

**A STUDY OF THE POLICY AND PROCESS OF
THE MINNEAPOLIS CIVILIAN POLICE
REVIEW AUTHORITY**

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* Für die Maus.

“The duties which a police officer owes to the state are of a most exacting nature. No one is compelled to choose the profession of a police officer, but having chosen it, everyone is obliged to live up to the standard of its requirements.”*

— U.S. President Calvin Coolidge

* Remarks of then Governor Calvin Coolidge (1872-1933) at Worcester Police Outing, Worcester, Mass., USA, Oct. 2, 1920.

EXECUTIVE SUMMARY

The Civilian Police Review Authority (CRA) serves as the administrative fact-finding agency of the City of Minneapolis, investigating citizen complaints of police misconduct, independent of the Minneapolis Police Department (MPD). The CRA ordinance, as passed by the Minneapolis City Council, mandates that the Chief of Police issue disciplinary decisions based on the facts investigated and found by the CRA. In many cases, discipline is foregone because CRA investigations are viewed as deficient, based on conjecture, or are alleged to be unsupported by the evidence. For these reasons, the Director of Civil Rights retained an independent consultant to conduct a study of the administrative work processes of the CRA and the policies that govern it.

The purpose of this study is to achieve three objectives:

- (1) address the MPD's allegations that the CRA investigations are deficient;
- (2) assess the current implementation of the CRA's governing ordinance; and,
- (3) make further recommendations for improving the CRA administrative process.

The study also discusses the larger issue of whether implementation of the ordinance, or the ordinance itself, prevents the effective oversight of the MPD.

The study of the CRA was accomplished through in-person interviews, internal document review, and analysis of actual CRA investigative files. The consultant first reviewed the historical background of the CRA complaint process and its development and redesign.

Next, the consultant conducted a sample audit of seventeen (17) CRA investigations using the efficacy criteria designed by Professor Eileen Luna of the University of Arizona and Professor Samuel Walker of the University of Nebraska in their 1997 study of the Albuquerque, New Mexico, Police Department's Internal Affairs Unit.[†]

[†] See *infra*, at 37. In their 1997 study, Professors Luna and Walker also examined the Minneapolis Civilian Police Review Authority.

Professors Luna and Walker established a standard efficacy criteria consisting of five (5) factors to determine the deficiencies, and systematic dysfunctions, of internal affairs investigations. The sample selection of CRA investigations showed that sixteen (16) investigations, or the vast majority, met or exceeded the Luna/Walker efficacy criteria for evaluating investigations.

This study revealed, however, that a persistent and major source of criticism regarding the thoroughness of CRA investigations arises from the Minneapolis Police Department's "*de novo* review" of the CRA's investigative determinations. Another significant source of criticism stems from the CRA's use (or misuse) of MPD Policies and Procedures as a standard for arriving at the final CRA findings-of-fact and determination.

The consultant also reviewed the CRA Board's decision-making process using a modified version of the

However, the institutional design of the CRA has changed since their study.

Luna/Walker criteria.[‡] While CRA Board determinations met acceptable standards using this modified criteria, it revealed that the authority granted to the Board to issue written decisions is problematic for the following reasons:

- (1) the Board's practice of issuing "concurring or dissenting opinions" leads to confusion as to the outcome of its final decision;
- (2) the CRA Board too often duplicates the work of its professional investigators;
- (3) the CRA Board erroneously applies the relevant legal standards; and,
- (4) the CRA Board's "opinions" are quite frequently perceived as biased against the police.

Overall, these concerns negatively affect the CRA's credibility in both the community and the MPD.

An additional analysis on the administration of discipline within and by the MPD also reveals areas of significant concern, meriting further study. In an alarming number of cases, the MPD leadership exceeds its administrative authority under the governing ordinance by refusing to accept the CRA Board's finding-of-facts and determinations. This results in the administrative

[‡] See *infra*, at 47. The consultant tailored the Luna/Walker criteria to fit the fact-finding function of the CRA Board as explained in greater detail in the study.

leadership of the MPD “Not Sustaining” CRA complaints that have already been “Sustained” by the CRA Board panel.

Furthermore, since the CRA ordinance does not specifically prohibit or proscribe acts of misconduct, the CRA, as an institution, does not set clear enforcement goals and objectives. These weaknesses in the ordinance result in CRA Board decisions being all too often disregarded—or viewed as advisory by the parties involved.

The combination of a lack of specifically prohibited acts of police misconduct, and inconsistencies in the implementation of discipline, has allowed the Chief to supercede the CRA Board’s finding and make his own decision to “Sustain” or “Not Sustain” the alleged misconduct. This enhances the risk that the CRA, as an institution, becomes subject to “administrative drift.”[§]

The consultant makes the following recommendations to address these concerns:

[§] See *infra*, at 82.

(1) CRA staff is recommended to:

- a. establish a clear **“dismissal process”** for complaints that **facially lack merit** or **do not justify** expending investigative resources;
- b. develop a **standardized investigative report form**, which will clearly reflect: (i) the misconduct alleged, (ii) the fact-finding process employed, (iii) the evidentiary standard applied, and (iv) the basis for the conclusion or recommendation reached; and
- c. **train CRA staff investigators to employ standards other than MPD policy and procedure manual** as a tool for the evaluation of citizen/police complaints should City Council leave the CRA’s current **“Scope of Authority”** in place;

(2) **CRA Board is recommended to issue outcome-based decisions** stating that the complaint is **“Sustained,” “Not Sustained,”** or **“Remanded,”** and **discontinue the practice of issuing “opinions”;**

(3) The Chief of Police is recommended to:

- a. **adopt an appropriate policy on police discipline based on final CRA determinations;** and
- b. **designate a senior command officer to serve as his or her “CRA liaison;”**

(4) The City Council is recommended to:

- a. **commission another CRA “Quality Service Audit” (QSA) such as the one conducted in February, 2001, by Professor Samuel Walker and Leigh Herbst, to evaluate the community and police department’s satisfaction with the quality of services provided by the CRA; ** and**

- b. **Establish an internal work group made up of City Council Members, Civil Rights staff, the CRA Board Chair, MPD senior command officer(s), a Police Federation representative, and the City Attorney’s office. This group would address several outstanding issues outside the scope of this study, some of which were of concern to the CRA Redesign Committee of 2002, including, but not limited to:**
 - i. reviewing the CRA’s current “Scope of Authority” to determine whether the CRA investigations should specifically focus on the Minneapolis Police Department’s Policy and Procedures;
 - ii. limiting the CRA Board’s review solely to complaints initially “Sustained” following the CRA staff’s investigations;
 - iii. amending the CRA ordinance to include an “appeal” to, or the general

** Professor Samuel Walker and Leigh Herbst, *The Minneapolis CRA Quality Service Audit: A Two-Year Report, 1998-2000 – A Report to the Civilian Review Authority*, (Feb. 2001).

- use of, a CRA administrative law judge;
- iv. amending the CRA ordinance to specifically define what constitutes police misconduct;
 - v. reviewing additional data and research to evaluate the feasibility of utilizing the CRA "Early Warning System" for officers with repeated "Sustained" findings of misconduct;^{††}
 - vi. reviewing the CRA and the accused police officer's need for subpoena power;
 - vii. reviewing the Chief's responsibility with respect to the CRA process, which may include reinstating time limitations for the issuance of the Chief's disciplinary decision, and finally;

(5) A review of the MPD's Internal Affairs Unit should be independently conducted by a qualified consultant to determine the statistical efficacy of the IAU's investigations of officer misconduct.^{††}

^{††} An "Early Warning System" tracks employees who receive repeated complaints or show a pattern of potential misconduct.

^{‡‡} Such review should address whether existing MPD-IAU evidentiary standards over-include or under-include actual incidence of officer misconduct.

I. INTRODUCTION

A. *The Purpose of the Study.*

The Director of the Minneapolis Department of Civil Rights¹ commissioned an independent consultant² to evaluate the administrative work processes of the Civilian Police Review Authority.³ The purpose of the study was to achieve three main objectives: (1) address the Minneapolis Police Department's⁴ allegations that the CRA investigations are deficient; (2) assess the current implementation of the CRA ordinance; and (3) make recommendations for improving the administrative process.

¹ Hereinafter referred to as the "MDCR."

² The CRA ordinance authorizes the "Review Authority" to "[c]onduct a program of research and study for the purpose of ascertaining how the objectives of this title may be attained and sustained," MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.60(d). According to the Administrative Rule, CRA procedures "shall be liberally construed to achieve" its objectives. CRA Administrative Rule 1 (c), ¶ 4. Since the "Review Authority" is considered Civil Rights Department staff, it follows that this authority to commission this study is conferred upon the Director. See MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.170.

³ Hereinafter referred to as the "CRA."

⁴ Hereinafter referred to as the "MPD" or the "Department."

The commission for this study did not specify an assessment of the MPD, evaluation of the MPD Policy and Procedure Manual, or any other facet of City government. However, in order to fully evaluate the CRA process, it was requisite to analyze and remark on factors affecting the administration of discipline. Thus, a summary review of the MPD Internal Affairs' process was integrated into this report. This was necessary to provide the foundation for understanding the Chief's disciplinary decisions.

Readers are also warned that this study is not intended to evaluate individual incidents involving Minneapolis police officers,⁵ or provide legal advice to the MDCR or MPD.⁶

⁵ See *infra* note 22. The Consultant takes no position on the merits of any allegations against Minneapolis police officer investigated by the CRA, or any of the Chief's decisions regarding the administration of discipline.

⁶ The Minneapolis Department of Civil Rights is an operational department of the City of Minneapolis. As such, the City Attorney is the legal advisor to the MDCR. See MINNEAPOLIS, MINN., CITY CHARTER, CH. 3 § 7 (2005). Only the City Attorney has charge of all legal matters connected with the city government. See *id.* To the extent that any analysis in this report is conducted using legal principles, it is not a substitution for the legal opinions of the City Attorney's Office. Should any legal perspective be presented in this study, it is solely for the purpose of identifying a legal principle, and should not to be construed as legal advice.

Additionally, this study does not attempt to examine all potential issues arising from the CRA ordinance. The objective of this study, as defined by the Director of Civil Rights,⁷ is to examine the work product of the CRA, evaluate the implementation of the CRA ordinance, and to make recommendations.⁸

B. The Context of the Study.

This study was undertaken in light of a series of exchanges between the Chief of Police and the CRA Board Chair. In these interactions the CRA Board Chair publicly criticized the Chief for not administering discipline on sustained CRA complaints: "We have faced constant criticism

⁷ See *infra* note 22; see also MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.60 (d).

⁸ *Supra*. It should be noted that the Federation takes the position that the CRA should be an "Audit System Model" (a model dependent upon a police department's internal affairs unit) rather than the currently enacted model (an investigation and determination independent of the police department). See Interview with Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, in Minneapolis, Minn. (Jul. 26, 2005). The purpose of this study, however, is to review the current model adopted by the City Council, to assess the administrative procedure and to evaluate the work product of the City employees. For these reasons, a section reviewing the Federation's proposal to adopt the "Audit System Model" is not addressed in this study.

from the Minneapolis Police Department and have not had our misconduct decisions supported by actions from the [C]hief.”⁹

The Chief, in turn, alleged that the CRA investigations were deficient, and the CRA Board determinations were unsound.¹⁰ Most noteworthy, the Chief was quoted publicly as stating:

[w]hen the cases come back from CRA we review them and in many cases we find that their determinations, their findings, are based on conjecture, lack of knowledge of police procedure, [and] those types of things.¹¹

Also, internally within the City enterprise, the Chief has stated:

The fact is that some sustained CRA cases where no discipline is issued are poorly

⁹ Michael Friedman, *Civilian Review Board Hamstrung by MPD Resistance, Inadequate Resources*. SPOKESMAN-RECORDER, Nov. 10, 2004, ¶ 4.

¹⁰ See Paul Demko & G.R. Anderson, Jr., *The Hit Parade Revisited*, CITY PAGES, Jul. 20, 2005, at 16, ¶41; Isaac Peterson III, *‘Significant Changes’ Ahead for Mpls. Civil Rights Dep’t*, SPOKESMAN-RECORDER, Dec. 2004, at 1.

¹¹ Paul Demko & G.R. Anderson, Jr., *The Hit Parade Revisited*, CITY PAGES, Jul. 20, 2005, at 16.

investigated due, in some cases, to a lack of understanding of policing.

I have made the consequences of misconduct quite clear to members of the MPD. However, those consequences will be realized only when the facts or when patterns of misconduct are clear. They will not be **based on conjecture or misinterpretation of an officer's actions.**¹²

The Chief also raised the issue of negative perceptions resulting from sustained CRA complaints on its rank-and-file officers and their careers, since "Sustained" CRA complaints are considered when officers seek promotions or special assignments.¹³ Accordingly, in cases where the officers are not disciplined, the Chief designated those decisions already "Sustained" by the CRA Board as "Not Sustained," and made note of this in the officers' personnel files.¹⁴

Although allegations of substandard work product are alarming to MDCR administration, it is only one criticism of

¹² E-mail from Chief McManus, Minneapolis Police Dep't, explaining his position regarding the CRA Chair's article in the SPOKESMAN-RECORDER (Nov. 23, 2004) (on file with author).

¹³ See *infra*, at 105.

¹⁴ The reader should not interpret the fact that the Director of Civil Rights commissioned an outside, independent consultant for this study, as validation of these allegations.

the CRA process that prompted this study. The MPD leadership has also made statements strongly suggesting that the CRA Board is biased against the police, and lacks the ability to render a fair decision. From these allegations, it was clear to the Civil Rights Director that “the police department [was] not in agreement with the way that the work of the CRA [was being] handled.”¹⁵

Nevertheless, throughout this study the Consultant discusses the larger issue of whether it is the implementation of the ordinance or the ordinance language itself that prevents the oversight process from operating effectively.

C. The CRA Ordinance.

The City of Minneapolis created the Civilian Police Review Authority in 1990¹⁶ as a means to process citizen complaints of police misconduct. The precursory catalytic

¹⁵ Isaac Peterson III, ‘Significant Changes’ Ahead for Mpls Civil Rights Dep’t, SPOKESMAN-RECORDER, Dec. 2004, at 1, ¶ 8 (quoting Director Jayne Khalifa).

¹⁶ In fact, the concept of civilian oversight of the MPD dates back to the 1960’s when a civilian board was unofficially appointed. See Harold Beral & Marcus Sisk, *The Admin. of Complaints by Civilians Against the Police*, 77 HARV. L. REV. 499, 511 (1964).

event was a protest held "...because officers had killed an elderly African-American couple in a raid and had broken up an apparently peaceful African-American college student party in a Minneapolis hotel."¹⁷ In 2002, the City dismantled the CRA. The CRA then underwent a redesign wherein the City integrated it into the Minneapolis Department of Civil Rights.¹⁸

In light of this fact, the intent of this study is not to redesign, overhaul, or recreate the existing CRA ordinance. It must be stressed that the City of Minneapolis has already enacted a civilian oversight ordinance.¹⁹

¹⁷ Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP'T OF JUSTICE, ed., 2001).

¹⁸ "The Minneapolis Department of Civil Rights shall provide staff to support the objectives of this chapter." MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.170(a). "The manager of the review authority shall be an attorney and shall report to the director of the department of civil rights." *Id.* at § 172.170(b).

¹⁹ Also, the Police Federation "has never been opposed to civilian oversight so long as it is fair and impartial for all parties involved." Letter from Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep't of Civil Rights (Dec. 14, 2004) (on file with author).

The purpose of these types of oversight mechanisms is to:

- (1) maintain effective discipline of the police;
- (2) provide satisfactory resolution of citizen complaints against officers;
- (3) maintain citizen confidence in the police; and
- (4) influence police administrators by providing feedback from citizens.²⁰

Therefore, the point of this study is not to debate the existence of the CRA or suggest a different civilian review model type,²¹ but to determine the quality of the CRA investigations,

²⁰ LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 294 (Janice Eccleston ed., Mathew Bender & Co. Inc., 2005) (1994).

²¹ See *infra* note 22. There are three general civilian review systems or types: "(1) Type I. Persons who are not sworn officers conduct the initial fact-finding. They submit an investigative report to a non-officer or board member. They submit an investigative report to a non-officer or board of non-officers, requesting a recommendation of discipline or leniency. This process is most independent and most 'civilian.' (2) Type II. Sworn officers conduct the initial fact-finding. They submit and investigative report to non-officer or board of non-officers for a recommendation. (3) Type III. Sworn officers conduct the initial fact-finding and make a recommendation to the police chief. If the aggravated citizen is not satisfied with the chief's action on the complaint; he or she may appeal to a board that includes non-officers. Obviously this process is the least independent. Although the above mentioned are the most common, other types of systems exist." Christopher Stone, *Civilian Oversight of the*

to assess whether the CRA discipline process is operating effectively, and to make recommendations for improvement.

II. METHODOLOGY²²

In order to define and outline the key issues raised regarding the administrative process of the CRA, it was necessary to interview individuals, both internal and external, to the process. The selection of the participants was not random. Rather, the individuals either hold positions at the City of Minneapolis, or are experts in the field of civilian review/police misconduct. The purpose of drawing from a

Police in Democratic Societies. Global Meeting on Civilian Oversight of Police Los Angeles, VERA INSTITUTE OF JUSTICE – MERRICK BOBB POLICE ASSESSMENT RESOURCE CENTER (May 5-8, 2002); see also Samuel Walker, "Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police," AM. JOURNAL OF POLICE, Vol. XV, No. 3, at 72-73 (1996); Justina R. Cintrón Perino, Developments in Citizen Oversight of Law Enforcement, 36 URB. LAW. 387, 388 (2004).

²² The methodology, format, some disclaimers and the verbiage of this report is adopted from: Eileen Luna & Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep't*, THE ALBUQUERQUE CITY COUNCIL, (1997), <http://www.cabq.gov/council/abqrpt0.html>. It is important to note that Samuel Walker, Ph.D., is the Isaacson Professor of Criminal Justice at the University of Nebraska at Omaha. He has authored 12 books, and numerous articles and studies, on police accountability.

broad range of experience was to obtain a balanced perspective. The following people (in alphabetical order) were interviewed:

- (1) Barbara Damchik-Dykes, Esq., CRA Manager;
- (2) Lt. Michael Davis, Commander Internal Affairs Unit, MPD;
- (3) Assistant Chief Tim Dolan, Central Services Bureau, MPD;
- (4) Mr. Michael Freidman, CRA Board Chair;
- (5) Deputy Chief Donald Harris, Office of Professional Standards, MPD;²³
- (6) Ms. Jayne Baccus Khalifa, Director of Civil Rights;
- (7) Ms. Robin M. Lolar, CRA Case Investigator;
- (8) Chief William P. McManus, Minneapolis Police Department;
- (9) Mr. Michael W. Quinn,²⁴ Retired MPD Sergeant and IAU Investigator;

²³ It was reported that Chief McManus created the "Office of Professional Standards" to oversee the department's Internal Affairs Unit. Chief "McManus said that he wanted the office to collect all complaints against the MPD, whether they came from a lawsuit, from Internal Affairs, or from the Civilian Review Authority, an independent board that looks into misconduct allegations." G.R. Anderson, Jr., *How's He Doing?*, CITY PAGES, Oct. 13, 2004, at ¶18. **There is no indication that the Office of Professional Standards collects information on citizen complaints of discrimination filed against the MPD which are tracked by officer name with the Complaint Investigations Unit (CIU) in the Minneapolis Department of Civil Rights.**

²⁴ It is also important to note that Mr. Quinn has qualified as a "police expert" in court and is the author of *Walking with the Devil: The Police Code of Silence*, a book dedicated to the topic of the unspoken rule of police officers concealing misconduct of other officers. See MICHAEL QUINN, *WALKING WITH THE DEVIL: THE POLICE CODE OF SILENCE*, (Margot T. Willett, ed., Michael W. Quinn) (2005).

- (10) Adam S. Richardson, Esq., CRA Case Investigator;
- (11) Ann E. Walther, Esq., Attorney for the Police Federation;
- (12) Mr. Michael P. Weinbeck, CRA Board Member; and
- (13) The Honorable Paul G. Zerby, Minneapolis City Council Member (Ward 2).

During the course of the study, it was necessary to discuss, informally, CRA issues with other individuals with various expertises. These individuals are not listed by name in order to preserve their requests for privacy. Nevertheless, these conversations provided additional insight into the CRA issues touching the community and the MPD.

In the interviews, the Consultant posed overarching and similar questions to the participants. Further, the Consultant inquired into the unique perspectives of the participants' positions and interactions with the CRA. Due to the differing experiences and roles of the participants involved in the CRA process, the Consultant did not follow a static set of inquiries. Rather, discussions centered on general

questions regarding the alleged deficiencies in the CRA process.

The Consultant reviewed seventeen (17) CRA investigations. The MPD characterized ten of the seventeen investigations, as having "investigative deficiencies." For comparison purposes, the Consultant reviewed an additional seven (7) CRA investigations selected by the CRA Manager. In order to abide by the Minnesota Government Data Practices Act,²⁵ the Consultant discusses the work product of the CRA Staff and Board in the manner outlined by Professors Luna and Walker in their study of the Albuquerque Police Department's Internal Affairs Unit.²⁶ This nationally recognized practice is utilized by experts in the field to review the quality of the investigations while, at the same time, protecting the confidential information of the complainants, officers and city staff. In addition to reviewing the work

²⁵ For further discussion, see Ann F. Walther, *Private Data in the Civilian Review*, 64 HENNEPIN LAW, 26 (Sept.-Oct. 1994).

²⁶ See *supra* note 22.

product, the Consultant reviewed the CRA Redesign information, as well as many internal documents/correspondence, and cites them accordingly.

Finally, this study outlines a blueprint to model through the "Recommendations" section. This medium demonstrates the appropriate channels by which CRA complaints should administratively navigate in order for the Chief to consider the recommendation for discipline. Overall, the ultimate goal of this study is to ensure that the independent civilian oversight of the police operates in the fashion that City Council mandated.

III. ASSESSMENT OF THE CRA

When a citizen files a complaint of police misconduct with the CRA, it triggers the following linear reaction: (1) investigation and determination under the CRA ordinance; (2) an assessment of the police department's rules;²⁷ (3) the Chief's administration of discipline; and (4) the officers' exercise of his or her rights under the Collective Bargaining Agreement ("CBA").²⁸

²⁷ The "Department Rules" collectively refers to the MPD Policy and Procedure Manual, and incorporates the MPD Complaint Process Manual, known as the "Discipline Matrix." See Minneapolis Police Dep't, Policy & Procedure Manual, <http://www.ci.minneapolis.mn.us/mpdpolicy/1-100/1-100.asp>. In the introduction of the MPD Complaint Process Manual, it recognizes "that not all complaints will result in an investigation or discipline." See MPD MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, Introduction ¶ 1, (Mar. 2002).

²⁸ This is also referred to as the "Labor Agreement." It should be noted that the CRA is not a signatory to this agreement, and not all terms of the labor agreement apply to the CRA. As a collective alternative, the Minneapolis Civil Service Commission Rules, the Veteran's Preference Rules or Fair Employment Act may also be triggered in the discipline of Minneapolis Police Officers. However, in an effort to limit the scope of this study, the effects of those mechanisms on CRA decisions were not examined, and are best considered on a case-by-case basis. See additional discussion for Public Employment Labor Relations Act (PELRA) at Letter from Mark S. Wernick to Members, Civilian Review Board Working Committee, RE: *Technical Advisory Committee* (Jul. 27, 1989) (on file with author) at 8. See also Memorandum from Members, Legal

In order to place the administration of discipline into the context of the CRA process, it is also prudent to recognize general external mechanisms. By law, the “Peace Officer Discipline Procedure Act,” also known as the “Peace Officer’s Bill of Rights” does not apply to the CRA, and therefore is not considered a factor in the CRA process.²⁹ The “Peace Officer’s Bill of Rights” principles do apply, however, to complaints of police misconduct originating with the MPD Internal Affairs Unit.³⁰

Also worth noting, the Minnesota Administrative Procedures Act (MAPA) does not apply to municipalities or their administrative subdivisions, since MAPA only applies to

Subcommittee to Members, Civilian Review Redesign Committee, *RE: Legal Issues*, at 4-5 (May 29, 2002) (on file with author).

²⁹ See MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, at 49 (Mar. 2002). See also MINN. STAT. § 626.89, Subd. 2(1) (2005) (“The procedures and provisions of this section apply to law enforcement agencies and government units. The procedures and provisions of this section do not apply to: (1) investigations and proceedings of the Minneapolis civilian police review authority.”).

³⁰ See MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, at 49, (Mar. 2002).

agencies with “statewide jurisdiction.”³¹ This essentially means that MAPA does not apply to the CRA discipline procedure. Nevertheless, MAPA is instructive in reviewing the administrative process of the CRA, and will be incorporated when applicable.

Finally, this report will assess the application of the CRA ordinance. In this regard, the study will examine three major categories: (1) the CRA complaint procedure; (2) the review of CRA investigations; and (3) the administration of discipline.

A. The CRA Complaint Procedure.

The ordinance specifically states that the purpose of the CRA is to:

investigat[e] allegations of misconduct on the part of officers of the Minneapolis Police Department and mak[e] findings of fact and conclusions based upon those findings of fact.³²

³¹ MINN. STAT. § 14.02, Subd. 2 (2005).

³² MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.10. The City of Minneapolis Charter vests the sole authority to appoint, remove and control Minneapolis Police Officers in the Mayor. MINNEAPOLIS, MINN., CITY CHARTER, CH. 6, § 1 (2005). Thus, it is the

Here, the CRA complaint procedure can involve as many as five different steps before a decision is made to discipline an officer:

- (1) the actual CRA investigation;
- (2) the CRA Board's adjudication;
- (3) the Internal Affairs review;
- (4) the Disciplinary Panel; and
- (5) the grievance process.

This report does not address appeals to the Minneapolis Civil Service Commission, or any subsequent legal action.³³

Municipal law governs the CRA process.³⁴ The CRA is divided into two sections: the CRA Staff (city employees in

Mayor's disciplinary authority that is delegated to the Chief of Police under the direction and discretion of the Mayor.

³³ The Civil Service Commission hears cases *de novo*, giving no deference to the City's decision. For full discussion, see CIVILIAN REVIEW AUTHORITY REDESIGN, ACTION GROUP RECOMMENDATIONS, (Jul. 22, 2002) at 26.

³⁴ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, ch. 172 (2005). The terms of the ordinance are further expanded in the Administrative Rules, which mirror the CRA Ordinance.

the MDCR),³⁵ and the citizen CRA Board members (appointed by the Mayor and City Council).³⁶ Both CRA Staff and Board conduct separate, but interrelated, tasks.

Under the law, the CRA Staff is authorized to perform (among other duties)³⁷ three major functions: (1) investigate citizen complaints of police misconduct as a personnel action;³⁸ (2) make investigative findings from the allegations; and (3) make recommendations to the board to “Sustain” or “Not Sustain” investigative findings.

The CRA is authorized to receive complaints alleging misconduct by an individual police officer including, *but not limited to*:

- (a) use of excessive force;
- (b) inappropriate language or attitude;
- (c) harassment;

³⁵ See MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.170 (2005).

³⁶ *Id.* § 172.30 (2005).

³⁷ See MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.40 (2005).

³⁸ *Id.* § 172.20.

- (d) discrimination in the provision of police services or other discriminatory conduct on the basis of color, creed, religion, ancestry, national origin, sex, affectional preference, disability or age or sexual orientation;
- (e) theft;
- (f) failure to provide adequate or timely police protection; and
- (g) retaliation for filing a complaint with the review authority.³⁹

Furthermore, the language of the CRA ordinance mandates that the MPD must cooperate with the investigation. The ordinance further dictates that all other Departments within the city enterprise (including employees and officials) shall promptly respond:

To any and all reasonable requests for information, * * * and for access to data and records for the purpose of enabling the review authority to carry out its responsibilities under this chapter. The failure by any official or employee of the Minneapolis Police Department or by any other City of Minneapolis employee or official to comply with such requests for information, participation or access shall be deemed an act of misconduct.⁴⁰

³⁹ *Id.* § 172.20. The CRA also has a "catch-all" category of Inappropriate Conduct under Minneapolis Civilian Police Rev. Auth. Admin. R. 1 (c).

⁴⁰ *Id.* § 172.180.

1. The CRA Investigation.

In order to trigger the CRA ordinance,⁴¹ a person must file the complaint within one year of the date of the alleged misconduct.⁴² Once the charging party signs the complaint and files it with the CRA, the CRA staff is required to review it,⁴³ and conduct an investigation.⁴⁴ The investigation has to be completed within sixty days.⁴⁵ Once the investigation is complete, the investigator prepares the findings, and a recommendation to the CRA Board to either “Sustain” or “Not Sustain” the allegation.⁴⁶

⁴¹ “Any person who has personal knowledge of alleged misconduct on the part of a Minneapolis police officer may file a complaint with the review authority” *Id.* § 70.

⁴² *Id.* § 160.

⁴³ The CRA ordinance requires the staff to “make a preliminary review of each complaint and determine whether an investigation of the alleged misconduct is warranted, whether mediation is appropriate, or whether no further action is necessary.” *Id.*

⁴⁴ When the complaint is determined to require further investigation, then “the complaint shall be investigated by a review authority investigator.” MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.90 (2005).

⁴⁵ *See id.* It is noteworthy that prior to the 2002 redesign of the CRA, investigators had 120 days to complete their investigations. MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.90 (1990).

⁴⁶ “The investigator shall prepare recommended findings of fact and a recommendation of sustained or not sustained in a written summary.” *Id.*

2. The CRA Board.

The CRA Board Chair then convenes a three-person panel to hear the complaints.⁴⁷ The investigative findings and recommendations are then presented to this panel.⁴⁸ The panel *may either remand the complaint for further investigation* or render a decision.⁴⁹ The CRA Board must base its decision on the preponderance of the evidence.⁵⁰ If the complaint is "Not Sustained," the citizen may request

⁴⁷ "Upon completion of the investigation of a complaint, a three (3) member panel of the review authority shall weigh and consider all reliable and credible evidence present." MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.100 (a) (2005). It is the responsibility of the CRA chairperson to appoint the panels. *See id.* § 172.50(b). The chairperson also designates a chairperson for each panel. *Id.*

⁴⁸ "Prior to the hearing, a review authority investigator or the manager shall present the investigatory findings of fact and recommendations to the panel." MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.100 (b) (2005).

⁴⁹ "Within thirty (30) days of the completion of a hearing, the hearing panel shall either remand the complaint to review authority staff for further investigation or issue a written report containing findings of fact and a determination of whether the complaint is sustained." MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.100 (d) (2005).

⁵⁰ "The standard of proof necessary to sustain a complaint is preponderance of the evidence. Preponderance of the evidence means that the greater weight of the evidence supports the decision." Minneapolis MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.110 (2005).

reconsideration.⁵¹ When the CRA Board “Sustains” a complaint, it forwards the entire investigative file to the Chief for disciplinary action.⁵² In contrast, files are not forwarded to the Chief when the allegations are “Not Sustained.”⁵³

Accordingly, the CRA process, as mandated by the CRA ordinance, **before** the CRA file is delivered to the Chief, would appear as follows in Table 1:

⁵¹ *Id.*

⁵² This report does not address the mediation process as it was mandated by City Council during the course of this study. MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.130 (a) (2005) (emphasis added).

⁵³ *See id.* § 172.20 (2005).

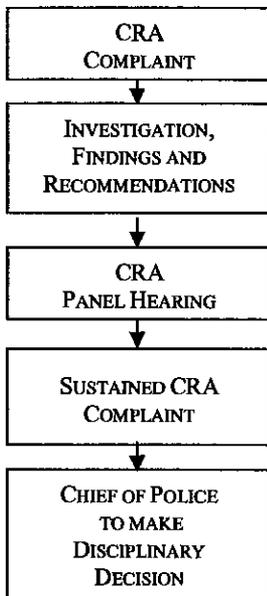


TABLE 1

3. The IAU Investigation.

Currently, the Chief does not make a “disciplinary decision” based solely on the CRA file.⁵⁴ Rather, the Chief forwards the CRA file to the Internal Affairs Unit (“IAU”) for an additional examination and analysis.⁵⁵ This course of action, although not proscribed by the CRA ordinance,

⁵⁴ Interview with William McManus, Chief of Police, Minneapolis Police Dep’t, in Minneapolis, Minn. (Aug. 9, 2005).

⁵⁵ *Id.*

appears to be internally instituted since disciplinary actions within the MPD are handled by Internal Affairs.⁵⁶

Nevertheless, that there is no rule, law or written policy authorizing IAU to review CRA decisions. Although the Chief acknowledges that the CRA files are "Sustained" complaints,⁵⁷ the IAU treats them as mere allegations, and processes them *similarly* to civilian allegations originating with the IAU.⁵⁸

It is at this point that CRA files are reviewed by the IAU according to an unofficial/modified version of the Minneapolis Police Complaint Process Manual. When a CRA file is forwarded to the IAU, it is assigned to an Internal

⁵⁶ "The Internal Affairs Unit (IAU) will investigate alleged violations of MPD policy and procedure, Civil Service rules and department operational manuals that arise from citizen complaints, internal complaints, civil lawsuits or criminal investigations of MPD employees." MPD Complaint Process Manual, Internal Affairs Function. Note that the IAU does not investigate allegations of police misconduct according to Minneapolis, Minn. Code § 172.20.

⁵⁷ Interview with William McManus, Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 9, 2005).

⁵⁸ Assistant Chief Tim Dolan confirmed that "Sustained" CRA complaints are processed as if they were allegations rather than adjudications. Interview with Tim Dolan, Assistant Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 27, 2005).

Affairs Investigator.⁵⁹ The Investigator is then assigned the following three tasks:

- (1) review the CRA file to determine which Department Rules are alleged to have been violated;
- (2) assess the quality and thoroughness of the investigation, along with identifying whether any investigative deficiencies exist (i.e. Were all the witnesses interviewed? Were the witnesses asked the appropriate questions relevant to the investigation? Was all the relevant evidence collected?); and
- (3) determine whether the logic of the CRA Board, as articulated, supports a violation of the Department Rules (i.e. interpreting the facts to determine whether they support a policy violation).⁶⁰

In reviewing a complaint, an IAU Investigator considers any mitigating and/or aggravating circumstances, such as “[e]mployee motive, past and present performance, degree of culpability, forthrightness, disciplinary history, severity of

⁵⁹ Interview with Mike Davis, Police Lieutenant, Minneapolis Police Dep’t, in Minneapolis, Minn. (Aug. 15, 2005). Currently, IAU is staffed with eight Investigators and two support staff. *Id.*

⁶⁰ *See id.* It is important to note that Internal Affairs’ alleges that its review of the CRA file is restricted to determining a Department Rule violation, not potential criminal investigation/prosecution.

infraction, acknowledgement of error/mistake by employee,
other pertinent factors.”⁶¹

Violations of the Minneapolis Police Department Rules are divided into four categories, which are based on a concept of “progressive discipline.”⁶² Minor violations are categorized as “A” violations, and progress to “B,” “C,” and “D” as the violations become more serious or repetitive.⁶³ “D” violations are the most serious.⁶⁴ “Although category “A” violations by themselves do not result in discipline, information in an employee’s statement which stems from a category “A” violation could be used for progressive discipline in a later case.”⁶⁵ The facts presented in the investigation can raise or lower the severity of the violation.⁶⁶

⁶¹ See *supra* note 59. See also MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at ¶10, (Mar. 2002).

⁶² MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Introduction ¶ 1 and Guiding Principles of the Complaint Process Manual ¶ 5 (Mar. 2002).

⁶³ *Id.* at ¶5.

⁶⁴ *Id.*

⁶⁵ MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual ¶ 26 (Mar. 2002).

⁶⁶ *Id.*

“The category range [severity of the violation] can be found in the MPD Policy and Procedure Manual at the title heading for each policy.”⁶⁷ The Investigator also considers the “reckoning period” for each violation.⁶⁸ **After the Investigator identifies which Department Rules have been violated, and recommends a violation category, he or she drafts a written summary.**⁶⁹ The combined CRA and IAU file is then forwarded to a “disciplinary panel.”

4. The Disciplinary Panel.

The MPD Complaint Process Manual states: “to ensure continuity in the area of discipline, a three-member disciplinary panel will review each case of police

⁶⁷ *Id.*

⁶⁸ The “reckoning period” is designated as the following: Category “A” is one year from the date of incident; Category “B” is three years from the date of incident; Category “C” is five years from the date of incident; and Category “D” is from the date of incident until the employee has separated from the MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at ¶12-15 (Mar. 2002).

⁶⁹ Interview with Mike Davis, Police Lieutenant, Minneapolis Police Dep’t, in Minneapolis, Minn. (Aug. 15, 2005).

misconduct.”⁷⁰ This panel has delegated authority from the Chief to review the complaint, make “findings,” and recommend a “disposition” of the complaint based on the concept of the majority rules.⁷¹ Thus, after reviewing the CRA Board recommendations and the IAU investigations, “the panel members must review the information and make a preliminary determination to sustain, not sustain, exonerate, issue a finding that the complaint is unfounded, that a violation is exceptionally clear or determine a policy failure for each allegation.”⁷²

If the “Sustained” CRA recommendation(s) for discipline is again sustained by the discipline panel, the officer(s) involved are required to meet with a “full discipline panel” at a recorded meeting.⁷³ The officer and/or their

⁷⁰ MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at ¶16.(Mar. 2002).

⁷¹ *Id.*

⁷² *See id.* at 29. It should be noted that this process is the same for category A-D violations.

⁷³ MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at 29-31, (Mar. 2002). It

federation representative/attorney are allowed to address the panel or panel chair to explain the officer's actions.⁷⁴ Further investigation may be directed based on the officer's explanation.⁷⁵

The panel then prepares a "brief synopsis" of the matter, which is signed by management.⁷⁶ This synopsis consists of: (1) "A short summary of the case investigation and finding(s);" and (2) "A recommendation of corrective/disciplinary measures to resolve the problem and prevent recurrence."⁷⁷

Finally, management "shall review the Discipline Work Sheet and forward the case, along with any recommendation(s), to the Chief of Police."⁷⁸ In the event the Chief decides not to administer discipline, this ends the

should be noted that this is the process designed for B-D violations. Category "A" violations are mainly handled by the Precinct/Unit/Division.

⁷⁴ *Id.* at 31. It should be noted the representation by an attorney is granted via the "Peace Officers Bill of Rights" and not the CRA ordinance.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at ¶32, (Mar. 2002).

progression of the CRA complaint. However, should the Chief decide to administer discipline to the officer, the mandates of the Labor Agreement between the City of Minneapolis and the Police Officers' Federation of Minneapolis, including all associated labor laws, are triggered.

Accordingly, the CRA process after the CRA file is delivered to the Chief it appears as follows in Table 2:

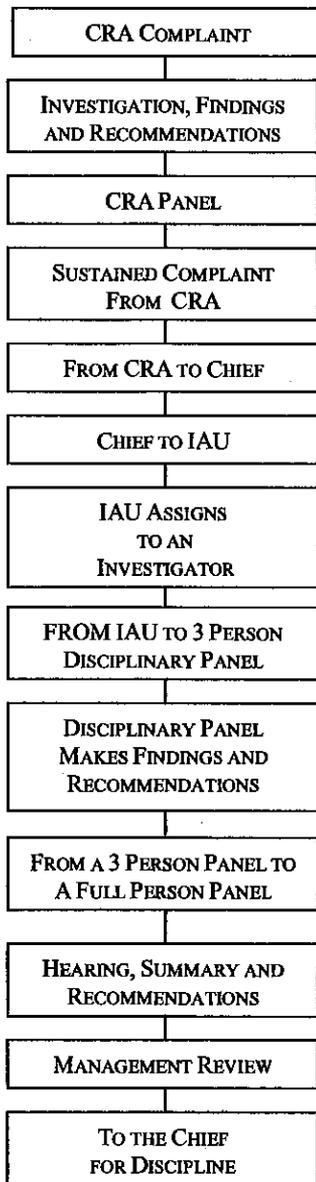


TABLE 2

5. The Grievance Process.

According to the Labor Agreement, the City of Minneapolis and the Police Federation have agreed to a grievance process. This process applies to any discipline administered by the Chief, and therefore is activated by discipline administered as a result of a recommendation by either the IAU or CRA.

The Labor Agreement specifies the conditions under which an employee police officer can be disciplined:

The City will discipline employees who have completed the required probationary period only for *just cause*. *** Investigations into an employee's conduct which do not result in the imposition of discipline shall not be entered into the employee's official personnel file.⁷⁹

⁷⁹ The City of Minneapolis and the Police Officers' Federation of Minneapolis, Labor Agreement, Police Unit, Oct. 15, 2002 through Oct. 14, 2005, Art. 4, Discipline, Sec. 4.1.

Thus, an employee police officer, disciplined under CRA ordinance, may file an appeal of the discipline through the grievance procedure.⁸⁰

An employee officer subject to discipline may also seek redress through the Civil Service Commission, or if the officer is a veteran, he or she may exercise his or her Veteran's Preference rights to file a complaint, as an alternative to filing a grievance.⁸¹ This appeal is called a *disciplinary grievance*,⁸² and is divided into three steps.

First, the officer, through the Federation, submits a notice to file a *disciplinary grievance* to his or her Bureau

⁸⁰ "A suspension, written reprimand, demotion or discharge of an employee who has completed the required probationary period may be appealed through the grievance procedure as contained in Article 5 of this Agreement. Also, an oral reprimand imposed on an employee who has completed the required probationary period which results from a sustained finding by the Civilian Review Authority following an evidentiary hearing may be appealed through the grievance procedure as contained in Article 5 of this Agreement." *Id.* at Sec. 4.2.

⁸¹ *See id.* As stated above, this study will not review the effects this administrative process has upon CRA decisions.

⁸² The Labor Agreement defines a *disciplinary grievance* as "a matter concerning the interpretation, applications, or alleged violation of Article 4." The City of Minneapolis & the Police Officers' Federation of Minneapolis, Labor Agreement, Police Unit, Oct. 15, 2002 through Oct. 14, 2005, Art. 5, Settlement of Disputes, Sec. 5.4.

Head (the manager),⁸³ who must respond to the notice in writing (*step one*).⁸⁴ The officer and the Federation then have a meeting with the Bureau Head to resolve the grievance.⁸⁵ If the grievance is not resolved to the satisfaction of the police officer, the Federation may appeal to the Chief,⁸⁶ and he or she must submit an answer (*step two*).⁸⁷ The officer and the Federation then have a meeting with the Chief to resolve the grievance.⁸⁸ If the grievance is not resolved at this level, the

⁸³ The *disciplinary grievance* begins at "step two." "A disciplinary grievance shall be commenced by the Federation by submitting to the disciplined employee's bureau head a written statement of the grievance on the standard grievance form within twenty (20) days after the imposition of discipline." *Id.* at Settlement of Disputes, Sec. 5.4, Subd. 2 (A).

⁸⁴ "Within twenty (20) days after the meeting or the receipt of the initial disciplinary grievance * * * whichever is later, the bureau head shall present a written decision to the Federation. The step two decision shall clearly identify that answer as a "step two decision." *Id.* at Sec. 5.4, Subd. 2 (C).

⁸⁵ At the "request of either party, all necessary persons shall have a reasonable opportunity to be heard at step two." *Id.* at Sec. 5.4, Subd. 2 (C).

⁸⁶ "If the step two decision is not satisfactory, a written appeal may be filed by the Federation with the Chief of Police, within ten (10) days of the date of the step two decision." *Id.* at Sec. 5.4, Subd. 3.

⁸⁷ "Within twenty (20) days after the step three meeting or receipt of the step three appeal, whichever is later, the Chief of Police shall send a written response to the Federation. The step three decision shall clearly identify that answer as a "step three decision." *Id.*

⁸⁸ At this stage, the Chief of Police shall have the full authority of the City Council to resolve the grievance. *Id.*

disciplinary grievance is sent to arbitration (*step three*).⁸⁹

The Arbitrator adjudicates the grievance.⁹⁰ The decision and award of the arbitrator is final and binding upon the City, the Federation and the officer.⁹¹ Here, it is possible that the decision to discipline an officer based on a CRA investigation and findings could be reversed by an Arbitrator. This is the last step of the complaint before it enters the Court system.

B. The Review of the CRA Investigations.

The Consultant's review and analysis of the CRA investigations is divided into three parts: (1) the quality of CRA investigations; (2) CRA Board Determinations; and (3) other issues touching the CRA.

⁸⁹ "Within twenty (20) days of the date of the step three decision the Federation shall have the right to submit the matter to arbitration by informing the Director of Employer/Employee Relations that the matter is to be arbitrated." *Id.* at Art. 5, Settlement of Disputes, Sec. 5.4, Subd. 4.

⁹⁰ "The arbitrator shall render a written decision and the reasons, therefore resolving the grievance, and order any appropriate relief within thirty (30) days following the close of the hearing or the submission of briefs by the parties." *Id.* at Sec. 5.5.

⁹¹ It should be noted, however, that before going to arbitration, the City and the Federation may utilize mediation in an attempt to resolve the grievance. *Id.* at Sec. 5.5.

1. The Quality of the CRA Investigations.

The specific purpose in conducting an analysis of the CRA investigations is to determine the quality of the Staff's work product. In order to accomplish this objective, the Staff's investigations and summaries were reviewed separately from the CRA Board Determinations. This distinction is crucial to ensure that the Consultant's comments and findings are not attributed to the CRA Board's work product.

In order to assess the quality of the CRA investigations, the Consultant reviewed ten CRA investigation files identified by the MPD as inadequate. The complaints reviewed were of varying complexity and substantive allegations of misconduct. The CRA Manager selected an additional seven CRA investigations which were not identified by the MPD as inadequate. The purpose of examining the additional files was to confirm whether results found in the target files were unique to the files selected by

the police. A total of seventeen CRA files were formally reviewed for this study.

The actual data from these files is not incorporated into this report, because it is considered non-public information according to the current interpretation of the Minnesota Data Privacy Act as it relates to the CRA.⁹² For this reason, the Consultant reviewed the work product of the CRA Staff in accordance with the standards outlined by Professors Luna and Walker in their study of the Albuquerque Police Department's Internal Affairs Unit.⁹³

First, the Consultant conducted a general review of the of the CRA files. Second, the Consultant conducted an in-depth review of five of the seventeen investigations. The files were audited utilizing the following efficacy criteria

⁹² For a discussion see, Ann F. Walther, *Private Data in the Civilian Review*, 64 HENNEPIN LAW. 26 (Sept.-Oct. 1994).

⁹³ The format, some disclaimers and the verbiage of this report was adopted from: Eileen Luna and Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep't*, THE ALBUQUERQUE CITY COUNCIL, (1997), <http://www.cabq.gov/council/abqrpt0.html>.

designated by Professors Luna and Walker for evaluating investigations:

- (1) whether all citizen and officer witnesses were interviewed;
- (2) whether Comm/CAD tapes were reviewed;
- (3) whether there was a focus on procedural and/or legal issues;
- (4) whether there was any evidence of bias against either citizens or police officers; and
- (5) whether investigations were completed within the required time deadline; and whether extensions of deadlines were properly requested and observed.⁹⁴

From the sample pool of seventeen CRA investigations that were reviewed, 71% (or more than the majority) exceeded the efficacy criteria identified by the Luna/Walker process for evaluating investigations. These files revealed that the case investigators demonstrated a strong ability to gather pertinent information, correctly identify the issues, designate the correct legal principles for the decision and logically analyze the data. The issues identified by the CRA investigators were procedural and legal

⁹⁴ *Id.*

in nature, and were appropriately identified. In fact, one CRA decision triggered the Chief to request a review of the policies and procedures. All material evidence, including "emergency response tapes" (when relevant) was gathered and all witnesses were interviewed.

Twenty-four percent of the CRA Staff investigations not only met the efficacy criteria identified by the Luna/Walker process, but were of sufficient quality that the appropriate disciplinary decision could be made with no additional investigation. The CRA investigations were found to be thorough and complete. All primary witnesses were interviewed. In some complaints, the supervising officer was not interviewed.⁹⁵ However, there is little indication that these witness statements would have changed the

⁹⁵ In order to increase cooperation from MPD management, the CRA could, as implemented by the Office of Citizen's Complaints for the City of San Francisco, amend its administrative rules to include a charge of "Failure to Supervise." Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP'T OF JUSTICE, ed., 2001), at 17. This would not be a unique legal situation since supervisors may be held liable for failing to supervise and/or properly train officers in the civil context. See 42 U.S.C. §1983 (2000).

investigative findings. Also, the investigator's finding followed from the facts discovered. There was no apparent bias towards the officers or the complainants in any of investigations.

In one case reviewed by the Consultant, there was an identifiable investigative concern or deficiency, and this file can be considered to fall below the efficacy criteria identified by the Luna/Walker process. The core problems stemmed from: (1) the failure to interview key witnesses; and (2) the incorrect matching of the MPD Policy and Procedure to the alleged facts.

Quality of the CRA Investigations
Using the Luna/Walker Efficacy Criteria

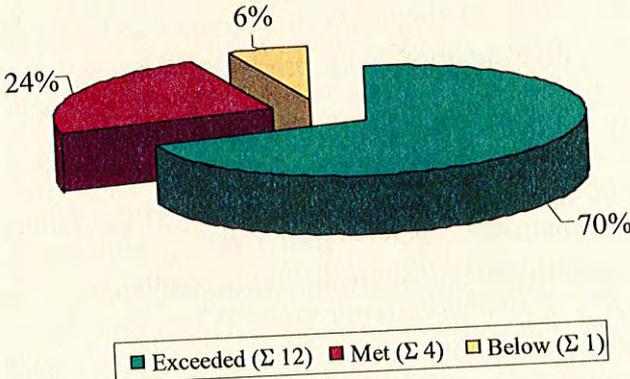


TABLE 3⁹⁶

Overall, the CRA Staff investigations contained some structural deficiencies:

- (1) the failure to consistently list or enumerate the findings of fact to be presented to the CRA Board;
- (2) the failure to identify and list aggravating and mitigating factors;
- (3) the investigator's failure to make a credibility determination/assessment of the witnesses; and
- (4) the persistence of the CRA in citing to the MPD Policy and Procedure as a basis for the recommending to sustain the complaint,

⁹⁶ The sole CRA Investigator who was below the Luna/Walker standard is no longer an employee with the CRA Unit.

even though this is not required by the CRA ordinance.⁹⁷

Notwithstanding the *structural* concerns, this study found that the CRA investigators' work product did not, as alleged, consistently exhibit fundamental deficiencies such as: (1) the failure to ask obvious follow-up questions; (2) the failure to interview identified and relevant witnesses; or (3) pose hostile questions to the police officers and/or leading "softball" questions to the Complainants.

One explanation for the MPD's perceived "investigative deficiencies" may be attributed to the discipline panel's *de novo* review of the facts, and substituting its credibility judgment of the witness statements for the Staff

⁹⁷ Deputy Chief Harris and Lt. Davis also alleged that the CRA investigators do not ask appropriate or relevant questions of witnesses. They also alleged the CRA investigators improperly use photo line-ups by showing a witness one photograph of the target officer instead of requiring the witness to pick the target officer out of an array of photographs. The investigative technique of showing a witness one photograph is analogous to a "show-up." "Show-ups are permissible identification tools used by the police." *State v. Harris*, 396 N.W.2d 622, 623 (Minn. Ct. App. 1986). The concern with use of "show-ups" in an investigation, is not the technique, but whether the "show-up" has a "substantial likelihood or irreparable misidentification." *Id.* (citing *Manson v. Brathwaite*, 432 U.S. 98, 116 (1977)). The MPD objects to the use of the technique in general, and did not raise a concern of misidentification.

and Board's opinion (*see infra* full discussion of *de novo* review). For example, one Precinct Inspector's review of a "Sustained" CRA complaint was highly critical of the finding.

The Inspector writes:

[t]he most serious investigative flaw with this CRA investigation is the failure to identify specific behaviors that explain the complainant's subjective observation that [the officer] was angry or unprofessional.⁹⁸

In this file, the CRA Investigator was able to elicit information from the Complainant, but ultimately recommended to "Not Sustain" the allegation connected to the "angry" officer. Nevertheless, the CRA Investigator did "Sustain" the allegations of "inappropriate conduct, harassment, and retaliation" for the officer mailing a letter to the Complainant's supervisor, notifying him of the issuance of a traffic citation. In this situation, the Precinct Inspector's comment does not appear to be relevant to the sustained

⁹⁸ Letter from an Inspector, Minneapolis Police Dep't, to a Deputy Chief, Minneapolis Police Dep't, (date omitted by Inspector) (on file with author).

allegations, and casts an erroneous shadow of "deficiency" upon the CRA investigation.

The Precinct Inspector further criticizes the investigators' incorporation of an "anonymous letter" in the investigative file:

[i]t is unbelievable that such a document would be included by an investigator. It is unfathomable that any investigative venue would include anonymous statements. Anonymous statements are a violation of the Police Officer Bill of Rights.⁹⁹

Here, the Precinct Inspector's analysis is erroneous. As noted above, the "Police Officer's Bill of Rights," by law, does not apply to CRA investigations, thus the premise of this allegation is defective.¹⁰⁰ Secondly, criminal investigations, with higher "probable cause" standards of proof routinely use statements from "Concerned Citizens" (as in this situation) who choose to remain anonymous.¹⁰¹ Ultimately, in the

⁹⁹ *Id.*

¹⁰⁰ See MINN. STAT. § 626.89, Subd. 2 (1) (2005).

¹⁰¹ For example, the United States Supreme Court held that an anonymous telephone tip, corroborated by individual police work, was sufficient information for the officers to engage in a custodial investigation.

above mentioned "Sustained" CRA complaint, the Chief issued discipline.

It was also discovered that the CRA investigators tend to use an "average citizen standard" rather than a "reasonable police officer standard." Both the CRA ordinance and Administrative Rules are silent as to the preferred standard, thus the investigators' quality of work product cannot be judged inadequate taking into consideration the different standards that may be used. The CRA decisions were also criticized because of their failure to cite to the MPD Policy and Procedural Manual. This was particularly true for claims of Harassment, which are determined based on the CRA Administrative Rule and related case law, rather than MPD Department rules.

Alabama v. White, 496 U.S. 325 (1990). The *White* Court indicated that the informant's veracity, reliability, and basis of knowledge were relevant in determining whether the information constituted "probable cause." *Id.* In determining whether an informant's tip is "probable cause" for issuing a search warrant, the determination must be based on the "totality-of-the-circumstances." Illinois v. Gates, 462 U.S. 213 (1993).

The CRA does have a problem with completing investigations in a timely manner. However, this initial problem appears to be attributed to several issues which arose from the CRA Redesign in 2002. During the redesign process the CRA was dismantled, but continued to take citizen complaints without an administrative mechanism in place to process the complaints. Additionally, prior to the redesign, the CRA Staff had an internal policy in place to complete investigations within 90 days, although the rule allowed for 120 days.¹⁰² The post-redesign language of the CRA ordinance posed even stricter time constraints than the previous internal policy, by further reducing the "target" completion time from 90 days to 60 days.¹⁰³

It does not appear evident that the various MPD discipline panels sufficiently considered these factors when determining that the CRA investigations were stale and

¹⁰² MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY, RESPONSE TO MCPRA REDESIGN REPORT, at 5 (Nov. 1998).

¹⁰³ *Id.*

therefore did not warrant discipline.¹⁰⁴ From the investigations reviewed by the Consultant, it appears that the CRA Staff continues to be challenged by the statutory time restraints mandated by the CRA ordinance for completing the investigations. It is advised that the CRA Manager continue to develop strategies to comply with the ordinance, or, should the Manager determine that the time constrictions are not feasible under the current staffing resources, request an amendment to the ordinance relaxing the 60 day requirement.

¹⁰⁴ See MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL RECOMMENDATION (Mar. 15, 2004). The CRA Manager also indicated that some of the delays in scheduling CRA Board hearings were due to the police officers unavailability. There was no statistical data available to verify this assertion.

2. CRA Board Recommendations.

After having looked at the work product of the CRA Staff, this study addresses the determinations of the CRA Board. The Consultant reviewed the Board work product using the following criteria, a modification of the Luna/Walker factors:

- (1) does the Board establish the factual findings;
- (2) are the issues identified;
- (3) are the appropriate basis for the decision identified;
- (4) is the analysis logically sound, and supported by the factual findings; and
- (5) is a reasoned decision concluded (see Table 4).

The Consultant only reviewed one file, in which the Chief of Police characterized an investigation as relying on conjecture, stating: "there [was] insufficient evidence presented in the case to sustain the findings. It appears the CRA findings were made based solely on *conjecture*."¹⁰⁵ In

¹⁰⁵ Letter from Chief McManus, Minneapolis Police Dep't, to the CRA (Nov. 19, 2004) (on file with author).

that case, however, the Inspector conducted a *de novo* review of the facts claiming:

In my opinion, the facts within the CRA case do not support the finding. I believe the panel's outcome is based purely on **conjecture**. Therefore, I recommend that we reject the CRA's findings and "Not Sustain" the case.¹⁰⁶

Of the seventeen CRA Board determinations that were studied and reviewed, 41% exceeded the criteria set by the modified Luna/Walker process. The determinations were well reasoned and thorough. Forty-seven percent met the criteria set by the modified Luna/Walker efficacy criteria, and were of sufficient quality that the appropriate disciplinary decision could be made. One particular CRA Board panel determination stands out, wherein the panel **"unanimously concur[red] with the investigator's recommendation,"** and did not provide a narrative supplement for its decision. This suggests that the CRA Board can make a decision based on

¹⁰⁶ Memorandum from a Precinct Inspector, Minneapolis Police Dep't, to the Chief of Police, Minneapolis Police Dep't (Nov. 17, 2004) (on file with author).

the CRA Staff's recommendation, without additional written comments from the Board.

In 12% of the Board decisions, the content of the determinations can be considered to fall below the modified Luna/Walker efficacy criteria. The core problems seem to stem from: (1) provocative statements made regarding the officer's conduct; (2) extended prose and verbose language explaining the reasons for the adoption of the findings of the investigator; (3) incorrect designation of the MPD Policy and Procedure allegedly violated and/or citing unpublished legal cases to support Board decisions; and (4) failure to consistently consider and designate facts constituting "extenuating circumstances."

Quality of the CRA Board Determinations
Using modified Luna/Walker Efficacy Criteria

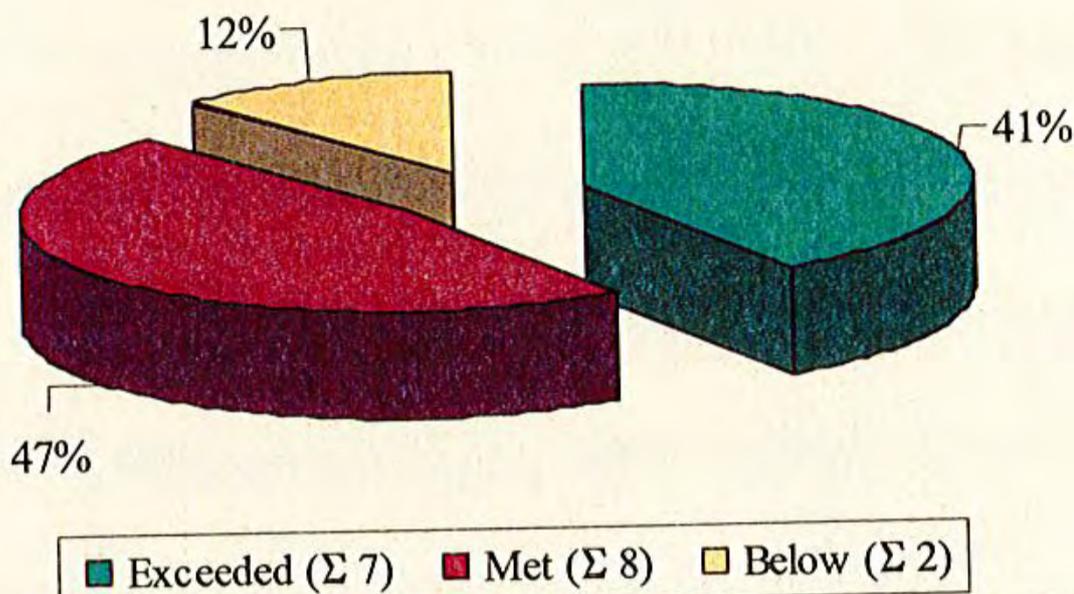


TABLE 4

The first clear problem with the Board determinations is that they are incorporated into the CRA Staff's written recommendations. This makes the decisions difficult to read because they immediately precede the Staff's recommendations, essentially presenting two opinions in the same document. Secondly, with the Staff's work product and the Board's determination fused into one document the reader can become confused as to the Board's final determination. In some decisions, the CRA Board based its decision to sustain the investigative findings on a MPD Policy and Procedure that was different from that cited by the CRA

may be board should be limited to a determination

investigator. The MPD discipline panel, in turn, cited an even different policy violation than the CRA Investigative Staff and Board.

Under the current language of the CRA ordinance, the Board is allowed to issue findings-of-fact, in lieu of the recommendations provided by the professionally trained CRA investigators. Furthermore, the language of the Administrative Rules extends the authority of the Board to include "any concurring or dissenting opinions."¹⁰⁷ These dual, (and in certain circumstance tripartite) "Findings" are sometimes conflicting and unclear for the decision-makers; when read together may have a confusing appearance of conjecture.¹⁰⁸ This situation is confounded when the CRA Board erroneously uses unpublished, and in some situations irrelevant, case law to support their decisions. The lay citizen Board has also been accused by the police of issuing

¹⁰⁷ Minneapolis Civilian Police Rev. Auth. Admin. R. 13 (B)(d).

¹⁰⁸ The term of conjecture refers to "a guess; supposition; surmise." BLACK'S LAW DICTIONARY 882 (8th ed. 2004).

decisions perceived as biased. One example of a perceived bias/conflict of interest occurred when one CRA Board Member was featured in a photograph in the "Skyway News," protesting (on the busy corner of 7th and Nicollet) the Chief's alleged failure to discipline police officers, holding a sign with a color photograph of the Chief, which asserted: "Chief McManus Supports/Endorses POLICE BRUTALITY."¹⁰⁹

The CRA Board has also used dissenting or concurring opinions (and in some cases "part concurring, part dissenting") in an attempt to address perceived issues with MPD policy. While suggesting improvements to MPD policy is well within the authority of the CRA Board, incorporating such suggestions into the findings is ineffective and confusing. A better approach for the CRA Board would be to identify suggested policy changes as agenda items at the monthly meetings, appoint a sub-committee to research and prepare a report, return to the full CRA Board for receipt and approval

→ attempted at 2/06 meeting

¹⁰⁹ Rich Ryan, *Downtown Scene*, SKYWAY NEWS, Aug. 8-14, 2005, at 3.

of the document, and present the matter to the MPD as the opinion of the entire CRA Board rather than an individual rogue Board member.¹¹⁰ It is further recommended that the CRA Board members consult with each other to establish a mechanism by which the body will present policy concerns and recommend changes to the MPD. Overall, these concerns negatively impact the credibility of the CRA.

One solution to the "opinion based" decisions is to modify the ordinance to grant the *CRA Board* authority to either "Sustain" or "Not Sustain" the CRA Investigators' recommended findings.¹¹¹ Files that are "Remanded" may have specific instructions to the CRA Staff to conduct additional research or investigation (which is not an adjudicated opinion), but it is not recommended that the CRA

¹¹⁰ See generally, HENRY M. ROBERT, *THE NEW ROBERT'S RULES OF ORDER*, (John Sherman ed., Barnes & Noble, Inc. 1993) (1876).

¹¹¹ Further study should be conducted to determine whether expanding the decision to include "Unfounded," "Exonerated" or "Policy Failure" would be appropriate for the CRA. See generally, Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP'T OF JUSTICE, e.d., 2001).

Board draft a decision to replace the investigators' professional work product. This would seem an appropriate since the Board decisions tend to concur with Staff investigations.

Additionally, this will eliminate the burden of requiring volunteer citizens to engage in (or re-create) the work of the professional city employee/investigator, and will allow for more efficient "turnover" of the CRA Board decisions. Moreover, such an arrangement will expedite the Board's deliberation, and maintain overall professionalism within the CRA as a whole. Finally, this alteration to the process will have greater accord with the language of the ordinance, with the CRA Board acting more as a "jury" evaluating the facts presented by the CRA Staff, and not an "appeals court" critiquing the Staff's work product.

Furthermore, police policy review is an extremely important aspect of the CRA Board's responsibilities. However, it appears that the CRA addresses this

responsibility in a reactive, as opposed to a proactive or “preventive” way. The CRA’s authority to recommend policy changes is also underutilized because it does not appear to re-examine the findings in CRA “Sustained” determinations where the Chief has declared a policy failure:

...in the CRA process, community standards, not just police standards, can be addressed and considered by citizens of Minneapolis. Police arguments [that], “this is standard procedure,” or, “the officers have been trained to do this,” can be evaluated by the staff and the board by what is acceptable under the law, rather than what is deemed acceptable by the police.¹¹²

To address this issue, the CRA Board could create a standing committee on “policy failures”¹¹³ to immediately deal with concerns and present suggestions for change to the entire Board. For example, the City of San Francisco’s Office

¹¹² E-mail from Adam S. Richardson Esq., Investigator, Minneapolis Civilian Review Authority, to Consultant, explaining the advantages of civilian review of officers (Aug. 11, 2005) (on file with author).

¹¹³ “Policy failure” is defined as: “The officer acted incorrectly but, because the department had no policy, an ambiguous policy, or contradictory policies prescribing the correct behavior for the situation at issue, no blame is attached to what the officer did.” Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP’T OF JUSTICE, ed. 2001) at 143.

of Citizen Complaints submits policy recommendations to the police department's internal affairs unit in its annual report.¹¹⁴ Thus, one example of a suggested policy change could be to reject candidates for the position of "field training officer" (FTO) when the candidate has a record of citizen complaints.¹¹⁵

3. Other Issues Touching the CRA.

Overwhelmingly, the CRA investigative summaries and the Board determinations are over-reliant upon the Minneapolis Police Department's Policy and Procedure Manual to support its decisions. The manner in which the MPD policies and procedures are cited varies depending upon the age of the CRA file. In fact, it appears that this was the previous method used by the pre-2002 CRA in determining CRA violations.¹¹⁶ Nevertheless, this practice is problematic for these three main reasons: (1) there is no requirement in the

¹¹⁴ In 1997, fifteen such policy recommendations arose from citizen complaints. *Id.* at 60.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at 32-33.

CRA ordinance and arguably the Labor Agreement, mandating that the Staff or Board identify the specific MPD policy violation in order to sustain an allegation under the CRA ordinance. By citing and relying on the MPD policy, it casts the false appearance that the CRA is investigating violations of police policy, and rendering recommendations/determinations as to whether the officer violated that policy, rather than identifying facts which support or negate the allegations of police misconduct; (2) by citing the MPD Policy and Procedure Manual, the CRA, at a minimum, undermines its mandate to review and recommend changes to the MPD's policies and training procedures;¹¹⁷ and (3) the CRA exceeds its authority under the CRA ordinance by citing the specified policies.¹¹⁸

“The City will discipline employees who have completed the required probationary period only for *just*

¹¹⁷ The CRA, under its “substantive duties and powers, is authorized to review Minneapolis Police Department policies and training procedures and make recommendations for change.” MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.60 (2005).

¹¹⁸ *Id.* § 172.130.

cause.”¹¹⁷ “Whether just cause exists to [discipline] a civil service employee is a question of law.”¹²⁰ “Cause must be something of a substantial nature directly affecting the rights and interests of the public.”¹²¹ “The evidence showing cause must be substantial.”¹²² The administration of discipline to an officer is a quasi-judicial procedure.¹²³ When an agency makes its decision in a quasi-judicial capacity, the applicable standard of review is the substantial evidence test.¹²⁴

¹¹⁹ The City of Minneapolis & the Police Officers’ Federation of Minneapolis, Labor Agreement, Police Unit, Oct. 15, 2002 through Oct. 14, 2005, Art. 4, Discipline, Sec. 4.1. Also, it is the Federation’s position that “‘Just cause’ for discipline and discipline are governed by the collective bargaining agreement between the City and the Federation. They are mandatory subjects of bargaining and therefore, the City council may not, by ordinance or by any other method, unilaterally define ‘just cause’ nor enact an ordinance that requires discipline in any particular situation without bargaining with the Federation.” Memorandum from Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep’t of Civil Rights, RE: *Draft Ordinance on Mandatory Mediation for CRA*, (Jul. 19, 2005) (on file with author) at 2.

¹²⁰ *City of Minneapolis v. Johnson*, 450 N.W.2d 156, 160 (Minn. Ct. App. 1990).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* at 159

¹²⁴ *In re Signal Delivery Ser.*, 288 N.W.2d 707, 710 (Minn. 1980).

Therefore, the Chief must have *substantial evidence* establishing just cause to discipline an officer.¹²⁵

“Substantial evidence” has been defined as variously as: “1. Such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; 2. More than a scintilla of evidence; 3. More than some evidence; 4. More

¹²⁵ Minnesota courts require *just cause* for discharge of a civil service employee. *Caldwell v. City of Minneapolis*, 486 N.W.2d 151, 153 (Minn. Ct. App. 1992). “Whether just cause exists to discharge a civil service employee is a question of law.” *City of Minneapolis v. Johnson*, 450 N.W.2d 156, 160 (Minn. Ct. App. 1990). Minnesota has a long history of defining *just cause* as requiring that “[t]he cause . . . be one which specially relates to and affects the administration of the office.” *Caldwell*, 486 N.W.2d at 153 (citation omitted). Subsequent cases emphasize that the “cause or reason for dismissal must relate to the manner in which the employee performs his [or her] duties.” *Id.*; see also *City of Minneapolis v. Moe*, 450 N.W.2d 367, 370 (Minn. Ct. App. 1990) (citing *Hagen v. State Civil Serv. Bd.*, 299, 164 N.W.2d 629, 632 (1969); *Ekstedt v. Village of New Hope*, 162-63, 193 N.W.2d 821, 827-28 (1972) (misconduct must be based on inadequate performance of duties); *Hughes v. Dep’t of Pub. Safety*, 22, 273 N.W. 618, 612 (1937) (misconduct denotes an improper discharge of the duties of office); *In re Discharge of Kelvie*, 384 N.W.2d 901, 904 (Minn. Ct. App. 1986) (discharge requires relationship between alleged misconduct and job performance).

Thus, “cause must be something of a substantial nature directly affecting the rights and interests of the public.” *City of Minneapolis v. Johnson*, 450 N.W.2d 156 (Minn. Ct. App. 1990) (citations omitted) (upholding the “substantial evidence” standard) (see *In re Larkin*, 415 N.W.2d 79, 82 (Minn. Ct. App. 1987). The Minneapolis Civil Service Commission has the authority to fashion an alternative remedy only if the evidence presents extenuating circumstances. See *Wagner v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1*, 596 N.W.2d 529, 531 (Minn. 1997); see also Section III, *supra*; *In re Schrader*, 394 N.W.2d 796, 801-802 (Minn. 1986).

than any evidence; and 5. Evidence considered in its entirety.”¹²⁶

The “substantial evidence” test requires that the Chief evaluate the evidence relied upon by the CRA (an administrative agency in the city) in view of the entire record as submitted.¹²⁷ “If an administrative agency engages in reasoned decisionmaking *** even though [the Chief] may have reached a different conclusion had [he/she] been the factfinder,” the Chief should administer discipline.¹²⁸

As established in Section III (A) above, the CRA ordinance specifically states that “[t]he investigator shall prepare recommended findings of fact and a recommendation of sustained or not sustained in a written summary.”¹²⁹ With respect to the CRA Board, the CRA ordinance also states that after completing a hearing, the Board shall “issue a written

¹²⁶ Cable Commc’ns Bd. v. Nor-west Cable Commc’ns P’ship, 356 N.W.2d 658, 668 (Minn. 1984).

¹²⁷ *Id.* at 668-69.

¹²⁸ *Id.*

¹²⁹ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.90.

report containing findings of fact and a determination of whether the complaint is sustained.”¹³⁰ It is important to first note that the CRA ordinance essentially requires the CRA Board to do the same paperwork as the CRA investigators. **Nevertheless, when the CRA Board sustains a complaint, it is tantamount to adjudicating, in a quasi-judicial administrative capacity, the factual merits of the alleged misconduct.** The CRA ordinance is clear that the CRA’s responsibilities are limited to making findings and determining whether or not to sustain the complaint. Authority to discipline based on the CRA’s determination is solely within the scope of responsibility for the Chief.¹³¹

There is neither instruction from the ordinance, nor arguably a mandate by the Labor Agreement, that directs the CRA to identify and label which policy and procedure the subject officer has violated. Also, the omission of this

¹³⁰ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.100 (d).

¹³¹ *Id.* § 172.130.

language from the ordinance does not appear to be in error, since the standard for administering discipline is not whether or not an officer violated a Department Rule, but whether there is "just cause" to determine that misconduct occurred, which is supported by "substantial evidence," after considering "extenuating circumstances" (full discussion *infra*).¹³²

The Collective Bargaining Agreement (the "CBA") also specifies the conditions under which an employee police officer can be disciplined, and grants the disciplined officer the right to file a grievance and contest the Chief's

¹³² One conceivable objection might be that these categories are too general, and do not provide a "target" officer with sufficient information to "answer" to the charges. However, since CRA complaints are analogous to civil lawsuits (*see infra* at 106-07), the rules mandating notice would be analogous to complaints filed in Minnesota courts. Minnesota is commonly referred to as a "notice" state, which requires pleading to state a claim upon which relief can be granted; that is "whether the complaint sets forth a legally sufficient claim for relief." *See Witzman v. Lehrman, Lehrman & Flom*, 601 N.W.2d 179, 185 (Minn. 2000); *see also Elzie v. Comm'r of Pub. Safety*, 298 N.W.2d 29, 32 (Minn. 1980)(quotation omitted). Analogously, the CRA's identification of the area of investigation is sufficient "notice" in Minnesota for the target officer to respond.

discipline.¹³³ “In an interview with Human Rights Watch, [former] Chief [Robert] Olson stated that the arbitration system was perhaps the greatest barrier he faces in his efforts to hold police officers accountable for misconduct.”¹³⁴

While evidence of a Department Rule violation can be considered evidence of “just cause” to discipline, it is better practice to attach the MPD policy at the “disciplinary” stage as opposed to the “adjudication of the facts stage.”¹³⁵ Mainly, the need to designate an actual policy or Department Rule is not a *per se* requirement to administer discipline under the CRA ordinance or arguable the Labor Agreement. Therefore, the CRA’s determination that a MPD policy and/or procedure

¹³³ The City of Minneapolis and the Police Officers’ Federation of Minneapolis, Labor Agreement, Police Unit, Oct. 15, 2002 through Oct. 14, 2005, Art. 5, Settlement of Disputes, Sec. 5.4-5.12.

¹³⁴ Human Rights Watch, *Shielded from Justice: Police Brutality & Accountability in the United States*, HUMAN RIGHTS WATCH, (Jun. 1998) ¶ 10 (citing telephone interview, Chief Olson, Jan. 23, 1998). It should be noted that the labor agreement does not distinguish *just cause* between sustained CRA findings, and the severity of Chief’s discipline administered. It should also be noted that the Chief could substitute a MPD policy for a Civil Service Rule, and discipline the officer accordingly based on the CRA’s adjudicated facts.

¹³⁵ *City of Minneapolis v. Johnson*, 450 N.W.2d 156, 160 (Minn. Ct. App. 1990).

has been violated before sustaining the allegation is problematic. Citing the policy at this stage of the investigation, undermines the provisions in the ordinance mandating the CRA to oversee and review the MPD policies and training procedures in order to make recommendations for changes. By citing the Department Rules, it indirectly lends a sense of validation to the policy from the independent CRA Board.

It follows, therefore, that the practice of determining whether to sustain the allegation of misconduct based upon (and later designated as) a specified violation of a MPD Policy or Procedure is improper. First, the MPD Policy and Procedures are connected systematically to the MPD's Complaint Process Manual and "discipline matrix."¹³⁶

¹³⁶ "When Police Chief Robert K. Olson took over the 960-member force in 1995, he emphasized respect for human rights and made clear he would not tolerate abuses by police officers. He set out a *disciplinary matrix*, allowing officers to know exactly what to expect if they break the rules, and he emphasized that Sergeants and Lieutenants were responsible for knowing about, and appropriately dealing with, officers who commit abuses." Human Rights Watch, *Shielded from Justice: Police Brutality & Accountability in the United States*, HUMAN RIGHTS WATCH, ¶ 1, (1998).

The discipline matrix assigns the severity of a violation to a letter (i.e. A, B, C, and D). As previously indicated, an “A” violation is the least severe type of indiscretion (and arguably not disciplined at all), while a “D” violation is a very serious violation.¹³⁷ Each Department Rule is assigned a violation letter. Each violation letter is assigned a category of discipline.¹³⁸ Thus, the CRA’s selection of a MPD Policy and Procedure as the basis of its findings incorporates, albeit inadvertently, a general *recommendation for a scope of discipline*. By citing the policy, the CRA is actually damaging the credibility of its own investigation by exceeding the authority granted to it under the ordinance.

Instead, it is recommended that the CRA should apply constitutional principles, statutes, ordinances, and case law to determine whether or not to “Sustain” the allegation of police misconduct. The CRA would then make a “finding” based

MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, Guiding Principles of the Complaint Process Manual at ¶ 5 (Mar. 2002).

¹³⁸ See *id.*

on *its subject matter jurisdiction*, and avoid making a determination that the MPD Policy and Procedure Manual has been violated. The responsibility of identifying which policy has been violated and the appropriate punishment should be exclusively left to the Chief of Police, until and unless the City Council states otherwise.

Essentially, the focus of the CRA decisions should be the “findings.” Keeping in mind that the Chief must have “just cause” for disciplinary actions taken, there are varying methods for determining that sufficient evidence is present. For example, evidence can be based on inferences drawn from all documentation and testimonial evidence,¹³⁹ the credibility of the witnesses, and whether the testimony is clear, convincing and consistent can be considered.¹⁴⁰

¹³⁹ *In re Hutchinson*, 440 N.W.2d 171, 177 (Minn. Ct. App. 1989).

¹⁴⁰ *Id.*

Currently, the CRA organizes its final determinations as follows:

I. Panel Hearing; II. Summary of complaint allegations; III. Findings of Fact in numerical order; IV. Recommendations; V. Determination of Panel, including dissenting opinion and indicating 'Prepared by' followed by the name of the panel member who writes the rationale.¹⁴¹

While the advantage of this writing structure is to disseminate an all-inclusive report of both the CRA Staff and Board, it not consistent with best practices (see *supra* full discussion of Board Determinations). The standard organization for an "Investigative Report" should include the following five elements: (1) Introduction; (2) Methodology; (3) Summary of the Interviews; (4) Credibility Assessment; (5) Findings.¹⁴²

In administrative adjudications, the following seven "decisional elements" are included: "(1) Statement of the Case; (2) Issue; (3) Summary of the Evidence; (4) Finding of

¹⁴¹ MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY, MINUTES, Motion 5 (Nov. 5, 2003).

¹⁴² See Fran A. Sepler, *Summary Guide to Investigations*, MINN. CONTINUING LEGAL EDUC. - MINN. STATE BAR ASSOC. (2003).

Fact; (5) Discussion; (6) Conclusion of Law; and (7) Order.”¹⁴³

Here, the CRA could adopt a combination of these two methods, tailoring the CRA “determination” to address its function in this administrative process, such as:

- (1) Statement of the Case;
- (2) Issue(s);
- (3) Summary of the Evidence;
- (4) Finding of Fact (in numerical order);
- (5) Credibility Assessment
- (6) Discussion; and
- (7) Recommendation.

Should the City Council deem it inappropriate for the Chief to process CRA complaints through the Internal Affairs Unit, the CRA should prepare an “Executive Summary of the Investigation” for the Chief’s review.

Finally, it should be mentioned, although not specifically found in the files reviewed by the Consultant, that some complainants appear to lose interest in the complaints

¹⁴³ Guy J. Avery, *Decision Writing – A Handbook for Administrative Law Judges*, MD. OFFICE OF ADMIN. HEARINGS & THE NAT’L ASSOC. OF ADMIN. LAW JUDGES, at 1 (1996).

they have filed, and become unavailable. This is of concern to the Director, since many investigations proceed until conclusion, without the participation of the complaining witness. While it does not appear that the complaining party is necessary for every step of CRA process (due to the nature of the CRA complaint which exclusively triggers personnel action), the MDCR's position is that resources should not be dedicated to files where the complaining witness does not vest interest in the completion of the investigation. In situations where the cooperation of the complainant deteriorates or becomes non-existent, the Director of Civil Rights should be allowed to dismiss the charge in order to appropriately manage the CRA's limited resources.¹⁴⁴

¹⁴⁴ The Police Officers' Federation is not opposed to this, stating: "the Federation fully agrees that the lack of triage, particularly the requirement that every case go before the Board for a decision, is a serious problem with the process." Letter from Ann E. Walther, Attorney, Police Officer's Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep't of Civil Rights (Oct. 23, 2004) (on file with author).

C. The Administration of Discipline within the MPD.

An analysis of the CRA discipline process reveals three areas of concern: (1) the Chief is exceeding his authority under the CRA ordinance by reversing or "Not Sustaining" CRA complaints that already have been "Sustained" by the CRA Board; (2) the failure of the CRA ordinance to prohibit or proscribe any act renders it primarily a procedural ordinance and unwittingly creates "advisory opinions;" and (3) the Internal Affairs Unit of the MPD conducts an unauthorized *de novo* review of the CRA file.

1. The Chief and the CRA Ordinance.

While it was always the intention of the CRA ordinance to grant the Chief of Police the ultimate authority to administer (or not administer) discipline, it is clear that at this stage of the discipline process, the citizen oversight balancing function is completely nullified.¹⁴⁵ This is problematic since

¹⁴⁵ For a full discussion on origin of the Chief of Police's discipline powers, see Memorandum from Mark S. Wernick to Legal/Policy Subcommittee Members, at 3 (May 8, 2002) (on file with author).

the Chief has taken the position that the CRA's work is essentially substandard, and does not provide him with the sufficient information to administer discipline. Here, the Chief has taken this position *in response to* the perceived deficient CRA investigations and determinations.

Also, many of the Chief's written communications indicate that the disciplinary disposition of a CRA complaint (when the MPD does not administer discipline) is considered "Not Sustained." For example, in a MPD discipline panel decision as recent as June 21, 2005, the Chief took no action on a "Sustained" CRA Complaint due to "insufficient facts," and stated:

Our records will show this case as being closed with a final disposition of "Not Sustained." No discipline will be issued in connection with this case.¹⁴⁶

In another decision dated May 24, 2005, the discipline panel writes, **"Chief McManus reviewed the case and concurred**

¹⁴⁶ MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL RECOMMENDATION, (Jun. 21, 2005).

with the [discipline panel's] determination to 'Not Sustain' the case."¹⁴⁷ In another decision, additional information changed the outcome of the discipline of the CRA file:

Based on this new information, I am reversing my decision to sustain this case and issue discipline. Our records will show the case as being "Not Sustained" and all three officers have received coaching regarding the use of force and providing medical attention when appropriate.¹⁴⁸

In a more extreme situation, the MPD suspended the CRA discipline process in its entirety:

A MPD disciplinary panel reviewed this case and determined at this particular time, it would be unfair to all concerned parties for the panel to make a determination of discipline due to the investigative deficiencies contained within the case.¹⁴⁹

This is the core problem with the MPD's "disciplinary decisions" required under the CRA ordinance.

¹⁴⁷ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (May 24, 2005).

¹⁴⁸ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Apr. 11, 2005).

¹⁴⁹ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Oct. 19, 2004).

In order to fully value the significance this issue, the specific language of the CRA ordinance must be examined.

The law states:

Upon conclusion of the hearing and request for reconsideration process, the review authority shall forward the investigative file, the findings of fact and the panel determination to the chief of police, *who shall make a disciplinary decision based upon this information.* In all cases where the review authority sustained the complaint, the chief of police shall provide the review authority and the mayor with a written explanation of the reason(s) for that disciplinary decision.¹⁵⁰

According to the ordinance, the discipline procedure is bifurcated. First, the CRA Staff investigates allegations of misconduct according to its scope of authority.¹⁵¹ Then, the CRA staff makes findings-of-fact and determines whether to make a recommendation to the CRA Board to "Sustain" or "Not Sustain" the complaint based on the findings.¹⁵²

¹⁵⁰ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.130 (a)(emphasis added).

¹⁵¹ *Id.* § 172.20.

¹⁵² *Id.* at § 172.90; 172.100(d).

Second, the disciplinary decision is vested with the Chief of Police. While the Chief has the discretion to “Not Sustain” an Internal Affairs investigation, the CRA ordinance does not confer this option upon the Chief for CRA investigations, since **the Chief is not the fact-finder.**¹⁵³

In fact, this problematic issue was reviewed by the CRA Redesign Team of 1997,¹⁵⁴ which supported the position that disciplinary authority remain with the Chief of Police under the following premise:

While the City Attorney has determined that the police chief cannot overturn CRA

¹⁵³ See MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, (Mar. 2002). See also MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Aug. 9, 2005). After the Consultant's interview with top MPD officials, the MPD Administrative Review decisions underwent a transformation from “An MPD discipline panel reviewed the case and determined the charge should be ‘Not Sustained’ ” (Apr. 4, 2005), to stating that there was “insufficient evidence to support disciplining” the officer, and noting the determination as “Not to Discipline” (Aug. 9, 2005). This language is preferred over the perceived notion that the Chief is “Not Sustaining” CRA adjudications.

¹⁵⁴ The City Coordinator named the CRA Redesign Team or “Action Group,” composed of 24 members. “The Action Group, which includes both community and City of Minneapolis representatives, will establish the goals and outcomes for the redesigned civilian review authority, including developing a process for involving the community in the redesign effort.” Sara Dietrich, *Action Group named for Minneapolis Civilian Review Authority Redesign*, MINNEAPOLIS COMM’N DEP’T, (Apr. 12, 2002), at 1.

findings, the chief retains managerial authority to determine the level of discipline imposed, if any. As a result, some concern was raised in focus groups and in Redesign Team discussion that even though the chief may disagree with a Board decision, light discipline for example, a letter of reprimand) is imposed in order to avoid a confrontation with the Board.

While some may question the wisdom of letting the Police Chief have the final say in discipline, ultimately his reappointment depends on satisfaction with his performance which includes how he handles sustained CRA complaints.¹⁵⁵

One manner in which it appears that the MPD is able to circumvent this process, however, is by allowing the Internal Affairs Unit to modify, challenge and supplement portions of the CRA files. This is inappropriate and raises concerns since it eliminates the intended check-and-balance system between the Chief, the Internal Affairs Unit and the appointed citizen advisory board, by requiring the Chief to make a disciplinary decision in response to a revision of the

¹⁵⁵ MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY 25, REDESIGN TEAM REPORT, (Nov. 1997).

CRA findings by the IAU.¹⁵⁶ Also, the Chief should discontinue the practice of “Not Sustaining” the “Sustained” CRA complaints.

Further review of the CRA files reveals that the Chief does not administer discipline based on the categories listed under the CRA’s scope of authority to investigate (i.e. Minneapolis, Minn., Code § 172.20). Rather, in practice, the Chief bases discipline decisions on the Department Rules and the disciplinary matrix.¹⁵⁷

Although the Administrative Procedure Act does not apply to the City of Minneapolis, it is instructive in this situation.¹⁵⁸ As a guideline to the Chief, s/he should discipline officers in response to “Sustained” CRA complaints, unless the decision is unsupported by substantial

¹⁵⁶ *See id.*

¹⁵⁷ It is important to point out that a review of the Minneapolis Civil Service Commission rules is beyond the scope of this study. However, it is noteworthy that the Civil Rules state that conduct unbecoming to a public employee may be cause for disciplinary action. Also, violation of Civil Rules is prohibited under the Department Rules. *City of Minneapolis v. Johnson*, 450 N.W.2d 156, 159 (Minn. Ct. App. 1990).

¹⁵⁸ MINN. STAT. §14.69 (2005); *see generally*, MINN. STAT. § 14.02, subd. 2 (2005).

evidence or is arbitrary, capricious or affected by errors in law.¹⁵⁹ When more than one inference may be drawn from evidence, the findings of an administrative agency must be upheld.¹⁶⁰

Alternatively, in order to maintain civilian oversight over the CRA process, the City Council could consider amending the CRA ordinance to create an additional "appeal" by either the complainant or the subject officer of the CRA Board's opinion, and the Chief's discipline decision.¹⁶¹ This could be similar in many respects to the oversight mechanisms utilized in Albuquerque. There, the "Independent Counsel" has the authority to disagree with the "Chain of Command" in the police department on discipline

¹⁵⁹ *Id.* (citing *In re Proposed Discharge of Larkin*, 415 N.W.2d 79, 81 (Minn. Ct. App. 1987).

¹⁶⁰ *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W. 2d 557, 565 (Minn. Ct. App. 2001).

¹⁶¹ In regard to the "fairness" aspect of the law, the subject officer would have to elect to either file the A.L.J. appeal, or file a union grievance.

decisions.¹⁶² When such a “disagreement” occurs, the parties hold a “Non-concurrence Meeting” with the Chief of Police.¹⁶³ In the event the “disagreement” is not resolved, the matter is resolved by the Chief Administrative Officer for the City.¹⁶⁴

A modified version of this “appeal” could be adopted by the City of Minneapolis, which would add a final “check-and-balance” element to the Minneapolis civilian oversight model. Here, the complainant or subject officer could file a written appeal of the Chief’s disciplinary decision to, for example, an administrative law judge (A.L.J.).¹⁶⁵ This “CRA–A.L.J.” could be instructed, according to administrative practices to review the Chief’s disciplinary decision to resolve whether his or her decision was “clearly

¹⁶²Eileen Luna & Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep’t*, ALBUQUERQUE CITY COUNCIL, (1997), <http://www.cabq.gov/council/abqrpt0.html>, at § IV, ¶ 5.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ In another case the City appointed an A.L.J. to hear an appeal and adopted the findings of the A.L.J. See generally, *CUP Foods, Inc. v. City of Minneapolis*, 633 N.W. 2d 557 (Minn. Ct. App. 2001). It should be noted, nonetheless, that the use of A.L.J.’s in the CRA process was considered by the 2002 CRA Redesign Team.

erroneous." Use of A.L.J. reinvests the police oversight to the "community leader" by allowing a civilian to have the "final say" on police discipline, before the mechanism of the Labor Agreement is triggered.

2. CRA "Advisory Opinions."

As previously stated, the administration of discipline to an officer is a quasi-judicial procedure.¹⁶⁶ Notwithstanding the nature of the process, the purpose of the CRA is to resolve the "factual" controversies, and make "conclusions based upon ... findings of fact" in order to determine whether (or not) a complaint should be sustained.¹⁶⁷ Sustained CRA complaints are forwarded to the Chief to make disciplinary decisions.¹⁶⁸ The Chief, however, has withheld the application of discipline for a number of reasons, including:

- (1) the MPD discipline panel did not believe the complainant, and witnesses were relatives of the complainant;

¹⁶⁶ *City of Minneapolis v. Johnson*, 450 N.W.2d 156, 159 (Minn. Ct. App. 1990).

¹⁶⁷ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.10 (2005).

¹⁶⁸ *Id.* § 172.130(a).

- (2) the allegations do not fit with MPD discipline matrix;
- (3) MPD cannot issue discipline when the officer erred in "good faith;"
- (4) issues raised by the CRA were addressed in the officer's report;
- (5) the officer has not had any new complaints;
- (6) the time period to discipline has passed;
- (7) the officer fully cooperated with the investigation;
- (8) the officer did not have an opportunity to explain him/herself to the CRA panel;
- (9) the CRA did not take a fact or witness into consideration;
- (10) an incomplete investigation would cause a grievance; and
- (11) the officer was following the direction of a supervisor.¹⁶⁹

This hinders the decision/action design of the City's CRA process, and further complicates the officer discipline procedure.

One procedural complication is conferring the authority to the Board to express an "opinion." As previous outlined, the CRA Board is essentially allowed to draft

¹⁶⁹ These examples originate from the 39 complaints the Chief of Police has acted on in 2004-2005 (*see infra*, Table 6). This data seems to support the allegation, at least with regards to CRA complaints, that Internal Affairs "rarely sustain[s] complaints." G.R. Anderson, Jr., *How's He Doing?*, CITY PAGES, (Oct. 13, 2004), at ¶ 20.

“findings-of-fact” in lieu of the recommendations provided by the professionally trained CRA investigators. As demonstrated above, the use of the phrase “shall make a disciplinary decision” does not actually require the Chief to render discipline on any “Sustained” CRA complaint.¹⁷⁰ As the law is currently drafted, it only requires the Chief to “make a ...decision.” However, the Chief can actually decide to forego discipline on a “Sustained” CRA complaint, and disregard the reasoning in the CRA Board’s written opinion. Here, the ordinance itself grants the Chief authority to veto, by proxy, the “Sustained” CRA Board’s “opinion.”¹⁷¹ Thus,

¹⁷⁰ It is likely that the reason for this loose language was to avoid defining the terms “just cause” under the Collective Bargaining Agreement between the City and the rank-and-file police officers.

¹⁷¹ During the course of the interviews, the issue arose of whether the CRA ordinance provided the officers with appropriate “Due Process” protection was cited, since the Chief could not return the complaints to the CRA Board for further investigations. Still, the due process rights are preserved in MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.100(d), since the CRA Board, as the ultimate fact-finder, may remand the complaint to the CRA Staff for further investigation. The Chief, under the ordinance, is not a fact-finder, but rather the administrator of the discipline. Secondly, due process normally refers to providing (1) notice; and (2) a meaningful opportunity to be heard. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). As such, there is no “Due Process” violation, for not extending the Chief this authority. This would seem to be supported by the fact that the CRA process is exempt from the

by design, the Chief has unbridled discretion to exercise the veto by simply deciding not to administer discipline. This obviates the CRA Board's "opinion," rendering it non-adjudicative.

Secondly, when the above situation occurs, the CRA decision does not become binding since the analysis in the CRA Board's "opinion" only serves to advise the Chief to discipline, rather than requiring discipline. When the Chief exercises his "veto" authority, the CRA Board's process essentially transform from adjudicative to non-adjudicative, thus creating a paper trail of "advisory opinions" rather than resolving a case-in-controversy, which in turn subjects the CRA, as an institution, to "administrative drift."¹⁷²

"Peace Officer's Bill of Rights," pursuant to MINN. STAT. § 626.89, Subd. 2(1) (2005). However, there is greater inequity between the citizen and the police officer: an "obstacle is the unequal balance of power that occurs when a citizen complaint progresses to the [adjudication] stage. The accused officers have the support of their union; therefore they always have legal representation. The citizen, on the other hand, most often does not have the resources to attain legal assistance." Richard S. Jones, *Processing Civilian Complaints: A Study of the Milwaukee Fire & Police Comm'n*, 77 MARQ. L. REV. 505, 518-19 (1994).

¹⁷² "Administrative drift" is an adaptation of the term "bureaucratic drift." The phrase "bureaucratic drift" appears to have been coined by Professor

This is concerning in general since the “justiciable controversy”¹⁷³ requirement in the law compels judicial and quasi-judicial entities to adjudicate rights on established facts, rather than issuing “advisory opinions.”¹⁷⁴ In Minnesota, neither the Supreme Court, nor the Court of Appeals (judicial entities) issue advisory opinions “merely to establish

Kenneth Shepsle of Harvard University: “[t]he problem that Congress faces is known as “bureaucratic drift;” it relates to the specific concern that future changes in administrative agency policies will be inconsistent with the original expectations of the legislation’s intended beneficiaries.” See Jonathan R. Macey, *Lawyers In Agencies: Econ., Social Psychology, & Process*, 61 LAW & CONTEMP. PROBS. 109 (1998)(citing from Murray J. Horn & Kenneth A. Shepsle, *Commentary on “Admin. Arrangements & the Political Control of Agencies.” Admin. Process & Organizational Form as Legislative Responses to Agency Costs*, 75 VA. L. REV. 499, 505-08, (1989)) (employing assumption of “intelligent foresight” to conclude that elected politicians in creating agencies devise initial enactments which will protect against the influences of bureaucrats and subsequent political coalitions); see also Kenneth A. Shepsle, *Bureaucratic drift, coalitional drift, and time consistency: A comment on Macy*. 8 J.L.ECON. & ORG., 111-118, (1992).

¹⁷³ The legal term of art, “justiciable controversy,” refers to a “case or dispute...capable of being disposed of judicially.” BLACK’S LAW DICTIONARY 882 (deluxe 8th ed. 2004). A lay use of the term “justiciable” referred to the capacity of a decision being made by legal principle, MERRIAM WEBSTER’S DICTIONARY, at www.m-r.com. This legal concept has been compared to “political questions.”

¹⁷⁴ See *Thuma v. Kroschel*, 506 N.W.2d 14, 20-21 (Minn. Ct. App. 1993) pet. for rev. denied (Minn. Dec. 14, 1993) (citing Minn. Stat. §555.0-16; commonly referred to as “the Uniform Declaratory Act”).

precedent.”¹⁷⁵ It follows, therefore, that since the CRA Board’s “opinion” (a quasi-judicial entity) is not binding, it is an “advisory opinion,” which merely projects the CRA Board’s view “on an issue clearly on the horizon,”¹⁷⁶ but does not actually adjudicate.

A solution to the “advisory opinions” issue would be to modify the CRA ordinance, granting the *CRA Board* the authority to either “Sustain,” “Not Sustain,” [even possibly “Exonerate,” find “Unfound”]¹⁷⁷ or “Remand” the CRA Investigators recommended findings without the additional written verbiage.

3. Improper de novo Review of the CRA File.

The current practice in the Internal Affairs Unit and the discipline panel is to conduct a *de novo* review of the

¹⁷⁵ *Jasper v. Comm’r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002); *State v. Hanson*, 532 N.W.2d 598, 601 (Minn. Ct. App. 1995).

¹⁷⁶ *Id.*

¹⁷⁷ *See infra* at 111 for discussion.

CRA facts, credibility assessments and determinations.¹⁷⁸

This practice clearly exceeds the MPD's authority granted under the ordinance, and appears to be contradictory to the independence of civilian oversight in general, since it was intended that the CRA "operate autonomously from the police," and "investigate complaints independent of [the] Internal Affairs Unit."¹⁷⁹

The MPD's *de novo* review of CRA decision has been disguised in various forms (as described above), including IAU's review of the CRA file to identify alleged "investigative deficiencies."¹⁸⁰ Other times, the *de novo*

¹⁷⁸ *Jasper v. Comm'r of Pub. Safety*, 642 N.W.2d 435, 439 (Minn. 2002); *State v. Hanson*, 532 N.W.2d 598, 601 (Minn. Ct. App. 1995) (citing *Selling v. City of Duluth*, 248 Minn. 333, 339, 80 N.W.2d 67, 71 (1956)). It is relevant to note that while the CRA investigates employee misconduct applying a preponderance of evidence standard, IAU investigates both misconduct (same standard) and criminal conduct (probable cause/beyond a reasonable doubt standard). Although aware of different standards, often times IAU investigators rendered the opinions on misconduct based on the higher criminal standard. Interview with Michael Quinn, former Police Sgt., Minneapolis Police Dep't, in Minneapolis, Minn. (Jul. 28, 2005).

¹⁷⁹ Civilian Review Authority Redesign, ACTION GROUP RECOMMENDATIONS, at 12-13 (Jul. 22, 2002).

¹⁸⁰ *Id.* It is important to note the Internal Affairs review of the CRA file, should City Council deem it appropriate for IAU to be a part of the

review is an overt disagreement with the CRA's findings, or an unnecessary resuscitation of the evidence the CRA considered in its fact-finding process. In one decision dated June 7, 2005, the MPD discipline panel stated it:

... determined that none of the charges against the officers should be sustained. Based on the facts outline in the case, the panel determined that the force used was in fact reasonable, contrary to CRA's determination.¹⁸¹

In many cases, the credibility assessment the CRA Board incorporates into its findings is inappropriately revisited, and other times, discarded as erroneous. For example, in a decision dated May 4, 2005, the MPD discipline panel stated:

In reviewing this case file it appeared that the CRA panel may not have taken into consideration the statement of [an officer], who was at the scene during this encounter.¹⁸²

In another decision dated June 7, 2005, the administrative review states:

process, should be restricted to determining a police department rule violation.

¹⁸¹ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Jun. 7, 2005) (emphasis added).

¹⁸² MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (May 4, 2005) (emphasis added).

An MPD discipline panel reviewed the case and determined that none of the charges against the officer should be sustained. The panel noted a number of inconsistencies with the complainant's statements, including an allegation of a broken wrist, even though the medical report indicated no such injury. *It does not appear that these inconsistencies were factored into the CRA assessment of the facts, prior to making a final determination.*¹⁸³

Yet in another example:

It was clear that to the panel that the officers did not act with malicious intent when they stopped to purchase food enroute to the hospital. Also, it is clear that the complainant's injuries, although being bit by a canine, were not of a life threatening nature. In addition, the officers were fully cooperative with the investigation and have acknowledged their judgment could have been better. Lastly, the incident occurred almost three years ago and the officers have not had any sustained violations since this incident. They are very productive and hard working officers on their shift.¹⁸⁴

This kind of action is in clear defiance of the CRA ordinance since the MPD is not allowed to determine facts on CRA complaints. Nevertheless, the aforementioned examples tend

¹⁸³ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Jun. 7, 2005) (emphasis added).

¹⁸⁴ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Feb. 4, 2004).

to be the explanations used by the MPD discipline panels to substitute their decisions for those of the CRA, and attack the investigations which, in many cases, contain "sufficient evidence" to support a "just cause" discipline by the Chief.

Also, the various discipline panel decisions have often designated the "reckoning period" as a mitigating factor, and have strongly stated bias and unprofessional comments against the CRA. For example, in an interoffice memorandum from an Inspector to a Deputy Chief, dated June 25, 2004, the Inspector inappropriately expresses his/her **personal** opinion of the disciplinary panel, and ignores the "just cause" standard, relying simply on the existence of policy and/or procedure in his/her "recommendation" for discipline:

This case is nearly three years old and does not constitute a violation of MPD policies and procedures. The CRA has gone to great lengths to sustain a *harassment* charge against [the officer] citing very technical '*common law of torts*' and other legal speak. **This is a clear example of what is wrong with CRA.** This is a very minor case which is three years old yet

the CRA and my staff have spent hours dealing with a case that at best should have been handled years earlier by a supervisor speaking with the officer, not by a CRA panel and not from a disciplinary standpoint.¹⁸⁵

The opinion continues, stating:

This is an example of the type of case which has serious impacts on department morale. Even if this complaint were [sic] a clear violation of MPD policies or procedures, it is well beyond the reckoning period and would not result in any action against the officer. In essence, we would have to destroy the case as soon as it was sustained.¹⁸⁶

This type of misapplication of the appropriate disciplinary standard combined with a misunderstanding of the concepts of progressive discipline highlight the appearance of bias by the MPD in reviewing CRA complaints.

In a more extreme situation, the discipline panel sought a "legal opinion" although there is no authority to take such action:

¹⁸⁵ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Jun. 25, 2005) (emphasis added).

¹⁸⁶ *Id.* (emphasis added).

In reviewing the case, it appears as though the CRA sustained the charges under the assumption that the Officers did not have probable cause to arrest the complainant for failing to obey a lawful order. *We ran a check with the Legal Department to confirm our belief that the Officers did have in fact have [sic] sufficient evidence to arrest the complainant for that offense and this fact was confirmed by the Legal Department.*¹⁸⁷

This is particularly concerning since it is unclear from where the legal opinion was sought, since the MPD does not have a “Legal Department,”¹⁸⁸ and there was no City Attorney opinion in the files.

In yet another example, the MPD discipline panel decided that the Complainant’s account of the events was inconsistent with “other statements given” therefore the **panel did not believe the Complainant.**¹⁸⁹ Moreover, the MPD discipline panel stated:

¹⁸⁷ MINNEAPOLIS POLICE DEP’T DISCIPLINE PANEL RECOMMENDATION, (Aug. 23, 2005) (emphasis added).

¹⁸⁸ Interview with Tim Dolan, Assistant Chief of Police, Minneapolis Police Dep’t, in Minneapolis, Minn. (Aug. 27, 2005).

¹⁸⁹ MINNEAPOLIS POLICE DEP’T DISCIPLINE PANEL RECOMMENDATION, (Mar. 15, 2004).

[t]his case was reviewed by a discipline panel, which **disagreed with the findings of the CRA board.**¹⁹⁰

Still, in another decision, the MPD stated the following:

It was also clear to the panel that the complainant did in fact lie to the officers during their initial response. Although the officer could have chosen an alternative approach that may have de-escalated the situation, her remarks seem somewhat understandable as [he or she] was clearly upset over being lied to by the complainant.¹⁹¹

An entirely separate "conflict of interest" issue arises from the MPD Discipline Panel discussions. First, the rank of Lieutenant, or for that matter Captain, are equivalent to managers.¹⁹² Second, the disciplinary panel comprised of: "Inspectors/captains/manager, plus two lieutenants."¹⁹³ However, this is in direct contradiction to the separation principles of rank-and-file employee and Managers, because:

¹⁹⁰ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Sept. 17, 2004) (emphasis added).

¹⁹¹ MINNEAPOLIS POLICE DEP'T DISCIPLINE PANEL RECOMMENDATION, (Mar. 15, 2004).

¹⁹² MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, (Mar. 2002).

¹⁹³ *Id.*

[s]ince 1972, the Police Officers Federation of Minneapolis has represented police officers up to the rank of captain who are employed by the City of Minneapolis and the Minneapolis Park and Recreation Board.¹⁹⁴

The Federation also is responsible for negotiating its members' salaries.

It is not clear that the City Council would disapprove of the Chief's use of the "disciplinary panels" for reviewing "Sustained" CRA complaints. However, allowing Panel members who are union members to make disciplinary recommendations on the actions of fellow Union Members, appears inappropriate and adds to the public perception that the police cannot police themselves. Especially since their current use and assessments of CRA files, are problematic. This is particularly the case, since the underlying effect of the MPD's *de novo* review attempts to substitute a higher standard of fact-finding for the CRA than is required under the CRA ordinance. The policy question that needs to be

¹⁹⁴ The Police Officers Federation of Minneapolis Website, <http://www.mpdfederation.com/>.

addresses is whether only non-union members of the police force should serve on such panels.

At this juncture, it is again necessary to highlight the fact that the CRA ordinance is silent as to the involvement of the IAU in the discipline process, particularly after a complainant makes the decision to file the complaint with the CRA, instead of IAU.¹⁹⁵ Rather than adjudicated matters, the MPD tends to treat "Sustained" CRA Board findings as "allegations" of misconduct (with the exception that the majority of the work was completed by the CRA investigators). Here, IAU essentially attempts to usurp the authority of the CRA's decision-making process, and converts the CRA into an alternative method for filing an Internal Affairs complaint. This is evidenced by the "bait and switch" language used by the MPD to "cease an investigation":

¹⁹⁵ "A complainant shall be offered the choice to proceed under this title or go to the Minneapolis Police Department internal affairs division." MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.190.

After reviewing [the CRA Case File] I have determined there are not enough facts for the Minneapolis Police Department to make a discipline determination. I am taking the following course of action so that we may move forward with the case.

Returning the case to the CRA requesting that additional investigative action be taken (see case deferral list).

Assigning the case to the Minneapolis Police Department – Internal Affairs Unit so that additional investigation can be done.¹⁹⁶

This course of action circumvents the CRA process because it does not allow the Chief to consider the CRA findings as they are, before IAU “tinkers” with the file. In many cases, it is difficult to determine whether additional information would change the outcome of the decision.

Currently, it is MPD’s practice to filter the “Sustained” CRA complaint through IAU and MPD disciplinary panels. Should the City Council approve Internal Affairs’ continued involvement, IAU should not be permitted

¹⁹⁶ Letter from an Inspector, Minneapolis Police Dep’t, to the CRA Manager, Minneapolis Dep’t of Civil Rights (Jun. 4, 2004) (on file with author).

to present arguments to the Chief regarding the interpretation/value of the CRA facts, or especially be allowed to reassess the credibility of a witness:

The investigation is seriously flawed and to administer discipline as a result of this investigation would result in a justifiable grievance.¹⁹⁷

The best practice would be to simply designate the MPD policy violation and punishment based on the CRA findings alone. More importantly, all recommendations should be grounded on the CRA's findings. Should the CRA facts be insufficient for identifying a violation of MPD policy and/or procedure, this should be simply stated.

Nonetheless, there should be at a minimum number of permanent staff personal in the Internal Affairs office, who are not subject to rotating out of his/her position, in order to establish a course of dealing with CRA files.¹⁹⁸ Placing a

¹⁹⁷ Letter from an Inspector, Minneapolis Police Dep't, to a Deputy Chief, Minneapolis Police Dep't, (date omitted by Inspector) (on file with author).

¹⁹⁸ Interview with Michael Quinn, former Police Sgt., Minneapolis Police Dep't, in Minneapolis, Minn. (Jul. 28, 2005).

non-permanent IAU investigator in charge of CRA files presents several possible problems, because:

...IAU is not an independent body. It is made up of police officers who, for the most part, will serve in their roles outside of IAU when their assignment at IAU is over. Those officers will have to reintegrate themselves into the rank and file of the police force, and this poses a conflict of interest within IAU when they investigate civilian complaint[s] of police misconduct.¹⁹⁹

The practice of rotating officers from the ranks to IAU, and back to the rank-and-file may be perceived as placing officers in an untenable situation once they return.

Finally, should it be the intent of City Council for the Chief to essentially have two recommendations of the same factual scenario (i.e. a CRA Investigation and an IAU Investigation), then the citizen complaint process in the City of Berkeley would be instructive as to the manner in which to accomplish this undertaking. In Berkeley, a citizen's complaint is individually forwarded to the citizen review and

¹⁹⁹ E-mail from Adam S. Richardson Esq., Investigator, Minneapolis Civilian Review Authority, to Consultant, explaining the advantages of civilian review of officers (Aug. 11, 2005) (on file with author).

internal affairs to conduct independent, but simultaneous, investigations.²⁰⁰ These “parallel investigations” are then submitted together to the “City Manager” and the “Chief” for resolution, where the intent is to give the Chief two separate investigations to review.²⁰¹

D. The Need for Further Review of the CRA/MPD.

There are several outstanding issues regarding the CRA and IAU which potentially account for the remaining variance between their respective investigations. These issues are beyond the scope of this study, but require mention.

Essentially, the perspective outside the city enterprise, which has been broadcasted to the public-at-large, is that the efficacy of the Internal Affairs Unit²⁰² and the CRA, are analogously a “white wash,” and “the Star Chamber.”²⁰³

²⁰⁰ Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP'T OF JUSTICE, ed., 2001), at 22.

²⁰¹ *Id.*

²⁰² “Around the city and nationwide, the MPD has been viewed as a department where investigations of police misconduct gather dust, minority citizens are routinely mistreated, and policing practices are woefully out of date. Internally, a culture of little discipline and political backstabbing had created an atmosphere high on cynicism and low on

[I]n recent years the MPD's Internal Affairs [Unit] has been largely [viewed as a] moribund [entity], rarely sustaining complaints against officers even when their actions have resulted in major [lawsuits, settlements and financially significant] payouts for the [C]ity. Over the years, *[IAU] has earned a reputation as the place where misconduct cases go to die.*²⁰⁴

This allegation seems to comport with the statistics. For example, the City of Minneapolis, with a population of 368,000 people in 1990, paid 1.4 million dollars in civil police liability cases in 1994.²⁰⁵ This amount appears to be a high, especially in comparison to the City of San Francisco, with a population of 724,000 people in 1990, which paid 1.9 million dollars in total for civil police liability cases for the years 1993-1995.²⁰⁶ Since 1995, Minneapolis taxpayers have coughed up some \$10.4 million in 190 cases stemming from MPD actions. Last year, Minneapolis disbursed more than \$2

morale." G.R. Anderson, Jr., *How's He Doing?*, CITY PAGES, (Oct. 13, 2004), at 22, ¶11.

²⁰³ *Faretta v. California*, 422 U.S. 806, 821.17 (1975).

²⁰⁴ Paul Demko & G.R. Anderson, Jr., *The Hit Parade Revisited*, CITY PAGES, (Jul. 20, 2005), ¶19 (emphasis added).

²⁰⁵ LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 430 (Janice Eccleston ed., Mathew Bender & Co. Inc., 2005) (1994).

²⁰⁶ *Id.*

million in damages to aggrieved citizens—the highest one-year total in the [C]ity’s history. And so far in 2005, the [C]ity has agreed to pay out \$915, 769.37 to 21 plaintiffs in cases against the MPD.²⁰⁷

Furthermore:

the [C]ity’s Civilian Review Authority – an [eleven]-person panel that investigates allegations of officer misconduct—has been largely ineffective for years, despite an overhaul three years ago.²⁰⁸

Regardless of the reputations, there is a cause for concern regarding the method in which the IAU handles CRA adjudications. As illustrated in the Table 5, during the course of drafting this report, 100% of “Sustained” CRA complaints in 2005 were managed by the MPD without administering discipline.²⁰⁹

²⁰⁷ Paul Demko & G.R. Anderson, Jr., *The Hit Parade Revisited*, CITY PAGES, (Jul. 20, 2005), ¶ 17.

²⁰⁸ *Id.* at ¶ 19 (emphasis added).

²⁰⁹ In 2004, the IAU received 104 citizen complaints in comparison to the 128 received by the CRA E-mail from Lt. Mike Davis’ assistant B.S., Minneapolis Police Dep’t, to Consultant, RE: 104 citizen complaints received by IAU in 2004, (Aug. 25, 2005) (on file with author).

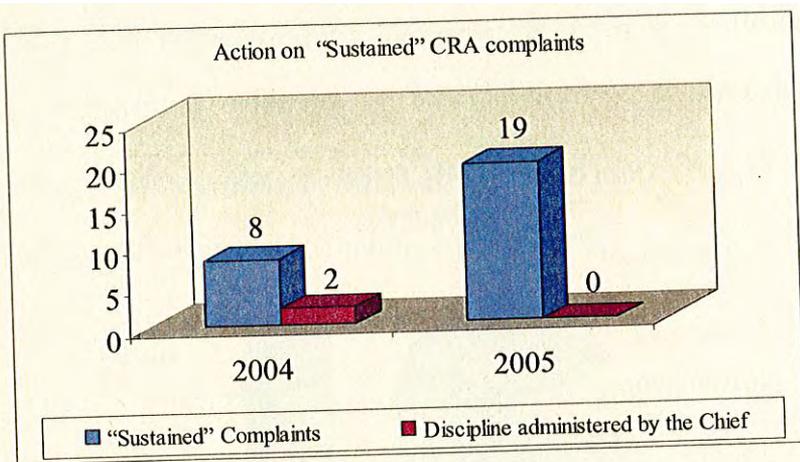


TABLE 5

This statistic is disturbing, especially considering the issues addressed in this report.²¹⁰ Further inquiry into the IAU processes may clarify the relationship between the "Sustained" to "Disciplined" ratio; however, the current processes within the MPD, under Chief McManus' leadership, clearly favors a disciplinary outcome which ultimately

²¹⁰ According to the Redesign Plan for the CRA, "[i]f complaints of police misconduct increase, the Civilian Review would require additional investigators and support staff to maintain timeliness. The cost for additional staff should be borne by the Department responsible for the increase and thus correlated to the budget of the Minneapolis Police Department." CITY OF MINNEAPOLIS, CIVILIAN REVIEW REDESIGN PLAN 6 (2002).

classifies the CRA investigation as “non-public” data (see Table 6).

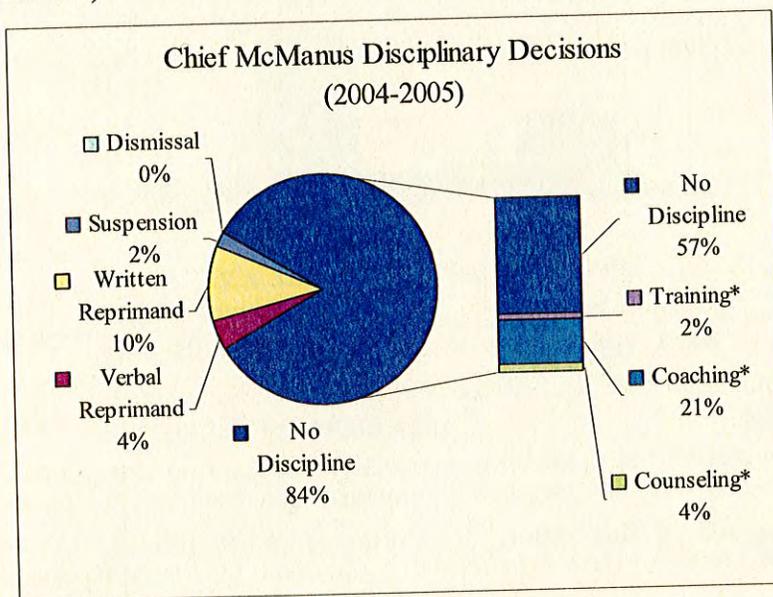


TABLE 6²¹¹

The organization of IAU may contribute to the types of recommendations, including the use of union represented management on disciplinary panels.

²¹¹ The asterisk “*” denotes that the action taken is not considered discipline, and the CRA file remains private under Minnesota Government Data Practices Act (MGDPA)(training, coaching and counseling are not discipline). This graph depicts a total of 48 disciplinary decisions arising from 35 complaints. A single complaint may contain allegations involving more than one officer. The three disciplinary decisions issued by Chief Olson during this period are not reflected in this chart. Under the MGDPA, complaints that are sustained, but the Chief does not administer discipline, are not public data and the CRA file remains private. These statistics are kept on file by the CRA Manager.

Second, the CRA readily uses and relies upon circumstantial evidence, or reliable hearsay, to reach its conclusions. This contrasts starkly with the IAU, which allegedly weighs such circumstantial evidence in favor of the officer rather than the complainant.²¹²

Third, although the standard of evidence for the purposes of employee discipline is a civil *preponderance of the evidence* standard,²¹³ it cannot be determined, without an examination of the Internal Affairs investigation files, whether the correct standard of evidence is, in fact, applied by the IAU. This is of particular concern since IAU, in contrast to the CRA, not only investigates misconduct as a personnel action, but also investigates allegations of actions considered for criminal prosecution.²¹⁴

²¹² Interview with Don Harris, Deputy Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 5, 2005).

²¹³ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.110.

²¹⁴ Interview with Michael, former Police Sgt., Minneapolis Police Dep't, in Minneapolis, Minn. (Jul. 28, 2005).

Although the issue of an "Early Warning System" (EWS) was not a specified task for the Consultant to review, there appears to be a need for such a mechanism (or a modification of the system) could be implemented by the CRA process. The purpose of an EWS is to alert the Police Chief to, and identify officers who, accrue an increased number of citizen complaints within a defined period of time.²¹⁵ In some jurisdictions, when an officer is identified:

...their entire record is reviewed in an attempt to identify problem areas and provide early assistance. In some cases, the complaints may be an unjustified attempt to have an officer removed from the department. Others may reflect early signs of substance abuse, martial problems, or emotional difficulties that can be addressed if identified early enough.²¹⁶

In the pre-2002 CRA design, an EWS existed wherein the names of officers who accumulated two or more complaints within a 12-month period were forwarded to

²¹⁵ See LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA* 291 (Janice Eccleston ed., Mathew Bender & Co. Inc., 2005) (1994).

²¹⁶ *Id.* at 291-2.

internal affairs.²¹⁷ Currently, this system does not appear to be utilized.

Upon review of just the seventeen sample CRA case files, the Consultant noticed the repeated appearance of some officers' names, which were target officers listed in multiple investigations. **One target officer had 21 CRA complaints filed against him in a period of three years.**²¹⁸ In another complaint, the two accused officers had six previous CRA complaints each. Finally, one accused officer had 27 CRA complaints since 1991:

Research on citizen complaints has consistently found that in every department a small number of officers receive a disproportionate number of all complaints.²¹⁹

The CRA also compiled data in 2003 of the number of officers with multiple complaints (see Table 7).

²¹⁷ See Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U. S. DEP'T OF JUSTICE, ed., 2001), at 81.

²¹⁸ This information was contained in one CRA complaint file.

²¹⁹ Eileen Luna & Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep't*, THE ALBUQUERQUE CITY COUNCIL, (1997),

<http://www.cabq.gov/council/abqrpt0.html> at The Issue of "Problem" Officers, ¶1 (1997).

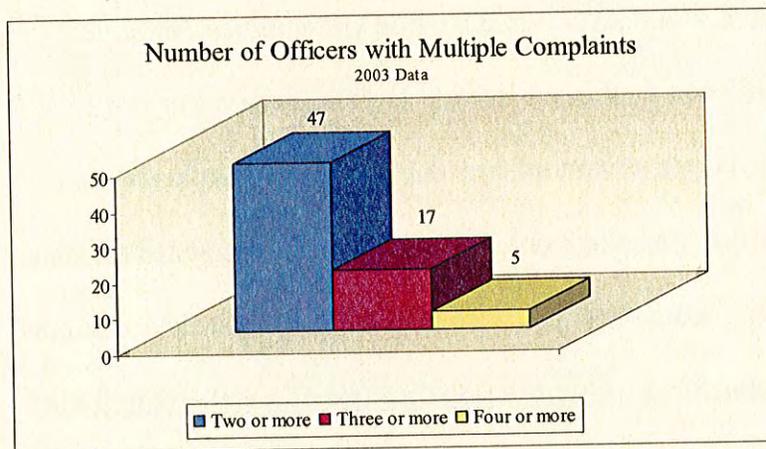


TABLE 7

In the City of San Jose, the EWS triggers when an officer receives three or more complaints in a 12 month period.²²⁰ In the City of San Francisco, the EWS is triggered when an officer receives three or more complaints within six months, or four in one year.²²¹ When the officer's name is highlighted, he or she is subjected to a performance review, and in the case of repeat offenses, this information may be

²²⁰ Eileen Luna & Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep't*, ALBUQUERQUE CITY COUNCIL, (1997), <http://www.cabq.gov/council/abqrpt0.html>, The Different Functions of Citizen Oversight ¶ 22.

²²¹ *See id.* It should be noted that San Francisco's Office of the Citizen's Complaints (OCC) is the most comparable civilian oversight system to the CRA in Minneapolis. *See* Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U.S. DEP'T OF JUSTICE, ed., 2001) at 17.

considered when the officer applies for special assignments.²²² To a certain extent, this already occurs within the MPD with regard to promotions and special assignments. The example below emphasizes the importance placed on CRA "Sustained" findings of misconduct, and negates the allegation that the CRA findings are too deficient to base MPD decisions upon the work of the CRA:

The Minnesota State Gang Strike Force is currently accepting applications for an officer / investigator in the Metro Region. Position will begin January 1, 2006. **Sustained** Internal Affairs and **CRA complaints will be reviewed by the MGSF Oversight Committee.**²²³

Until a determination is made by the Chief, all complaints are considered private data. However, one advantage with the current CRA system is that statistics on case disparities are currently being maintained on a monthly basis by the CRA Staff. The Internal Affairs Unit currently issues a quarterly report that lists ten (10) officers who have

²²² See *id.* at 60.

²²³ MINNEAPOLIS POLICE DEP'T, *Job Announcement* (Dec. 4, 2005) (posting sergeant position) (emphasis added).

received the most complaints.²²⁴ Further research into the development and implementation of an “Early Warning System” should be conducted in order to determine the best practice for the CRA in utilizing the data, and informing Chief of Police of “problem officers.”

A lengthier examination of the IAU process should be conducted to determine whether there is proper application of a bifurcating mechanism to distinguish the two types of evidentiary standards for investigations within IAU. This appears to be particularly appropriate, in light of the fact that the CRA process is more comparable to a civil lawsuit, rather than a criminal one. For example, in reference to requiring mediation for all CRA complaints, the Police Federation’s attorney, in a letter dated July 19, 2005, took the position that:

There is no reason that every CRA complaint should not be subject to mandatory mediation, just as every civil lawsuit is referred to alternative dispute resolution regardless of the allegations contained in the complaint. As with

²²⁴ See Peter Finn, *Citizen Review of Police: Approaches & Implementation*, (U. S. DEP’T OF JUSTICE, ed., 2001) at 35.

civil cases, the mediator, who is specifically trained to analyze the prospects of settlement in a particular case, should have the discretion to determine whether a particular CRA complaint can be successfully mediated.²²⁵

As such, a comparative study could be commissioned to examine this issue.²²⁶

Fourth, the CRA ordinance does not limit the Staff and Board as to the severity level of civilian complaints it may review and adjudicate. For example, the CRA ordinance specifically *allows* the Staff and Board to consider complaints based on allegations of "Inappropriate language or attitude" and "Harassment."²²⁷ Neither the ordinance nor the

²²⁵ Memorandum from Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep't of Civil Rights, RE: *Draft Ordinance on Mandatory Mediation for CRA*, (Jul. 19, 2005) (emphasis added) (on file with author).

²²⁶ The CRA and IAU underwent a similar comparative study, with the focus to determine "how civilian complaints were handled by the new Civilian Review Authority (CRA) and how they were handled by the Internal Affairs Unit of the Minneapolis Police Department." William J. Craig, *A Study of the Minneapolis Civilian Review Authority: Comparing its First Two Years with the Last Two Years of the Minneapolis Police Dep't's Internal Affairs Unit*. CENTER FOR URBAN & REGIONAL AFFAIRS, UNIV. OF MINN., (Jul. 21, 1993).

²²⁷ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.20 (2005).

administrative rules contain any specific limiting language.²²⁸

In contrast, the MPD Complaint Process Manual limits the taking of similar complaints by stating that:

[c]omplaints that are based solely on harassment, attitude and rudeness will not be accepted by the MPD without supporting information of specific behavior that may be a violation of the MPD's policies and procedures.²²⁹

This appears to be "loop hole" with the MPD Complaint Process, since the Manual specifically directs "minor policy infractions to be handled and documented at the precinct/unit/division level,"²³⁰ and may never be

²²⁸ "IAU does not investigate allegations [that] the policy manual denotes as 'A' level violations. This means that citizen complaints of things like inappropriate language, failure to fill out a report, and many examples of other inappropriate conduct will automatically be referred to an officer's direct supervisor with little accountability to anyone else within the department, and no accountability to the public or to elected officials. Thus, especially for these less egregious complaints, there is no mechanism within the police department to ensure a systematic approach to improving the quality of police service to the public." E-mail from Adam S. Richardson Esq., Investigator, Minneapolis Civilian Review Authority, to Consultant, explaining the advantages of civilian review of officers (Aug. 11, 2005) (on file with author).

²²⁹ MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, (Mar. 2002).

²³⁰ *Id.* at Guiding Principles of the Complaint Process Manual ¶ 5.

investigated by IAU.²³¹ This is one form of “fast-tracking” misconduct complaints which results in no documentation being placed in the officers’ personnel file. Conversely, the CRA ordinance has a broader scope of authority. The organizational structure of the CRA ordinance does not allow for the MPD Complaint Process Manual’s “fast-tracking” process. This may account for the lag-time on “minor policy infractions” because the CRA does not expedite such complaints in the same manner as the MPD.

Fifth, two of the alleged reasons for failing to discipline officers in “Sustained” CRA cases is the lack of timeliness of complaint adjudication and the so-called expiration of the “reckoning” period.²³² The policy regarding the “reckoning” period is vague. For example, when dealing with a level “B” policy violation, the MPD Complaint Process Manual defines the terms “Reckoning Period” as:

²³¹ “A formal investigation in to a category “A” violation may not be necessary.” *Id.* at Processing and Routing the Initial Complaint ¶ 6.

²³² MINNEAPOLIS POLICE DEP’T, DISCIPLINE PANEL RECOMMENDATION, (Jun. 23, 2004) (emphasis added).

May be considered in subsequent misconduct for three years from date of the incident, unless the employee's labor agreement specifies otherwise. [The recorded discipline r]emains in the IAU files for three years.²³³

This language does not state, however, that a "Sustained" CRA Complaint cannot be acted upon if it is three years or older from the date of incident. It merely refers to the ability of the disciplinary authority to use a prior "Sustained" category "B" violation to enhance a subsequent violation within the three year "consideration" window. This interpretation comports with the plain meaning of the verb "to reckon," which is commonly defined as: "to count; to estimate; to compute; to consider."²³⁴ Here, the verb "to reckon" does not equate to the term "to pardon."²³⁵ Thus, as

²³³ MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL, (Mar. 2002). "Category B Violation."

²³⁴ MERRIAM WEBSTER'S ONLINE DICTIONARY, at www.m-w.com.

²³⁵ Legal doctrine itself does not always provide the empirical materials necessary for a theory, "because there is no necessary fixity of meaning of legal ideas. They do not necessarily represent anything consistently so theory cannot concern itself exclusively with their meaning and the logic of their relationships in legal doctrine. Therefore, the empirical reality to be reflected in theory is the reality of people's (linguistic) practices..." Roger Cotterrell, *The Politics of Jurisprudence*. U. PENN. PRESS., at 96 (1992).

the police department's rules are currently drafted, they do not seem to be an obstacle in the administration of discipline for complaints that are sustained by the CRA Board. *In sum, the police policy on "Reckoning Period" addresses requirements for including prior offenses as part of the concept of progressive discipline, not the elimination of discipline because of the age of alleged offense.*

Sixth, should the City Council approve of the Chief's use of Internal Affairs Unit to review "Sustained" CRA complaint, IAU still does not have an established policy or procedure to guide the investigator in the appropriate manner of reviewing CRA complaints. For example, the CRA's final determinations are based on the findings of "Sustained" or "Not Sustained."²³⁶ In contrast, when the IAU investigates personnel actions, it is not restricted to a "up-or-down" determination. Additionally, IAU policies allow for finding of: "Exceptionally Clear," "Exonerated," "Not Sustained,"

²³⁶ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.90 (2005).

“Policy Failure,” “Sustained” or “Unfounded.”²³⁷ This basic difference in the classifications of the final disposition of the personnel actions alone renders the “MPD Complaint Process Manual” incompatible with the CRA ordinance.

Seventh, the CRA ordinance is largely just a procedural mechanism for processing allegations of misconduct. The CRA ordinance itself, however, does not define prohibited or unacceptable behavior. One practical solution for resolving this deficiency is for City Council to amend the CRA ordinance to prohibit or proscribe the behavior the CRA is authorized to investigate under Minneapolis, Minn., Code § 172.20 (i.e. the unacceptable acts considered to be police misconduct).²³⁸

²³⁷ “Exceptionally Clear: The complaint was investigated, but a finding cannot be determined due to lack of cooperation from the complainant, death, employee resigns, etc.” “Exonerated: The incident did occur, but was lawful and proper.” “Not Sustained: There is insufficient evidence to either prove or disprove the complaint.” “Policy Failure: The complaint is true, but the employee’s actions were not inconsistent with MPD policy.” “Sustained: The complaint is supported by sufficient evidence to indicate the complaint is true” and “Unfounded: The complaint is false.” MINNEAPOLIS POLICE DEP’T, COMPLAINT PROCESS MANUAL, (Mar. 2002).

²³⁸ Should City Council decide to leave the CRA ordinance as a “procedural” ordinance rather than an “enforcement” ordinance, then the

Eighth, after a comprehensive assessment of the CRA ordinance, it was discovered that the CRA is currently not complying with a few of the administrative processes outlined by the CRA ordinance. In particular, at the time of drafting this report, the CRA did not do the following:

- (1) have an organized training program for all CRA members;
- (2) present a formal quarterly report to the Public Safety and Regulatory Services Committee;
- (3) facilitate a cultural awareness training with the MPD; and
- (4) "Create and implement a community outreach program in coordination with the outreach activities with the Minneapolis Commission on Civil Rights."²³⁹

Although the CRA has produced monthly reports to individual council members, more than a year has passed

Civil Rights Department may not be the appropriate department to house the CRA. Since the nature of the CRA complaint is an investigation into an employee personnel action, it may be more appropriate to house the CRA in the Human Resources Department. This would also solve the issues of the CRA maintaining disciplinary records on City employees and the firewall concerns with the administration of the Civil Rights Department. This move would also clarify the nature of the CRA investigations to the complainants and the public at large.

²³⁹ MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE TITLE 9, § 172.60 (2005).

since the last public presentation of a quarterly report. The regular and public presentation of CRA statistics is crucial to keeping the public informed about CRA issues and the effects of civilian oversight on police misconduct. In addition, the Civil Rights Department should request City Council to consider funding the Community Outreach Advocate position with the CRA in order to be in full compliance with the mandates and intentions of the CRA ordinance. By having an advocate, the CRA will be better able to maintain a presence in the community to proactively address the public concerns regarding the actions of the police. The issue of training will be discussed *infra*.

Finally, serious consideration should be given to conferring upon the CRA the ability to subpoena documents and witnesses during the course of an investigation, as requested by the CRA staff.²⁴⁰ Since the CRA ordinance is,

²⁴⁰ See full discussion for subpoena power at MINNEAPOLIS CIVILIAN REVIEW AUTHORITY, REDESIGN ACTION GROUP RECOMMENDATIONS, at 25 (Jul. 22, 2002); Memorandum from Legal Issues Sub Committee to Civilian Review Redesign Committee, *Subject: Legal Issues Sub*

in fact, a public welfare ordinance,²⁴¹ it does not necessarily need to be limited to serving a procedural function.²⁴² This would resolve the issue of the CRA ordinance's lack of "teeth," as is customary with other civilian oversight systems.

E. Training.

One issue presented by the MPD and the Police Federation is training for the CRA investigators and Board members.²⁴³ Both entities indicated that a more in-depth understanding of police policy and additional training would

Committee Meeting 4/25/02 & 5/2/02 at 2 (May 9, 2002); Memorandum from Members, Legal Subcommittee to Members, Civilian Review Redesign Committee, RE: Legal Issues, at 4 (May 29, 2002) (on file with author); Letter from Mark S. Wernick to Members, Civilian Review Board Working Committee, RE: Technical Advisory Committee, at 5 (Jul. 27, 1989) (on file with author); see generally, Wiley v. Shanahan, 185 N.W.2d 523 (Minn. 1971).

²⁴¹ **Public welfare:** "A Society's well being in matters of health, safety, morality, economics, and politics." BLACK'S LAW DICTIONARY (8th ed. 2004).

²⁴² Although the City is bound by the requirements of MINN. STAT. § 471.44, Subd. 2 (2005), in theory, the City Council could also implement MINN. STAT. §§ 412.231 & 609.034 (2005), should it chose to proscribe behavior. "Most, if not quite all, codified sets of rules*** lay down what is to be done with people who infringe the prohibition or injunctions" of the law. NIGEL WALKER, WHY PUNISH?, 85 (Oxford Univ. Press) (1991).

²⁴³ Interview with Don Harris, Deputy Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 5, 2005), & Interview with Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, in Minneapolis, Minn. (Jul. 26, 2005).

assist the CRA Board in its decision-making process.²⁴⁴

While this study did not reveal a lack of knowledge on the part of the CRA Staff and Board as to their roles, additional training in the suggested topic areas could be considered. For example, the MPD recommended the investigators attend academic training similar to that utilized by the IAU investigators.²⁴⁵ Meanwhile, the Federation recommended more "police observation" type training, and to have such training on a regular schedule.²⁴⁶ Both entities suggested that

²⁴⁴ See *id.*

²⁴⁵ The MPD recommended the following areas of training for the CRA: Basic Investigation, Complaint Investigation, Basic Police Operations, Use of Force, Application of *Garrity* Law, Investigative Analysis, & Interrogation Techniques. Interview with Don Harris, Deputy Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 5, 2005). This study reveals, however, that the CRA does not require any "basic" level training. After initial training, the MPD recommends annual and "refresher" training on procedure. See *id.* The MPD also recommended training on "Understanding Peace Officer's Bill of Rights," however, since it is not applicable to the CRA, the Consultant does not support this recommendation. See MINN. STAT. § 626.89, Subd. 2 (1) (2005). Several of the academic training courses are available from the Minnesota Bureau of Criminal Apprehension, the International Association of the Chiefs of Police, and the Upper Mid-West Community Policing Institute.

²⁴⁶ For example, the Police Federation suggests the following training: "1. Require all CRA board members and investigators to attend citizens academy; 2. Require all CRA board members and investigators to initially go on a ride-along in each precinct and thereafter, at least one per year; 3. Require CRA board members and investigators to consult with the

the CRA three-member hearing panel should also have a member of the MPD to provide advice on matters of police policy and procedure.

It is recommended that the CRA Manager review these training suggestions, along with "The Redesign Plan of 2002,"²⁴⁷ and present a training curriculum for the CRA Staff and Board to the Director of Civil Rights, as mandated by the CRA ordinance.²⁴⁸ Notwithstanding this recommendation, it is suggested that the Chief, as a course of dealing, designate a senior command officer to serve as his/her "CRA Liaison," with "his or her" assignment being to attend the monthly

Department regarding interpretation of policy or law; 4. Require CRA board members and investigators to consult with use of force experts on force issues; and 5. Require CRA investigators to get training on interviewing witnesses." Interview with Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, in Minneapolis, Minn. (Jul. 26, 2005).

²⁴⁷ In 2002, then Civil Rights Director Vanne Ownes-Hayes proposed training for the CRA. "The Civilian Review should be involved in the training (e.g. Cultural awareness, CODEFOR) program of officers ***" CIVILIAN REVIEW REDESIGN PLAN, 6 (2002). The reason presented was: "Involvement of the civilian Review in the training programs assists with the formation of police conduct standards consistent with community expectations and with the development of a police force that is appreciative of the cultures of the people of the City." *Id.*

²⁴⁸ It should be noted that the Manager did suggest a training sponsored by the International Association of Chiefs of Police.

CRA Board meetings, and provide technical assistance on MPD policy and procedure as the need may arise.

IV. RECOMMENDATIONS

Based on the issues raised in this report, the independent consultant recommends the following actions:

RECOMMENDATION ONE – CRA Staff Should Establish a Clear Dismissal Process for Complaints.

In the "preliminary review" stage of the CRA process, or any other stage in the investigation process, the Manager, with concurrence from the Director of Civil Rights, should be allowed to dismiss complaints which: (1) do not merit investigation; (2) there is an unresponsive or absent Complainant; or (3) are found to be frivolous (lacking in merit). The ability to dismiss these types of claims administratively would allow for a more sensible allocation of the investigators time to resolve complaints.

RECOMMENDATION TWO – *Change the Format of the CRA Staff's Recommendations.*

The CRA Staff recommendation format should be changed to reflect the elements of a decision of administrative agency, and should include the following: (1) Statement of the Case; (2) Issue(s); (3) Summary of the Evidence; (4) Finding of Fact (in chronological order); (5) Assessment of Credibility; (6) Discussion and Analysis; and (7) Final Recommendation. CRA Board determinations may be attached to the CRA Staff's determination, but should not be incorporated into the same document.

RECOMMENDATION THREE – Train *CRA Staff Investigators to Employ Standards other than the MPD’s Policy and Procedures Manual*

The CRA Staff/Board should refrain from relying primarily on the MPD Policy and Procedure Manual to determine whether or not to sustain a CRA complaint. Identification of a particular MPD policy or procedure is a technical process used by the police, to determine misconduct. The CRA’s over reliance on the MPD’s Policy and Procedure Manual incorrectly suggests that the MPD’s discipline process is the sole process that can be used to discipline a police officer.

For this reason, the CRA Staff/Board *should not* rely on the Police Department rules to make this determination of officer misconduct. Rather, a sustained allegation of misconduct should be grounded on sound facts and reasoning derived from the law (including constitutional, statutory and case law).

RECOMMENDATION FOUR – *CRA Board Should Only Offer Outcome Based Decisions.*

It is recommended that the ordinance be modified to grant the *CRA Board* specific authority to either “Sustain,” “Not Sustain” or “Remand” the *CRA Investigators’* recommended findings. This will alleviate unnecessary pressures on the volunteers to have technical knowledge of police procedure, as is required of the professional investigators, and will resolve the concerns raised regarding the Board’s bias and competence when they draft their own investigative decisions. Further, the City Council, in an internal work group (*see recommendation eight infra*), might consider letting the *CRA Board* “exonerate” or find the allegation to be “unfounded.” Files that are “Remanded,” however, may have specific instructions to the *CRA Staff* to conduct additional research or investigation. The *CRA Board* should not redraft investigative decisions or issue opinions, because they convert into “advisory opinions” when the Chief

foregoes discipline. CRA Administrative Rule 13 (B)(d) and (e) should be rescinded.

RECOMMENDATION FIVE – Chief to Adopt an Appropriate Policy Regarding CRA Investigations.

The Chief (in conjunction with all other policy makers in the MPD) should meet and adopt a policy to determine the appropriate manner for reviewing the adjudicated facts determined by the CRA, in accordance with the CRA ordinance. This policy should include directions that the CRA adjudicated facts be taken “as is,” including the CRA determinations of a witnesses credibility. The Internal Affairs Unit Staff, should the City Council deem there involvement appropriate, is to be instructed that CRA files *are not* mere allegations of misconduct, but rather adjudicated facts which have been determined by an administrative body of the City in a quasi-judicial manner.

Should it be permitted, IAU Staff would only match the adjudicated CRA facts to a MPD Policy and Procedure.

When the facts do not correlate to a policy violation, this should be noted accordingly. The CRA facts, and the IAU-identified policy violations, could be forwarded to the MPD Discipline Panel, should City Council decide to approve this additional step in the CRA process. The Discipline Panel, after considering the fact "as is," in conjunction with extenuating circumstances, then could make a discipline recommendation to the Chief based on "just cause," supported by substantial evidence. However, at no time should the Discipline Panel re-interpret the facts determined by the CRA, and the Chief should not determine that a "Sustained" CRA finding be overturned or "Not Sustained." This exceeds the mandates of the CRA ordinance and the Chief's authority to discipline (or not discipline) an officer.

RECOMMENDATION SIX – *The Chief Could Designate a Senior Command Officer to Serve as His or Her “CRA Liaison.”*

The Chief, in an effort to bridge the gap between the CRA and the MPD, could designate an official “CRA Liaison” assigned to attend the monthly CRA Board meetings, and provide technical assistance on MPD policy and procedure as issues and/or requests arise. This position would allow for more effective communication between all entities involved with the CRA Process.

RECOMMENDATION SEVEN – *CRA Quality Service Audit*

This study was commissioned to review the administrative operation of the CRA. However, in order to properly measure the satisfaction of the public at large, a “Quality Service Audit” (QSA) should be conducted. The last QSA, conducted in February 2001 by Professor Samuel Walker and Leigh Herbst, provided excellent feedback on the community and the police department’s satisfaction with the

quality of service provided by the CRA and the City of Minneapolis. An alternative method for surveying the quality of the CRA could be completed by use of a "utility bill" insert, requesting the public at large to fill out an evaluation form, posing rudimentary questions about the readers' knowledge and/or experience with the CRA.

RECOMMENDATION EIGHT - *Establish an internal work group made up of City Council Members, Civil Rights staff, the CRA Board Chair, MPD senior command officer(s), a Police Federation representative, and the City Attorney's office. This group would be responsible for addressing several outstanding issues that were outside the scope of this study, some of which were of concern to the CRA Redesign Committee of 2002:*

- A. *Reviewing the CRA's current "Scope of Authority" to determine whether the CRA investigations should specifically focus on sustaining or (not sustaining) allegations of misconduct based upon the Minneapolis Police Department's Policy and Procedures, rather than Minneapolis, Minn. Code §172.20;*

B. *Limiting the CRA Board's review solely to complaints initially "sustained" following the CRA staff's investigations;*

The current practice, under the ordinance, is to forward both "Sustained" and "Not Sustained" complaints to the CRA Board. This is ineffective for several reasons. First, both the professional investigator and the CRA Manager (a licensed attorney by ordinance) have reviewed the completed investigation and determined that the allegations have not met the "preponderance of the evidence" standard. This is not only a factual determination, but a legal one, which, again, is reviewed by an attorney.

This change during the first CRA ordinance was intended to correct a concentration of power residing with the Executive Director. However, this change has resulted in a process that eliminates the inherent "procedural triage" of case files that do not meet the "preponderance of the evidence" standard.

Since the CRA redesign lowered the standard of proof, the concentration-of-power issue should not recur. In addition, modification of this aspect of the process would increase the credibility of the CRA, not only with the community at large, but with the MPD. Finally, as a matter of administrative processes, this unnecessarily creates an automatic "appeal" of a "Not Sustained" investigation in situations where a Complainant may not desire one. This would eliminate CRA Board hearings *in absentia* of the Complainant.

- C. *Amending the CRA ordinance to include an "appeal" to, or the general use of, a CRA administrative law judge;*

It is recommended that City Council amend the CRA ordinance to incorporate an appeal process allowing the use of an administrative law judge (CRA -A.L.J.).

- D. *Amending the CRA ordinance to specifically define what constitutes police misconduct and/ or proscribe unwanted behavior;*

Additionally, City Council should change the language in the CRA ordinance (Minneapolis, Minn., Code § 172.20) to prohibit or proscribe the acts of police misconduct, eliminating the vagueness around what constitutes prohibited conduct in the ordinance.

- E. *Reviewing additional data and research to evaluate the feasibility of utilizing a CRA "Early Warning System" for officers with repeated "Sustained" findings of misconduct;"*

Additional research should be conducted in order to develop and implement a CRA "Early Warning System." The study should recommend the best practices for utilizing CRA data to inform the Chief of "problem officers."

F. *Reviewing the CRA need for subpoena power;*

Include a provision granting the CRA explicit subpoena power for CRA investigations.

G. *Review the Chief's responsibility with respect to the CRA process, which may include reinstating time limitations for the issuance of the Chief's disciplinary decision;*

H. *A review of the MPD Internal Affairs Unit should be independently conducted by a qualified consultant to determine the statistical efficacy of IAU investigations of officer misconduct;*

Since the scope of this study was limited to reviewing apparent deficiencies in the CRA investigations, further review of the MPD-IAU is recommended to determine: (1) whether circumstantial evidence is properly analyzed in investigations of personnel actions; and (2) whether there are proper methods in place for bifurcating the two types of evidentiary standards for investigations within IAU.

RECOMMENDATION NINE – *Training for the CRA and MPD.*

Both the CRA and MPD Internal Affairs Unit would benefit from legal training to ascertain more definitely what constitutes police misconduct “under the law.” The training could include sample decisions by the arbitrator, and case law identifying the evidence needed to support the allegations of misconduct. CRA investigators should undergo training tailored to optimize the broad investigative authority they have under the CRA ordinance.

V. CONCLUSION

Although this study highlights certain deficiencies in the CRA administrative process, the central goal of this study is to maximize the CRA's effectiveness, and improve the City of Minneapolis responsiveness to citizen complaints of police misconduct as a customer service issue. As City Council Vice President Robert Lilligren (Ward 8) pointed out:

[i]t is important...that Minneapolis citizens have faith that their complaints of police misconduct will be taken seriously and that their case will be handled fair.²⁴⁹

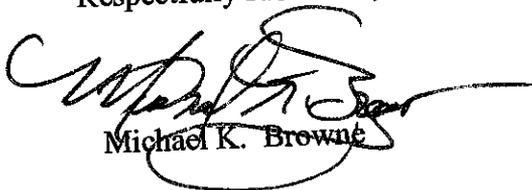
As revealed in this study, several recommended changes in the current CRA process could further the goals of producing high quality investigations, improving public service, and strengthening the integrity of the CRA process. As Council Member Paul Zerby (Ward 2) recognized during the 2002 redesign, this task cannot be accomplished without building key partnerships with the stakeholders:

²⁴⁹ Sara Dietrich, *Action Group named for Minneapolis Civilian Review Authority Redesign*, MINNEAPOLIS COMM'C'N DEP'T, (Apr. 12, 2002), ¶ 5.

An effective system for handling citizens' complaints of police misconduct must have credibility with both Minneapolis citizens and the City's police officers.²⁵⁰

Moreover, unaddressed police misconduct is simply unacceptable for the public welfare of the citizens of the City of Minneapolis. To this end, it is important that a working relationship between the CRA and the MPD continues to evolve in order for the CRA process, and to a certain extent the Chief's ability to discipline on "Sustained" CRA complaints, properly function.²⁵¹

Respectfully submitted,



Michael K. Browne

²⁵⁰ *Id.* at ¶ 6 (emphasis added).

²⁵¹ The words of Professor Cornel West of Harvard University best describe the relationship needed between the CRA and the MPD: "We must acknowledge that as a people - *E Pluribus Unum* - we are on a slippery slope toward economic strife, social turmoil, and cultural chaos. If we go down, we go down together." Cornel West, *Race Matters*, HARVARD UNIV. PRESS, 1993, <http://www.bpfna.org/reconciled.html>.

APPENDIX A

CONSULTANT'S QUALIFICATIONS

Mr. Michael K. Browne is an Attorney and earned his Juris Doctor degree from Hamline University School of Law.

As an Independent Consultant to the Director of the Minneapolis Department of Civil Rights, Mr. Browne was commissioned to conduct several internal reports. The first study, entitled: "Evaluation and Recommendation for the Civil Rights Complaint Investigations Process,"* has resulted in a number of procedural changes that have increased the overall effectiveness of the Department.

Mr. Browne has an extensive legal background, including working in private practice and has represented individuals in a variety of civil and criminal matters.

* Director Khalifa also commissioned the Civil Rights Complaint Investigation Process study, published by the Department in August, 2005.

Mr. Browne worked at the non-profit law office of Centro Legal, Inc. as a bilingual Staff Attorney, and was one of the lawyers initially involved in the drafting of the first civil rights opinions from the Office of the Monitor in *Pigford, et. al. v. Glickman*, 185 F.R.D. 82 (D.D.C. 1999). That case enforced the settlement arising out of an African-American farmers' federal class-action discrimination suit against the United States Department of Agriculture.

Mr. Browne's previous public sector experience includes working in the Hennepin County District Court as a Judicial Clerk to the Honorable Judge LaJune T. Lange. He later worked as an Assistant Public Defender with the Third Judicial District Public Defender's Office and a Special Assistant Public Defender with the Hennepin County Public Defender's Office.

In addition, Mr. Browne was a Post-Graduate Fellow with the Robert Bosch Foundation Fellowship Program in Germany, where he conducted an extensive study on the subject of victim rights law and police misconduct, and published the results in the law review article entitled: *International Victims' Rights Law: What can be Gleaned from the Victims' Empowerment Procedures in Germany as the United States Prepares to Consider the Adoption of a "Victim's Rights Amendment" to its Constitution?*[†] Mr. Browne also completed a "Stage" at the German Federal Ministry of Justice in Berlin, and the Munich Public Prosecutor's Office (München I).[‡]

[†] 27 Hamline L. Rev. 15 (2004).

[‡] In that capacity, Mr. Browne was invited by the Council of Europe to Kiev, Ukraine, where he participated in an intensive work and study program in the advancement of American-German/European Union relations. For more information regarding the Robert Bosch Fellowship, please visit www.cdsintl.org.

As a law student, Mr. Browne was a member of the Fredrick Douglas Moot Court Team, the Hamline Journal of Public Law & Policy, and the Hamline Mock Trial Team. Mr. Browne also published an article addressing the Minneapolis Loitering Ordinance.[§]

[§] 20 Hamline J. Pub. L. & Pol'y 147 (1998).

APPENDIX B

REFERENCES

CITY CHARTER

MINNEAPOLIS, MINN., CITY CHARTER, ch. 3 § 7 (2005).

MINNEAPOLIS, MINN., CITY CHARTER, ch. 6 § 1 (2005).

FEDERAL CODES

42 U.S.C. §1983 (2000).

STATE STATUTES

MINN. STAT. § 14.02 (2005).

MINN. STAT. § 14.69 (2005).

MINN. STAT. § 412.231 (2005).

MINN. STAT. § 471.44 (2005).

MINN. STAT. § 609.034 (2005).

MINN. STAT. § 626.89 (2005).

CITY ORDINANCES

MINNEAPOLIS, MINN., FIRE AND POLICE PROTECTION CODE
TITLE 9, ch.172 (2005).

CASES

Illinois v. Gates,
462 U.S. 213 (1993).

Alabama v. White,
496 U.S. 325 (1990).

Manson v. Brathwaite,
432 U.S. 98 (1977).

Mathews v. Eldridge
424 U.S. 319 (1976).

Faretta v. California,
422 U.S. 806 (1975).

Jasper v. Comm'r of Pub. Safety,
642 N.W.2d 435 (Minn. 2000).

Witzman v. Lehrman, Lehrman & Flom,
601 N.W.2d 179 (Minn. 2000).

Wagner v. Minneapolis Pub. Schs., Special Sch. Dist. No. 1,
596 N.W.2d 529 (Minn. 1997).

In re Schrader,
394 N.W.2d 796 (Minn. 1986).

Cable Commc'ns Bd. v. Nor-west Cable Commc'ns P'ship,
356 N.W.2d 796 (Minn. 1984).

In re Signal Delivery Ser.,
288 N.W.2d 707 (Minn. 1980).

Elzie v. Comm'r of Pub. Safety,
298 N.W.2d 29 (Minn. 1980).

Ekstedt v. Village of New Hope,
193 N.W.2d 821 (Minn. 1972).

- Wiley v. Shanahan*,
185 N.W.2d 523 (Minn. 1971).
- Hagen v. State Civil Serv. Bd.*,
164 N.W.2d 629 (Minn. 1969).
- Hughes v. Dep't of Pub. Safety*,
16, 273 N.W. 618 (Minn. 1937).
- CUP Foods Inc. v. City of Minneapolis*,
633 N.W.2d 557 (Minn. Ct. App. 2001).
- State v Hanson*,
532 N.W.2d 598 (Minn Ct. App. 1995).
- Thuma v. Kroschel*,
506 N.W.2d 14 (Minn. Ct. App. 1993).
- Caldwell v. City of Minneapolis*,
486 N.W.2d 151 (Minn. Ct. App. 1992).
- City of Minneapolis v. Moe*,
450 N.W.2d 367 (Minn. Ct. App. 1990).
- City of Minneapolis v. Johnson*,
450 N.W.2d 156 (Minn. Ct. App. 1990).
- In re Hutchinson*,
440 N.W.2d 171 (Minn. Ct. App. 1989).
- In re Larkin*,
415 N.W.2d 79 (Minn. Ct. App. 1987).
- In re Discharge of Kelvie*,
384 N.W.2d 901 (Minn. Ct. App. 1986).

State v. Harris,
396 N.W.2d 622 (Minn. Ct. App. 1986).

ADMINISTRATIVE RULES

Minneapolis Civilian Police Rev. Auth. Admin. R. 1 (c)
(2003).

Minneapolis Civilian Police Rev. Auth. Admin. R. 13 (B)(d)
(2003).

OTHER ADMINISTRATIVE MATERIALS

MINNEAPOLIS POLICE DEP'T, COMPLAINT PROCESS MANUAL,
(Mar. 2002).

MINNEAPOLIS POLICE DEP'T, *Job Announcement*
(Dec. 4, 2005) (posting sergeant position).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Feb. 4, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Mar. 15, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Jun. 4, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Jun. 23, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Sept. 17, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Oct. 19, 2004).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (May 24, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (May 4, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Jun. 7, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Jun. 21, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Jun. 25, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Aug. 9, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Aug. 23, 2005).

MINNEAPOLIS POLICE DEP'T, DISCIPLINE PANEL
RECOMMENDATION, (Apr. 11, 2005).

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY,
MINUTES (Nov. 5, 2003).

CITY OF MINNEAPOLIS, CIVILIAN REVIEW REDESIGN PLAN 6
(2002).

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY,
REDESIGN TEAM REPORT (Nov. 1997).

MINNEAPOLIS CIVILIAN POLICE REVIEW AUTHORITY,
RESPONSE TO MCPRA REDESIGN REPORT, (Nov.
1998).

MINNEAPOLIS CIVILIAN REVIEW AUTHORITY, REDESIGN
ACTION GROUP RECOMMENDATIONS, (Jul. 22, 2002).

LEGAL AGREEMENTS

The City of Minneapolis & the Police Officers' Federation of
Minneapolis, Labor Agreement, Police Unit, Oct. 15,
2002 through Oct. 14, 2005.

DICTIONARIES

BLACK'S LAW DICTIONARY (8th ed. 2004).

BOOKS

MICHAEL A. CALERO & JOHN P CRANK, POLICE ETHICS; THE
CORRUPTION OF NOBLE CAUSE, (Janice Eccleston ed.,
Mathew Bender & Co. Inc., 2004) (2000).

ROGER COTTERRELL, THE POLITICS OF JURISPRUDENCE,
(Univ. of Penn. Press) (1992).

LARRY K. GAINES & VICTOR E. KAPPELER, *POLICING IN AMERICA*, 430 (Janice Eccleston ed., Mathew Bender & Co. Inc., 2005) (1994).

MICHAEL QUINN, *WALKING WITH THE DEVIL: THE POLICE CODE OF SILENCE*. (Margot T. Willett, ed., Michael W. Quinn) (2005).

HENRY M. ROBERT, *THE NEW ROBERT'S RULES OF ORDER* (John Sherman ed., Barnes & Noble, Inc. 1993) (1876).

NIGEL WALKER, *WHY PUNISH?*, 85 (Oxford Univ. Press) (1991).

LEGAL PUBLICATIONS

Guy J. Avery, *Decision Writing – A Handbook for Administrative Law Judges*, MARYLAND OFFICE OF ADMIN. HEARINGS & THE NAT'L ASS'N OF ADMIN. LAW JUDGES (1996).

Harold Beral & Marcus Sisk, *The Admin. of Complaints by Civilians Against the Police*, 77 HARV. L. REV. 499 (1964).

Justina R. Cintrón Perino, *Developments in Citizen Oversight of Law Enforcement*, 36 URB. LAW. 387 (2004).

Murray J. Horn & Kenneth A. Shepsle, *Commentary on "Admin. Arrangements & the Political Control of Agencies:" Admin. Process & Organizational Form as Legislative Responses to Agency Costs*, 75 VA. L. REV. 499, 505-08 (1989).

Richard S. Jones, *Processing Civilian Complaints: A Study of the Milwaukee Fire & Police Comm'n*, 77 MARQ. L. REV. 505 (1994).

Jonathan R. Macey, *Lawyers in Agencies: Econ., Social Psychology, & Process*, 61 LAW & CONTEMP. PROBS. 109 (1998).

Fran A. Sepler, *Summary Guide to Investigations*, MINN. CONTINUING LEGAL EDUCATION – MINN. STATE BAR ASS'N (2003).

Kenneth A. Shepsle, *Bureaucratic drift, coalitional drift, & time consistency: A comment on Macy*. 8 J.L. ECON. & ORG., 111-118 (1992).

Christopher Stone, *Civilian Oversight of the Police in Democratic Societies. Global Meeting on Civilian Oversight of Police Los Angeles*, VERA INSTITUTE OF JUSTICE – MERRICK BOBB POLICE ASSESSMENT RESOURCE CENTER (May 5-8, 2002).

Samuel Walker, *"Varieties of Citizen Review: The Implications of Organizational Features of Complaint Review Procedures for Accountability of the Police,"* AM. JOURNAL OF POLICE, Vol. XV, No. 3, 72 (1996).

Ann F. Walther, *Private Data in the Civilian Review*, 64 HENNEPIN LAW, 26 (Sept.-Oct. 1994).

ACADEMIC STUDIES

William J. Craig, *A study of the Minneapolis Civilian Review Authority: Comparing its First Two Years with the Last Two Years of the Minneapolis Police Dep't's Internal Affairs Unit.* CENTER FOR URBAN & REGIONAL AFFAIRS, UNIV. OF MINN., (Jul. 21, 1993).

Peter Finn, *Citizen Review of Police: Approaches & Implementation,* (U. S. DEP'T OF JUSTICE, e.d., 2001).

Professor Samuel Walker & Leigh Herbst, *the Minneapolis CRA Quality Service Audit: A Two-Year Report, 1998-2000 - A Report to the Civilian Review Authority,* (Feb. 2001).

NEWSPAPER ARTICLES/ PRESS RELEASES

G. R. Anderson, Jr., *How's He Doing?*, CITY PAGES, Oct. 13, 2004, at 22.

Paul Demko & G.R. Anderson, Jr., *The Hit Parade Revisited,* CITY PAGES, Jul. 20, 2005, at 1.

Sara Dietrich, *Action Group named for Minneapolis Civilian Review Authority Redesign,* MINNEAPOLIS COMM'N DEP'T, Apr. 12, 2002, at 1.

Michael Friedman, *Civilian Review Board Hamstrung by MPD resistance, inadequate resources,* SPOKESMAN-RECORDER, Nov. 11, 2004, at 1.

Isaac Peterson III, *'Significant changes' Ahead for Mpls Civil Rights Department,* SPOKESMAN-RECORDER, Dec. 9 2004, at 1.

Rich Ryan, *Downtown Scene*, SKYWAY NEWS, Aug. 8-14, 2005, at 3.

INTERVIEWS

Interview with Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, in Minneapolis, Minn. (Jul. 26, 2005).

Interview with Michael Quinn, former Police Sgt., Minneapolis Police Dep't, in Minneapolis, Minn. (Jul. 28, 2005).

Interview with Don Harris, Deputy Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 5, 2005).

Interview with William McManus, Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 9, 2005).

Interview with Mike Davis, Police Lieutenant, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 15, 2005).

Interview with Tim Dolan, Assistant Chief of Police, Minneapolis Police Dep't, in Minneapolis, Minn. (Aug. 27, 2005).

LETTERS/E-MAILS/MEMORANDA

Letter from an Inspector, Minneapolis Police Dep't, to a Deputy Chief, Minneapolis Police Dep't, (date omitted by Inspector) (on file with author).

E-mail from Lt. Mike Davis' assistant B.S., Minneapolis Police Dep't, to Consultant, RE: 104 citizen complaints received by IAU in 2004, (Aug. 25, 2005) (on file with author).

E-mail from Adam S. Richardson Esq., Investigator, Minneapolis Civilian Review Authority, to Consultant, explaining the advantages of civilian review of officers (Aug. 11, 2005) (on file with author).

E-mail from Ann E Walther, Attorney, Police Officers Federation of Minneapolis, to Consultant *RE: prior interview* (Jul. 26, 2005) (on file with author).

Memorandum from Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep't of Civil Rights, RE: *Draft Ordinance on Mandatory Mediation for CRA*, (Jul. 19, 2005) (on file with author).

Letter from Ann E. Walther, Attorney, Police Officers Federation of Minneapolis, to Jayne Khalifa, Director, Minneapolis Dep't of Civil Rights (Dec. 14, 2004) (on file with author).

E-mail from Chief McManus, Minneapolis Police Dep't, explaining his position regarding the CRA Chair's article in the SPOKESMAN-RECORDER (Nov. 23, 2004) (on file with author).

Letter from Chief McManus, Minneapolis Police Dep't, to the
CRA (Nov. 19, 2004) (on file with author).

Memorandum from a Precinct Inspector, Minneapolis Police
Dep't, to the Chief of Police, Minneapolis Police
Dep't (Nov. 17, 2004) (on file with author).

Letter from Ann E. Walther, Attorney, Police Officer's
Federation of Minneapolis, to Jayne Khalifa, Director,
Minneapolis Dep't of Civil Rights (Oct. 23, 2004) (on
file with author).

Memorandum from an Inspector, Minneapolis Police Dep't,
to a Deputy Chief, Minneapolis Police Dep't (Jun. 25,
2004) (on file with author).

Letter from an Inspector, Minneapolis Police Dep't, to the
CRA Manager, Minneapolis Dep't of Civil Rights
(Jun. 4, 2004) (on file with author).

Memorandum from Members, Legal Subcommittee to
Members, Civilian Review Redesign Committee, *RE:
Legal Issues* (May 29, 2002) (on file with author).

Memorandum from Legal Issues Sub Committee to Civilian
Review Redesign Committee, *Subject: Legal Issues
Sub Committee Meeting 4/25/02 & 5/2/02* (May 9,
2002) (on file with author).

Memorandum from Mark S. Wernick to Legal/Policy
Subcommittee Members (May 8, 2002) (on file with
author).

Letter from Mark S. Wernick to Members, Civilian Review Board Working Committee, RE: *Technical Advisory Committee*, (Jul. 27, 1989) (on file with author).

ELECTRONIC SOURCES

Cornel West, *Race Matters*, HARVARD UNIV. PRESS (1993).
<http://www.bpfna.org/reconciled.html>.

Eileen Luna & Samuel Walker, *A Report on the Oversight Mechanisms of the Albuquerque Police Dep't*, THE ALBUQUERQUE CITY COUNCIL (1997),
<http://www.cabq.gov/council/abqrpt0.html>.

Human Rights Watch, *Shielded from Justice: Police Brutality & Accountability in the United States*, HUMAN RIGHTS WATCH, <http://www.hrw.org/reports98/police/>.

Minneapolis Civilian Police Review Authority Website,
<http://www.ci.minneapolis.mn.us/cra/>.

Minneapolis Police Department, Policy & Procedure Manual,
<http://www.ci.minneapolis.mn.us/mpdpolicy/1-100/1-100.asp>.

MIRIAM WEBSTER'S DICTIONARY, <http://www.m.-r.com>.

Police Officers Federation of Minneapolis Website,
<http://www.mpdfederation.com/>.