

POLICE MISCONDUCT IN SAN ANTONIO

THE NEED FOR MORE ACCOUNTABILITY,
TRANSPARENCY, AND RESPONSIVENESS



A TEXAS CIVIL RIGHTS PROJECT 2011 HUMAN RIGHTS REPORT

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Executive Summary

A string of incidents in the past few years has revealed a troubling pattern of misconduct by San Antonio police officers, ranging from illegal searches and sexual misconduct to unresponsiveness and indifference to victims. The thread connecting these incidents is the fact that better supervision, accountability, and transparency by SAPD could have prevented them. The Texas Civil Rights Project has documented many of these events, discovered through media reports, accounts from community members, SAPD records, and its own intake process.

A review of SAPD's response to many of these incidents shows that misconduct is often addressed too late — after an officer does something egregious, and too late for the department to try and remedy the officer's dangerous habits and tendencies. SAPD itself has commissioned a number of independent auditors to study some of these issues. To its credit, some changes are beginning to take place, though many reforms have not yet been considered, fallen by the wayside, or have yet to be implemented.

This report discusses a departmental culture that protects its own and is unwelcoming of supervision. Citizens report a variety of problems in dealing with the police, often when they are the victims and especially when they attempt to lodge complaints against the police. Internal Affairs' policies and practices create a hostile environment for individuals reporting possible police misconduct. The agency also suffers from a serious lack of transparency that impedes public scrutiny, and many roadblocks protect officers against the possibility of serious repercussions for most of their actions.

SAPD's current police chief, William McManus, has made efforts to move the department in the right direction by listening to citizens' concerns and pushing for changes. In order to encourage continued improvement on this front, this report provides forty-one (41) specific recommendations that address institutional problems in SAPD's culture, training, and policies. The recommended changes focus on the following areas:

- improving the investigation of citizen complaints through greater autonomy for investigators and providing better information and follow-up for complainants;
- increasing supervisor accountability for misconduct by subordinates when the supervisor fails to report or address it;
- facilitating supervisors' oversight of police officers through the creation of standardized disciplinary guidelines and better monitoring of officers' job performance;

- supporting officers in dealing with the challenges and pressures of law enforcement through access to mental health services, employee assistance programs, and supervisor training; and,
- equipping officers to deal better with victims and groups who are subject to discrimination, through regular in-service training and partnerships with community organizations, and adding two victim liaisons to the police force.

Note on Sources & Methods

TCRP conducted a broad investigation with the dual goals of documenting the forms of police misconduct prevalent in San Antonio and identifying improvements and best practices to stop these problems from continuing to occur.

A significant part of the factual information gathered for this report comes from SAPD and Internal Affairs records obtained through open government requests.

In addition, TCRP interviewed a large network of community leaders and organizations in San Antonio to learn more about the problems faced most frequently by different constituencies, some of which are not widely discussed in the news media.

TCRP's own intake process and legal advocacy informed this report on specific issues.

Lastly, this report's analysis and recommendations takes into account other recent studies of SAPD, including reports by the PERF committee and the Matrix Consulting Group.

More information on select references is available in the Appendix and on our website, <http://www.texascivilrightsproject.org/go/sapd>.

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I. Introduction

One Saturday in August 2009, Texas Civil Rights Project attorney Isaac F. Harrington was in San Antonio for a family wedding. Downtown late that night, Mr. Harrington called the police when he and those with him came upon a woman screaming, being beaten, and visibly injured inside a parking garage. The woman was a victim of domestic violence.

San Antonio Police Officer Craig Nash responded to the scene and began to question the victim in an abrasive tone, then grew angry with her when she was reluctant to provide information about her attacker. As one witness stated, in her complaint, to an onlooker, “it would have looked like [the woman] was the suspect and not the victim.”

Officer Nash also threatened to arrest Harrington and other bystanders, who were attempting to console the woman and suggesting to Nash that he not be so abrasive with her. Harrington, who works extensively with immigrant women trying to escape domestic violence, advised Nash that he would not likely obtain cooperation or information from the victim using such a hostile approach.

Harrington and the others eventually filed written complaints with SAPD Internal Affairs regarding Nash’s aggressive and hostile behavior toward them and the victim. They also complained to the Mayor and City Council at a public meeting, as did other members of the public. SAPD did not any action with regard to Nash, either disciplinary or helping train him better for the future. Nor did the Mayor and City Council take any proactive steps.

Six months later, while on duty, Officer Nash picked up a transgendered woman near Guadalupe and Zarzamora Streets. Nash handcuffed her, put her in his patrol car, and drove her to a secluded area, where he forced her to perform oral sex and raped her. The woman immediately reported to SAPD that an on-duty officer had raped her. This time, the victim’s complaint got the attention of SAPD. Nash was arrested on criminal charges of rape and official oppression. He ultimately pled guilty to official oppression, a misdemeanor, and was sentenced to a year in prison. Once the Nash incident became public, another individual reported having been raped by him in summer 2008; and other prior allegations of misconduct by Nash came to light that had raised questions of his emotional stability.

Unfortunately, the Nash incident is not isolated. Nor is it an aberration. TCRP has identified a pattern of officer misconduct, ranging from illegal searches and sexual misconduct to unresponsiveness and indifference to victims. There is a thread connecting these incidents: better supervision, accountability, and transparency by SAPD could have prevented them.

This report aims to draw attention to this pattern of misconduct, and to propose some reforms to tackle the institutional problems that allow such misconduct to persist.

II. A Failure to Protect and Serve: Recent Examples of Officer Misconduct

TCRP has documented many forms of misconduct by SAPD officers, discovered through media reports, accounts from community members, SAPD records, and TCRP's own intake process. This report recounts a few of these incidents to illustrate the kinds of problems that can be avoided through reform, and to provide a context for identifying possible improvements.

(a) Sexual Misconduct

In March 2010, Officer Christopher Martínez was suspended indefinitely after he was found to have engaged in sex in public, both off-duty and on-duty. SAPD was first alerted to Officer Martínez' misconduct by a private security firm that caught him while engaged in a sex act while on duty, in uniform, and inside his patrol vehicle. Martínez had been caught at the same location in a previous off-duty incident. On that occasion, Martínez used his position as an SAPD officer to influence the detaining security guards to release him from custody.

Martínez' ex-girlfriend, in her sworn statement to Internal Affairs, stated that she and Martínez frequently had sex while he was on duty. She stated that Martínez would routinely disable the GPS device in his patrol vehicle in order to avoid SAPD surveillance of his movements.

During the course of its investigation, Internal Affairs also discovered that Martínez would routinely show himself to still be on a call even after leaving the scene in order to conduct personal business and visit acquaintances. The investigation uncovered a pattern where other officers cooperated in covering up this type of misconduct for a fellow officer who went AWOL during a call for service.

Rather than reporting this misconduct to a supervising officer, fellow officers would routinely cover for each other by taking each other's calls and then letting the officers know how and when to dispose of the calls, investigators concluded.

Martínez also regularly took advantage of his position as an SAPD officer to run official queries of female acquaintances through law enforcement computer databases and to provide a false lead to a neighboring law enforcement agency. The investigation revealed that Martínez had run official license plate queries on his ex-girlfriend at least ten times between July 31 and

November 8, 2009, and had run queries of her telephone number at least ten times between August 28 and November 20, 2009. Martínez also had performed license plate and telephone number queries of other female acquaintances, and also performed official motor vehicle registration queries on a car driven by his ex-girlfriend's current boyfriend at least twice.

Martínez also intentionally provided a false lead to a Live Oak police officer, telling him that his ex-girlfriend's current boyfriend had been seen frequenting a known drug location in Martínez' service area.

Martínez was not the only SAPD officer recently caught abusing his position of authority and misusing his power to access sensitive information. On the morning of December 12, 2009, Officer Gabriel Villarreal used an official computer database, to which he had access as an SAPD officer, to seek out the address and cell phone number of a woman he had met the night before while shopping at a retail establishment where the woman worked.

That same morning, Villarreal paid the woman an unannounced and unsolicited visit at her home. The woman answered the door, she and her 6-year-old son still in their pajamas. Officer Villarreal claimed he was responding to a 911 hang-up call from her residence. The woman told the officer that no one had made a 911 call from her home, but allowed him into her home to investigate. Villarreal asked her if she had a husband who might have made the call. The woman told him she did not have a husband. Villarreal then asked the woman where she worked. When she told him, he pretended to be surprised and asked if she remembered him from the previous evening. She said that she did.

The officer continued to hang around the woman's home, asking her how many children she had, telling her that the weather might have caused the 911 call, and looking around her house and down the hall. The encounter became awkward, and Villarreal eventually left.

When the woman filed a complaint, an investigation revealed Villarreal's ongoing pattern of using his Mobile Data Terminal to look up personal information on various women and to exchange sexually charged messages with other officers regarding civilian females as well as female SAPD officers. Villarreal received an indefinite suspension.

Unfortunately, some SAPD officers have engaged in more egregious and dangerous conduct than Martínez and Villarreal. For instance, on June 26, 2009, while conducting a traffic stop, Officer Gregory Mickel learned that the female passenger in the vehicle had prior arrests for prostitution. Officer Mickel ordered the male driver to leave the vehicle. He then took the woman to a dark, secluded parking lot, and had sex with her in the back seat of his patrol vehicle.

The woman immediately attempted to report being raped by an SAPD officer and requested an ambulance, but Mickel made himself the responding officer to her call and cancelled all medical care for her. He also tried to cancel all other responding officers from coming to the scene and discounted the veracity of her claims by telling fellow investigating officers that the woman suffered from mental problems.

In January of that same year, Mickel had been seen “making out” (kissing and hugging) with an SAPD civilian evidence technician while on duty. Mickel was indefinitely suspended and pleaded guilty to misdemeanor charges of official oppression and violation of civil rights.

In September 2008, Officer James McClure conducted a traffic stop of a female driver. After noticing a suspicious bulge in the woman’s pants, Officer McClure requested a female officer to search the woman but was told that no female officers were available. After ordering the woman’s boyfriend, who was in another vehicle at the same location, to leave, Officer McClure instructed the woman to follow him in his patrol car to a business center on Hardy Oak.

Once there, Officer McClure directed the woman to the rear of one of the buildings where he told her to strip naked, which she did. He discovered a bag of marijuana inside her pants, but did not arrest her. Instead, he fondled the naked woman and returned the marijuana to her. He was indefinitely suspended six months later.

Off-duty police officers have engaged in sexual misconduct as well. While off-duty on the afternoon of February 2, 2009, Officer Patrick Muriel drove to a parking lot on the University of Texas at San Antonio campus. Muriel approached a female student in his vehicle and said, “You’re on candid camera,” causing her to look at him. Muriel was seated in his car with his pants below his knees, exposing his erect penis. About 20 minutes later, Muriel returned to the same parking lot and approached another female student. He gestured to the young woman to look down into his car to see his erect penis. Muriel was indefinitely suspended and charged with indecent exposure in both incidents.

In August 2009, another off-duty officer, Kyle Goodwin, assaulted a female guest at a pool party he was hosting, groping underneath her bathing suit top and taking her hand and placing it over his crotch area. Goodwin was indefinitely suspended.

(b) Failure to Respond to Situations Appropriately

As illustrated by the account of Officer Nash, the most pervasive, yet difficult to classify, form of misconduct occurs when officers respond to a situation with unwarranted aggression,

recklessness, or apathy. When those entrusted with great authority act in this fashion, the consequences can be extremely serious.

In November 2010, SAPD officers located a teenage girl who had just been raped. They placed the young woman in their patrol car and took her home. When they arrived at the house, the girl's mother saw that her daughter was visibly injured, bruised, and distraught. The mother pleaded with the officers to take her daughter to the hospital. She explained her car wasn't working, and that her daughter clearly needed medical and psychological care. The officers refused and left. Abandoned by the officers and trying to find a way to get her daughter to a hospital, the mother found her daughter a short time later in the garage, where she had committed suicide by hanging herself. The girl's mother filed a complaint with Internal Affairs. To her knowledge, SAPD never took any action. Nor did she ever receive a response regarding her complaint.

Unchecked carelessness manifests itself in a variety of ways. For instance, in November 2008, Officer David Seaton responded to a code-one (low priority) shoplifting call by driving over 100 mph in a 45-mph zone without his overhead lights or siren on and running a red light without slowing down. His patrol car crashed into another vehicle, severely injuring a civilian motorist, and then struck and killed Officer Robert Davis, who was in the road clearing flares from a previous accident. According to SAPD's General Manual, officers are required to obey all traffic laws when responding to a code-one call. SAPD records showed that Seaton would habitually speed to low-priority calls. Officer Seaton was fired and ultimately convicted of two counts of aggravated assault by a police officer and one count of manslaughter.

Aggressive tactics can also combine with personal biases to unnecessarily escalate a situation. On April 28, 2009, a group of nine San Antonio police officers conducted a raid at the Leon Valley home of a lesbian couple. Without knocking, the officers broke down the couple's door with guns drawn, accompanied by drug-sniffing dogs. The officers were searching for a man named Randy and evidence of a methamphetamine lab. Their search and questioning failed to turn up any evidence of "Randy" or of any narcotics, and it quickly became apparent that they had gone to the wrong place or the informant's information was wrong or conjured up.

Instead of releasing the two women, however, the officers chose to keep them handcuffed and spent two hours harassing and humiliating them. They were never read their *Miranda* rights. Three officers stood watching and smirking while they made one of the women, who was partly disrobed when the officers barged in, get dressed in front of them. When the women stated they

were lesbians, the officers laughed at them. During the women’s detention, the officers made disparaging remarks about their sexual orientation. Two of the officers remarked, while looking at the women, that they “liked quirky women because they were freaks in bed.” During their search, the officers pulled out intimate personal items and apparel, and placed them on the bed, as if to taunt the women. None of the officers involved were ever disciplined or counseled in connection with the incident or provided further education about working with LGBT persons.

After learning of this incident, TCRP decided to represent these individuals in a federal lawsuit against the officers involved and SAPD. As a result of this suit, TCRP learned that SAPD’s high-risk, door-breaking tactics in this incident were not unusual, but standard practice — since 2008, officers executing drug warrants have broken down the door and barged in without knocking 88% of the time.¹

The same inappropriate attitude can be seen in other contexts. In April 2008, a San Antonio cab driver assaulted a gay tourist. Several SAPD officers responded to the scene; and, rather than arresting the cab driver, they arrested the tourist. The officers intimated, in a mocking tone, that the man had been at the Saint, a local gay bar (even though the man had not been to any bar that night). As he was being locked up, an SAPD jailer asked him if he was a “faggot or a homo.” The man filed a complaint, but SAPD refused to investigate, arguing that in accordance with the collective bargaining agreement, the department has 180 days to take disciplinary action against an officer for misconduct and that, although he had filed his complaint well within 180 days of the incident, there would not be enough time left within the 180-day limit to complete the investigation.

III. Addressing the Problems That Allow Police Misconduct to Persist

The incidents highlighted in this report are not meant to be an indictment of all SAPD officers. There are indeed many good officers. However, these events demonstrate that SAPD suffers from a systemic lack of supervision and accountability that allows serious incidents of misconduct to arise.

¹ The case was dismissed on the grounds that the officers executed the warrant in “good faith” and that their conduct was not constitutionally egregious. The case is on appeal to the U.S. 5th Circuit Court of Appeals. Whether police misconduct reaches the high unconstitutional standard should be irrelevant in the sense that SAPD should act immediately and proactively with regard to any allegation and finding of misconduct so as to prevent more serious and unconstitutional misconduct in the future.

In most of these cases, officers ultimately were indefinitely suspended; and, in a couple of cases, faced criminal charges. But most of the time, the officers were not first-time offenders. Rather, it took an egregious incident to get SAPD's attention. For example, even the slightest amount of oversight should have uncovered Officer Martínez' habit of disabling his patrol vehicle's GPS device. And indeed, upon reviewing records of the department's Automated Vehicle Locator system to analyze Martínez' movements on the day he was caught having sex on duty, Internal Affairs was "immediately able to detect a pattern" where the vehicle's GPS locator would operate normally for other officers operating the vehicle on other shifts, and then would malfunction as soon as Officer Martínez signed on to the vehicle for his shift. Yet it took an independent private security firm, rather than a supervising officer, to bring Martínez' behavior to the attention of Internal Affairs.

Likewise, adequate supervision should have uncovered Officer Seaton's pattern of speeding recklessly to low-priority calls, yet he was never reprimanded until he killed someone.

Importantly, none of these officers' supervisors were ever held accountable for these gross failures of supervision. When an officer's ongoing behavior indicates a lack of training or a pattern of misconduct, it is necessarily up to his or her supervisors to take appropriate steps before the behavior becomes dangerous to citizens and fellow officers. Similarly, when members of the public bring problems to SAPD's attention, how the department resolves complaints matters both internally (catching and correcting problematic behavior) and externally (maintaining a cooperative and constructive relationship with the public).

SAPD also apparently recognizes that it has a real problem in these areas. It has commissioned three reports to review SAPD policy, procedure, and organizational structure:

- (a) A report by the Police Executive Research Forum (PERF), published in May 2008;
- (b) A report by the Matrix Consulting Group, published in May 2010; and,
- (c) A report by Morris & McDaniel Management Consultants, also published in May 2010.

These reports echoed concerns regarding the department's lack of supervision and accountability, and made recommendations aimed at increasing supervision and at improving the accessibility and transparency of the complaint process.

(a) PERF

The PERF team conducted its study by reviewing SAPD policies, procedures, and training curricula and by interviewing both departmental members and community residents. A major focus of the PERF report, and the biggest concern voiced by community leaders, was the need to make the police misconduct complaint process more accessible, user-friendly,” and transparent.

At the time, the police misconduct complaint form stated that “a person commits Aggravated Perjury, a Third Degree Felony,” if the individual makes a false statement in the complaint. This threatening language, as well as threats in the same vein from investigators, deter people from filing complaints or speaking openly under fear of prosecution, and send the message that SAPD is not an impartial investigator.

The PERF report recommended removing this language from the complaint form, finding that it intimidated and discouraged citizens from filing legitimate complaints.

The PERF team also recommended that the complaint form be made available online and be accepted both online and by mail; that complainants be given a copy of their signed statement, something that was previously denied to them; and that Internal Affairs investigators be willing to take complaints and conduct interviews at locations convenient to complainants and witnesses rather than only in a police facility, which is not always the most friendly environment for someone complaining about police misconduct..

PERF further recommended that SAPD revise its procedure for appointments to its Citizen Advisory Action Board (CAAB). This body reviews Internal Affairs findings and votes on whether or not to sustain the complaint and, if necessary, what punishment to impose. (The Board’s recommendation is given to the Chief, who makes the final decision.) At the time, the Board was composed of seven officers and four civilians. More importantly, the police officers’ union had veto power over any civilian appointees to the Board. PERF recommended that the collective bargaining agreement be revised to remove the union’s veto power.

Finally, PERF recommended that SAPD develop a “disciplinary matrix,” a kind of formal schedule that provides guidance in addressing officer disciplinary violations, specifying the recommended action for each type of misconduct and any adjustment to be made, based on an officer’s previous disciplinary record. This proposal, discussed in greater detail in a subsequent section of this report, was deemed “not recommended at this time” by SAPD, though it promised to “initiate discussions” with the police union to develop some guidelines in the future.

(b) Matrix

The Matrix Consulting Group conducted its research by interviewing the Police Chief and his management team, the City Manager, and the Assistant City Manager overseeing Public Safety, as well as over 100 staff at every level in the organization. It based its findings and recommendations on its own performance measures as well as a comparative survey with other law enforcement agencies that encounter similar service issues to San Antonio.

The report's ongoing theme was the need for more supervision in the field. The Matrix Group found the ratio of officers to sergeants to be well above the benchmark of between six-to-one to nine-to-one. Compounding the problem, they found, was that supervisors are overburdened by administrative tasks, which take away from time in the field. Officers therefore work with little supervision and expect to do so. The lack of sufficient supervision in the field has led to what the Matrix Group describes as a "culture" permeating the ranks of SAPD "in which line employees do not welcome supervisory presence."

The Matrix Group also found SAPD does not have mobile video recorders in field response units. Without recording devices, investigators usually lack evidence to support or disprove internal affairs complaints. The Matrix Group recommended that video recording devices be installed.

(c) Morris & McDaniel

The Morris & McDaniel report focused largely on organizational structure of SAPD. Its recommendations were not pertinent to supervision and accountability issues.

IV. What Has Improved

To their credit, SAPD and the Police Chief have begun to implement some of the policy changes recommended by the reports and advocated for by community activists.

SAPD added 18 more sergeants in the 2010 budget to move the officer-to-sergeant ratio into the recommended range for most divisions and shifted administrative duties away from field supervisors in order to increase active field supervision. Chief McManus also announced last year that supervisors would be held accountable for misconduct by their subordinates, although it is unclear if this has ever happened to date.

By adding more supervisors and eliminating some of their administrative responsibilities, SAPD appears to be making progress in this area, but supervision needs to remain a priority.

One way in which SAPD can improve its quality of supervision is by improving the

efficacy of its Early Intervention System, as recommended by PERF. An effective Early Intervention System emphasizes identification and intervention for problem officers, and utilizes both disciplinary and non-disciplinary processes to help and support employees whose behavior suggests they could be at risk.

Many experts have advocated greater utilization of Early Intervention Systems, including the U.S. Department of Justice's Office of Community Policing Services, which released an extensive report advocating them in 2003. By taking action before an employee gets into serious trouble, an officer like Craig Nash, a six-year veteran, might have been saved from his misdeeds, and, at least, fewer citizens will be affected by his misconduct.

SAPD recently has made changes to the complaint and review process as well. SAPD has removed the aggravated perjury language from the complaint form (leaving a warning about false statements), although the Internal Affairs website today still states that aggravated perjury statutes apply when filing a complaint.

Complainants also will now receive a copy of their complaint.

Finally, the new collective bargaining agreement, approved in May 2010, added more civilian members to the Citizen Advisory Action Board, so that it is now comprised of seven officers and seven civilians, and removed the police union's ability to veto appointment of new members to the Board.

V. Problems That Persist, and the Need For Institutional Change

All these policy changes represent steps in the right direction and are to be commended. Community organizations in general feel that SAPD's current police chief, William McManus, has made some efforts to move the department in the right direction by listening to citizens' concerns and pushing for changes. In order to encourage continued efforts on this front, this report seeks to identify the institutional problems in SAPD's culture, training, and policies.

(a) Internal Affairs' Misguided Focus on Complainants Instead of Complaints

The problems in Internal Affairs (IA) in particular run more than policy-deep. Internal Affairs' gut reaction to most complaints is to protect fellow officers and to disbelieve and attack the credibility of complainants.

An email sent to the members of the San Antonio Criminal Defense Lawyers Association by Ben Sifuentes, Jr., formerly of the District Attorney's office (1984-1992), describes an

Internal Affairs division whose mission is to circle the wagons, protect officers, and try to catch complainants in a lie, rather than to take complaints seriously and conduct an impartial and thorough investigation into allegations of officer misconduct.

Mr. Sifuentes asserted that the DA's office would often pursue aggravated perjury cases against complainants. "In fact," he wrote, "the perjury cases were easy to prove Many times, the IA investigator will attempt to prove the complainant did not have the ability to see or perceive the events. Sometimes an IA investigator will attempt to have a complainant make an inconsistent statement." Having a complainant make an inconsistent statement is easily done, because IA officers — not the complainants themselves — actually write the official complaint. IA investigators have a habit of making minor but important changes to complainants' statements. If complainants are subject to perjury charges, then prohibiting them from giving statements in their own words poses a major problem. Moreover, prosecutors would often send copies of complainants' statements to trial court prosecutors to use for impeaching defendant complainants. Mr. Sifuentes' email advised that, "unless you have done a complete independent investigation and are certain you know as much as the police, you are better off advising your client not to talk to IA."

Investigations into allegations of misconduct by fellow police officers, on the other hand, are not pursued with nearly the same level of fervor as perjury charges against complainants.

Even if SAPD has lowered the barriers to filing a complaint, those who do file complaints often find the process fruitless, as they rarely receive any follow-up on the status or outcome of their complaints.

Deana Buriel, Director of Crisis Intervention at The Rape Crisis Center in San Antonio, said that, in her experience, complainants usually don't receive a response. "If we do get a response," Ms. Buriel said, "it's usually just an email that says, 'Thanks, we'll take care of that.' But we never hear if or how it was resolved." Said George Alejos of LULAC, "I've sent ten cases to Internal Affairs in the past five years; not once did they contact the complainant or conduct any investigation."

Thus, by all appearances, a complaint filed with Internal Affairs is more likely to trigger an investigation of the complainant than of the officer complained against. It is therefore not surprising that citizens are generally hesitant to file a complaint.

Most criminal defense lawyers in San Antonio believe the complaint process is a waste of time and can only be problematic for their clients. "There is an understanding amongst criminal

defense lawyers in San Antonio that you'd never send your client to Internal Affairs," said Patrick Filyk, a criminal defense attorney and former president of the San Antonio ACLU chapter "In fact," Filyk said, "it might even be malpractice to send your client to Internal Affairs because it can only result in problems for your client."

Filyk believes lowering charges for a false complaint from aggravated perjury to perjury is an improvement, but doesn't go far enough. "Complaints need to be treated as privileged, not a basis for prosecution. Complainants should be allowed to be wrong — they're civilians and don't understand things like the continuum of force. That's why you have Internal Affairs."

Jack Ryan, a retired police captain with twenty years of experience in the Providence Police Department in Rhode Island, stated a similar sentiment: "Best practices dictate that Internal Affairs should remove all threats from its complaint forms and intake procedures."

Complainants themselves also need to be protected.

Carmen Vazquez, Associate Director of the Counseling Department at The Rape Crisis Center, says IA officers have told her clients they can't file a complaint because they're undocumented.

"It's important to assure people that it doesn't matter what their immigration status is. We've made it a point to put that on all of our literature," said Margo Frasier, the former Travis County sheriff and current Police Monitor in Austin. A police department that is serious about policing itself must encourage the reporting of incidents of police misconduct, no matter from whom the reports come.

According to the Pew Hispanic Center in Washington, an estimated 1.6 million illegal immigrants live in Texas. Given the fact that over half the population of San Antonio is Hispanic, there are almost certainly thousands of undocumented immigrants living in San Antonio. A policy of barring undocumented immigrants from filing complaints further victimizes an already vulnerable population and leaves them with no recourse against police abuse.

Internal Affairs' atmosphere of intimidation against complainants is reflected in the low number of complaints received.

According to SAPD's 2010 Internal Affairs Report, citizens of San Antonio, a city of 1.3 million people, filed 313 complaints with Internal Affairs last year. In contrast, in Austin, a city of approximately 800,000, citizens filed a total of 753 complaints against police officers in 2010.

"That's alarming to me," Ms. Frasier said of the number of complaints in San Antonio. "That few complaints tells me something is happening at the front door." Indeed, something is

happening — the intimidation tactics, described by Filyk and other community members, have had the pronounced effect of driving away would-be complainants.

(b) Empowering Independent Review of Police Actions

SAPD can look to other major cities in Texas for examples of how to provide effective independent scrutiny of police officer conduct.

The City of Austin, for instance, established an independent Office of Police Monitor in 2002, when the Austin Police Department was facing circumstances similar to those that SAPD faces now. In response to poor relations between APD and the community, community activists demanded independent citizen oversight of APD. The OPM receives citizen complaints (citizens are still allowed to file complaints directly with Internal Affairs, but almost never do), then sends complaints to Internal Affairs, which conducts the investigation. OPM, however, monitors the investigation of all complaints and is present during all interviews pertaining to formal complaints. Once the Chief of Police makes a decision regarding whether or not to sustain a complaint and, if applicable, what punishment to impose, the OPM notifies the complainant of the result. *If* the complainant is not satisfied with the resolution of the case, he or she can contact the Police Monitor for a conference and go before a citizen review panel, which can make recommendations to the Chief for a different result, further investigation, and potential changes to policies or training.

Generally, citizens feel more comfortable filing a complaint with the Austin OPM because they're not filing it with the police department. And the fact that the OPM exists helps ensure the process is fair, thorough, and transparent. For instance, sustained complaints and punishments levied against officers available online in Austin, providing an additional mechanism for institutional disclosure (the benefits of which are discussed in the next section).

Investigating citizen complaints against police officers is different and poses special challenges because the investigator is investigating a fellow officer, as noted in a 2004 report by veteran citizen complaint investigator Jayson Wechter in coordination with widely recognized criminal justice expert Samuel Walker. Not only are these situations emotionally charged from both sides, but complaint investigators must serve multiple constituents (the accused officer, the victim, the police department, and the community) with significant, but differing, interests in the outcome of the investigation. As a result of these unique pressures, citizen oversight agencies tend to be the most effective type of external review, according to Jack Ryan.

Likewise, Dallas has an independent Citizens Police Review Board that can subpoena witnesses and take complaints and sworn testimony from citizens. If the Dallas Police Department refuses to investigate a complaint, the Board can hire a professional investigator to conduct its own inquiry.

The Dallas institution is an improvement over San Antonio's weak review board, which lacks subpoena power or the ability to take complaints, and concludes with a recommendation which lacks any binding force. However, this model is nonetheless a less successful form of review than a fully independent monitor's office, such as Austin's, because it runs into problems such as the need to wrest control from the police department on a case-by-case basis in order to force an administrative interview.

The SAPD Internal Affairs division has so little legitimacy in the public eye that policy changes alone will not be sufficient to restore its credibility in the eyes of the public. The City of San Antonio needs to establish an independent police oversight board with subpoena power to take citizen complaints, ensure satisfactory follow-up with complainants, and — most importantly — affirmatively monitor the investigative process and patterns of misconduct.

(c) Achieving Real, Not Perfunctory, Transparency

One way Internal Affairs can begin to improve its credibility is by publishing meaningful annual reports. The preface to each section of the Internal Affairs annual report states: "The following charts, graphs and tables provide detailed information on alleged violations of the San Antonio Police Department's Procedures as well as Rules and Regulations."

Yet, the level of "detail" in the reports is unbelievably vague. Internal Affairs annual reports fail to convey any substantive information. The reports simply present a tally of the number of complaints, broken down by whether they were formal (major) or line (minor) complaints, whether they were initiated by citizens or by the administration, what rule was allegedly violated, and of which division and patrol substation the officer was a member.

Nor do the Internal Affairs reports show outcomes of the complaints. Aside from listing the number of officers indefinitely suspended (there were 20 in 2010), there is no mention of how any cases were resolved. Outside organizations and the public at large, therefore, have no means of monitoring whether or not Internal Affairs investigators are actually doing their jobs.

Further, the reports list complaints to categories that are far too broad to convey any real meaning. For example, an offense like that committed by Officer Nash (on-duty sexual assault)

would be lumped under the category “Responsibility to Serve the Public -- Conduct and Behavior.”

Complaints must be broken down into categories that are specific enough to reflect the types of misconduct that occur.

According to Tim Maher, a criminal justice expert at the University of Missouri-St. Louis (and former police officer), who specializes in police deviance and sexual misconduct: “It’s important that police sexual misconduct, in particular, be a specific category because if there’s no specific mention of inappropriate sexual behavior, such problems are left in a grey area and it’s unlikely that anything will be done about it.” Police sexual misconduct has clearly been an issue for SAPD in recent years, and therefore needs to be reflected in IA reports.

The Internal Affairs report should also include a detailed breakdown of the complaint and review process so the public can understand what SAPD does to police itself. Relatedly, this information should be included on all IA literature to enable complainants to understand how the process works and what their rights are, something that hasn’t happened in the past.

For example, complainants have habitually been prohibited from bringing an attorney with them to file a complaint, despite a departmental policy to the contrary (incidentally, complainants also have no right to bring an attorney to CAAB hearings). George Alejos of LULAC says that, in his experience, Internal Affairs never allows advocates to accompany complainants when filing a complaint. Patrick Filyk has been able to argue his way in a couple of times to accompany clients when filing a complaint, but he says that he’s “had to be pretty forceful.” Likewise, “they say they’ll come to you to take your complaint, but they never do.”

And according to Mario Salas, an organizer of the PERF community focus group and former city council member, complainants have been told they have to take a drug test before filing a complaint, which is also against protocol. Making information about Internal Affairs policy available to the public in a clear and easily accessible way can help prevent violations of policy by individual officers.

As noted, SAPD has instituted some positive reforms over the course of the past year, but unless Internal Affairs provides meaningful reports, the citizens of San Antonio will be unable to monitor whether SAPD is making any real progress.

(d) Compounding Factors

Even when complaints do trigger an Internal Affairs investigation, outside actors often

sabotage the process. The police union's collective bargaining agreement stipulates that all complaints must be investigated, and punishment imposed, within 180 days of the incident complained of. Officers' lawyers have been known to drag the investigative process out past the 180-day period whenever possible in order to foreclose possible sanction of their client.

And the union has continued to pay officers' salaries while they are serving an unpaid suspension for misconduct, which takes much of the sting out of any punishment handed down. If officers are being paid even while serving an unpaid suspension, then, short of termination, there are no substantial consequences that would deter officers from committing acts of misconduct. Officers therefore don't have to fear significant repercussions for anything but the most severe and termination-worthy misconduct, which represents only a small minority of all officer misconduct.

Even when officers do face sanction from the police department, they rarely face criminal sanction. The District Attorney's office has routinely failed to prosecute cases of criminal misconduct by police officers, which only reinforces the notion that officers are not beholden to the law. This failure sets a bad example and sends a message that, in reality, the penalty for misconduct is not heavy.

VI. A Problem of Culture

In cases of the most egregious misconduct, such as on-duty sexual assault, for example, it appears that Internal Affairs usually responds swiftly and appropriately. However, these cases of severe criminal misconduct do not represent the majority of complaints citizens have regarding interactions with SAPD officers.

Both Henry Rodriguez, Civil Rights Chair of LULAC of Texas, and Oliver Hill, President of the NAACP of San Antonio, say that most of the complaints, which their organizations receive about SAPD officers pertain, to officer rudeness and unresponsiveness. "Officers are often insensitive, arrogant, and disrespectful," Rodriguez said. These types of complaints need to be taken just as seriously as those pertaining to more severe misconduct — not merely because such behavior is inappropriate in itself, but because it is a precursor for later problems.

Edward Piña, an attorney who was on the PERF committee and also a former president of the San Antonio ACLU chapter, explains why: "One of the things I learned while serving on the PERF committee is that officer rudeness is the strongest predictor of more serious misconduct

down the road.” Dr. Maher affirms this reality, observing that “if you let officers get away with minor stuff, then they are likely to engage in more serious misconduct. There must be consequences for police misbehavior, and zero tolerance for officer misconduct.”

Concerns voiced by members of the San Antonio community echo the Matrix Group’s diagnosis that the misconduct exhibited by SAPD officers is a reflection of the culture embedded in the department.

Earlier this year, for instance, Austin police officers pulled over an SAPD officer for suspected DWI. He was in Austin for a police officers’ convention. After determining the SAPD officer was in fact intoxicated, the APD officers placed him under arrest. At this, the SAPD officer went ballistic. He was absolutely incredulous that the APD officers would arrest a fellow police officer, and insisted that that would never happen in San Antonio.

SAPD officers are quick to protect each other, but are not as responsive to the needs of community members, particularly when those members come from poor, vulnerable, and marginalized populations. Recently, a subsidized housing tenant was illegally evicted by her landlord. The landlord removed all the woman’s belongings from her home and left them outside along the street, which he was clearly not permitted to do under well-established law. By the time the woman arrived home from work, all her belongings had been grabbed by passersby. She called the police, but the officer who arrived refused to write a police report up for theft. Instead, he insisted that this was a civil matter and he didn’t need to get involved.

(a) Better, More Consistent Training on Victims’ Services

Just like the woman illegally evicted from her home, citizens of San Antonio often find SAPD officers unresponsive when they need them the most. Members of the community who work regularly with victims of sexual assault and domestic violence find that officers often respond inappropriately to victims.

The Rape Crisis Center management team explained that the questions officers ask victims are often victim-blaming, which creates even more trauma for victims. Sometimes clients tell them officers don’t believe them. “Officers will sometimes call sexual assault nurses and ask them to take blood alcohol reading of the victim to try to prove she’s lying,” Deana Buriel of the Rape Crisis Center said. And often, officers don’t know how to communicate with victims in an appropriately sensitive manner. “Sometimes cases are hard to prove, so they won’t be able to take the case. But their language when they tell the survivor that they can’t take her case needs to

be better. The language and manner in which they handle people is so inappropriate. One victim had gone to the hospital, then tried to call an officer to file a report, and he told her that her case was dropped because it was consensual,” Ms. Buril said. Carmen Vasquez, also of the Rape Crisis Center, reported that another victim, a teenage girl, was asked by the responding officer to lift up her shirt and “show me where he touched you.”

An experienced victim advocate we spoke with finds officers often respond equally inappropriately to victims of domestic violence: “I think there is a bias against women if they don’t have the ‘victim look.’ Sometimes our clients are on probation for DWI or something like that. Sometimes they have children with multiple fathers. Sometimes they have lots of tattoos or suffer from mental illness. They’re not the ideal victim. And officers often don’t believe them or assume that they’re mutually combative.”

She has also found that, when women express other concerns to the officer responding to a domestic violence scene — concerns over who will take the kids, for example — officers will often immediately treat the call as a civil matter and refuse to help. “Officers lose focus of the purpose of a 911 call. They say, ‘This is a custody or a divorce issue, you need a lawyer; we’re not going to get involved.’ But people don’t call 911 for a lawyer — they call because they need help.” Officers are also called to the scene to help diffuse situations of domestic violence; their attitudes can have a large impact on the resolution of those violent situations.

The victim advocate believes there is a need for consistent, ongoing training, including updates on what the law is. She also believes there is a need for greater empathy in victims’ services. “Officers need to understand that domestic violence victims aren’t always going to look like a typical victim,” she says. “Victims might not show a lot of emotion because they have a history of abuse and have become accustomed to it and have learned to cope with it in a certain way. But in those cases officers have a hard time believing them.”

The Rape Crisis Center’s management team has found that SAPD management has been open to sitting down with them, discussing issues, and trying to make improvements. Last year, they were invited by SAPD to provide victims’ services training of all SAPD officers from the top down, which was very well received by the vast majority of officers. The management team had nothing but positive things to say about Lieutenant Andrew Carian, SAPD’s sex crimes liaison. “Lieutenant Carian is great, very responsive. He gives great training. But we don’t see that it trickles down,” Ms. Buril said.

Miriam Elizondo, Executive Vice President for Client Services at The Rape Crisis

Center, believes part of the problem is desensitization. “Cops are so desensitized that they themselves are causing trauma,” Ms. Elizondo said. “We need to keep in mind that officers are a traumatized population as well — it’s hard for them to shift gears.” Elizondo believes part of the solution could lie in improved mental health services for officers. “SAPD has only one or two psychologists for officers to see. There’s no specific employee assistance program. SAPD needs to promote mental health services to help with compassion fatigue, burn-out, and desensitization.”

Another way to improve victims’ services is to elevate the status of the sex crimes unit and the domestic violence unit. Currently, these are entry-level units, for new detectives. Generally, detectives don’t want to be there. Rather, detectives see these units as merely a holding station until they get promoted. It’s important that the status of these divisions be elevated, both so that detectives view the work as important and so that more experienced detectives are working with these types of victims.

Another part of the solution could be to partner more closely with victims’ agencies. The Rape Crisis Center finds that when its staff is in the room when officers are interviewing victims, officers behave better. Currently, rape crisis intervention advocates can go with the victim to file a report, but are not allowed to accompany them while an officer is interviewing them. The intervention advocates feel it is important that they be allowed to accompany the victim, not only to help ensure that the victim is treated appropriately, but also to help officers get more useful information from them. “How you treat the victim determines how likely you are to get the info to help the case. We can be the go-between to help them get information, but SAPD resists that help,” Buril said.

The problem of lack of follow-up is a problem not only of the complaint process but of victims’ services as well. “Clients don’t feel they have their phone calls returned,” according to Buril. “Follow-up is nonexistent. Often they don’t even know if their case was taken as a sexual assault report. Clients who’ve called once sometimes are hesitant if there’s no callback.”

In the last few years, SAPD established victims’ advocates to serve as liaisons between detectives, victims, and victims’ agencies like the Rape Crisis Center. But there are only two advocates, and they are overworked and overwhelmed. Often rape crisis case managers will call several times and never hear back. “It takes a lot of work and perseverance to access the [SAPD] advocates. Sometimes it’s easier just to track down the detective,” according to Buril.

The most recent year for which SAPD’s website provides statistics on domestic violence

is 2005; in that year, there were 12,633 reported domestic violence assaults in San Antonio. That number had increased steadily each year from 4,723 in 1997, the earliest year for which statistics are provided.

If that trend has continued, the prevalence of domestic violence in San Antonio is even greater today. The most recent available statistics on rape are from 2009; in that year, SAPD handled 628 cases.

In addition, the Rape Crisis Center works with three new victims who report sexual assault every day. Given the enormity of the problems related to domestic violence and sexual assault in San Antonio, it is not surprising that the two SAPD liaisons are difficult to reach. In order for the victims' advocacy program to be successful, there needs to be more funding for at least two more SAPD liaisons.

(b) Reforming Anti-LGBT Attitudes Through Ongoing Training

Another group that has historically been the target of SAPD officer insensitivity is the LGBT community. By all accounts, relations between SAPD and the LGBT community have improved greatly in the last few years. SAPD established an LGBT liaison in 2004. Since Chief McManus took office in 2006, he has led the charge in softening relations with the LGBT community. "McManus is very gay-friendly," said Elena Guajardo, co-chair of the Bexar County Stonewall Democrats. In 2007, he served as grand marshal of the gay pride parade.

SAPD has made LGBT sensitivity training a part of the police academy curriculum starting in 2008 and has invited representatives of the San Antonio Gender Association (SAGA) and the Stonewall Democrats to conduct the trainings.

Following Officer Nash's sexual assault of a transgender woman in 2010, McManus apologized to the LGBT community for the incident and attended a SAGA meeting to express his commitment to treating all citizens equally. Last December, the city council appointed two members of the LGBT community to the Citizen Advisory Action Board: Ruby Krebs, a former president of SAGA and currently on the board of the Stonewall Democrats (who also served on the Chief's personal advisory board reviewing the Matrix study); and Dee Villarubia, one of the original founders of the Stonewall Democrats and currently the Deputy Chair of the Bexar County Democratic Party (the first lesbian to hold that office).

Despite these efforts, Krebs reports that, "amongst veteran officers, there are still entrenched negative attitudes toward the LGBT community." Since LGBT sensitivity training

only takes place at the police academy, any officers who joined the force prior to 2008 haven't received the training. "What I would love to see," Krebs said, "is LGBT sensitivity training required for veteran officers. There is sensitivity training in the police academy, but veteran officers haven't received this training, and they're the ones who need it the most because once new recruits get out of the academy, the veteran officers are the main influence on them. Things are markedly better, but there's still a lot of work to be done."

Another remarkably effective sensitivity training technique integrates field work into police academy training programs. Jack Ryan, in his work advising police departments, has come to recommend that departments develop "service-learning partnerships" as a component of academy training. While officer need sensitivity training on issues such as race/ethnicity, social class, gender, and sexual orientation, classroom instruction alone can only accomplish so much.

Ryan previously assisted one police department in preparing a program for recruits to do field work in partnership with sexual assault clinics, domestic violence shelters, workforce development organizations, and Boys & Girls' Clubs. Each recruit kept a journal of observations and reflections during each visit, and, according to Ryan, the ensuing classroom discussions prompted an unprecedented level of engagement and empathy among participants.

Such programs, both for academy recruits and more veteran officers, provide a crucial experiential component to sensitivity training, and also aid in building stronger relationships with the community the department serves.

(c) A Structured Process for Officer Conduct Review and Discipline

Officer misconduct, whether it involves unnecessary rudeness or something far more serious, must be dealt with appropriately and consistently. Supervisors need both accurate information and adequate guidelines to effectively respond to problem behavior by subordinates. These two needs, in turn, can be addressed with two useful law enforcement tools: a disciplinary matrix to provide guidance, and regular supervisory field reviews to provide fuller information.

According to police accountability expert Samuel Walker, "lack of consistency in discipline is a special problem in large agencies where responsibility for discipline is decentralized among commanders at the precinct level." As Walker noted in a 2003 report, this issue is a major concern not only for the public, but among rank and file police officers in many departments as well. The perception of inconsistency can manifest as an impression that certain officers are treated more favorably than others, or that different command officers apply

inconsistent standards for judging similar behavior.

A disciplinary matrix is meant to remedy this problem by creating a formal schedule for disciplinary actions. The PERF committee (which is composed of top police executives from other departments) concluded that SAPD should develop exactly such a schedule. PERF explained its recommendation and the reasons for it: “A matrix groups violations by severity and then offers a range of sanctions for each group. A matrix system maintains a range of sanctions, allowing management to take into account individual circumstances, but adds predictability and equity for officers having committed similar infractions. It also provides a statement by the department about how senior management views the severity of different types of misconduct.”

SAPD decided in error to reject PERF’s proposal, leaving open only the possibility of future conversations on the issue. A well-designed disciplinary matrix has the potential to act as a guidance system for law enforcement supervisors. Of equal importance, it demonstrates concretely to officers that there are predictable adverse consequences for improper conduct. A disciplinary matrix serves as a specific tutorial to officers on what is (and is not) acceptable behavior. In addition to its broader effects, a disciplinary matrix would help SAPD deal with a problem not dealt with effectively at present: it could act as a greater deterrent to the problem of officer sexual misconduct, by warning officers on the seriousness of sexual misconduct, and educating them that activities that some officers may think of as harmless — such as pulling a girl over because she is attractive or looking up a woman’s phone number in a police database — is a punishable violation of policy.

Even with a better guide to enforcing disciplinary rules, however, supervisors cannot correct behavior they are not aware of. SAPD recently took an important step toward addressing this problem by streamlining supervisors’ workloads and improving the ratio of supervisors to line officers. More numerous and attentive eyes can catch misbehavior earlier, and help in combatting an entrenched culture the Matrix Group described as unwelcoming of supervision.

But supervisors need better ways to monitor their subordinates’ day-to-day conduct as well. Police practices expert Jack Ryan, noting that this report (as well as the Matrix Group) advises the installation of mobile video recorders in field response units, suggested a practice his experience has shown to be a powerful tool for supervisors. Namely, supervisors should utilize the availability of this video data to conduct occasional, random supervisory reviews of their employees’ stops. By reviewing video records, rather than relying solely on officer reports or complaints, supervisors can ensure that subordinates are following procedures and using proper

techniques in their everyday performance.

Supervisors can also mandate additional training, or in some cases impose discipline, based on information learned through such reviews (which they otherwise might never have been able to observe).

The investigation of Officer Martínez — especially the belated discovery of evidence of his misconduct that had been in his supervisor’s possession the entire time — sufficiently demonstrates this point, but the practice of random reviews has further precedent. Under a well-known consent decree between the U.S. Department of Justice and the New Jersey Division of State Police in effect between 1999 and 2009, supervisors were required to regularly review “patrol car video tapes of traffic stops, to ensure that troopers are employing appropriate practices and procedures. Where concerns arise, supervisors may require that the trooper be counseled, receive additional training, or that some other non-disciplinary action be taken. Supervisors also can refer specific incidents for further investigation, where appropriate.”

SAPD’s proposed budget for the coming year appears to provide for a significantly expanded deployment of video cameras in police vehicles, possibly in an effort to implement the Matrix Group’s recommendations.

The department should bolster the effectiveness of this new tool by requiring supervisors to conduct regular reviews of each of their officers’ stops –no less than twice per month per officer according to Mr. Ryan, and preferably utilizing a standardized checklist approach. This review would pick up patterns on officer stops, misconduct, and safety violations by officers which then could be remediated.

And even when video recordings are not accessible, supervisors can nonetheless attain similar improvement (albeit less efficiently) by occasionally appearing at stops being conducted by officers under their supervision, to monitor their behavior on a regular but unpredictable interval.

VII. Summary of Recommendations

To the City of San Antonio:

- The City should create an independent civilian police oversight board to take complaints and oversee the investigative process. The board should be able to subpoena witnesses and sit in on Internal Affairs interviews with complainants and witnesses.

- The City should set requirements for transparent, meaningful reporting by Internal Affairs.
- The City should provide more funding for two more victim liaisons.
- The Mayor should establish a committee of council members to evaluate and make recommendations regarding Internal Affairs transparency and to consider implementation of the recommendations in this report.
- The collective bargaining agreement should be amended so that any complaint filed within 180 days of the incident will be investigated thoroughly and, if necessary, seen through to the punishment phase, with no time limitations, or, in the alternative, provide that the department has 180 days to take disciplinary action against an officer starting at the time the complaint is filed.
- The collective bargaining agreement should be amended to prohibit the union from continuing to pay officers' salaries while they are serving unpaid suspensions for misconduct.

To the Bexar County District Attorney's Office:

- The DA's office should prioritize pursuing cases of criminal police misconduct in order to send the message to police officers and the public that they are not above the law and to create an added layer of accountability and deterrence against police misconduct.

To the San Antonio Police Department (SAPD):

Complaint process accessibility

- The citizen complaint form should be available online. Providing an email address via which citizens can contact Internal Affairs is not satisfactory.
- Threats of prosecution against complainants should be removed from all Internal Affairs forms and intake procedures, and the "Aggravated Perjury" language should be removed from the Internal Affairs website.
- Complainants should receive written, regular updates of the status of their complaints and the progress of the resulting investigation.
- Complainants should be provided with a telephone contact to check on the status of the investigation of their complaint.

- Anonymous complaints should be accepted for the purpose of triggering further investigation, especially with regard to the supervisor of the allegedly offending officer.
- Complainants themselves, and not Internal Affairs officers, should be able to transcribe their own sworn statements if they choose, and be advised of that option.
- The complaint form should be available in Spanish, and complainants should be allowed to give their statements in Spanish.
- Internal Affairs literature should make clear that people can file complaints no matter what their immigration status is and without fear of retaliation.
- Complaints should be privileged. Citizens should be immune from perjury charges on the grounds of statements made in the complaint.
- Complainants should be entitled to bring an attorney or non-attorney advocate to meetings with Internal Affairs or the Chief's Advisory Action Board.
- SAPD should reach out to the community to inform people about the complaint process and encourage them to file complaints when they have been the victim of officer misconduct.

Officer accountability

- Officers should be encouraged and trained to intercede when they witness misconduct by fellow officers and to report misconduct by fellow officers to Internal Affairs; officers and their supervisors should also be held accountable for failure to report misconduct.
- Any officer who attempts to dissuade a complainant from filing an abuse or other complaint should be punished appropriately.
- SAPD should provide periodic training on receiving complaints. All officers should be required to demonstrate competency in understanding complaint policies and procedures.
- Sustained complaints against an officer should never be purged from the officer's record after a set period of time.
- Upper-level officers should routinely review supervising officers to ensure they are appropriately supervising their subordinates.

- Supervisors who fail to appropriately supervise their subordinates should be held accountable for their subordinate officers' actions.
- When a complaint alleging potentially criminal behavior is sustained, it should be automatically forwarded to the DA's office for review.
- The filing of a civil lawsuit alleging officer misconduct should automatically trigger an internal investigation.

Internal Affairs reporting

- Internal Affairs should improve transparency of its reporting. Complaints should be broken down into more specific and more meaningful categories, and reports should discuss investigation and outcomes of cases. Internal Affairs should consult the Austin Police Monitor's report as an exemplar.
- Police sexual misconduct policy should be categorized separately as sexual misconduct, not lumped in with other forms of misconduct.
- Internal Affairs reports should indicate where supervisors were held accountable for misconduct by subordinates and where supervisors and officers were held accountable for failure to report misconduct.
- If the Chief's Advisory Action Board votes to sustain a complaint against an officer and the Chief decides not to discipline the officer, a detailed justification for his decision should be provided publicly at the time of the decision and as part of the Internal Affairs annual report.
- Punishments imposed on officers by the Chief of Police should be made public on the police department's website.

Oversight

- SAPD should develop a disciplinary matrix, after consultation with outside experts and professional standards, for use by supervisors in dealing with officer misconduct.
- GPS devices should be located in the patrol vehicle, not in the vehicle's computer system, so that officers can't unplug them.
- Video recording devices should be installed in all field response units, and supervisors should be required to conduct a supervisory review of no less than two stops per month

per officer, based on a standardized checklist/document to ensure compliance with SAPD policies and detect any patterns of misconduct and safety violations by officers which then could be remediated.

Officer support

- SAPD should provide better mental health services for officers and create a proactive employee assistance program to help alleviate compassion fatigue, burn-out, and desensitization.
- Supervising officers should receive periodic training to improve the efficacy of the Early Intervention System.

Victims' services

- SAPD should partner more closely with victims' agencies.
- SAPD should require ongoing victims' services training.
- SAPD should elevate the status of the sex crimes and domestic violence units to have more experienced detectives in these units.

Sensitivity Training

- Veteran officers should receive periodic LGBT sensitivity training.
- SAPD should incorporate a field-work component into its training programs (minimum of 40 hours in academy training, and 20 hours annually for officers) that involves officers volunteering with community organizations, such as, for example, sexual assault crisis centers, domestic violence shelters, workforce development programs, and youth outreach.

VIII. Appendix: References and Further Reading

Much of the information in this report was obtained through inspection of police department records and extensive interviews. For additional information, readers may review some of the following materials which were referenced or reviewed in the preparation of this report. PDF versions of these documents are available at <http://www.texascivilrightsproject.org/go/sapd>.

City of Austin – Office of the Police Monitor, 2010 Annual Report.

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Police Executive Research Forum, San Antonio Police Department Policy, Practice, and Training Review (May 2008).

San Antonio Police Department – Internal Affairs, 2010 Annual Report: Officer & Complainant Demographics.

U.S. Department of Justice – Office of Community Oriented Policing Services, Early Intervention Systems for Law Enforcement Agencies: A Planning and Management Guide (2003) (prepared by Samuel Walker, Ph.D., Department of Criminal Justice, University of Nebraska at Omaha).

United States v. Division of State Police of the New Jersey Department of Law And Public Safety, Civil No. 99-5970(MLC) (U.S. District Court for the District of New Jersey), Joint Application for Entry of Consent Decree (December 30, 1999).

Samuel Walker, The Discipline Matrix: An Effective Police Accountability Tool?, Conference Report, Police Professionalism Initiative of the University of Nebraska at Omaha (January 2003).

Jayson Wechter, Investigating Citizen Complaints is Different: The Special Challenges of Investigating Citizen Complaints Against Police Officers, Police Professionalism Initiative of the University of Nebraska at Omaha (Samuel Walker, coordinator) (September 2004).



About the Texas Civil Rights Project

The Texas Civil Rights Project (TCRP) promotes racial, social, and economic justice through education and litigation. TCRP strives to foster equality, secure justice, ensure diversity, and strengthen communities. Since its beginning, TCRP has achieved substantial system gains in ensuring justice for all Texans. TCRP uses education and litigation to make structural change in areas such as voting rights, police and border patrol misconduct, sex discrimination, employment bias, privacy, disability rights, grand jury discrimination, traditional civil liberties (i.e. free speech), and Title IX in secondary education.

TCRP was founded in 1990 as part of Oficina Legal del Pueblo Unido, a non-profit community-based foundation in South Texas. Oficina Legal del Pueblo Unido, Inc., started in 1978 as a community, grassroots foundation to provide legal assistance and education, without cost, to low-income people, particularly minority persons and individuals victimized by discrimination.

TCRP began with an unpaid staff of two in the Austin Peace Building (an attorney and an office manager). Within a few months, TCRP was able to hire an attorney for its South Texas office. TCRP now has offices in Austin, Alamo, Odessa, and El Paso, and a staff of 37 people.

Since 1990, the Texas Civil Rights Project has been a tireless advocate for racial, social and economic equality in Texas, through its education and litigation programs.

Some of the achievements we are most proud of:

- * Handled more than 2000 cases
- * Published eight Human Rights reports on issues such as hate crimes and the death penalty
- * Compiled five “self-help” manuals
- * Published 300 opinion editorials in Texas newspapers
- * Given 250 speeches and talks on civil rights
- * Conducted community and lawyer trainings for more than 22,000 persons.

The South Texas Project has worked steadfastly to extend equal rights to farm laborers and *colonia* residents in the Rio Grande Valley, and improve their living and working conditions.

We have litigated every kind of official misconduct in every part of Texas — city police, sheriff deputies, Department of Public Safety officers, and Border Patrol agents. Because of our work, jails in Hidalgo, El Paso, Henderson, Tom Green, Williamson, Travis, Bexar, Dallas, and Brown Counties do much more now in preventing inmate suicide, providing interpreters for deaf prisoners, protecting vulnerable inmates from sexual assault, administering HIV medications, and making them accessible for inmates with disabilities.

TCRP set the national model in ballot accessibility for blind voters and has led more than two dozen regional compliance campaigns in Texas under the Americans with Disabilities Act (ADA). Thanks to the efforts of our staff, churches and courthouses in Texas are much more accessible to elderly and disabled people – and government more accountable.

We have pioneered a unique “circuit-rider” outreach program in west and south rural Texas for abused and undocumented spouses under the Violence against Women Act (VAWA).

And we have prodded the Texas Supreme Court to improve pro bono services for poor and low-income families in the state, 90% of whom have unmet legal needs each year.

Our Title IX educational and litigation programs on sexual harassment, bullying, and equal sports opportunities have helped make rural middle schools and high schools more hospitable for young women. Our work has also opened up the prospect of athletic scholarships to college for them.

Our “Equality under the Law” campaign has addressed “benign” discrimination against African Americans and Hispanic Americans in banks, restaurants, motels, and other places of public accommodation.

Our efforts to help South Asian, Muslim, and Arab citizens, permanent residents, and students who fell victim to post September 11 discrimination have included filing a suit against a major airline, and enlisting Texas attorneys to represent, on a pro bono basis, individuals who were questioned by the FBI.

We worked with the Mexican American Legal Defense and Education Fund (MALDEF) to help create single-member school board districts in Del Valle ISD and assisted in redistricting the Texas Legislature and Texas Congressional so as to protect the voting and representational rights of minority citizens.

We assisted the NAACP in bringing the U.S. Department of Justice to review Austin Police Department policies and make changes to APD’s use of force practices in minority communities.

We joined with the American Jewish Congress in one of the first court cases in the country to challenge the constitutionality of government funding of a religiously orientated job-training program that used the Bible as a text and proselytized among its trainees.

We are a leading voice in raising questions about the fairness of Texas' death penalty scheme, and the possibilities of executing innocent people. So, too, are we an intrepid advocate of traditional civil liberties, such as free speech and assembly, due process, and equal protection under the United States and Texas Constitutions.

History of Oficina Legal del Pueblo Unido, Inc. and the Texas Civil Rights Project, and other information, available at <http://www.texascivilrightsproject.org>.