interview date.¹⁴

Non-compliance complaints are rising while MCD is sustaining fewer and fewer allegations of non-cooperation, without any change in OCC’s standards for determining non-compliance. MCD sustained 80% of non-compliance cases in 1999¹⁵ and 96% in the year 2000.¹⁶ The sustained rate has since plummeted: MCD only sustained 40% of the cases in 2001¹⁷ and 55% in 2002.¹⁸ Cases of non-compliance that are not sustained cannot lead to discipline and the failure of MCD to sustain such a huge proportion of these cases sends the message that cooperation with the OCC is not a high priority. It encourages further non-compliance and threatens to undermine the system of accountability. As the OCC commented in its 2001 annual report, “the conclusion is inescapable that a serious contempt of OCC’s investigative notification procedures was permitted to take place by and among some members of SFPD during 2001.”¹⁹

¹¹ Office of Citizen Complaints Annual Report, 2001, p. 8

¹² Id. p. 9.

¹³ Compiled from records obtained from the OCC under a Sunshine Ordinance request.

¹⁴ Id.

¹⁵ Office of Citizen Complaints Annual Report, 1999, p. 6.

¹⁶ Office of Citizen Complaints Annual Report, 2001, p. 8.

¹⁷ Id.

¹⁸ Compiled from records obtained from the OCC under a Sunshine Ordinance request.

¹⁹ Office of Citizen Complaints Annual Report, 2001, p. 8.

Even when a non-compliance complaint is sustained (MCD has found a failure to cooperate with OCC), officers rarely face meaningful consequences. A review of all cases referred to MCD by the OCC during 2001 and 2002 reveals not one case where an officer was suspended for failing to cooperate. Rather, all cases of sustained misconduct resulted in a reprimand or admonishment.²⁰ This, occurred despite the fact that the Disciplinary Guidelines categorize obstructing an administrative investigation conducted by the OCC as Class “B” Misconduct, punishable by suspension, termination, or fine.²¹

By not sustaining allegations of non-compliance and not meting out sufficient discipline for failure to cooperate with OCC investigations, the Department sends the message that cooperation is not important. It is, in effect, encouraging non-compliance. Without the ability to conduct prompt interviews of officers in misconduct cases and receive information from them in a timely manner, its ability to fulfill its mission is jeopardized.

Breakdown 3: Management Control

As discussed above, MCD has increasingly and consistently failed to sustain cases of officers who refuse to cooperate with OCC investigations. It has also failed to act on sustained citizen complaints in a timely manner, which has significant consequences. General Order 2.04 requires that the Department act on cases of sustained misconduct within 60 days of receipt from the OCC. This timeline is critical given the one-year statute of limitations. Government Code § 3304(d) bars discipline in cases of misconduct where more than a year has passed from the time a complaint is filed to the time officers are formally notified of proposed disciplinary action.

On January 9, 2003, the OCC’s Acting Director, Jean Field, sent a letter to Chief Sanders complaining about the lack of action by the Department on cases of sustained misconduct. Her letter cited 23 cases that had been submitted to MCD over 90 days earlier for which the OCC had not received a response. Field concluded that “the current leadership at MCD has failed in its duty to process OCC complaints in a timely and efficient manner, despite repeated inquiries by the OCC as to its progress.”²² A copy of this letter was also sent to the Police Commission.

Assistant Chief Fagan responded in a letter dated January 22, stating that many of the cases had been acted on. Did the letter from OCC prompt action from MCD on cases that would otherwise not have been acted on? Was the OCC incorrect about some of the cases? The answers to these questions are unclear, but what is clear from Assistant Chief Fagan’s letter is that there are still five cases pending at MCD that have been there longer

²⁰ Compiled from records obtained from the OCC under a Sunshine Ordinance request.

²¹ San Francisco Police Department Disciplinary Penalty & Referral Guidelines, 1994, pp. 2, 4.

²² Letter from Jean Field, obtained from the Office of Citizen Complaints under the Sunshine Ordinance.

than 60 days and five others were dismissed because of violations of the one year statute of limitations set out in Government Code § 3304(d).²³

General Order 2.04 requires the Chief to act on disciplinary cases within 60 days or seek an extension from the Police Commission. Have extensions been sought in these cases? Have they been considered by the entire Commission? The ACLU is unaware of such an extension being agendized in the past two years.

This is a serious problem. In 2002, for example, 27 cases of sustained misconduct representing 81 separate allegations were dismissed because the statute of limitations was violated. Some were dismissed because the OCC failed to complete the investigation in a timely manner (this may or may not be due to officer non-cooperation; the reason in each case is unclear); others were dismissed because the Department failed to act on OCC complaints.²⁴ Whatever the reason, this represents a substantial problem that must be addressed.

The cases being dismissed are not only limited to minor cases. Three cases of serious misconduct including excessive force are currently being litigated in court. In all three cases the OCC completed its investigation within 10 months of the complaint being filed and in all three cases, the Department failed to provide notice of proposed disciplinary action within the one year time period.²⁵ Cases should never be dismissed due to the Department's failure to act on cases of sustained misconduct. This failure sends the message that officers will not be held accountable for their behavior, even when that behavior has been investigated by the OCC and found to be in violation of Department policy.

Breakdown 4: Early Warning

If the incident involving Officer Fagan, Jr. has revealed anything, it is the inadequacy of the Department's early warning system. Since the Union Street incident, Officer Fagan's short but volatile history with the Department has been well documented. In just 13 months, he used force 16 times sending six people to the hospital. A number of civil claims have been filed based on his conduct, and he was repeatedly disrespectful to members of the public and his supervisors.²⁶

Sergeant Stansbury, Fagan's supervisor at Park Station documented this pattern of conduct in September 2002.²⁷ Why was Fagan's conduct not noticed earlier? Why was there no intervention prior to the Union Street incident?

²³ Letter from Assistant Chief Alex Fagan, obtained from the Office of Citizen Complaints under the Sunshine Ordinance.

²⁴ Compiled from records obtained from the Office of Citizen Complaints under the Sunshine Ordinance.

²⁵ See generally the record in *San Francisco Police Officers Association v. City and County of San Francisco*, pending, Superior Court.

²⁶ Susan Sward, Jaxon Van Derbeken, and Bill Wallace, "Rookie Cop Fagan Jr. Had History of Using Force on Duty," *San Francisco Chronicle*, March 2, 2003.

²⁷ Memorandum from Sgt. Vickie Stansberry to Captain Daniel Lawson regarding conduct of officer Alex Fagan, September 19, 2002.

The answer may lie in San Francisco's outdated and inadequate early warning system. General Order 3.19, which describes the early warning system, relies on citizen complaints as a trigger to intervention. If an officer is the subject of three citizen complaints in a six months period or four complaints within a year, intervention must occur, usually in the form of counseling. While citizen complaints should definitely be taken into account, they should not be the only factor that triggers automatic intervention. Other factors such as uses of force, civil suits and/or tort claims, and resisting arrest charges are all potential indicators of poor officer performance and should trigger intervention.

We do not know if citizen complaints were filed against Fagan prior to the Union Street incident, but it certainly would be disturbing if officer Fagan's conduct was not documented prior to Sgt. Stansbury's memo simply because people did not file complaints against him. The Department does have a "Performance Improvement Program" ("PIP") where some information about individual officer's performance is entered, but the General Orders governing PIP do not require mandatory intervention based on a specified set of criteria.²⁸

Further, it is our understanding that both PIP and the early warning system are manual systems that must be entered by hand and analyzed by supervisors without the aid of computer technology. This represents a backward system compared with other departments such as Pittsburgh, Phoenix, and others,²⁹ and reflects a general problem within the Department. As Ron Martinelli, a police training expert and criminal justice consultant has commented, "the San Francisco Police Department absolutely does not operate on modern management principles, and if they are telling people they do, they are being disingenuous."³⁰

Breakdown 5: Unwillingness to Impose Discipline

Officer Fagan's history raises further questions about the Department's willingness to discipline members who commit serious misconduct. The memo by Sgt. Stansbury not only reports a problem – a specific incident of disrespect, excessive force, and threats to kill a suspect – but also documents a pattern of problems. Despite this pattern of behavior in *a probationary employee*, Sgt. Stansbury only recommended anger management for Officer Fagan. How could that be?

Captain Dan Lawson, Fagan's supervisor at Park Station, explained, "you try to correct behavior at the district station. If this doesn't work, you go the next step."³¹ A

²⁸ General Order 3.18 addresses PIP.

²⁹ See Merrick J. Bobb, Los Angeles County Sheriff's Department, 16th Semiannual Report, February 2003. (Discussing model early warning systems. Other model systems are being developed in cities throughout the country pursuant to agreements with the Department of Justice)

³⁰ Susan Sward and Bill Wallace, "Lawsuits, Complaints, Jury Awards No Bar to Promotions," *San Francisco Chronicle*, March 2, 2003.

³¹ Jaxon Van Derbeken and Rachel Gordon, "Probe Urged Into Ignored Memo on Cop," *San Francisco Chronicle*, February 14, 2003.

desire to resolve minor problems at a district level is appropriate, even laudable, in some circumstances, but when repeated problems and serious situations involving abuse of members of the public are treated in the same manner, it raises red flags.

Apparently, this approach goes unquestioned by upper level management. Rather than suggesting or even imposing more severe consequences for a probationary employee with a documented record of serious conduct problems, Deputy Chief Greg Suhr rubber-stamped the anger management recommendation. According to Suhr, “I got the report, and that was what the recommendation was, but that was not until after the training was already scheduled. I just went along with the recommendation.”³²

Why was Fagan’s conduct not referred to the Office of Citizen Complaints or Management Control for discipline? As a probationary employee, why was Fagan simply not terminated? The failure to provide early intervention and later to impose serious discipline or terminate Fagan and similar officers is detrimental for a number of reasons. It is hazardous to the safety of ordinary San Franciscans, it tarnishes the reputation of the many good officers in the Department, it undermines the credibility of the Department’s accountability mechanisms, and it only will lead to future problems. As San Mateo County Sheriff Don Horsley has said: “Nobody on probation goes to anger management. With a probationary employee, if you have problems with them in their first year, they’re not going to get any better. That’s when they’re on their best behavior.”³³

Breakdown 6: The Code of Silence

According to research conducted by Neal Trautman, Director of the National Institute of Ethics (“NIE”), the police officer code of silence is a reality in virtually every police agency. The NIE conducted extensive confidential surveys both of new recruits at the academy and of veteran officers. What they found was confirmation of what many have said for years – that the code of silence is real. Among academy recruits, 79% said that a law enforcement code of silence exists and 52% said the fact that it existed did not bother them. Among veteran officers, nearly half indicated that they had “witnessed misconduct by another employee but took no action.” Of those who participated in the code of silence, 58% did not report the action out of fear of reprisals.³⁴

While Trautman’s survey reflects national trends, the reaction of officers to the recent indictments provides strong evidence that, in the San Francisco Police Department, the code of silence exists. Following the announcement of the indictments, the Police Union and other police officer organizations immediately spoke out in defense of the indicted officers. They had not seen any evidence and only knew that upper level managers were being charged with felony obstruction of justice. These charges, although only charges, were very serious charges. Why did no officer organization caution that, perhaps, the charges should be taken seriously, that those accused should be placed on

³² Id.

³³ Mark Simon, “Peninsula Cops Aghast at SFPD,” *San Francisco Chronicle*, March 6, 2003

³⁴ Neal Trautman, “Police Code of Silence Facts Revealed,” paper for International Association of Chiefs of Police, Legal Officers Section, 2000, available at www.aele.org/loscode2000.html.

leave pending the resolution of the charges, and that people should wait until seeing the evidence before making a decision one way or another about the case? Was it because no officers were concerned about the possibility that there was a cover-up? Was it because no officers were concerned about possible obstruction of justice?

As it turns out, many officers were concerned; however, none of these officers were willing to give their names to reporters or speak to the press without the shield of anonymity. A recent *San Francisco Chronicle* article documented officers' fears about talking on the record about the problems in the Department. It is likely that such fears mirror the concerns voiced by the respondents to Trautman's survey.³⁵

And, it appears that such fears may be justified. For example, when management decided that Lt. Joe Dutto would be transferred out of General Works where he was supervising the Union Street investigation, he told members of the media that he believed the transfer was punitive. In an ominous response, Deputy Chief David Robinson said that Dutto would be "held to account" for his opinions.³⁶ This response at the highest levels of the Department breeds fear and strengthens the code of silence, rather than breaking it down and fostering an environment of accountability.

Breakdown 7: Police Commission

Charged with overseeing the Police Department, the Police Commission is responsible for setting police policy. It holds public meetings nearly every week, providing a public forum to address important issues of public concern. Unfortunately, the Commission rarely takes up issues of police accountability or is otherwise responsive to public concerns about misconduct.

The one exception in recent history has been the two hearings that the Commission held on racial profiling. In response to a report issued by the ACLU documenting a three-year failure of the Department to address the issue of racial profiling, the Commission held a hearing and took action on the issue. It showed leadership in directing the Department to adopt a strong policy prohibiting racial profiling, required monthly reporting on traffic stop data, and considered the issue of consent searches. The ACLU again applauds the Commission for its strong action on this issue. These two hearings, however, are the exception, rather than the rule.

A survey of Police Commission agendas for the years 2001 and 2002 reveals only four items related to police accountability that were not regularly agendized reports. Commission meetings frequently last less than an hour and, in 2002, 17 Commission meetings lasted less than half an hour. While the length of meetings clearly does not tell the whole story, it is a sign that the Commission is not fully exercising its oversight role.³⁷

³⁵ Stephanie Salter, "Cracking the Code of Silence," *San Francisco Chronicle*, March 9, 2003

³⁶ Jaxon Van Derbeken and Susan Sward, "DA Blasts SF Cops on Probe of Fight," *San Francisco Chronicle*, January 16, 2003.

³⁷ Information obtained from Police Department website at www.ci.sf.ca.us/police.

One example of the Commission's failure to respond to public concerns is its reaction to the Thurgood Marshall High School incident. This incident, which occurred on October 11, 2002, involved an overwhelming police response to a fight at a high school and caused great anger and frustration in the community. In early November, members of a number of community and civil rights organizations and several members of the Thurgood Parent Teacher Student Association ("PTSA") sent a letter to the Commission asking that a hearing be held on the incident and the broader issues of police accountability on school campuses.

That letter went unanswered. On January 8, 2003, members of the Thurgood Marshall community went to the Commission to resubmit the letter (now signed by even more organizations, including members of the Board of Education), and again requested a hearing. After public comment was over, the Commission adjourned the meeting and got up and left without even thanking the various members of the public – including students – for bringing the matter to their attention.³⁸ In the following weeks, several additional requests were made for a hearing on the police in schools issue. Finally, in February, the Commission voted to have two members of the Commission participate in joint hearings with two members of the Board of Education on the issue. This hearing has yet to be scheduled.

The response by the Commission to the Thurgood Marshall incident has been woefully inadequate. The issue of the proper role of police in schools is an important one and is a policy issue that should be addressed by the entire Commission, not a joint body that has no policy making authority. Moreover, the response to this incident is representative of a broader failure to respond to community concerns. The Commission exists to oversee the Police Department. To do this in an effective manner, it must hear and act on community concerns.

II. Roadmap to Reform

The current crisis in the San Francisco Police Department has exposed a significant erosion of the Department's accountability mechanisms and undermined public confidence in the police. While this presents a very real problem for the Department, it also presents a unique opportunity for policy makers to publicly demonstrate that the Department and the City are committed to a police force with strong accountability structures where misconduct will not be tolerated.

This section contains a list of recommendations for changes that should be made within the Department to begin repairing the system. It is important to point out that these proposals only address reform within the Department. There are other issues such as the lack of prosecution of police misconduct that must also be examined and acted on. If vigorously implemented and enforced, however, the reforms outlined here would go a long way toward improved accountability and greater public trust.

³⁸ JR, "Crown Demands Accountability from Police Commission for Thurgood Marshall Attack," *San Francisco BayView*, January 15, 2003.

Reform 1: Strong Leadership

Significant policy changes are needed to address the problems that have been brought to light as a result of the indictments, but strong leadership is also necessary. The disturbing public statements by the Mayor and the Police Chief downplaying the alleged assault by the three off duty officers and condemning critics of the admittedly sloppy police investigation have an impact both externally and within the Department. Further, the failure of the Police Commission to suspend the Chief and other high-ranking officers *while felony criminal charges were pending* perpetuated the perception that the Commission plays favorites, which is bound to have a lasting effect in the Department.

Leadership is not something that can be legislated; however, the Mayor, the Chief, and the Commission should know that their statements and actions have a significant and lasting effect. The Mayor, the Chief, and the Commission must work to reestablish a commitment to holding officers accountable for misconduct, impose certain and fair discipline, and lead the way in reforming the system. They must demonstrate a greater commitment to finding the truth about misconduct allegations, rather than defending the Department against allegations. Only by showing leadership in reform will members of the public begin to regain trust in the Department.

Reform 2: Compliance and Cooperation With the OCC

The Office of Citizen Complaints is *the* organization charged with investigating complaints filed by members of the public. General Order 2.04 must be complied with and strictly enforced. In addition to enforcing the General Order, however, the following additional measures should be taken:

- The Department should impose suspensions of at least one day for a first time failure to cooperate with the OCC. Should the Department not issue suspensions, the OCC should use the verified complaint procedure to bring these cases before the Police Commission and seek discipline there.
- General Order 2.04 should be amended to require the Department to act on OCC complaints within 30 days rather than the 60 days currently allowed by DGO 2.04. If more than 30 days transpire, the Department should be required to seek permission for an extension from the Commission and the request should be placed on the Commission agenda so the public is aware of delays and can monitor the Department's compliance. Further, the OCC should be sent a letter whenever a case is at MCD for longer than 30 days detailing the reason for the delay.
- The Commission should require the Department to issue quarterly public reports detailing the number of sustained misconduct cases pending at Management Control and the length of time each case has been pending.

Reform 3: Early Warning System

The current early warning system needs to be significantly upgraded and improved. It should be an automated system that relies on a number of factors beyond citizen complaints. The City of Oakland's recent consent decree in the Riders' case requires an early warning system that relies on 20 factors that may trigger intervention.³⁹ Among others, the following factors should also be included in the early warning system:

- All use of force incidents. Officer Fagan used force 16 times in only 13 months. High rates of use of force are a sign that something is wrong. Even if uses of force do not result in complaints, they should trigger automatic intervention.
- Cases dismissed due to constitutional violations. In criminal courts, prosecutors often make decisions not to prosecute and judges suppress evidence based on officers violating defendant's constitutional rights. High rates of cases being dismissed due to constitutional violations are a warning sign and should trigger automatic intervention.
- Tort claims and/or civil cases being filed against the City based on police misconduct. These should be treated as complaints.
- All charges of resisting or obstructing a peace officer (Penal code §§ 69 and 148), assault on a peace officer (Penal Code § 243(b)(c)), or assault with a deadly weapon on a peace officer (Penal Code § 245(b)). Officers who have engaged in excessive force often use these as "cover charges." Relying on these charges at high rates is a sign that there is a problem.
- All on-duty vehicle pursuits, traffic accidents and traffic violations. Reckless driving behavior is a problem indicator and should trigger intervention.

Reform 4: Automatic Disciplinary Investigation Triggers

The apparent failure of Sgt. Stansbury to refer Officer Fagan's case to either the OCC or Management Control for discipline is disturbing as is the failure of supervisors to look critically at his cases, despite repeated violations of departmental policy. Probationary employees should not remain employees of the Department if they have significant disciplinary problems and serious misconduct should be automatically referred for discipline. The following changes should be made:

- Probationary employees who show disrespect for members of the public and supervisors, and who compile excessive numbers of citizen complaints or uses of force, should have their employment terminated. The Department should not recommend anger management for a probationary employee.

³⁹ Settlement Agreement Re: Pattern and Practice Claims, *Delphine Allen et al., v. City of Oakland, et al.*, p. 27-28 (listing factors for system).

- Any observed excessive force or dishonesty (including lying to superiors and on police reports) should be automatically reported to the Office of Citizen Complaints or Management Control.
- All instances of suppression motions being granted in criminal court for violations of a defendant's constitutional rights should be treated as complaints and automatically trigger a misconduct investigation by the OCC.
- All tort claims and/or civil cases filed should be treated as complaints and automatically trigger a misconduct investigation by the OCC.

Reform 5: Whistleblower Protections

The code of silence and fear of reprisals for reporting misconduct or criticizing department practice or policy prevents honest police officers from reporting violations and only serves to shield those who commit misconduct. San Francisco has a citywide whistleblower protection policy that prohibits adverse action against an employee who reports misconduct.⁴⁰ However, an environment needs to be fostered within the Department where officers not only do not fear reporting misconduct, but are also obligated to do so. In order to attack the code of silence, the following provisions should be adopted:

- The City's whistleblower protection policy should be incorporated into the Department's General Orders and officers should receive training on its provisions.
- To the extent possible, reports of misconduct by fellow officers should be treated confidentially to encourage reporting.⁴¹
- Failure to report misconduct should result in discipline.
- Supervisors who threaten officers for reporting misconduct or criticizing departmental policy should be subject to discipline.
- Officers should have the option of going outside the chain of command to report misconduct to the OCC.

⁴⁰ San Francisco Campaign and Government Code, Article IV, Protection of Whistleblowers.

⁴¹ Suggestion made in John L. Burris, *Blue v. Black*, 1999, p. 221.

Reform 6: Promotions

It has been publicly reported that high-ranking officers in the Department have been promoted despite records of discipline and civil settlements in the hundreds of thousands of dollars.⁴² Promoting officers despite significant discipline histories sends the wrong message both to rank and file officers and to the public about the values the Department promotes. The Commission should therefore re-examine the promotion process. To what extent is disciplinary history considered in determining promotions? To what extent are civil suits considered? To what extent are violations of defendants' constitutional rights considered? To what extent is an officer's ability to communicate effectively and interact well with the community he or she serves considered?

The consent decree recently established in Oakland creates a presumptive ineligibility for promotion for 12 months following a sustained finding in a serious misconduct case and requires that such violations be considered important for three years following the completion of the investigation. Further, the Chief is required to consider the number of citizen complaints, instances of unnecessary force, and support for departmental integrity measures in making promotions.⁴³ San Francisco should have even higher standards and the Commission should evaluate the Department's promotion practices to ensure that officers that commit serious misconduct are not promoted.

Reform 7: Make Police Commission Accountable

Finally, measures aimed at making the Police Commission more accountable to the public should be adopted. The Commission's failure to act in response to public outcry over the Thurgood Marshall incident provided a glaring example of the lack of accountability. There need to be mechanisms in place to ensure that the Commission timely and consistently hears and acts on issues of public concern. Two such mechanisms would be to allow members of the public to place items on the agenda and authorizing the Board of Supervisors to appoint two of the Commissioners.

In Berkeley, for example, if members of the public gather 50 signatures, they can require the Police Review Commission to hold a public hearing on an issue.⁴⁴ San Francisco should have a similar procedure. If there is sufficient concern about an issue, the Commission should be required to at least listen to the issue and consider acting on it. Policy makers should also consider allowing the Supervisors to appoint two of the five members to the Police Commission. Supervisors currently appoint members to the Planning Commission.⁴⁵ Having Commissioners appointed by both the Supervisors and the Mayor would increase Commission accountability.

⁴² Susan Sward and Bill Wallace, "Lawsuits, Complaints, Jury Awards No Bar to Promotion," *San Francisco Chronicle*, March 2, 2003

⁴³ Settlement Agreement Re: Pattern and Practice Claims, *Delphine Allen et al., v. City of Oakland, et al.*, p. 41.

⁴⁴ City of Berkeley Ordinance 4644-N.S, section 8.

⁴⁵ San Francisco City Charter, Article IV, section 4.105.