



May 6, 2022

**VIA EMAIL**

Commission on POST  
Attention: Rulemaking  
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**RE: Public Comment on the Commission on Peace Officer Standards and Training (POST)  
Proposed Regulations to Implement Senate Bill 2**

Dear Commission on POST:

On behalf of the ACLU Foundations of Northern and Southern California, which supported the passage of Senate Bill 2 (SB 2), we commend the Commission on POST for the proposed regulations that it recommended to adopt to reflect the implementation of SB 2. We submit the below comments to recommend additional specific changes to the proposed regulations, which we believe more accurately reflect the legislature's intent.

**Specific Comments on Proposed Commission Regulations**

**1. Proposed Commission Regulation §1206. Peace Officer Standards Accountability  
Division Investigations**

Subsection (a)(2)(B) sets forth the circumstances under which the Peace Officer Standards Accountability Division (the division) can conduct its own investigations into allegations of serious misconduct. In all instances, for the division to take action it requires first allowing the local agency to conduct an investigation or express a refusal to conduct an investigation. While it is understandable that the division does not have the capacity to conduct the investigation into a complaint in all instances, it should have the authority to conduct its own investigation without first waiting for the agency to act if such deference would only serve to delay or hinder

resolution of the underlying complaint for purposes of decertification. In creating the SB 2 scheme, the Legislature intentionally established a civilian review entity that would be “independen[t] from law enforcement.”<sup>1</sup> As stated in the legislative history, it mandated this independence in light of the “nearly universal recognition across the country that local law enforcement cannot be relied upon to protect our residents from people that should not be peace officers.”<sup>2</sup> SB 2 also created a process to direct complaints to the division that do not have to flow through the agency, allowing submissions directly from the public and allows the Board and Commission to either recommend or direct the division to conduct its own investigation.<sup>3</sup>

Given the nature of the conduct that qualifies as serious misconduct, including involvement in a law enforcement gang, intimidating witnesses, tampering with evidence, and failing to cooperate in investigations into police misconduct, it should be presumed that at least some individuals who submit complaints to the decertification process rather than to the involved agency either know or have reason to believe that their complaints will not be rigorously investigated or could result in harassment or retaliation. Also, as the division better understands the internal investigation process at various agencies, it will also gain insight into when a local agency’s investigation will be insufficient for it to conduct the type of review and recommendation the process requires.

Thus, requiring the agency to conduct an investigation where there is reason to believe that it will be inadequate or result in harm to the complainant serves no purpose but to delay the initiation of a meaningful investigatory process. The proposed regulations should be amended to allow the division discretion to conduct an investigation in the first instance—without relying on the agency’s investigation or refusal to investigate.

## **2. Proposed Commission Regulation § 1209. Notification of Completed Investigation, Officer Rights to Request Review, and Hearing Procedures (11 CA ADC § 1209)**

Subsection (a)(1) identifies entities that should be notified in writing if the division does not find reasonable grounds for revocation or suspension, but this should specifically include the complainant for the initiating complaint, if applicable. One of the purposes of the scheme established by SB 2 is to “ensure public trust that the system for decertification will hold peace officers accountable for misconduct and that California’s standards for law enforcement reflect community values.”<sup>4</sup> Built into this scheme is also transparency into the actions of the Board and Commission as it fulfills this mission, and requires making records relevant to decertification public.<sup>5</sup> Ensuring that complainants receive information regarding the outcome of their complaint and the determination whether the officer’s conduct constituted “serious misconduct”,

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<sup>1</sup> S.B. 2, 2021 Leg., 2021-2022 Reg. Sess. (Cal. 2021).

<sup>2</sup> Sen. Comm. on Pub. Safety, Rep. on Sen. Bill 2 (2021-2022 Reg. Sess.) Apr. 13, 2021, p. 10.

<sup>3</sup> CAL. PENAL CODE § 13509.5 (d).

<sup>4</sup> S.B. 2, 2021 Leg., 2021-2022 Reg. Sess. (Cal. 2021).

<sup>5</sup> CAL. PENAL CODE § 13510.85 (b).

and whether the Board or Commission determined that this conduct justified removing that officer from the community would directly further this purpose. This proposed regulation should be amended to require providing this information to the original complainant if one exists.

Subsection (b)(3)(B) indicates that the Board shall review the findings and investigations that are presented to it by the division, but it does not expressly state that the Board will be provided with the entire file upon which its recommendation relies. Compare this language with the provision of subsection (b)(3)(A), which specifically states that this information will be provided to the officer if they request a hearing before the Board. Thus, this omission seems to indicate that this material will not be provided to the Board. Not only is it necessary for the Board to have access to the entirety of the division's file to assist in its decision, but, as this process creates the record for the officer's appeal of any penalty, it is necessary that the decision-makers be provided with the entire record upon which its decision is based, not merely a summary so that the sufficiency of the evidence supporting their decision may be appropriately evaluated. The proposed regulations should be amended to ensure that the Board is provided with "a copy of all materials used by the division to render" its findings and recommendations.

Subsection (c) describes the hearing review process and the type of material that may be submitted. While it allows the officer to provide additional documentation or argument if desired, it explicitly prohibits public comment and does not provide any mechanism for the public to provide additional information about the incident or its impact on the community. As a result, all information regarding the "community values" impacted and the "individual and community trauma" created by the misconduct, which the Legislature created this decertification process to address, is limited to what information the employing agency, or possibly the division, collected in its investigation.<sup>6</sup> In most instances, there will be little or no incentive for the employing agency to gather evidence into this information because it is irrelevant to its determination whether its officer violated the agency's own policies and what penalty should be imposed, thus any information that goes to the impact of the officer's actions will likely be absent from the agency records that will form the exclusive basis for the agency's analysis in most cases. And within the scheme presented by POST through these proposed regulations, there is no requirement for the division to supplement the agency's investigations with such information or to provide the Board or the Commission with any information that may be relevant to the community impact of an officer's misconduct—which is information that should be relevant to their determinations whether that officer should temporarily or permanently be removed from the community.

The proposed regulations should be amended to specifically provide that the public may submit impact statements or other written comments relating to an officer or incident under consideration before either the Board or Commission to be included in the hearing review process. To make this possible, the public must also have advance notice of the incidents that will be before the Board or Commission with sufficient time to submit comments and for those comments to be received and reviewed by the Board or Commission in advance of making a decision as to the officer involved. To that end, the proposed regulations should also be amended

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<sup>6</sup> S.B. 2, 2021 Leg., 2021-2022 Reg. Sess. (Cal. 2021).

to require that the public posting of the agenda for any upcoming meetings should identify any officer or incident that will be subject of discussion, the division's written findings and recommendations, and clear instruction on how the public may submit additional comments or information that could be relevant to the Board or Commission's determination. All of this information should be provided with sufficient notice to the public that would allow them to respond, and no less than 14 days in advance of the meeting.

### **3. Proposed Commission Regulation § 1211. Peace Officer Standards Accountability Advisory Board (11 CA ADC § 1211)**

Subsection (a) also references the Board's review of the "findings and investigations" presented, but does not make reference to review of the entire record upon which those findings were based. As above, it should be clarified that the Board shall be provided access to the entire record, as is likely required to justify its decision as it progresses through the various levels of review provided for by the statute.

Subsections (a) and (c) acknowledge that the division will be presenting its findings to the Board, however it does not specify what staff shall be making this presentation. Given the requirement that the Board's determination satisfy various legal standards, including the "clear and convincing standard," and that its decision forms the basis for multiple levels of review, including before an Administrative Law Judge and potentially a Superior Court, it is essential that the presenter be an attorney familiar with the legal as well as the factual basis that would support a penalty. This is even more critical when, in the context of hearings before the Board or Commission, the subject officer or their representative—who will in almost all instances be an attorney provided by the officer's union—has the opportunity to provide argument in opposition to the division.<sup>7</sup> Experience from other similar proceedings, such as the Board of Rights disciplinary appeal process used by officers of the Los Angeles Police Department (LAPD) in which representatives of the LAPD defend the department's proposed discipline before a largely civilian disciplinary board, has repeatedly demonstrated that "department advocates . . . were simply outmatched by the seasoned private defense attorneys representing accused officers."<sup>8</sup>

The regulations, in subsection (b)(3) also provide that the Board "may conduct deliberations in closed session," however this contravenes the express purpose of the legislation to ensure that the decertification scheme is transparent and encourages the public's faith in the system. Again, the purpose of the SB 2 scheme set forth by the Legislature was to "ensure public trust that the system for decertification will hold peace officers accountable for misconduct and that California's standards for law enforcement reflect community values."<sup>9</sup> Both the Board and Commission's decisions, and all of the records on which they rely on for those decisions, are already required to be within the public record. Moreover, the division does not operate as

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<sup>7</sup> REGISTER 2022, NUMBER 12-Z, Cal. Regulatory Notice Reg. § 1209(c), (proposed Mar. 25, 2022).

<sup>8</sup> Melanie Penny Ochoa, TOWARDS ACCOUNTABILITY: OVERCOMING LAPD'S FLAWED DISCIPLINARY PROCESS, November 2018, at 20, <https://www.aclusocal.org/en/publications/towards-accountability-overcoming-lapds-flawed-disciplinary-process> (last visited May 5, 2022). (See attachment for full report).

<sup>9</sup> S.B. 2, 2021 Leg., 2021-2022 Reg. Sess. (Cal. 2021).

counsel for the Board or the Commission, so any communications and records relating to this decision would not be subject to attorney-client privilege. There is also no stated limitation on when the Board—a state-constituted Board subject to the public meeting requirements under Bagley-Keene Act—would be permitted to conduct these deliberations in closed sessions.

The ability to conduct deliberations in closed session also significantly undermines the goal of developing public confidence in the decertification system, because, under the scheme created by POST, the Board only creates a written record of its analysis when it decides to impose a penalty. Thus, in each case where the Board decides not to decertify an officer, closed deliberations would mean that the public is provided with no understanding as to why the Board decided to reject the division's finding that serious misconduct had occurred or why it determined that a sanction such as suspending or revoking that officer's certification was not necessary. Such a process would drastically undermine the stated legislative purposes of this decertification scheme.

At minimum, if the Board is permitted to conduct closed deliberations in some instances, it must be required to provide a written statement of its reasons, and a record of the Board members' votes, so at least the minimum transparency standards are met.

Also, in subsection (c) the proposed regulations provide a list of individuals who should receive a copy of the written decision. For purposes of transparency, this document—which the statute already designates as a public record under the California Public Records Act—should be provided automatically to the original complainant, where applicable. The proposed regulations should be amended to add any complainant to the list of individuals or entities provided a copy of this report.

#### **4. Proposed Commission Regulation § 1212. Commission Hearing on Peace Officer Certification (11 CA ADC § 1212)**

Subsection (c)(3) sets forth the individuals and entities who should receive a copy of the final decision issued by the Commission. As above, this should include the initial complainant, if any.

#### **5. Proposed Commission Regulation § 1214. Annual Reporting Requirements (11 CA ADC § 1214)**

Subsection (a) sets forth information that must be included in the annual report issued by the Commission. In addition to the items listed, it should include the number of immediate terminations under proposed 11 CA ADC 1203 or 1204, or immediate temporary suspensions under 11 CA ADC 1208 issued by the Commission and the underlying grounds (e.g. “misrepresentation or fraud,” “best interests of community,” or if based on an arrest or conviction the crime charged). This is an important aspect of the Commission's power to remove officers who are unfit from the community, and its invocation of this authority should be

included within the mandatory reporting. The proposed regulations should be amended to include this information within the report.

Sincerely,

ACLU Foundations of Northern and Southern California

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# TOWARDS ACCOUNTABILITY

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## Overcoming LAPD's Flawed Disciplinary Process



ANALYSIS & RECOMMENDATIONS  
November 2018

**ACLU**  
AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION  
Southern California

This report, “Towards Accountability: Overcoming LAPD’s Flawed Disciplinary Process,” is published by the ACLU of Southern California, Black Lives Matter-Los Angeles, and Community Coalition.

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Special thanks to Julie Ly.



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# EXECUTIVE SUMMARY

How does a city effectively discipline its police? Los Angeles, home to one of the largest police forces in the nation, has struggled with this question for decades, and has yet to settle on an answer that regularly ensures that officers who commit serious misconduct receive serious discipline.

The Los Angeles Police Department gained notoriety for scandals that, at their core, were caused by its failure to properly discipline officers and take allegations of misconduct seriously. Perhaps its most significant scandal was the beating of Rodney King by three LAPD officers on March 3, 1991. Before the infamous amateur video of that beating surfaced, two separate witnesses contacted the LAPD and attempted to report the incident and file a complaint. The Department rebuffed both of their efforts. One of the witnesses—who had also captured the beating on tape—contacted a local news station, which expressed much more interest in the incident than the LAPD. The videotape was broadcast locally, then picked up in nationwide coverage, leading even then-president George Bush to comment on the incident and describe the officers’ conduct “sickening.”

The public outcry over the officers’ conduct led then-L.A. Mayor Tom Bradley to create the Independent Commission on the Los Angeles Police Department, more popularly known as the Christopher Commission, to investigate excessive force within the LAPD. The Christopher Commission identified a number of causes for the pervasive use of excessive force within the Department, but the linchpin of this unchecked violence was its ineffective disciplinary process. And central to that disciplinary process was the Board of Rights—the disciplinary appeals board for the LAPD that has the ultimate say in officer discipline.

The disciplinary process for LAPD officers is long and complex, but for the most serious misconduct, the process ends with the Board of Rights. Any discipline starts with a complaint filed against an officer—either by the public or another LAPD employee—for violating LAPD policy. Internal affairs and the officer’s supervisor investigate complaints. If the officer used deadly force, the Inspector General’s Office and the LAPD Police Commission will also weigh in on whether it believes the officer’s conduct violated Department policy. If anyone during the review process determines that the facts don’t support the allegation, or that the conduct only deserves a very minor penalty, the process stops. But when the internal process determines that the officer did violate policy and that he or she deserves a significant penalty, the case is referred up to the chief of police.

If the chief reviews the investigative file and agrees that the officer is not only guilty but deserves a lengthy suspension, demotion, or to be fired the officer gets to challenge this penalty with the Board of Rights—a three-person panel that currently includes two officers and one civilian. The Board of Rights is not bound to the Department’s factual findings or disciplinary recommendations. Instead, the three members independently determine whether an LAPD officer should receive the chief’s recommended punishment, or any punishment at all. The Board of Rights therefore has tremendous power in determining whether LAPD officers ultimately are held accountable for wrongdoing.

The Board of Rights also featured prominently in reports seeking to explain the Rampart Scandal—a corruption scandal involving widespread criminal activity among officers in the Rampart Division’s gang unit, which became public in 1998. There were numerous reports issued in its wake, but the reports commissioned by both LAPD’s civilian oversight body and the officers’ union cited the Board of Rights as undermining effective discipline and limiting the chief’s ability to remove problem officers.

While these large scandals have triggered blue ribbon commissions and in-depth examinations of the Department and its disciplinary processes, over the past decades critics from many other corners also have criticized its effectiveness, often focusing on the impact of the Board of Rights. This report re-

examines the analyses presented in these prior reports and draws connections across the data spanning almost thirty years. This report also supplements these previous analyses by providing context available from public discourse around the Board of Rights—including City Council actions—and with publicly-available disciplinary data. It concludes by highlighting recommendations that have gone unheeded, and, with input from community partners, supplements with additional recommendations directly in response to these identified needs.

This report comes at a moment of great opportunity for serious disciplinary reform within the LAPD. In March 2017, Los Angeles voters approved Charter Amendment C, which mandated that the City Council adopt an ordinance changing the existing Board of Rights system. Along with placing Charter Amendment C on the ballot, the City Council also created an Ad Hoc Committee on Policing, purportedly tasked with providing a public process for investigating the failings of the current system and informing other actions to be taken by the City Council to improve LAPD discipline. While the City Council is free at any time to make changes to the Board of Rights or other elements of the LAPD disciplinary system, it is explicitly tasked with doing so right now. This report and the series of recommendations it proposes, should inform the City Council's next steps towards meaningfully improving LAPD discipline.

As one of the post-Rampart reports, commissioned by the LAPD officers' union and authored by Prof. Erwin Chemerinsky recognized, “[t]here never will be public confidence in the Police Department until there are major reforms in the disciplinary system. Officer confidence in the system is equally important. There thus must be major reforms of every aspect of the disciplinary system to provide a fair and just system of receiving, investigating, and adjudicating complaints against officers.” If the LAPD disciplinary system remains dependent on the Board of Rights to impose serious discipline, finally adopting these needed changes is a crucial part of this reformation process.

## FINDINGS

This report identifies six concerns with the existing Board of Rights process:

- 1. The Board of Rights undermines Department discipline through excessive leniency.** The Board of Rights routinely reduces or eliminates the Department's recommended punishment, including reinstating officers that the Department sought to terminate in 51 percent of the cases it considered.
- 2. Officers perceive the Board of Rights as biased.** Despite the fact that the Board of Rights reverses the Department's recommended discipline around half of the time, officers still perceive that the Board of Rights is biased against them and does not provide a true opportunity to challenge their discipline. This belief impacts Department morale and contributes to a conviction that discipline is arbitrary rather than based on actual misconduct.
- 3. The Board of Rights imposes inconsistent discipline.** There are significant and unexplained disparities in outcomes involving similar misconduct, as well as a tendency to treat misconduct against the public less severely than violations of administrative Department rules.
- 4. Board of Rights proceedings and outcomes lack transparency.** Lack of access to Board of Rights hearings or outcomes fosters distrust by the public as well as among officers, and prevents any public oversight of this body.
- 5. The Department's defense of its disciplinary decisions before the Board of Rights is inadequate.** The Department relies on police officers to defend the chief's recommended discipline in Board of Rights hearings, but those officers are pitted against seasoned defense attorneys—often provided to the accused officer for free by the police officers' union—and their lack of legal knowledge and experience often contributes to the high rate of reversal.
- 6. Board of Rights panels have insufficient training.** Research has observed many procedural errors, such as imposing an unnecessarily high burden of proof or imposing not guilty verdicts that rely on facts that are directly contradicted by the evidence—all of which tend to accrue in favor of the accused officer.

## RECOMMENDATIONS

To address these concerns, which substantially undermine the ability of the Department to meaningfully and consistently discipline officers who commit serious misconduct, the ACLU SoCal, Black Lives Matter-LA, and Community Coalition propose the following recommendations:

**1. Change the composition of Board of Rights panels to eliminate real and perceived bias.** Officers' perceptions of bias are largely just that—perceptions, not borne out by any records of Board of Rights outcomes. Nonetheless, the current structure of the Board of Rights, and proposals to amend the selection process that are currently being floated by the City Council, will maintain this false perception. Some proposals, like allowing retired officers to serve as “civilians” on the Board of Rights will also contribute to the public's perceptions of bias. Because officers and the public must perceive the disciplinary process to be unbiased, the best step towards that will be to change the structural elements that—regardless of outcome—contribute to perceptions of unfairness. The following specific proposals should be adopted to further perceptions of fairness by the public and by officers:

*1.1. Eliminate the option allowing accused officers to select between a panel comprised of two officers and one civilian or a panel comprised of three civilians.*

*1.2. Eliminate the option allowing officers to select individual members of the board from a pool of randomly selected participants, and require that any challenges to the participation of an individual panelist must be “for cause.”*

*1.3. City Council should participate in the selection of civilian hearing examiners through a transparent process that allows inclusion of civilians with diverse experiences and perspectives.*

*1.4. Eliminate criteria that civilian hearing examiners must have seven years' experience in mediation, arbitration, or similar work.*

*1.5. Prohibit individuals who are current or former employees of local law enforcement agencies from serving as civilian hearing examiners.*

**2. Increase oversight and transparency of Board of Rights proceedings to the maximum allowed under state law.**

The lack of transparency in Board of Rights proceedings and disciplinary outcomes generally contribute to these perceptions of bias—particularly on the part of officers whose perceptions are directly contradicted by the available evidence. The opaque nature of the disciplinary process also insulates decision-makers from any possible oversight and precludes the Department, Office of Inspector General, City Council, or any other entity from taking corrective action to ensure that errors are corrected, if not in real-time then in future proceedings.

The following recommendations provide specific steps that can be taken to ensure that the disciplinary process is as transparent as possible under existing state law:

*2.1. Require the Office of Inspector General to audit the Board of Rights proceedings and report on whether the Board's findings are supported by the hearing record, and issue detailed quarterly reports on the outcomes of Board of Rights proceedings.*

*2.2. Materials relating to LAPD officer discipline, including applicable policies, any summaries or reports created internally, and raw data, should be provided to the public and made easily accessible on the Department's website.*

*2.3. Release Board of Rights’ decisions to the full extent allowed under the law, including full disclosure of documents made public under Senate Bill 1421 (2018).*

*2.4. The mandatory report on the “effectiveness” of Charter Amendment C should examine whether the use of civilian-only panels have reduced bias and inconsistencies in Board of Rights decisions, increased the rate at which officers are punished for misconduct, and enhanced the public’s faith in the LAPD disciplinary system.*

*2.5. City Council should reaffirm its support for transparency by resolving to support state legislation allowing for the disclosure of officers’ disciplinary records and reopening Board of Rights proceedings.*

**3. Address inconsistencies in discipline between officers and between types of misconduct.** There is a need to ensure uniform discipline between officers who commit similar misconduct. The Department should also take an affirmative stance through its disciplinary process to punish acts of misconduct against the public—particularly violence and false statements in the course of criminal investigations and prosecutions—more seriously than mere violations of administrative rules with no criminal component. The following recommendations are necessary to achieve that goal:

*3.1. Reduce inconsistencies in discipline by adopting a more-detailed disciplinary matrix.*

*3.2. Adjust recommended discipline to impose more serious penalties for violence against the public.*

**4. Improve the quality of advocacy defending the Department’s recommended punishment by employing Department Advocates who are experienced attorneys and whose remaining job functions do not depend upon maintaining the goodwill of LAPD officers.** Some of the difficulty in successfully defending the Department’s recommended discipline is attributable to the asymmetry in the advocacy and legal skills between the paid attorneys that serve as the accused representatives, and the LAPD Sergeants that represent the Department. Legal questions often arise that the LAPD representatives are unable to effectively respond to and the absence of a professional advocate also places the Department at a disadvantage. City Council should ensure that the Department is also represented by trained legal counsel from an entity that is independent from the LAPD and whose job functions would not be impacted by an adversarial relationship to LAPD officers.

**5. Improve quality and consistency of adjudication in Board of Rights through improved and expanded training.** Entities have reported that Boards of Rights frequently commit technical errors such as applying the wrong burden of proof or factual errors in making findings that are contrary to the records before them. Many of these failures may be attributable to insufficient training in both the requirements for adjudicating these claims as well as the substantive issues that are being decided. The following specific recommendations are intended to improve the quality and accuracy of the adjudications by the Board of Rights:

*5.1. City Council should engage the services of an independent expert in police discipline and oversight to conduct a review and analysis of existing Board of Rights training material and create required training materials for all Board of Rights participants.*

*5.2. All Board of Rights participants should be required to receive the same training.*

*5.3. All Board of Rights training materials should be made public.*

# I. BACKGROUND ON THE BOARD OF RIGHTS

## A. Board of Rights Enactment and Structure

The Board of Rights is a disciplinary appeals board for officers of the Los Angeles Police Department (“LAPD”). Officers who the Department finds guilty of misconduct and punishes with termination, suspension, or demotion have the right to challenge their discipline to this Board of Rights.<sup>1</sup> As a result, it is the Board of Rights that effectively has the ultimate say in the discipline an officer receives.

This disciplinary process is set by the City’s charter. The Board of Rights process was first written into law via charter amendment on the September 1934 ballot,<sup>2</sup> and was narrowly approved by only 50.2 percent of the vote.<sup>3</sup> Future-LAPD Chief William Parker and another member of the LAPD officers’ union drafted this measure specifically to lessen the Chief’s ability to discipline officers, and it was the union that provided the financial and strategic backing for the charter amendment campaign.<sup>4</sup> Prior to the amendment, the Chief had the final say in disciplining officers.<sup>5</sup> Even though officers already had the right to challenge their discipline to a trial board, the Chief was allowed to ignore the board’s findings and the board could not force the Chief to change his intended discipline.<sup>6</sup> The 1934 amendment eliminated this unfettered discretion by granting officers a “substantial property right” in their “office or position and to the compensation,” and provided that they could only be deprived of that right through action of the Board of Rights.<sup>7</sup> The practical result was that an officer could not be suspended or fired until after the Board of Rights found him or her guilty and deserving of such punishment.<sup>8</sup> A 1992 charter amendment added “demotion” to the penalty options available, subject to the same Board of Rights process.<sup>9</sup> After the creation of this new Board of Rights, the Chief’s only remaining discretion to alter an officer’s discipline after the Board weighed in was the ability to further reduce a penalty that the Board issued.<sup>10</sup>

The disciplinary process ultimately resulting in a Board of Rights hearing is initiated by a complaint filed against an officer by either a

member of the public or a Department employee.<sup>11</sup> These complaints are investigated by the officer’s supervisor or internal affairs.<sup>12</sup> If the accused officer’s Commanding Officer determines that the complaint is substantiated and that the officer deserves punishment, this recommendation is transmitted upwards.<sup>13</sup> Ultimately a sustained finding that an officer committed misconduct and should be terminated, suspended, or demoted is reviewed by the Chief.<sup>14</sup> Thus, before an officer is terminated, suspended, or demoted, multiple actors in the Department’s chain of command, culminating with the Chief, have reviewed the investigative file, concluded the officer committed misconduct, and is deserving of such punishment.

Currently, the Charter provides two ways for an officer to challenge this disciplinary decision before a Board of Rights: a “directed hearing” or an “opted hearing.” A directed hearing occurs when the Chief seeks to impose a penalty of a suspension greater than 22 days or termination.<sup>15</sup> In such cases, the officer is “directed” to a Board of Rights before the penalty is imposed.<sup>16</sup> Officially, therefore, the Chief only “recommends” a punishment and no penalty is imposed until after the Board of Rights process is complete. An opted hearing occurs when the Chief imposes a suspension of up to 22 days or demotion, and the accused officer “opts” to challenge the punishment before the Board of Rights rather than accept the punishment.<sup>17</sup> In such cases, the punishment is technically imposed prior to the Board of Rights hearing, although its imposition is stayed until the Board of Rights process is complete.<sup>18</sup>

Finally, after the Board of Rights issues its decision, including any recommended punishment, the Chief has the discretion to further reduce this penalty.<sup>19</sup> Neither the Chief nor the Board of Police Commissioners (“Police Commission”), which performs various executive and oversight functions for the LAPD, can increase the penalty assessed or overturn the Board’s factual finding that the officer was not guilty of misconduct.

## B. Changing Composition of the Board of Rights

Each disciplinary appeal is heard before a Board of Rights panel comprised of three individuals selected from a pool of eligible panelists.<sup>20</sup> Therefore, every Board of Rights panel has a different composition. Board of Rights panels were initially made up of three officers at the rank of captain or above.<sup>21</sup> Under this original system, the accused officer randomly selected the names of six eligible officers, and then selected the three officers he preferred to sit on his panel.<sup>22</sup>

The Board of Rights was amended in June 1992 as part of a larger set of changes to the LAPD in the wake of officers' beating of Rodney King, an African-American Los Angeles resident, by LAPD officers and the civil disturbance that followed after the officers involved were acquitted in a criminal trial. Voters adopted Charter Amendment F which, among other things, changed the makeup of the Board of Rights to replace one of the officers with a civilian, formally known as a "civilian hearing examiner."<sup>23</sup> They supported this measure citywide by more than a 2 to 1 margin, with the strongest support—92 percent of ballots cast—coming from the majority-black Eighth Council District representing south Los Angeles.<sup>24</sup>

The inclusion of a civilian on the Board of Rights was one of over 100 suggestions proposed by the Christopher Commission to respond to the King incident and public outcry, and its chairman, Warren Christopher, supported the reforms proposed by Charter Amendment F.<sup>25</sup> The Christopher Commission, along with groups supporting this amendment, contended that including a civilian on the Board would help eliminate officer misconduct by increasing the likelihood that they would be held accountable in the disciplinary process.<sup>26</sup> The Police Protective League ("PPL"), the union representing rank-and-file members of the LAPD, strongly opposed this amendment and provided about three-fourths of the funding for the opposition campaign.<sup>27</sup> Officers opposed the entire set of reforms proposed by Charter Amendment F, asserting that the changes would "inhibit officers from doing their jobs and exacerbate already low morale."<sup>28</sup> With respect to the inclusion of civilian hearing examiners, officers

challenged the ability of civilians to effectively adjudicate claims against LAPD officers.<sup>29</sup>

Charter Amendment F directed the City Council to adopt an ordinance to establish qualifications and selection criteria for the pool of civilian hearing examiners.<sup>30</sup> Rather than fulfilling this obligation directly, in October 1992, the City Council Public Safety Committee adopted then-Chief Willie Williams' recommendation that it issue "very general ordinance" and require only that "any adult citizen" may serve on the Board of Rights.<sup>31</sup> Instead of directly setting qualifications and selection criteria for civilian members, Williams suggested, and the City Council agreed, to delegate this duty to the Police Commission.<sup>32</sup> The full City Council passed an ordinance to this effect on December 16, 1992, directing the Police Commission to "create a panel of adult civilians deemed competent by that body to serve as members of Boards of Rights."<sup>33</sup> The ordinance also instructed the Police Commission to issue a resolution setting forth the "terms and conditions applicable to service" on the Board of Rights for the City Council to approve.<sup>34</sup>

The City Council approved the Police Commission's resolution, ordaining that "[t]he Board of Police Commissioners shall create a pool of civilian hearing examiners[,] . . . shall select the members of the pool and shall have the authority to remove the members of the pool at its discretion."<sup>35</sup> The only limitations on civilian hearing examiners established via ordinance were that they must be of voting age and not a "present law enforcement officer."<sup>36</sup> The ordinance also required the Police Commission to provide orientation and training necessary to allow the hearing examiners to "participate fully in [the Board's] factfinding and deliberation process."<sup>37</sup>

As of October, 2018, the criteria established by the Police Commission required that civilian Board of Rights members: 1) have no criminal record "that would impact the . . . ability to act impartially"; 2) have a record of "responsible community service"; 3) are not presently employed as full-time law enforcement; 4) have seven years' experience in arbitration, mediation, administrative hearings, or comparable work, and 5) are preferably residents of Los Angeles.<sup>38</sup> The application also asked whether

applicants had prior arrests or convictions, or had previously submitted complaints to the LAPD, although the established criteria did not explicitly include these as selection criteria. The application also asked individuals to provide demographic information, and to specify their employer, educational background, permits or other licenses, professional or union organization memberships, other civic affiliations, whether any relatives or close friends work in law enforcement, and whether their employer had ever sued the City of Los Angeles or any other law enforcement agency.<sup>39</sup> Individual members are selected after a private interview with the executive director of the Police Commission.<sup>40</sup>

Since 1992 and the passage of Charter Amendment F, each Board of Rights panel has been comprised of two command officers with the rank of captain or above and one civilian.<sup>41</sup> The officers on each individual Board of Rights are selected by first conducting a random draw from the pool of all eligible officers to select four potential panelists, and then allowing the accused officer to choose between them to select the two officers to serve on his or her panel.<sup>42</sup> The civilian member was selected by randomly drawing three individuals from the pool of eligible hearing examiners and allowing both the accused and the Department to strike one of the civilians drawn.<sup>43</sup> The remaining member ultimately sits on the panel.

The composition of the Board of Rights was once again amended in May 2017, when voters approved Charter Amendment C. This amendment authorized City Council to adopt an ordinance that would give accused officers the option of challenging their discipline to a traditional Board of Rights panel comprised of two officers and one civilian, or a new panel made up of three civilians.<sup>44</sup>

This measure—increasing civilian participation in the Board of Rights—was supported by the PPL, with select public officials including most of the City Council and Mayor Garcetti serving as its primary public endorsements.<sup>45</sup> The PPL and others who endorsed this measure asserted that “increase[d] civilian oversight” would help ensure that “officers who act inappropriately are held accountable,” by “oversee[ing] the police discipline, making decisions

based on facts and evidence, and with the best interests of our community in mind.”<sup>46</sup> The PPL, which had changed its position towards civilian participation on the Board of Rights since the passage of Charter Amendment F, explained its desire for increased civilian participation in the Board of Rights by a concern that the existing system relying on command officers was perceived by rank-and-file officers as “rigged,” because “command staff don’t treat the accused fairly because the chief pressures them to go along with his decisions.”<sup>47</sup>

A coalition of over 60 organizations, including groups focused on police disciplinary reform including the ACLU of Southern California, opposed this measure on the basis that it would actually undermine police accountability.<sup>48</sup> The groups opposed pointed to a report requested by City Council and issued by the city’s Legislative Analyst’s Office observing that the Board of Rights already rejected the Chief’s recommendation to fire officers accused of serious misconduct in over half of the cases before it, and that the civilians currently selected to serve on the Board of Rights were even more lenient in their voting patterns than officer participants.<sup>49</sup> The report also showed that, in the preceding five years, civilians never voted in the minority against reducing officers’ penalties.<sup>50</sup> Then-LAPD Chief, Charlie Beck, also expressed his view that the change would undermine officer accountability, noting that civilians currently “tend to be less likely to hold officers accountable . . . [and] the changes proposed in C would exacerbate that.”<sup>51</sup>

At the time that the City Council voted to place this measure on the ballot changing the structure of LAPD discipline, it also voted to begin a series of hearings to learn about problems with the existing disciplinary system and to invite input from various stakeholders.<sup>52</sup> As of October 2018, the City Council had not yet completed these hearings or enacted the enabling ordinance pursuant to Charter Amendment C. As a result, the current procedures for selecting panelists for the Boards of Rights remain as they were prior to the May 2017 election.

## II. FINDINGS

### 1. The Board of Rights Undermines Department Discipline Through Excessive Leniency

The Board of Rights features prominently in reports on LAPD discipline because it was frequently identified as impeding the punishment of officers who commit serious misconduct. While various reports have highlighted specific failings with the Board proceedings or structure, these failings uniformly reduce the overall discipline imposed on LAPD officers. Repeatedly, officers internally found guilty of misconduct receive no penalties or minimal penalties—contrary to the recommendations of the Chief, the civilian Police Commission, and the expectations of the public. As more fully described below, empirical examinations of Board of Rights outcomes support the view that the Board of Rights frequently leads to reduced or no penalties for officers that have committed serious misconduct, and, more often than not, allows the reinstatement of officers that the Department sought to terminate.<sup>53</sup>

The Department has publicly acknowledged that it views the Board of Rights as an impediment to imposing serious discipline on LAPD officers. For instance, in 2003, after an LAPD officer shot and killed Margaret Mitchell—a petite, homeless, and mentally ill woman holding a screwdriver—Chief Bratton responded to criticisms against the Board of Rights after it elected not to punish the officer who was found to have acted out of policy by the Police Commission. In an op-ed published in the *Los Angeles Times*, Chief Bratton complained that, because of the Board of Rights system, he “lack[ed] the necessary ability to control and impose discipline on [his] staff.”<sup>54</sup> He also claimed that his predecessors, Chiefs Williams and Parks, experienced similar frustrations in their inability to effectively discipline officers, and he sought “a rewrite of the board of rights system and a citywide vote to change the charter.”<sup>55</sup>

The public and its elected bodies have also criticized the Board of Rights, recognizing that it “is traditionally too lenient,” particularly in cases when the Police Commission found an officer’s

shooting to be out of policy, yet the Board refused to impose any penalty.<sup>56</sup> For instance, reports that have incorporated the public’s views have also found that “[m]any in the public believe that the system does not adequately discipline wrongdoers.”<sup>57</sup> The City Council has also expressed concern about this disparity. For instance, in 2003 the Public Safety Committee requested the Inspector General to issue a report on “all cases in which the Police Commission and/or the Inspector General have concluded the Los Angeles Police Department officers have acted ‘out of policy’ and the subsequent decisions of the Boards of Rights; and . . . whether Board of Rights decisions are often inconsistent with the conclusions of the Department’s civilian overseers and to what extent their decisions vary from the civilians’ recommendations.”<sup>58</sup>

The composition of the Board of Rights has been cited as a factor contributing to a lack of officer accountability. In response to a Board comprised of all officers that routinely failed to impose serious discipline—particularly in excessive force cases—the Christopher Commission recommended the addition of a civilian representative to “bring a detached perspective to the case and force a rigorous sifting and evaluation of the evidence.”<sup>59</sup> Despite the general presumption that increased civilian participation in LAPD discipline would lead to greater accountability, even before this suggestion was adopted there was already skepticism that this would be the result. For instance, in the debate leading up to the adoption of Charter Amendment F, which ultimately placed one civilian on the Board of Rights, retired Deputy Chief George Beck—father of former-Chief Charlie Beck—observed that “[w]herever the police department in the past has interfaced with civilian authorities, the process is one of weakening discipline, not strengthening it. We have a hard time getting the city attorney to file a misdemeanor charge. We have a harder time to get the district attorney to file a felony charge against policemen . . . and generally speaking, civilians are soft on discipline. Policemen themselves are much tougher.”<sup>60</sup>

This belief was borne out by the early experiences with the addition of a civilian to the Board of

Rights after Charter Amendment F. By 1998—six years after it passed—the PPL was supporting an entire-civilian Board of Rights. This shift was explained by an LAPD Deputy Chief, stating “[i]t’s no mystery why they want to do that . . . [t]he discipline is not likely to be as strong. The irony of civilian review is that it gives people the opposite of what most people would expect.”<sup>61</sup>

This observation was further borne out by an analysis conducted by the Chief Legislative Analyst in 2017 showing that civilians on the Board of Rights voted more frequently to eliminate or reduce discipline than their command-staff counterparts and, unlike the officers, civilians never voted to uphold discipline when the other two members of the panel voted to reduce or eliminate it.<sup>62</sup> Voting patterns in individual Board of Rights proceedings have also long-reflected civilians’ proclivity towards leniency, with reports as far back as 1999 indicating that civilians were not inclined to discipline officers even for egregious conduct, such as public masturbation or wielding a gun in a drunken off-duty argument.<sup>63</sup>

No analysis has been completed to determine whether the outcomes after the Board began incorporating civilians meaningfully differed from the Board outcomes without civilians. Additionally, the apparent leniency of civilian members on the current Board may also be a product of the way in which these members were selected—a screening process that gives full discretion to the Police Commission’s executive director, with no outside oversight. There is also some evidence that civilian hearing examiners may be removed if they do not routinely vote in favor of officers, which would further explain the apparent leniency of the existing panel members.<sup>64</sup> Even without an empirical comparison of outcomes before and after Charter Amendment F, the current voting patterns nonetheless illustrate that civilian participation is not the panacea expected by some advocates, and, depending on its execution, may facilitate, rather than rectify, leniency by the Board of Rights.

Reports have cited various other flaws in Board of Rights proceedings, but these failings consistently accrue to the benefit of accused officers. For example, experts have observed that

the Department relies on inadequately-trained staff to defend its recommended discipline, that the Board itself improperly imposes a higher burden of proof than legally required,<sup>65</sup> and that it has imposed penalties that are at odds with the evidence before the panel. This inconsistency between the evidence and the Board’s decision has included both decisions that misstate the factual record in order to find an officer not guilty, as well as penalties that seem to conflict with the severity of officers’ misconduct.<sup>66</sup> Importantly, although the various analyses that the ACLU SoCal relied upon in creating this report included officers’ critiques of the system, none of these reports—including a report created by the LAPD—cited empirical evidence that the Board’s structure, procedures, or irregularities resulted in outcomes that were consistently adverse to officers.

The sum total of these criticisms is the conclusion that the Board of Rights process must undergo changes to increase the likelihood that officers guilty of misconduct will be held accountable and that serious misconduct results in serious punishment. While the remainder of this report also discusses research advocating for changes to increase officers’ perceptions of fairness, the repeated indictments of the Board of Rights’ failure to hold officers accountable for even the most egregious conduct indicates a need for conscious reforms that ultimately result in *more* discipline for LAPD officers.

## 2. Officers Perceive the Board of Rights as Biased

A repeated critique of the Board of Rights, and the stated motivation for the recent Charter Amendment C, is that officers believe that the Board is biased against them and leads to unfair discipline. This criticism is two-fold. First, rank-and-file officers believe that the Board of Rights does not give them an opportunity to challenge their discipline to an impartial body because the officers on the Board blindly adopt the Chief’s recommended discipline out of fear of retaliation. For instance, a post-Rampart report notes that officers “perceived the system as unfair” and “believed . . . that the Chief of Police often controlled the Board of Rights.”<sup>67</sup> Officers further

believed that “command staff who did not behave as the Chief desired would be transferred to a less desirable or less convenient location far from their house.”<sup>68</sup> This perception that command staff are “ beholden to the [Chief of Police], which means they cannot be fair or impartial,” was reasserted more recently in officers’ critiques of LAPD discipline in a 2014 report,<sup>69</sup> and as the impetus for ballot measure to create the option of an all-civilian Board of Rights panel in 2017.

Secondly, this “fairness” concern also reflects rank-and-file officers’ complaint that they are more likely to be subjected to discipline than command staff also accused of misconduct. As reflected in an LAPD report issued in 2000, “there is a strong perception of a dual disciplinary standard, one for captains and above and the other for lieutenants and below.”<sup>70</sup> Both perceptions make the disciplinary system—and the Board of Rights in particular—a target for officers’ ire and reform attempts by the special interest groups representing officers.

Despite these strong feelings, what evidence exists does not support officers’ perceptions that the Board of Rights is unduly influenced by the Chief or unfairly targets officers rather than command staff. It is also important to note that while the criticism that the Chief exercises an inappropriate influence over the Board’s outcomes is often framed as a critique of the specific Chief—most recently former-Chief Beck—this has been a documented complaint for at least 30 years, a time that spans the administrations of five different Chiefs.<sup>71</sup> This, therefore, is a perception that is founded on the structure of the Board of Rights, which currently includes two command-staff officers—and the presumption that “command staff who did not behave as the Chief desired” would be retaliated against by adverse employment actions.<sup>72</sup>

Two analyses have assessed the outcomes of Board of Rights proceedings spanning from 2010 to 2016 and have not found support for the contention that the command staff on the Board of Rights uncritically follow the Chief’s recommendations. To the contrary, a 2017 report issued by the Los Angeles Chief Legislative Analyst that reviewed Board of Rights decisions from 2011 through

November 2016 found that the Board rejected the Chief’s recommendations in the majority of cases.<sup>73</sup> Specifically, in 229 completed Board of Rights proceedings where the Chief determined the officer committed serious misconduct and recommended that the officer be terminated, the Board of Rights only upheld both the guilty finding and suggested punishment in 112 cases—49 percent. This low rate of affirmance resulted from the Board rejecting the Chief’s finding that the officer had committed any misconduct in 17 percent of the 229 cases, and reducing or completely eliminating punishment despite a guilty finding in 34 percent of these cases.<sup>74</sup> In 58 cases over that same period where an officer opted for a hearing when the Chief recommended demotion or suspension, the Board did not concur with the Chief’s guilty finding in nearly 26 percent of the cases, and only upheld the Chief’s recommended punishment in less than 21 percent of the cases.<sup>75</sup>

These rates are consistent with the 2014 analysis by the LAPD’s Special Assistant for Constitutional Policing (“Constitutional Policing Office”) that analyzed outcomes from Board of Rights hearings from 2010 through 2013. This report found that out of 148 completed hearings in which the Chief recommended firing, the Board rejected a guilty finding in 15 percent of cases, and recommended termination in 53 percent of cases.<sup>76</sup> Thus, the slight difference in rates of affirmance between the two studies may suggest that there is increasing divergence between the recommendations of the Chief and the Board.<sup>77</sup>

This data shows that for serious misconduct that the Chief determines renders an officer unfit for service, the Board affirmed the Chief’s recommendation in only 53 percent of cases from 2010 through 2013, and 49 percent of cases from 2011 through 2016. Neither study directly supports the view that command staff participants on the Board of Rights routinely refuse to reject the Chief’s finding and recommended punishment, to the detriment of officers. To the contrary, the studies indicate that officers sitting on the Board of Rights routinely exercise independent judgment that is opposed to the views of the Chief.<sup>78</sup>

The report by the Constitutional Policing Office also investigated Board of Rights outcomes for possible disparities based on officer characteristics, including rank. The report concluded that there was not any apparent bias in the rate at which officers of differing ranks were directed to Board of Rights hearings with a recommendation that they be terminated. Limitations in the data made it impossible, however, to conclude that there was no actual bias in Board of Rights outcomes across rank. For instance, while the report was able to compare rates at which officers at different ranks were referred to the Board of Rights for termination, the relatively small pool of employees that are above police officer, and the varied rates at which officers dropped out of the Board of Rights process before it was completed, limited its ability to definitively conclude that this process did not favor command staff over police officers.<sup>79</sup> Nonetheless, the data it did have did not support a finding of bias against rank and file police officers.

During the period reviewed, the Department was comprised of 68 percent police officers, 16 percent detectives, 12 percent sergeants, 3 percent lieutenants, and 1 percent command staff.<sup>80</sup> The distribution of individuals directed to a Board of Rights hearing was observed by the Constitutional Policing Office and generally mirrored the groups' percentage in the Department: 74 percent of those directed to Board of Rights for termination were police officers, 14 percent detectives, 10 percent sergeants, 1 percent lieutenants, and 1 percent command staff.<sup>81</sup> Outcomes were more difficult to compare, however, as the rate of completion for directed hearings ranged from 56 percent for police officers to zero percent for command staff.<sup>82</sup> The rates at which officers that completed hearings were found guilty ranged significantly across rank, but were partly due to these different rates of completion. For instance, 100 percent of lieutenants who completed the Board of Rights process were found guilty—but that is because the one lieutenant who completed his or her Board of Rights hearing was found guilty. Conversely, 87 percent of those at the police officer rank that completed a hearing were found guilty, but this number reflects 103 police officers that were found guilty.<sup>83</sup> Although the data has limitations, the Constitutional Policing

Office ultimately concluded that “[t]he data . . . does not support the perception of bias with respect to directed [Board of Rights] . . . [and] the variances regarding sworn personnel found guilty and terminated are not wide and . . . there are many factors that may account for the variations.”<sup>84</sup>

Importantly, however, the absence of data for this analysis also reflects the lack of evidence to support the officers' belief that the Board of Rights is biased in favor of command staff or other non-rank-and-file officers. For instance, if the Board of Rights has not fully adjudicated a single case involving command staff officers, then rank-and-file officers have no factual basis for believing the Board of Rights is biased based on rank.

Nonetheless, the lack of evidence to support claims that the Chief exercises an inappropriate amount of influence over Board of Rights outcomes does not by itself eliminate officers' perceptions of unfairness. As reflected in reports and other public comments by LAPD officers and their union representatives, the perception of unfairness by officers—regardless of whether it is substantiated in practice—persists. Despite empirical evidence from two recent city-conducted analyses that should have abated officers' concerns, the union representing rank-and-file officers spearheaded Charter Amendment C to provide officers the option of selecting a Board of Rights comprised of all civilians, with the argument that such change was needed to avoid Chief Beck's undue influence and ensure that officers received a fair hearing.<sup>85</sup> As a participant in the Constitutional Policing Office's study succinctly put it: “perception is reality.”<sup>86</sup> With this truism in mind, multiple reports have cited the need to adopt reforms that change the structures officers blame for this perceived bias in an attempt to address that perception—and not to necessarily change the outcomes the system produces in a way that results in greater leniency for officers accused of misconduct.

### **3. The Board of Rights Imposes Inconsistent Discipline**

Complaints about the inconsistency of Board of Rights outcomes reflect two distinct problems. First, is the absence of uniformity in decisions and

punishments across similar incidents of misconduct. A post-Rampart report noted that “many officers complain about their perception of unequal punishments being imposed for similar conduct.”<sup>87</sup> And a 2017 report reflected that the Department remains under “sustained criticism” from officers that view the disciplinary system as “inconsistent . . . in how disciplinary penalties are applied.”<sup>88</sup> The OIG has also documented apparent disparities in penalties for the same or similar misconduct.<sup>89</sup> For instance, in a 2011 review of Department disciplinary reports, it “noted potential disparities in the treatment of officers,” and discussed a number of cases in which it could not reconcile the punishments received by different officers after taking into account their respective disciplinary histories and the seriousness of the conduct in question.<sup>90</sup>

Second, these complaints of inconsistency also reflect the disparate treatment of different types of misconduct. Specifically, there are complaints both within and outside of the Department that violations for egregious misconduct against the public—in particular, cases involving excessive police force—often receive lesser punishment than violations of the Department’s administrative rules. The Christopher Commission, for example, noted that the perception of officers was that the Department was “light in punishment” on issues of excessive force, and officers believed that “if [they] lie, cheat and steal . . . [or] if [they] use drugs” they would be fired, but not if they used excessive force.<sup>91</sup> The report also cited a member of the Police Commission who concluded that “the discipline imposed by the Department is more severe for conduct that embarrasses the Department than for conduct that reflects improper treatment of members of the public.”<sup>92</sup> A high-ranking officer supported this view, stating “excessive force is treated leniently because it does not violate the Department’s internal moral code” in which “violent behavior . . . is viewed by many members of the Department as not requiring discipline . . . because . . . ‘some thumping’ is permissible as a matter of course.”<sup>93</sup> Conversely, conduct like theft and bribery would be punished more “vigilantly” because it “indicate[s] police corruption.”<sup>94</sup> The report also included similar sentiments from the PPL and

rank-and-file officers, who contended that “officers receive more severe punishment for breaking what they described as ‘administrative’ rules than for breaking rules regarding excessive force.”<sup>95</sup>

In addition to these observations, the Christopher Commission’s own empirical analysis supported the conclusion that the Department—and particularly the Board of Rights—was often lenient on officers who committed acts of violence against the public. It reviewed 36 cases identified through Department records over a six-year period in which discipline was imposed on an officer with a sustained complaint that he or she used excessive force against a handcuffed suspect.<sup>96</sup> The Commission chose these incidents because Department interviewees reported that “unnecessarily striking a handcuffed person was absolutely unacceptable behavior which would not be tolerated by the Department [and] . . . except in the most unusual cases, no force is necessary once a person is handcuffed.”<sup>97</sup> Thus these 36 incidents should have reflected the most unambiguous uses of excessive force requiring punishment. Two of the 36 cases led to removal of the officer, and in both cases the officers had “egregious records of force-related complaints including prior suspensions.”<sup>98</sup> Every other case involved a suspension of 22 days or less, and most were under ten days. This apparently-lax discipline was largely a product of the Board of Rights’ actions, as about half of the cases were referred to the Board with a recommendation of termination or suspension of more than 22 days. Only the aforementioned two removed officers received the Department’s recommended discipline, and even “outrageous behavior”—such as an officer balancing himself on his motorcycle by putting his boot on the face of a handcuffed suspect on the ground—did not result in a suspension greater than 22 days.<sup>99</sup>

While the Christopher Commission report was issued in 1991, this general trend of greater punishments for violations of administrative rules than incidents involving excessive force appears to have continued. A report by the Los Angeles Times published in 2003, for instance, revealed that out-of-policy uses of force against the public often resulted little or no punishment for the officers

involved.<sup>100</sup> A particularly egregious comparison in that report found that “[i]n a pair of shootings that occurred just months apart in 2000 . . . one officer violated department policy when he shot and killed an unarmed man[, and] . . . another broke the same rules when he shot a dog. The officer who shot the dog was given the heavier penalty.”<sup>101</sup>

Limited public data on officer disciplinary outcomes from 2007 through 2016 also suggests this pattern continues.<sup>102</sup> These public reports include final dispositions on most sustained complaints and a table comparing the Chief-recommended discipline and the outcome at the Board of Rights for cases in which a “sworn employee opted for a BOR in lieu of the initial proposed penalty.”<sup>103</sup> During this ten-year period, the available discipline reports reflect that in opted hearings, the Board of Rights recommended 36<sup>104</sup> officers for removal, termination, or discharge.<sup>105</sup> The records do not reflect that any of these officers were removed due to allegations of excessive force.<sup>106</sup> The allegations sustained against the terminated officers ranged from “unbecoming conduct” for “inappropriately threaten[ing] the commanding officer,” to “neglect of duty” for failure to comply with various rules while on sick status or for failing to properly process and store departmental reports, and “alcohol related” due to an off-duty DUI arrest and failure to report that arrest.

During the same period, seven individuals came before the Board of Rights for “unauthorized force.” The officers in these seven cases were all found guilty by the Board. The most severe punishment recommendation was a five-day suspension, which was issued in two cases. In the first case, an officer “unnecessarily directed . . . [a] police service canine to use force.”<sup>107</sup> The punishment recommended by the Department for this officer was a 15-day suspension, but it was reduced to a five-day suspension by the Board.<sup>108</sup> In the second case, an officer tased a handcuffed suspect.<sup>109</sup> The Department imposed a five-day suspension, which was affirmed by the Board.<sup>110</sup>

The penalties issued by the Board in the remaining five cases involving sustained findings of “unauthorized force,” are as follows: No penalty (unnecessarily striking complainant’s face),<sup>111</sup>

official reprimand (used a baton on a citizen),<sup>112</sup> two-day suspension (unnecessarily punched a citizen twice in the stomach),<sup>113</sup> two-day suspension (unnecessarily striking a citizen with a baton),<sup>114</sup> and three-day suspension (either striking the citizen with a baton or forcing a seated citizen off of a rock).<sup>115</sup>

The Board reduced the Department-recommended penalty in four out of the seven reported cases involving officers found guilty of using unauthorized force. In addition to the above-described case involving the officer who sicced a police dog on a civilian, the Board also reduced the penalty in cases where officers hit a citizen in the face (reduced from official reprimand to no penalty),<sup>116</sup> hit a citizen with a baton (reduced from five-day suspension to two-day suspension),<sup>117</sup> and either struck a citizen with a baton or pushed him off of a rock (reduced from ten-day suspension to three-day suspension).<sup>118</sup>

There were four separate cases included in these reports involving “unauthorized tactics,” two of which involved an officer’s use of his firearm. One of the two cases involved an officer who, while off duty, failed to carry his firearm in a Department-approved manner and made an “ethnic remark” to a co-worker. His recommended punishment was a five-day suspension, and the Board of Rights reduced this to a two-day suspension.<sup>119</sup> The second involved an officer who “demonstrated deficient tactics during an officer involved shooting” in which a civilian was shot—in which the officers falsely stated that they were responding to a disturbance caused by a man with a gun, despite no evidence at the time that the individual they sought to stop for riding his bike on the sidewalk was armed.<sup>120</sup> The officer received an official reprimand.<sup>121</sup>

The overall pattern in these cases from 2007 through 2016 is consistent with the views reflected in the Christopher Commission report over two decades prior: violations of administrative rules or conduct that reflect lying or fraud are punished more severely than acts of violence against the public. The Board directly contributes to this outcome by frequently reducing or eliminating the penalties issued by the Department for excessive force incidents. Indeed, the Police Commission and

at least one former Chief, has criticized the Board of Rights for “undermin[ing] civilian oversight of the LAPD and limit[ing] the chief’s authority to manage the institution,” even going so far as demanding that the Board be “disbanded” and a replaced by a new system.<sup>122</sup>

In 2016, the Department issued a penalty guide to attempt to address the first inconsistency concern mentioned above—*i.e.* officers receiving divergent penalties for similar conduct. In so doing, however, it also formalized this disparity in the Department’s attitudes towards violent versus administrative misconduct. The stated goal of this penalty guide was to “enhance consistency and assist commanding officers and Boards of Rights with determining appropriate and reasonable penalties.”<sup>123</sup> The guide identifies various categories of misconduct and indicates the range of possible penalties for a first, second, or third offense in each category. There are seven penalty levels, ranging from “no penalty” to “recommendation for removal.” The recommended penalties for an offense typically include a range of at least three penalty levels, but in some cases they span the entire range of seven penalty levels. For a few acts of misconduct, the punishment is limited to a single recommended penalty.

For a first offense involving unauthorized force (excluding shootings) and for an illegal search, the recommended penalties range the entire spectrum, from no penalty to removal.<sup>124</sup> In comparison, the recommended penalty for a first offense of “unbecoming conduct” involving “[u]se of official position to solicit gratuities/gifts/special favors” starts at the second penalty level: official reprimand or suspension of one to five days.<sup>125</sup> The recommended penalties for an officer found guilty of working while technically out on injured status, inappropriately accessing Department databases<sup>126</sup>, or improperly possessing alcohol while on duty also begin at the second penalty level with an official reprimand or a one to five day suspension.<sup>127</sup> Lying-related conduct typically has an even higher base penalty.<sup>128</sup> For instance, knowingly making a false statement to a supervisor during an official inquiry has a base recommended penalty of suspension for 16 to 22 days (the fifth penalty level),<sup>129</sup> and the

recommendation for a first instance of fraudulently obtaining compensation or making a false statement under oath is the most severe penalty: removal.<sup>130</sup> Conversely, a shooting violation where the officer’s intentional shooting was found to be out of Departmental policy—and the Department determines that the offense cannot be fixed through extensive retraining—has a base recommended penalty of official reprimand or suspension of one to five days.<sup>131</sup> While some offenses encompass a wide range of offending conduct that may include varying degrees of culpability and harm, the allocation of penalties in this matrix conveys that *all* instances where an officer works while on injured status or inappropriately accesses a Department’s database, are more severe violations than at least *some* instances where an officer is found to have used excessive force, intentionally and inappropriately fired his weapon, or conducted an illegal search.

This is not to say that penalties against officers for committing acts that violate the public’s trust—and may also qualify as criminal offenses—should not be punished severely. Rather, the formal disciplinary guide is merely further evidence of the long-observed Department stance—also reflected in Board of Rights outcomes—of punishing acts of violence against the public less severely than various other forms of misconduct.

#### 4. Board of Rights Proceedings and Outcomes Lack Transparency

The lack of transparency around the Board of Rights has been viewed as a major factor contributing to the both the public and officers’ distrust of—and at times, outrage at—LAPD discipline. As the Inspector General recognized in its review of best practices, it is necessary to have “transparen[cy] in decision-making, indicating that rules are applied consistently and fairly,” to ensure that the public and officers alike respect and trust the outcomes of the disciplinary system.<sup>132</sup> This transparency does not exist around the Board of Rights.

Board of Rights proceedings, while previously open to the public, have been closed since 2006, when the Supreme Court held in *Copley Press*

*v. Superior Court*, 39 Cal. 4th 1272 (2006) that records of officers' disciplinary proceedings were confidential under California Penal Code Section 832.7.<sup>133</sup> Although the *Copley* decision did not expressly hold that disciplinary hearings must be closed,<sup>134</sup> the LAPD and City Attorney have interpreted the ruling to require closure of Board of Rights proceedings.<sup>135</sup> There have been statewide legislative attempts to reopen these proceedings, including those supported by current and former LAPD chiefs, current and former Los Angeles mayors, and the Los Angeles City Council.<sup>136</sup> None have succeeded thus far. Thus, some of the secrecy around Board of Rights proceedings is imposed by state law and the interpretation of that law adopted by the City Attorney. However, a new law that requires certain police investigatory and disciplinary records to be made public will go into effect in January 2019, and creates the possibility that these proceedings must be opened as well.

Los Angeles public officials have cited secrecy around the Board of Rights as a hurdle that "prevent[s] the public from seeing whether and how cops who violate policy are held accountable."<sup>137</sup> Data continuously shows that the Board of Rights is a major impediment to serious discipline. If there is any legitimate reason for the Board to reduce or eliminate penalties that the Department, Police Commission, and the public think are justified, this explanation is never made public and the lack of transparency makes it impossible for the public to understand and trust the Board's rationale for leniency.

The killing of 13-year-old Devin Brown by an LAPD officer, and the subsequent disciplinary process, illustrates the conflicts caused by this lack of openness. In 2005, an LAPD officer shot and killed Devin Brown in what the Police Commission found was an out of policy shooting.<sup>138</sup> The Board of Rights found the officer involved, Steven Garcia, not guilty in January 2007 and he received no punishment.<sup>139</sup> In the wake of the Board's decision, Chief Bratton—who also disagreed with the Commission's decision to find the shooting of Brown out of policy—complained about his inability to discuss officer discipline publicly. In an LAPD news release, he stated that he "regret[s] that

current laws and legal restrictions preclude both the Police Commission and [him] from commenting on the decision," and asserted that both were "committed to transparency and . . . frustrated with [their] inability to explain [their] respective actions in this matter, and those of the Board of Rights."<sup>140</sup> In an attempt to understand these conflicting outcomes, the City Council moved to ask the Commission and Chief Bratton to "make a presentation [on] . . . the LAPD Board of Rights action to ignore the Police Commission finding that the shooting death of 13-year-old Devin Brown . . . violated department policy,"<sup>141</sup> although this hearing does not appear to have taken place.

Officer Garcia ultimately publicly released the transcript of the Board of Rights decision that found him not guilty.<sup>142</sup> The Police Commission, however, remained unable to release its records reaching the opposite conclusion. This limited disclosure raised further concerns, with public advocates noting that the transcripts "show[ed] that the board deliberately ignored the testimony of witnesses . . . that contradicted the officers' version of the shooting."<sup>143</sup> Also, without routine disclosure, the Board cannot expect to have its decisions held up to public scrutiny, and is able to operate without any check whatsoever on its decision-making process.

The lack of transparency around the Board of Rights also contributes to officers' perceptions that the Board and its decisions are biased, inconsistent, and unfair, and that the Chief of Police has inordinate influence on Board of Rights outcomes. Because Board of Rights proceedings are confidential and comprehensive reports and analyses of officer discipline are rare, these officers' perceptions of unfairness are based largely on "anecdotal evidence,"<sup>144</sup> with officers relying on "rumor to evaluate the fairness of the system."<sup>145</sup> Perception becomes reality, and in the absence of information to the contrary, these unfavorable perceptions dictate officers' attitudes towards discipline, and even spur electoral changes to the City's charter to address perceived, yet unsubstantiated, problems.

## 5. The Department's Defense of Its Disciplinary Decisions Before the Board of Rights is Inadequate

Past research has also identified the poor quality of the Department's own advocacy before the Board of Rights as contributing to the observed leniency towards officers. Currently, the advocate who presents the Department's case against the accused at the Board of Rights is not required to be an attorney.<sup>146</sup> Rather, Department Advocates are most often lay personnel—"mainly sergeants with no formal legal training."<sup>147</sup> While a City Attorney is allowed to advise the Department Advocate, the City Attorney does not serve as the advocate and his or her presence is not required at a Board of Rights hearing.<sup>148</sup> Contrast the Department's general lack of legal representation with the accused, who has the right to have an attorney present the case on his or her behalf.<sup>149</sup> As a practical matter, the accused officer is nearly always represented by an attorney because for the nearly 10,000 sworn officers who are members of the PPL, the union provides counsel for every Board of Rights hearing.<sup>150</sup> As observed by the post-Rampart Blue Ribbon Panel, "department advocates . . . were simply outmatched by the seasoned private defense attorneys representing accused officers."<sup>151</sup>

Although Board of Rights hearings are not formal legal proceedings, the procedural rules presume that participants and Board members can accurately apply various legal rules—some of which may determine the case's outcome. For instance, with respect to the admissibility of evidence, the rules state that "[t]he hearing need not be conducted according to technical rules relating to evidence and witnesses," and allow that "[a]ny relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely," regardless of whether it would be admissible in civil action.<sup>152</sup> At the same time, however, the rules prohibit relying solely upon hearsay that "would be inadmissible over objection in a civil action . . . to make a finding of Guilty."<sup>153</sup> Thus, while hearings are not constrained by hearsay rules in terms of the evidence that the Board may consider, hearsay rules are still relevant because they limit the record on which a decision legally may be based. Without a working understanding of the hearsay rules under

California law, an advocate will not be able to make proper objections to limit the Board's reliance on these statements, or sufficiently articulate a hearsay exception to ensure that admissible statements are included in the record. The Board also relies on legal standards when it accepts official notice of any generally-accepted fact that "may be judicially noticed by the courts of this State,"<sup>154</sup> or when it is called upon to determine whether a charge falls outside of the applicable statute of limitations period.<sup>155</sup>

Although the Board should not consider legal arguments, they were observed doing so nonetheless.<sup>156</sup> Because the Department Advocates lacked legal training, they often "found themselves unable to effectively respond to many of the legal arguments made by defense counsel, including such basic issues as whether the statute of limitations precluded the charges."<sup>157</sup> These post-Rampart analyses confirmed that the Department Advocates' general lack of legal knowledge placed them at a disadvantage in prosecuting cases, and undoubtedly contributed to the high rate at which the Boards reversed the Department's discipline.

## 6. Board of Rights Panels Have Insufficient Training

Another specific flaw that has been identified in Board of Rights proceedings is the inadequacy of the training provided to panelists. This lack of training manifested in various ways. For instance, when post-Rampart researchers observed Board of Rights hearings or reviewed transcripts, they noted that the Board frequently applied the incorrect burden of proof.<sup>158</sup> While the standard for determining an officer's guilt at a Board of Rights hearing is the "preponderance of the evidence"<sup>159</sup> standard—which is equivalent to concluding that there is greater than 50 percent likelihood of guilt—many panels seemed to apply a much heavier burden.<sup>160</sup> Additionally, panels were confused about whether certain legal arguments such as hearsay or statutes of limitations should be considered.<sup>161</sup> While the rules specified that panels should not consider these arguments, observers reported that they were considered on multiple occasions.<sup>162</sup>

Others have also raised concerns about the lack of training and guidance received by Board of Rights panelists. For instance, the City Council inquired about the quality of training received by Board of Rights civilian hearing examiners. In July 2003, a motion before the Public Safety Committee noted that “[q]uestions have been raised recently about the LAPD’s Boards of Rights.”<sup>163</sup> In describing the existing training process, it noted that “[c]ivilian members . . . receive orientation presentations by the Police Commission and Command Officers received limited briefings regarding the Board of Rights system[,] [h]owever, none of the training presently offered to Board members appears to deal with adjudicatory matters which would enable the members . . . to make better, [more] reasoned decisions as finders of fact or interpreters of law.”<sup>164</sup> The motion requested a report from the LAPD and Police Commission on the “training and educational opportunities provided to members of the LAPD’s Boards of Rights prior to or during their service on the Board.”<sup>165</sup> It also proposed holding a hearing before the Public Safety Committee on “suggestions on how to train civilians and Command Officers who serve on Boards of Rights,” to be attended by the “Los Angeles County Bar Association, rape and domestic violence treatment centers, the Police Protective League, the Command Officers Associations, and other relevant experts.”<sup>166</sup>

The Police Commission submitted a report in November 2003 describing in greater detail the training for civilian and command staff Board of Rights participants. With respect to civilian members, the only training provided was an annual orientation seminar, in which “a selected field of police work is presented and discussed.”<sup>167</sup> The report noted that most civilian participants were lawyers and arbitrators, and thus the Department believed that no training regarding fact finding or legal interpretation was necessary.<sup>168</sup>

With respect to command staff, the Department did not provide any training on fact finding, contending that officer participants “spent their careers as fact finders.”<sup>169</sup> The report cited their supervisory experience in conducting investigations and adjudicating personnel complaints as a form of training provided to command staff participants.<sup>170</sup>

It also cited the Command Development College—a multi-day training attended by most command staff before promotion to captain that covers various topics—as another avenue for training, as this includes presentations related to “administrative law, discipline, and the Board of Rights process.”<sup>171</sup> Despite this representation, the report also noted that command staff had “not had the opportunity to attend any specific training relative to interpreting administrative law.”<sup>172</sup> The Police Commission’s report also suggested that command staff Board of Rights participants who are less experienced or knowledgeable may defer to other members of the Board, with the inference that this was a positive relationship between panelists. In particular, it stated that new command staff participants could “benefit from the legal insights,” provided by civilian members, as well as the “experience and knowledge” of other command staff participants.<sup>173</sup> No further action was taken on this matter after the submission of the Police Commission’s report, and the proposed hearing on Board of Rights training including various community stakeholders does not appear to have taken place.<sup>174</sup>

The training provided to Board of Rights participants was also an area of concern for the U.S. Department of Justice, as reflected in the 2001 post-Rampart scandal consent decree entered into between the federal government and the LAPD.<sup>175</sup> This agreement required the Department to “train all members of the public scheduled to serve on the Board of Rights in police practices and procedures.”<sup>176</sup> Over the course of the twelve years in which the LAPD operated under this consent decree, multiple updates from the consent decree monitor reported that the Department had failed to satisfy this requirement.<sup>177</sup> The consent decree was originally set to expire on May 15, 2006, and the Monitor reported that the Department had not satisfied this training requirement at that time, and did not do so until over a year later on March 31, 2007.<sup>178</sup>

To comply with the consent decree, the staff of the Police Commission developed a lesson plan for training civilian hearing examiners, including 48 new examiners selected in February 2007.<sup>179</sup>

The Department held a training session attended by 45 hearing examiners, with the executive director of the Police Commission providing training for the remaining three at a later date.<sup>180</sup> No training for the command staff participants was required under the consent decree.

It is unclear whether any further trainings have occurred for civilian hearing examiners, or if any additional trainings have been initiated for command staff to address the above deficiencies. The Legislative Analyst's Report indicated that, as of January 2017, there were 38 individuals employed as civilian hearing examiners.<sup>181</sup> Thirty-three of those individuals have served nine years or more, and were subject to the March 2007 training.<sup>182</sup> The remaining five individuals were appointed in September 2016.<sup>183</sup> The report does not indicate whether these individuals received any training at that time.

### III. RECOMMENDATIONS

Many entities—from LAPD Chiefs, to blue ribbon commissions, to police-reform advocates—have suggested reforms to address the above-described failings with the Board of Rights. The below recommendations are drawn from these sources or developed directly in response to these previously-identified issues. These recommendations also rely on a variety of institutions to accomplish the suggested changes. While some recommendations can be implemented simply by directing the Inspector General or LAPD to issue certain reports or track various outcomes, some require the City Council to enact an ordinance and still others can only be attained if voters adopt additional amendments to the city charter.

#### 1. Change the composition of Board of Rights panels to eliminate real and perceived bias.

Attempts to address bias in Board of Rights proceedings must be handled with an acute awareness of the vastly differing perceptions of bias by different LAPD constituencies. Reports have identified the Board of Rights as a significant roadblock to stemming misconduct by LAPD officers by routinely failing to discipline officers that both the public and the Department view as having committed serious misconduct, and each of the Board’s failings appears to favor accused officers. Yet officers still hold the belief that the Board is unfair and, despite a rate of reversal hovering around 50 percent, assert that the Board proceedings do not provide them with sufficient opportunity to challenge the Chief-recommended discipline. Thus, the suggested reforms have—and must—focus on both ensuring that the Board does not undermine departmental attempts at discipline, while also fostering a sense of fairness for officers and the public they serve.<sup>184</sup>

To address officers’ continued concerns regarding perceived bias in the proceedings, reports suggested changes that would encourage a sense of procedural justice.<sup>185</sup> The concept of procedural justice, as endorsed by the OIG, relies on four underlying principles: “[1] treating people with dignity and respect; [2] giving individuals a voice,

or opportunity to explain their perspective, during encounters; [3] being neutral and transparent in decision-making, indicating that rules are applied consistently and fairly; and [4] conveying trustworthy or well-intentioned motives, in that the person can understand why the action is being taken.”<sup>186</sup> Although all of the reports do not cite these specific principles of procedural justice, they nonetheless support changes that facilitate a perception that the Board of Rights functions impartially and consistently.

##### 1.1. *Eliminate the option allowing accused officers to select between a panel comprised of two officers and one civilian or a panel comprised of three civilians.*

A consistent suggestion has been to change the structure of the Board to undercut the factual premise on which perceptions of unfairness are based. From the officers’ perspective these suggestions focused on removing command staff from the Board because their presence drives the perception that officers do not receive a true opportunity to challenge the Chief’s recommended discipline. Charter Amendment C, by creating the option of an all-civilian panel, eliminated one of officers’ most recurrent sources of dissatisfaction.

However, because public confidence in Board outcomes is also necessary in order to ensure that it has faith in the LAPD as an institution, changes to the structure or composition of the Board must also encourage a sense of procedural justice for the public as well. To that end, the parallel Board of Rights structures created by Charter Amendment C should be eliminated so that accused officers are not able to select between two differently-constituted panels.

In advocating for the civilian-only panel, the PPL rejected its previous stance that civilians were not equipped to decide police disciplinary matters. Thus, in the officers’ view, the command staff participants do not add any necessary experience or knowledge to the Board of Rights proceedings. Moreover, officers also complained about the time command staff spent away from the field and on administrative duties including sitting on Boards of Rights.<sup>187</sup> If the PPL and others who advocated for the creation of a three-civilian panel believe that

a panel that includes command staff is subject to bias or the appearance of bias, burdens the Department's supervisorial staff, and provides no additional needed expertise, then it serves no purpose to give officers the option of selecting such a panel.

Conversely, maintaining the option undermines the legitimacy of the disciplinary system through the appearance that officers are being allowed to manipulate the system to appear before a Board constituted to give them the more favorable outcome in any specific instance. This was one of the complaints raised in opposition to Charter Amendment C.<sup>188</sup> Indeed, retaining the Boards comprised of two command staff and one civilian was viewed as a means for officers to avoid accountability by ensuring that if "some future council changes the criteria for selecting civilian members to make them tougher on accused officers, those officers would still be able to select a board without a civilian majority."<sup>189</sup> Eliminating the unnecessary option of a panel comprised of two officers and one civilian would "convey[] trustworthy or well-intentioned motives" in adopting a civilian-only hearing panel at the behest of LAPD officers and further a sense of procedural justice for the public.<sup>190</sup>

*1.2. Eliminate the option allowing officers to select individual members of the Board from a pool of randomly selected participants, and require that any challenges to the participation of an individual panelist must be "for cause."*

Officers should also be prohibited from selecting the individual participants who sit on the Board of Rights. The Christopher Commission previously recommended that accused officers not be given discretion to manipulate the composition of their Board of Rights by choosing the specific command staff to sit on their panel—an option currently provided under the charter.<sup>191</sup> This ability of officers to—essentially—choose their own jury, was cited during the recent debate over Charter Amendment C as further evidence that the Boards are structured to be biased in favor of officers. While there was no selection procedure for civilians at the time of the Christopher

Commission, its recommendation stands with equal force for the civilian selection process.

Currently, when selecting the one civilian hearing examiner on the traditionally-constituted Board of Rights, three civilians are randomly selected from the pool of hearing examiners and both the accused officer and the Department are allowed to strike one individual. This selection process for civilians is not established under the charter but rather is merely a procedural rule created by the Department.<sup>192</sup> This selection procedure—whether for individual officers as allowed under the charter, or individual civilians as allowed under the Department's rules—should be eliminated so that all panelists are selected at random without interference by the accused officer or the Department.<sup>193</sup> To the extent there is an actual conflict with a specific hearing examiner, the Board of Rights procedures already allow challenges for cause—and such challenges could remain, although the accepted bases for a causal challenge need to be explicitly stated.<sup>194</sup>

*1.3. The City Council should participate in the selection of civilian hearing examiners through a transparent process that allows inclusion of civilians with diverse experiences and perspectives.*

The City Council should take a more active role in selecting civilian Board of Rights members through a transparent process that is not skewed to ensure that only those biased in favor of officer leniency are allowed to serve. As described above, the City Council delegated the responsibility to establish criteria and select hearing examiners to the Police Commission. The Commission subsequently set forth basic requirements and then further delegated the selection process to its executive director, who was allowed to pick hearing examiners after a private interview based on unspecified criteria. The application for the hearing examiner position inquired about experiences with law enforcement, both by the individual and his or her employer, and about friends and relatives within law enforcement—although none of these experiences or relationships were formally acknowledged as relevant to the selection process.

The current selection process and its lack of transparency were also a subject of critique in the debate over Charter Amendment C.<sup>195</sup> This concern was buoyed by a report including statements from past PPL leadership indicating that the Police Commission screened out civilian hearing examiners who were critical of the police or who were from demographics presumed to be skeptical of police.<sup>196</sup> The PPL representative further explained that the Police Commission removed civilians from the pool of eligible examiners if they were “too vicious in their objections to what the LAPD is doing,” and therefore did not vote in favor of officers.<sup>197</sup> If true, the current selection process therefore systematically ensured that only those sympathetic to officers would serve on Board of Rights panels.<sup>198</sup>

While the existing selection process may have enquired into prior arrests or complaints regarding the LAPD in order to screen out individuals who may have had interactions with the police that were not uniformly positive, the result is not a pool of neutral decision-makers, but rather one that is prone to skepticism of allegations of officers’ misconduct. This is reflected in civilians’ voting patterns that appear to reflect bias in favor of officers. Because the selection of the existing civilian hearing examiners was tainted by this process, with the adoption of a new selection procedure all of the existing civilians should be retired from the pool of eligible examiners.

To both ensure fairness in outcomes as well as the public’s faith in the newly-constituted Board of Rights, it is necessary to adopt greater transparency in the selection process and a set of criteria that will ensure that a range of views and experiences as diverse as the City of Los Angeles are represented. With respect to transparency, the process for selecting civilian Board of Rights members could be similar to the process for appointing commissioners for the City’s various advisory boards: individuals could be nominated by the mayor, City Council, or other entities, and confirmed by the City Council either by the full council, subcommittee, or ad hoc committee on policing. This process would also allow the names and relevant backgrounds of nominees to

become part of the public record, as it is for other commissioners, and provides the public with the opportunity to voice concerns about the selection process if any arise. And, as with other commission-selection processes, there may also be specific seats set aside for individuals who satisfy certain criteria.<sup>199</sup> For instance, this might be a mechanism to ensure that a certain number of seats are set aside for individuals who have personal experience with the LAPD complaint process.

In conjunction with this process, the City could also adopt a nomination process similar to the process used by Newark, New Jersey to staff its civilian complaint review board. This process requires various constituencies to nominate individuals to be appointed by the mayor, subject to advice and consent of the city council.<sup>200</sup> Some of the nominating entities in the Newark model include local clergy, specific civil rights organizations, the Inspector General, and city council members.<sup>201</sup> The City Council could adopt a similar process here, designating certain seats to be filled by nominees from local community-based organizations, civil rights groups, clergy, and others—subject to the City Council’s approval. This would help diversify the perspectives of Board of Rights members and ensure broader community representation.

*1.4. Eliminate criteria that civilian hearing examiners must have seven years’ experience in mediation, arbitration, or similar work.*

With respect to the selection criteria, the sole experience currently required—a seven year history in mediation, arbitration, or similar work—does not appear to have had a significant impact on the quality of Board of Rights proceedings, yet has functioned to exclude large swaths of the Los Angeles population. Despite including civilians with this experience, Boards of Rights were still reported to suffer from various procedural errors, such as failing to apply the correct burden of proof, and rendering verdicts unsupported by the factual record before them. There thus seems to be little benefit to requiring expertise in mediation or similar work given the limitation it places on the pool of eligible civilians with negligible positive impact on the accuracy of Board of Rights

decisions. This limitation also seems unnecessary, given that juries comprised of lay people are regularly tasked with making similar factual determinations. This requirement should therefore be eliminated, and civilian members should instead receive specific training in Board of Rights procedures and subject-specific training related to misconduct that repeatedly comes before the Board of Rights, such as use of force and sexual harassment.

*1.5. Prohibit individuals who are current or former employees of local law enforcement agencies from serving as civilian hearing examiners.*

The Chief Legislative Analyst's report on the voting patterns of civilians and officer participants on the Board of Rights suggests that civilians—as currently selected—are more lenient than the high-ranking LAPD officers. In the wake of Charter Amendment C, the one suggestion floated by City Councilmembers was allowing retired officers to serve as “civilians” on the Board of Rights.<sup>202</sup> But allowing former officers to serve as civilians is unlikely to result in better outcomes from either a substantive or procedural justice standpoint. Instead, the City Council should establish criteria that would preclude current or former law enforcement employees from serving as civilian hearing examiners.

First, the prior report on voting patterns of Boards of Rights participants does not at all suggest that retired officers would be more likely to hold officers accountable than the current pool of selectively-chosen civilian hearing examiners—and it definitely does not suggest that they would be less lenient than civilians who are not strategically selected because they are inclined to favor officers. Even if the voting patterns of active officers and the civilian hearing examiners chosen under the current process diverge somewhat, in each of the approximately fifty percent of cases in which the Chief's discipline is reversed, one or both officers still voted to reduce the recommended penalty. This high rate of reversal would not exist if officers did not routinely vote to undermine the Department's discipline. Thus even if active officers are marginally less lenient than the current

hearing examiners they still contribute to the ineffectiveness of the Board of Rights.

Additionally, there is no reason to believe that the voting patterns of retired officers who volunteer to serve on the Board of Rights will be the same as the voting patterns of currently-employed officers who serve on the Board as part of their managerial duties. The self-selected group of officers who would volunteer to serve on these panels will not be the same as the broader group of officers that are required to rotate through the Board of Rights. Nor do these volunteers, who are no longer formally affiliated with the Department, serve with the same formal obligation to ensure that misconduct is discouraged. Any pool of retired officers should not be expected to vote in the same manner as current Department personnel, and that presumption should not be a basis for believing that retired officers should serve in this capacity.

Second, from a procedural justice perspective, allowing retired officers to serve on the panel as “civilians” will only further entrench officers' and public perceptions of bias and ensure that the system appears illegitimate—regardless of its outcomes. Supporters of Charter Amendment C—including the PPL and current members of both the Police Commission and City Council—argued that allowing officers to serve on the panel “puts officers in the difficult position of making decisions about their colleagues' careers.”<sup>203</sup> These proponents also recognized that permitting “police officers to police themselves [by serving on the Board of Rights] can be a conflict, or the appearance of a conflict of interest.”<sup>204</sup> Whether these conflicts are real or only perceived, allowing retired officers to serve as “civilians”—the ostensibly neutral and detached Board of Rights participant—only exacerbates them.

Both current and former law enforcement personnel may have relationships to accused officers or hearing witnesses that could result in a real or apparent conflict of interest. All kinds of relationships may cause conflicts, as LAPD officers have complained that both friendships and familial relationships unfairly protected well-connected officers from punishment.<sup>205</sup> Thus, even if civilian reviewers have only a passing acquaintanceship

or vague knowledge of parties' involved, rumor, innuendo, and supposition may undermine officers' and the public's faith in the objectiveness of the Board of Rights process—even absent evidence of strong relationships or actual bias. Financial ties to the Department—through either salary or pensions—also create the appearance of bias for current and former employees.

As we have seen with rank-and-file officers' perception that the Board of Rights is biased against them, perceptions of unfairness can persist even absent objective evidence to support it. These perceptions nonetheless deeply influence attitudes towards the Department and the legitimacy of the disciplinary process. If the disciplinary process is structured in a way that encourages individuals to believe that the outcomes are likely to be unfairly skewed, it is very difficult to effectively challenge those beliefs and foster trust in the system. Allowing current or former law enforcement employees to participate on Board of Rights panels would nurture the perception—by the public, as well as less well-connected officers (which would likely be the rank-and-file officers)—that the Board's decisions are not based on an objective review of the evidence. The inclusion of civilians on the Board of Rights in the first instance was intended to address concerns that officers were unduly lenient on officers guilty of misconduct—a concern seemingly supported by the evidence. Charter Amendment F was strongly endorsed by the public to combat this problem, and allowing retired officers to serve as the civilian members of the Board would completely subvert the public's expectations when it adopted that amendment, without meaningfully addressing the issues that rendered it necessary. Therefore, current and former law enforcement personnel should be excluded from the pool of civilians eligible to serve as hearing examiners in order to support the public's and officers' sense of procedural justice.

A strict rule precluding current or former law enforcement personnel from serving as hearing examiners is necessary to prevent both real and perceived bias, and a case-by-case exclusion would not suffice to avoid real and perceived conflicts and the consequent loss of legitimacy. If current or former law enforcement personnel were

permitted to serve as civilian hearing examiners at all, it would be impossible during the hearing examiner selection process to determine whether such an applicant may have future conflicts that would weigh against his or her selection. And in any individual case, a conflict may or may not be apparent at the outset of the proceeding that could compromise the legitimacy of the Board's determination. Even if a law enforcement employee did not have actual ties to the participants in any specific case, no amount of screening could prevent observers—the public or officers in the Department—from nonetheless inferring that such bias did, in fact, exist and influence the outcome. It would therefore be impossible to successfully and efficiently ensure that there is no conflict or apparent conflict in each individual hearing once current or former law enforcement personnel are allowed to serve as civilian hearing examiners. Given the extensive interactions—both professionally and personally—between law enforcement personnel, this exclusion should extend to current and former LAPD employees as well as those currently or formerly employed by other law enforcement agencies in the greater Los Angeles area or adjacent communities.

## **2. Increase oversight and transparency of Board of Rights proceedings to the maximum allowed under state law.**

Nearly every complaint regarding the Board of Rights was coupled with a call for greater transparency and oversight of Board of Rights outcomes. Those calling for such changes ranged from the Christopher Commission, to the City Council, to the Chief of Police. Even LAPD officers themselves have asked that the Department make public the records of discipline imposed on officers, along with justifications for divergence in penalties.<sup>206</sup> Transparency is therefore both a key factor to achieving any meaningful improvements to the Board of Rights system and widely supported.

*2.1. Require the Office of Inspector General to audit the Board of Rights proceedings and report on whether the Board's findings are supported by the hearing record, and issue detailed quarterly reports on the outcomes of Board of Rights proceedings.*

To the extent that individual Board of Rights hearings and disciplinary outcomes remain confidential, transparency will primarily be achieved through the issuance of reports by the Department and its oversight bodies including the OIG. This office—adopted as one of the Christopher Commission’s suggested reforms in response to the LAPD’s beating of Rodney King<sup>207</sup>—is already tasked with investigating and overseeing LAPD discipline, and publicizing its findings.<sup>208</sup> In the wake of other LAPD scandals, the OIG was also granted the authority to “initiate any audit or investigation of the LAPD without prior approval of the Police Commission, guaranteed access to all Department information and documents, and the power to subpoena a witness at will.”<sup>209</sup>

The Christopher Commission also envisioned that the OIG would “audit the disciplinary system at least annually.”<sup>210</sup> A report issued several years later to track the progress of reform also advised that the Police Commission and newly-formed OIG should “track Board of Rights proceedings carefully.”<sup>211</sup> And, more recently, the OIG has endorsed “ongoing analysis of disciplinary outcomes to ensure fairness and consistency across complaint types, ranks, geographic areas, and demographic groups.”<sup>212</sup>

To fulfill its role as an investigatory office that facilitates oversight of LAPD discipline, the OIG should therefore regularly audit the Board of Rights process and track outcomes that are necessary to monitor any improvement or exacerbation of the issues mentioned in this report. This is not a completely new undertaking, as the OIG previously produced reports that reviewed the quarterly discipline reports produced by the Department and included some information about Board of Rights outcomes. The last of these reports published on the OIG’s website was issued in August 2012.<sup>213</sup> Consistent with the above, the OIG should reinstate the issuance and publication of regular reports on the LAPD disciplinary process. This should include quarterly reports on the outcomes of Board of Rights proceedings. At minimum these reports should include an accounting and description of all cases before the Board of Rights, the Department-recommended penalty, whether the

Police Commission concluded the officer’s conduct was out of policy, the Board of Rights finding and recommended penalty, and voting patterns of civilian versus Departmental participants. The report should also compare sustained complaints and penalties issued by division, bureau, origin of complaint (e.g. public vs. internal), whether the offense was against the public (e.g. unauthorized force or false statements on police reports) or an administrative violation (e.g. working off duty without a permit), rank, gender, and race of the accused officers, and the race and gender of complainant (if known). These are crucial data points in understanding if and where bias exists and determining what other adjustments must be made to the structure of the Board of Rights or overall disciplinary process to combat any remaining bias. The OIG should also conduct and publish audits of Board of Rights proceedings to determine whether the Board’s findings are indeed supported by, and consistent with, the records produced at the hearing.

*2.2. Materials relating to LAPD officer discipline, including applicable policies, any summaries or reports created internally, and raw data, should be provided to the public and made easily accessible on the Department’s website.*

To facilitate “a culture of transparency and accountability,” the OIG has recommended—and the Police Commission has endorsed—the need to make “all policies available for the public review.”<sup>214</sup> After a review of the Department’s website, the OIG observed that many of the relevant directives that make up the Department’s policy on a specific item—such as discipline—are in disparate locations.<sup>215</sup> The OIG recommended that the Department make these policies more easily accessible to the public by making sure that all the relevant material is available online, and suggested that the Department include up-to-date indices to show which materials relate to the same topic.<sup>216</sup> The Department should ensure that this recommendation is adopted, and also expanded so that the public has access to as many documents related to the Board of Rights as possible, including the materials used to train panelists.

Additionally, to the extent information regarding LAPD disciplinary outcomes is already being compiled by the Department and made available internally consistent with confidentiality laws, this information should also be made available to the public. For instance, among the recommendations provided by the Office of Constitutional Policing to increase officers' understanding of the disciplinary system, was to ensure that Department personnel were aware of the "availability of monthly summaries of disciplinary actions and imposed penalties on the LAN."<sup>217</sup> If such monthly records already exist and are being circulated within the Department, they should be made available to the public along with the other regular reports that are requested here.

Finally, as consistent with the OIG's recommendations, the LAPD should also expand the information about disciplinary outcomes that it currently provides and improve the readability and accessibility of these reports. In its report of best practices, the OIG noted that in 2007—as part of its compliance with the Rampart consent decree—the LAPD began issuing reports with "extensive data about the internal disciplinary program, including personnel complaints initiated, the results of the investigation, and any associated discipline."<sup>218</sup> It recommended that the LAPD publish further statistical data on complaints and other disciplinary activity, and expand the public's access to the Department's raw data when possible.<sup>219</sup> Consistent with this suggestion, the Department should expand the content included in the disciplinary report to include divergence in outcomes between the Department-recommended discipline and Board of Rights decisions for all hearings, not just a subset of hearings as it currently does.<sup>220</sup> The format of the disciplinary reports also should be improved to connect the narrative description of the misconduct involved with the disciplinary outcomes in each case—in particular where there are multiple officers involved in a single complaint.

*2.3. Release Board of Rights' decisions to the full extent allowed under the law, including full disclosure of documents made public under Senate Bill 1421 (2018).*

While analyses and summaries provided by the LAPD or Inspector General can allow for a better understanding of disciplinary outcomes across many important dimensions, much of the public's lack of faith in the Board of Rights is based upon its seemingly unjustified reversal of officer discipline in specific, prominent cases. For the Department to build the public's faith in its ability to discipline itself, it may be necessary to release the records of Board of Rights proceedings to the full extent permitted under existing law.

The City Council previously appeared to recognize the need for this level of transparency, and asked the Legislative Analyst's Office to identify options to increase transparency in Board of Rights proceedings.<sup>221</sup> In response, the Office suggested that the LAPD release redacted versions of Board of Rights' decisions that did not disclose officers' identities.<sup>222</sup>

A recent change in the law has also created the opportunity for greater transparency with the recent passage of Senate Bill 1421 in the 2018 legislative session.<sup>223</sup> This bill, referred to as the Right to Know Act, repealed portions of the law limiting the release of police officer records, and authorizes the public release of the entire investigative file and disciplinary record for serious uses of force and sustained complaints of sexual assault or dishonesty in the investigation, reporting, or prosecution of crimes.<sup>224</sup> While this bill requires that the Department disclose this material if the public requests it via a California Public Records Act request, the Department should adopt a policy of publishing this material as soon as it becomes eligible for release.

Given previously-expressed concerns that Board of Rights' decisions were not always supported by the factual records before it, maximum transparency will likely be necessary to provide an opportunity for the public to develop faith in the system and its outcomes. Publicly disclosing full records of these proceedings where possible, and redacted records where necessary, would allow for greater transparency while still providing confidentiality to individual officers' personnel records as required under the law.

*24. The mandatory report on the “effectiveness” of Charter Amendment C should examine whether the use of civilian-only panels have reduced bias and inconsistencies in Board of Rights decisions, increased the rate at which officers are punished for misconduct, and enhanced the public’s faith in the LAPD disciplinary system.*

As part of Charter Amendment C, the LAPD is directed to report back to the City Council, two years after the ordinance granting officers the option of selecting a three-civilian panel is enacted, to describe the “effectiveness” of the new disciplinary structure.<sup>225</sup> It is clear that this effectiveness should not be measured by how often officers successfully reduce or avoid their punishment. Indeed, given past reports, any increase in the rates of overturning Department-imposed discipline should be viewed as a failure of the new disciplinary process.

In determining whether the newly-constituted Boards are “effective,” the City Council should determine whether the civilian-only panels increased the likelihood that officers are held accountable for misconduct, reduced any empirically-observed bias in outcomes across ranks or based on the type of misconduct (*i.e.* offenses against the public vs. administrative violations), and increased the frequency at which the Board produced outcomes that are consistent with the factual records before them. The City should also solicit the public’s views on the disciplinary system to determine whether its confidence in the Department has increased under the new Board of Rights process. To the extent possible, these analyses should be comparative—contrasting the outcomes under the all-civilian panel with the mixed officer-civilian panels, and both before and after the passage of Charter Amendment C.

*25. City Council should reaffirm its support for transparency by resolving to support state legislation allowing for the disclosure of officers’ disciplinary records and reopening Board of Rights proceedings.*

Finally, the City Council should also reaffirm its support of state-wide measures in support of greater transparency regarding police records of misconduct. The City Council has previously taken

strong steps to affirmatively investigate local actions that can be taken to maximize transparency, sought reports on disciplinary proceedings, and investigated and endorsed state-wide legislation that has attempted to render police disciplinary records public. Because state law remains an obstacle to the City’s previously-stated goals of transparency, the City Council should reaffirm its support for state-wide transparency bills, and consider working with advocates on such measures.

### **3. Address inconsistencies in discipline between officers and between types of misconduct.**

A post-Rampart report identified the need for a uniform penalty guide to eliminate inconsistencies in punishment.<sup>226</sup> The Inspector General, in 2017, also emphasized the importance of adopting a disciplinary guide along with a process that requires “justifications for any inconsistencies in disciplinary outcomes.”<sup>227</sup> While the Department has taken steps to make penalties more consistent by adopting a disciplinary matrix in 2016, this current iteration is unlikely to address the two-prong concern with disciplinary inconsistencies discussed in Section III.C, *supra*.

#### *3.1. Reduce inconsistencies in discipline by adopting a more-detailed disciplinary matrix.*

First, the guide presents a wide range of suggested penalties for many of the violations—in some cases ranging the entire spectrum of possible punishment: from official reprimand to removal for a first offense.<sup>228</sup> The guide also notes various considerations that could impact an officer’s discipline—such as “the employee’s past work record, . . . ability to get along with fellow workers, and dependability,” and the “employee’s past disciplinary record”—but there is no specificity on how these factors should be taken into account.<sup>229</sup> For instance, it is not clear whether the presumption should be that discipline will be assessed at the lowest range within the guideline absent aggravating factors, or whether a mid-point or higher penalty should be presumed absent mitigating factors. Furthermore, the introductory language in the guide also acknowledges that the matrix “is meant merely as a guide or

starting point for assessing the appropriate level of discipline and should not be employed in a mechanical fashion . . . [but should] depend[] on a careful balance of factors relative to each situation and employee.”<sup>230</sup> Thus, with wide ranges for recommended discipline, little guidance on how punishments should be meted out within that range, and an acknowledgement that the guidelines need not be strictly adhered to, the matrix seems to accomplish toward eliminating unnecessarily divergent punishments. It is therefore unsurprising that the guide notes that, as a result of this unguided, multi-factored analysis, “employees may receive different penalties for similar conduct.”<sup>231</sup> This divergence is precisely the complaint that the penalty guide was intended to address, so it appears that the guide will likely have little impact on reigning in unnecessary disparities in penalties.

Second, while the guide does specify that “[i]t is imperative that each penalty assessment includes a detailed rationale for the penalty recommended and how it was deemed to be the most appropriate alternative,”<sup>232</sup> without the above guidance, those imposing the discipline will not know what divergence need be explained. Reports describing the rationale for imposing punishment provide insight into that individual’s justification for discipline, but without a rubric explaining to supervisors how these decisions should be made, these explanations will do little to make punishments consistent across the Department. Thus, despite the Department’s apparent intent in adopting its penalty guide, the content of the current guide will likely do little to reign in inconsistencies or bolster officers’ faith in the consistency of Department discipline. Instead, the Department should consider adopting a penalty matrix that allows for less divergence in outcomes by formally incorporating the considerations the penalty guide identified as relevant mitigating or aggravating factors.

### *3.2. Adjust recommended discipline to impose more serious penalties for violence against the public.*

As described above, the current guide contributes to the view that the Department is more concerned with misconduct that reflects administrative

malfeasance than it is about officers who commit violence against the public. If one of the goals of the disciplinary system is to make the Department’s moral code and its standards of acceptable behavior clear, its decision to recommend punishments for violence against the public that are less than recommended punishments for other types of misconduct reflects its view that such misconduct is less egregious. This view also appeared to be reflected in Board of Rights outcomes as described above, in which the Board regularly reduced penalties for violence against citizens and imposed higher penalties for other forms of misconduct, such as lying about sick status. If the Department views violence against the citizenry as one of the more serious forms of misconduct, as it should, it should adjust its penalty guide to reflect that assessment. To guide Board of Rights’ decision-making, the disciplinary matrix should make explicit what types of conduct the Department views as serious violations of its moral code and threaten the Department’s legitimacy with the public.

To achieve this goal, and to ensure consistency across outcomes, the Department should amend its matrix to explicitly articulate what presumptive penalties should be and when and how aggravating and mitigating circumstances justify departure. Additionally, it should further break down categories of misconduct that include a wide range of conduct—including varying degrees of culpability and intentionality—and a wide range of resultant penalties. These additional categories should specify where the violations include certain findings, such as intentional dishonesty, and account for the severity of the outcome (e.g. the degree of harm inflicted on a member of the public or the value of the property converted, etc.). This would better ensure that like cases are treated the same, and would make it easier for the Department to establish penalties that treat egregious violations against the public more severely than technical violations of Departmental rules.

#### **4. Improve the quality of advocacy defending the Department's recommended punishment by employing Department Advocates who are experienced attorneys and whose remaining job functions do not depend upon maintaining the goodwill of LAPD officers.**

A post-Rampart report suggested that the system “that pits officer representatives with no legal training against seasoned defense attorneys and under which the department lost approximately two thirds of the [Rampart]-corruption cases” should be replaced with a system that employed “attorneys who are experts in police policy and culture” to represent the Department.<sup>233</sup> The attorneys responsible for representing the Department in Board of Rights hearings must be able to provide a vigorous defense of the Department's decision to discipline its officers. As a result, the attorneys selected to represent the Department cannot have other job functions that also require them to rely on the same officers they seek to punish in order to successfully fulfill their professional responsibilities. In other words, if the Department Advocate is also an attorney responsible for prosecuting crimes or defending officers in civil suits, this reliance may limit their ability or willingness to take an aggressive stance against officer misconduct.

While the City Attorney's office is currently available for the Department to consult in Board of Rights proceedings, a post-Rampart analysis called into question the ability of the City Attorney's Office to impartially serve in a role in which they must be adverse to LAPD officers.<sup>234</sup> The City Attorney is both responsible for prosecuting misdemeanors and representing the City—and often individual officers—in civil actions alleging police misconduct.<sup>235</sup> As a result, the City Attorney's office relies on a cooperative relationship with officers in order to fulfill these obligations. The post-Rampart analysis observed a “strong perception that the City Attorney's Office too often protects bad officers and does not do enough to remedy problems in the LAPD,”<sup>236</sup> which conflicts with the role required for Department Advocate.

As an alternative to allowing individuals from the City Attorney's office to serve as Department Advocates, it may be necessary to create a new

legal office that solely serves to represent the Department when adverse to Department employees in administrative proceedings, and is not otherwise dependent on cultivating the goodwill of LAPD employees to fulfill its job responsibilities. A post-Rampart report suggested that this office could be placed within the Police Commission.<sup>237</sup> Alternatively, it could report directly to the Chief of Police. Wherever this office is placed, however, it will be necessary to consistently evaluate its ability to vigorously advocate for officer discipline, and determine whether its placement or the process by which attorneys are selected to serve has succeeded in insulating it from competing pressures that could undermine its effectiveness.

#### **5. Improve quality and consistency of adjudication in Board of Rights through improved and expanded training.**

As stated in the City Council's motion examining the training provided to Board of Rights participants, “[a]mong the hallmarks of a fair and impartial system of justice are training and educational opportunities to inform those individuals who serve in a judicial or quasi-judicial capacity.”<sup>238</sup> The report compiled by the Police Commission describing the training available to Board of Rights panel members acknowledged that “[t]he integrity of the Department's disciplinary process [was] extremely important . . . [and thus] continual efforts should be made to train, educate, and provide accountability for all parties involved in the Board of Rights process.”<sup>239</sup>

The report did not specify any specific training that the Department believed was lacking and should be provided, but it did note that the Department was considering providing all command staff with training on adjudicating administrative hearings by an outside provider.<sup>240</sup> It also was considering allowing civilian hearing examiners to participate in the continuing education trainings already provided to command staff for other purposes—and it specifically cited domestic violence and Departmental policies on shooting and pursuits as possible training subjects.<sup>241</sup> Also, while the City Council did not provide specific recommendations for changing Board of Rights trainings, it expressed concerns that the training did not

include “adjudicatory matters which would enable the members of the Boards to make better, [more] reasoned decisions as finders of fact or interpreters of law.”<sup>242</sup>

Since the City Council and the post-Rampart report criticized the insufficient training provided to Board of Rights participants, civilian hearing examiners have received additional training as mandated under the consent decree and the content of this training was not made public. This was over a decade ago, however, and it is unclear what, if any, training has occurred since—in response to new law, new Department policies, and for newly-appointed members. The record is also unclear whether the Department followed through in hiring a third-party provider to train command staff in administrative law.

*5.1. The City Council should engage the services of an independent expert in police discipline and oversight to conduct a review and analysis of existing Board of Rights training material and create required training materials for all Board of Rights participants.*

The first step in ensuring that Board of Rights members receive appropriate training is an evaluation of existing training material. A 2003 City Council motion on Board of Rights training noted a need for expert input on training from various perspectives including experts in the law, policing, and domestic violence.<sup>243</sup> The City Council should continue the investigation it began, by engaging an expert on police discipline and oversight to review the existing material and develop appropriate materials if necessary. Possible experts to oversee this process could include those with past experience overseeing Los Angeles law enforcement agencies, such as Merrick Bobb or Richard Drooyan, both of whom formerly oversaw reform in the Los Angeles County Sheriffs’ Department. This process should also include soliciting input from the public. The City Council’s Ad Hoc Committee on Police Reform, could provide over such public hearings and was created for precisely such purpose.

Once this analysis is complete, the City Council should the recommendations into the Board of Rights’ training materials.

*5.2. All Board of Rights participants should be required to receive the same training.*

If any of the existing hearing examiners remain—which is not recommended—or the City retains the option to allow officers to choose a Board of Rights panel that includes command staff, these members should participate in the same training that any new civilian hearing examiners receive. Requiring that all Board of Rights panelists receive the same training is also a change from the existing training process, in which civilians and officers take part in different trainings, and were expected to rely on each others’ respective expertise. Providing all panelists with the same training will also reduce interdependence and discourage individual members from being unduly influenced by those with perceived expertise or experience.

The training should also be supplemented at regular intervals to reflect changes in the law or Board of Rights procedures, and to refresh participants’ recollections as to the appropriate standards and procedures, even if they remain unchanged.

*5.3. All Board of Rights training materials should be made public.*

To continue the aforementioned commitment to transparency, any written materials that are provided as a part of this training should be made accessible to both officers and the public through their inclusion on the Department website.

## ENDNOTES

- 1 Special Assistant for Constitutional Policing, Los Angeles Police Department, *Perspectives on the Disciplinary System of the LAPD: Insights and Recommendations from the Men and Women of the Los Angeles Police Department* (2014) [hereinafter *Perspectives on LAPD Discipline*] at 12-13.
- 2 James Warren Ingram III, *The Rules of Ruling: Charter Reform in Los Angeles, 1850-2008* 426 (2008) (unpublished Ph.D. dissertation, University of California, San Diego) [hereinafter *Rules of Ruling*], available at <http://escholarship.org/uc/item/4r0419j2>.
- 3 *Rules of Ruling*, *supra* note 2, at 426.
- 4 JOE DOMANICK, TO PROTECT AND TO SERVE: THE LAPDs CENTURY OF WAR IN THE CITY OF DREAMS (1994), 93-94.
- 5 *Id.* at 93.
- 6 *Id.*
- 7 LOS ANGELES, CAL. CHARTER, art. 19 § 202(1) (eff. Jan. 9, 1935) [hereinafter L.A. CHARTER (eff. 1935)], available at <https://babel.hathitrust.org/cgi/pt?id=uc1.b4234608;view=lup;seq=141>.
- 8 L.A. CHARTER (eff. 1935), art. 19 § 202(1).
- 9 LOS ANGELES, CAL. CHARTER art. 10 § 1070(a) (eff. July 1, 2000) [hereinafter L.A. CHARTER (eff. 2000)]; Leslie Berger, “Elections ’92: LAPD Disciplinary System to Undergo Major Restructuring: Police: Passage of Charter Amendment F adds demotion to possible punishments. Placing a civilian on review boards will increase scrutiny.” L.A. TIMES, June 4, 1992.
- 10 DOMANICK, *supra* note 4, at 94.
- 11 *Perspectives on LAPD Discipline*, *supra* note 1, at 10-13.
- 12 *Id.*
- 13 *Perspectives on LAPD Discipline*, *supra* note 1, at 10-12. According to the Department, “[o]nce a complaint has been entered into the Department’s Complaint Management System (CMS), the case is assigned for investigation by either the employee’s chain of command . . . or by investigators in the Department’s [Internal Affairs Group].” *Id.* at 11. The assigned investigators conduct the investigation, including reviewing relevant witnesses and examining other evidence. *Id.* The accused officer’s Commanding Officer reviews the investigative material to determine if the complaint will be sustained. *Id.* If sustained, he or she recommends a penalty, which can range from “no penalty” to a recommendation that the accused officer be terminated. *Id.* at 11-12. A summary of the investigation and this recommendation is transmitted to the Bureau Chief and Internal Affairs Group (“IAG”), and the Bureau Chief can recommend a different finding or punishment than the Commanding Officer, which is also transmitted to IAG. *Id.* at 11. IAG reviews the investigative file and any recommended discipline and transmits its recommendation to the Chief for further review and determination of punishment. *Id.* at 12.
- 14 *Id.*
- 15 L.A. CHARTER (eff. 2000) art. 10 §§ 1070(a), (b); *Perspectives on LAPD Discipline*, *supra* note 1, at 12-13.
- 16 *Perspectives on LAPD Discipline*, *supra* note 1, at 12-13.
- 17 L.A. CHARTER (eff. 2000) art. 10 §§ 1070(a), (b); *Perspectives on LAPD Discipline*, *supra* note 1, at 12-13.
- 18 *Perspectives on LAPD Discipline*, *supra* note 1, at 12-13; L.A. CHARTER (eff. 2000) art. 10 §1070(b).
- 19 L.A. CHARTER (eff. 2000) art. 10 § 1070(p).
- 20 Independent Commission on the Los Angeles Police Department, *Report of the Independent Commission on the Los Angeles Police Department* (1991) [hereinafter *Christopher Commission Report*] at 157.
- 21 L.A. CHARTER (eff. 1935), art. 19 § 202(6).
- 22 L.A. CHARTER (eff. 1935), art. 19 § 202(6).
- 23 The measure also limited the Chief to two five-year terms, allowed the mayor to select a Chief with the approval of the City Council, added demotion as a punishment that may be levied against officers, allowed the Board of Rights to consider past complaints that were not sustained during the penalty phase of the hearing, and extended the time period in which misconduct complaints can be investigated. Louis Sahagun & John Schwada, “Measure to Reform LAPD Wins Decisively,” L.A. TIMES, June 3, 1992; Berger, *supra* note 9.
- 24 James Rainey & Louis Sahagun, “LOCAL ELECTIONS: Measure F Vote Called Just Start of Police Reform,” L.A. TIMES, June 4, 1992.
- 25 Sahagun & Schwada, *supra* note 23; *Christopher Commission Report*, *supra* note 20.
- 26 Louis Sahagun, “Riots Transform Campaign on Police Reform,” L.A. TIMES, May 31, 1992.
- 27 The PPL’s opposition to Charter Amendment F brought in a “campaign fund of \$500,000, hundreds of off-duty officers prepared to canvass on its behalf and the services of the New York-based consulting firm . . . which handled Jesse

- Jackson's 1988 presidential campaign." Sahagun & Schwada, *supra* note 23. Other law enforcement groups, including the Los Angeles Police Command Officers Association and California Organization of Police and Sheriffs, also contributed to the campaign financially or through direct community outreach. Richard Simon, "Late Barrage of Pleas Launched by Candidates," L.A. TIMES, May 30, 1992.
- 28 Berger, *supra* note 9.
- 29 Berger, *supra* note 9.
- 30 L.A. CHARTER (eff. 2000) art. 10 § 1070(h).
- 31 L.A., Cal., City Council File 91-1215-S18 (introduced Aug. 21, 1991), available at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=91-1215-S18>.
- 32 *Id.*
- 33 L.A., Cal., Ordinance 168,442 (Dec. 23, 1992), available at [http://clkrep.lacity.org/online/docs/1991/91-1215-S18\\_ORD\\_168442\\_12-10-1992.pdf](http://clkrep.lacity.org/online/docs/1991/91-1215-S18_ORD_168442_12-10-1992.pdf).
- 34 L.A., Cal., Ordinance 168,442 (Dec. 23, 1992), available at [http://clkrep.lacity.org/online/docs/1991/91-1215-S18\\_ORD\\_168442\\_12-10-1992.pdf](http://clkrep.lacity.org/online/docs/1991/91-1215-S18_ORD_168442_12-10-1992.pdf).
- 35 L.A., Cal., Ordinance 170,024 (Sept. 22, 1994), available at [http://clkrep.lacity.org/online/docs/1991/91-1215-S18\\_ORD\\_170024\\_10-28-1994.pdf](http://clkrep.lacity.org/online/docs/1991/91-1215-S18_ORD_170024_10-28-1994.pdf).
- 36 L.A., Cal., Ordinance 170,024 (Sept. 22, 1994), available at [http://clkrep.lacity.org/online/docs/1991/91-1215-S18\\_ORD\\_170024\\_10-28-1994.pdf](http://clkrep.lacity.org/online/docs/1991/91-1215-S18_ORD_170024_10-28-1994.pdf).
- 37 L.A., Cal., Ordinance 170,024 (Sept. 22, 1994), available at [http://clkrep.lacity.org/online/docs/1991/91-1215-S18\\_ORD\\_170024\\_10-28-1994.pdf](http://clkrep.lacity.org/online/docs/1991/91-1215-S18_ORD_170024_10-28-1994.pdf).
- 38 Board of Police Commissioners. *Board of Rights Hearing Examiner & Police Permit Hearing Examiner Positions Bulletin*. 2014. (Obtained under the California Public Records Act from Board of Police Commissioners; received May 2017).
- 39 Board of Police Commissioners. *Application for Police Commission Hearing Examiner*. (Obtained under the California Public Records Act from Board of Police Commissioners; received May 2017).
- 40 Sharon M. Tso, *Report of the Chief Legislative Analyst: Options Related to Charter Section 1070—Police Department Board of Rights Panels 3* (Jan. 6, 2017) [hereinafter *Legislative Analyst Report*], available at [http://clkrep.lacity.org/online/docs/2016/16-1331\\_rpt\\_CLA\\_01-06-2017.pdf](http://clkrep.lacity.org/online/docs/2016/16-1331_rpt_CLA_01-06-2017.pdf).
- 41 L.A. CHARTER (eff. 2000) art. 10 § 1070(h).
- 42 L.A. CHARTER (eff. 2000) art. 10 § 1070(h). See also Los Angeles Police Department, *Board of Rights Manual: Rules and Procedures Governing the Conduct of Board of Rights Hearings Under Los Angeles Charter § 1070*, § 142.20 (12th ed. 2005) [hereinafter *Board of Rights Manual*].
- 43 *Board of Rights Manual*, *supra* note 42, at §§176.20-176.30.
- 44 Charter Amendment C amended Section 1070 to include the provision that "the Council may adopt an ordinance providing the accused the option of having the complaint heard and decided by a Board of Rights composed of three individuals who are not members of the department (three civilian members) instead of a Board composed of two officers and one civilian." See L.A., Cal., City Council Resolution (Jan. 24, 2017), available at [http://clkrep.lacity.org/online/docs/2017/17-1300\\_misc\\_1-24-17.pdf](http://clkrep.lacity.org/online/docs/2017/17-1300_misc_1-24-17.pdf) (resolution adopting the ballot text for Charter Amendment C) [hereinafter Charter C Ballot Resolution].
- 45 The list of those endorsing Charter Amendment C displayed on the proponents' website included Mayor Garcetti, all current city council members except Marqueece Harris-Dawson representing District 8, Board of Police Commissioner Cynthia McClain-Hill, County Supervisor Janice Hahn, and the Los Angeles Police Protective League. *Endorsements, Yes on C*, <http://www.yesoncivilianoversight.com/endorsements/> (last visited September 15, 2017).
- 46 Craig Lally, et al., "Argument in Favor of Charter Amendment C," Official Sample Ballot, General Municipal Election May 16, 2017 (L.A. Cal.), available at [http://clerk.cityofla.acsitefactory.com/sites/g/files/wph606/f/CharterAmendmentC\\_ENG.pdf](http://clerk.cityofla.acsitefactory.com/sites/g/files/wph606/f/CharterAmendmentC_ENG.pdf) (last accessed Aug. 24, 2017).
- 47 Franke Stoltze, "LA's Measure C upends politics around police discipline," 89.3 KPCC, May 4, 2017, available at <http://www.scpr.org/news/2017/05/04/71462/la-s-measure-c-upends-politics-around-police-disci/> (last accessed Aug. 25, 2017).
- 48 See *Endorsements, No on C*, <https://www.nooncharterc.org/endorsements/> (listing groups and individuals that formally opposed Charter Amendment C).
- 49 *Legislative Analyst Report*, *supra* note 40, at 4. See also Editorial, "More reasons for Angelenos to say no to Charter Amendment C," L.A. TIMES, May 6, 2017 (describing instances where civilians voted to eliminate or reduce discipline for officers accused of egregious misconduct and criminal acts). [hereinafter "More reasons to say no"].
- 50 *Legislative Analyst Report*, *supra* note 40, at 4.
- 51 Kate Mather & David Zahniser, Q&A, "How would Charter Amendment C affect the LAPD's disciplinary system?" L.A. TIMES, May 14, 2017.

- 52 L.A., Cal., City Council File 17-0071 (introduced Jan. 20, 2017), *available at* <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=17-0071> (last accessed Sept. 15, 2017). The City Council formally adopted the report of the Rules, Elections, Intergovernmental Relations, and Neighborhoods Committee establishing the Ad Hoc Committee on January 24, 2017. It was amended on January 31, 2017 to alter the composition of the ad hoc committee to include up to five City Council members and to change the name of the committee to the Ad Hoc Committee on Police Reform. *Id.*
- 53 *See Legislative Analyst Report, supra* note 40, at 4.
- 54 William J. Bratton, Commentary, “Power to Discipline LAPD officers is out of the Chief’s Hands,” L.A. TIMES, July 1, 2003.
- 55 Bratton, *supra* note 54.
- 56 Richard Winton & Andrew Blankstein, “More Disciplinary Power for Bratton Urged,” L.A. TIMES, July 13, 2004.
- 57 Erwin Chemerinsky, *An Independent Analysis of the Los Angeles Police Department’s Board of Inquiry Report on the Rampart Scandal*, 34 LOY. L.A. L. REV. 545, 598 (2001) [hereinafter *Rampart Independent Analysis*]. *See also Christopher Commission Report, supra* note 20, at 153 (“Many community groups and members of the general public firmly believe that the Department is incapable of disciplining its own officers.”).
- 58 L.A., Cal., City Council File 03-1289, Motion (Weiss), (introduced June 17, 2003), *available at* <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=03-1289>. The City Council records do not reflect that any further action was taken on this item.
- 59 *Christopher Commission Report, supra* note 20, at 176.
- 60 “Which Way LA? Debate on Proposition F,” KCRW, June 1, 1992, transcript *available at* <http://www.lmu.edu/Assets/Academic+Affairs+Division/Von+der+Ahe+Library/Special+Collections/1+June+1992+transcript.pdf>.
- 61 Jim Newton & Matt Lait, “Charter Changes Pivotal in LAPD Power Struggle,” L.A. TIMES, June 25, 1998.
- 62 *Legislative Analyst Report, supra* note 40, at 4; *see also* “More reasons to say no,” *supra* note 49.
- 63 “More reasons to say no,” *supra* note 49
- 64 Jordan Greenslade, “We are Getting our Asses Kicked, We got to Speak the Language of Reform”: Police Unions and Crises of Legitimacy 52 (unpublished honors theses, Occidental College) (on file with author) (citing a former PPL board member stating that “if [civilians are] too [vicious] in their objections to what the LAPD is doing, the Police Commission removes them from the list” of eligible hearing examiners).
- 65 *See Blue Ribbon Rampart Review Panel, Rampart Reconsidered: The Search for Real Reform Seven Years Later* 65 (2006) [hereinafter *Rampart Reconsidered*] (observing that many of the Board of Rights appeared to apply a burden of proof that was higher than the applicable preponderance of the evidence standard).
- 66 For instance, an analysis of post-Rampart Board of Rights proceedings reported “several recent Boards of Rights that have reached troubling outcomes,” including one in which the Board “appeared to strain to reach” a finding of not guilty and relied in part on the officer having been found not guilty at trial, which was not true. *Rampart Reconsidered, supra* note 65, at 65. Additionally, the Christopher Commission analyzed 36 sustained excessive force cases against handcuffed suspects, including one case in which an officer punched a handcuffed suspect in the mouth who was “quietly sitting in a chair,” and lied to the Board—providing a story the Board found to be unbelievable. *Christopher Commission Report, supra* note 20, at 167. He was given only a 22-day suspension despite the excessive force, the officer’s false statements, and the Departmental recommendation that he be fired.
- 67 *Rampart Independent Analysis, supra* note 57, at 607.
- 68 *Rampart Independent Analysis, supra* note 57, at 607.
- 69 *Perspectives on LAPD Discipline, supra* note 1, at 7.
- 70 Los Angeles Police Department, *Board of Inquiry into the Rampart Area Corruption Incident* 339 (2000) [hereinafter *Board of Inquiry Report*].
- 71 *See, e.g.,* Musa T. Camara, Op-Ed, “LAPD Discipline Enforces the Party Line: Police: The system is fine in principle. Yet small things are pursued with a vengeance, while major things may slide by.” L.A. TIMES, Aug. 27, 1991 (LAPD officer-defense representative arguing that Board of Rights command staff were controlled by departmental politics and Chief Gates); *Rampart Independent Analysis, supra* note 57, at 607-608 (describing reports from officers that the Board of Rights process was unfairly controlled by the chief, under Chief Parks’ administration); *Perspectives on LAPD Discipline, supra* note 1, at 7-8 (describing complaints by officers that the Board of Rights members were beholden to Chief Beck).
- 72 *Rampart Independent Analysis, supra* note 57, at 607.
- 73 *Legislative Analyst Report, supra* note 40, at 4.
- 74 *Legislative Analyst Report, supra* note 40, at 4.
- 75 *Legislative Analyst Report, supra* note 40, at 4.

- 76 *Perspectives on LAPD Discipline, supra* note 1, at 19.
- 77 *Perspectives on LAPD Discipline, supra* note 1, at 19.
- 78 Neither study provides data on whether command staff who disagree with the Chief in their Board decisions are later penalized, but the high frequency at which Board of Rights participants reject the Chief's recommendation does not indicate their decisions are driven by fear of retaliation, as the rank-and-file officers believe. Nonetheless, captains who were not promoted have filed lawsuits complaining that their failure to be promoted was based on their refusal to fire officers that the Chief recommended for termination. This argument has been rejected by at least one jury, and other cases raising this argument have been settled or are currently pending. *See Stoltze, supra* note 47.
- 79 *Perspectives on LAPD Discipline, supra* note 1, at 37.
- 80 *Perspectives on LAPD Discipline, supra* note 1, at 31.
- 81 *Perspectives on LAPD Discipline, supra* note 1, at 33.
- 82 *Perspectives on LAPD Discipline, supra* note 1, at 35. Individuals may withdraw from the Board of Rights process any time before it renders a decision, and may do so by "resigning, retiring, or another removal process . . . [or] negotiat[ing] a settlement agreement with a lesser penalty or accept[ing] a modified penalty other than termination." *Id.* at 19. The rate at which officers may view alternatives such as retiring as a viable option would likely vary by rank, but would not likely reflect Department bias. Differences in the rates at which officers were offered alternatives such as settlement agreements and the offered terms could potentially reflect preferential treatment depending on rank, but the study does not examine those differences. Even if rank-based differences in enticements offered for individuals to withdraw from the Board of Rights process were observed, this still would not support officers' view that hearing examiners themselves are biased and that officers are more likely to be found guilty and punished if they are of a lower rank.
- 83 *Perspectives on LAPD Discipline, supra* note 1, at 35.
- 84 *Perspectives on LAPD Discipline, supra* note 1, at 37.
- 85 The Police Protective League President Craig Lally lobbied for Charter Amendment C asserting that "officer[s] should feel that they are going to get a fair shake . . . [and] [i]t can't be a rigged system where there is a predisposed guilty finding before the evidence is heard." *Stoltze, supra* note 47.
- 86 *Perspectives on LAPD Discipline, supra* note 1, at 8.
- 87 *Rampart Independent Analysis, supra* note 57, at 609.
- 88 Office of the Inspector General, *Review of National Best Practices* 10 (May 2, 2017) [hereinafter *OIG Best Practices*].
- 89 *See, e.g.,* Office of the Inspector General, *Review of the Department's Quarterly Discipline Report Fourth Quarter 2011* 1 (August 23, 2012), available at [https://docs.wixstatic.com/ugd/b2dd23\\_fc5b86ae4e27455f8b60c1b612662ff5.pdf](https://docs.wixstatic.com/ugd/b2dd23_fc5b86ae4e27455f8b60c1b612662ff5.pdf) [hereinafter *OIG 2011 Fourth Quarter Discipline Report*]; Office of the Inspector General, *Review of the Department's Quarterly Discipline Report Second & Third Quarter 2011* 6 (March 20, 2012), available at [https://docs.wixstatic.com/ugd/b2dd23\\_6991caf7969d215704378ac686271849.pdf](https://docs.wixstatic.com/ugd/b2dd23_6991caf7969d215704378ac686271849.pdf).
- 90 *OIG 2011 Fourth Quarter Discipline Report, supra* note 89, at 1, 4. The report does not specify, however, whether the discipline for which disparities were observed involved cases that appeared before the Board of Rights.
- 91 *Christopher Commission Report, supra* note 20, at 165-166.
- 92 *Christopher Commission Report, supra* note 20, at 166.
- 93 *Christopher Commission Report, supra* note 20, at 166.
- 94 *Christopher Commission Report, supra* note 20, at 166.
- 95 *Christopher Commission Report, supra* note 20, at 166.
- 96 *Christopher Commission Report, supra* note 20, at 167.
- 97 *Christopher Commission Report, supra* note 20, at 167.
- 98 *Christopher Commission Report, supra* note 20, at 167.
- 99 *Christopher Commission Report, supra* note 20, at 167.
- 100 Matt Lait and Scott Glover, "LAPD Prevails Over Civilian Overseers," *L.A. TIMES*, June 22, 2003 [hereinafter "LAPD Prevails"].
- 101 *Id.*
- 102 Discipline reports for each quarter from 2007 through the first quarter of 2016 are available on the LAPD website at [http://www.lapdonline.org/office\\_of\\_constitutional\\_policing\\_and\\_policy](http://www.lapdonline.org/office_of_constitutional_policing_and_policy). The file including the discipline report for the third quarter of 2011 was corrupted and could not be accessed by the author. Discipline during that quarter is therefore omitted from this report. There was also no information provided on Board decisions for the first and second quarters of 2007.
- 103 *See, e.g.,* Los Angeles Police Department, *Discipline Report for Quarter 3, 2009* 12 (Nov. 18, 2009), available at <http://>

- [assets.lapdonline.org/assets/pdf/QDR\\_Q3\\_2009.pdf](http://assets.lapdonline.org/assets/pdf/QDR_Q3_2009.pdf) [hereinafter *LAPD Third Quarter 2009 Discipline Report*]. Although the disciplinary reports indicate that these tables only include instances where an individual “opted” for a Board of Rights hearing rather than accepting the penalty, it includes individuals whose department-recommended discipline included termination—which should place those officers in the “directed hearing” category which requires a hearing before imposition of discipline, rather than the “opted hearing” category. This apparent inconsistency is not explained in the disciplinary reports.
- 104 The number of officers that appeared before the Board of Rights based on the publicly-available disciplinary reports is inconsistent with the numbers provided in either the OIG or Legislative Analyst analyses of Board of Rights from this same period, with the discipline reports reflecting a much lower number of cases considered by the Board. *See, e.g., Legislative Analyst Report, supra* note 40, at 4.
- 105 These discipline reports include these three penalties, but does not explain what, if any differences exist between the three outcomes.
- 106 Three cases did not include a description of the misconduct precipitating the punishment, but none of the cases in which there was such information included a claim of excessive force. Of the 32 officers the Board recommended removed during this period, the discipline reports identified the nature of the allegations involved in 30 of the cases mentioned, while there was no mention of the allegation for two of the officers recommended to be removed.
- 107 Los Angeles Police Department, *Discipline Report for Quarter 3, 2007* 50 (Nov. 6, 2007), available at <http://assets.lapdonline.org/assets/pdf/2007%20QDR%203rd%20Qtr.pdf> [hereinafter *LAPD Third Quarter 2007 Discipline Report*] (complaint no. 06-0764).
- 108 *Id.* at 15.
- 109 Los Angeles Police Department, *Discipline Report for Quarter 3, 2014* 14 (Dec. 28, 2014), available at <http://assets.lapdonline.org/assets/pdf/Discipline%20Report%20Qtr%203,%202014.pdf> [hereinafter *LAPD Third Quarter 2014 Discipline Report*] (complaint no. 12-002602).
- 110 *Id.* at 14.
- 111 Los Angeles Police Department, *Discipline Report for Quarter 3, 2009* 12 (Nov. 18, 2009), available at [http://assets.lapdonline.org/assets/pdf/QDR\\_Q3\\_2009.pdf](http://assets.lapdonline.org/assets/pdf/QDR_Q3_2009.pdf) [hereinafter *LAPD Third Quarter 2009 Discipline Report*] (complaint no. 06-5610).
- 112 Los Angeles Police Department, *Discipline Report for Quarter 3, 2012* 14 (Oct. 25, 2012), available at <http://assets.lapdonline.org/assets/pdf/QDR%203rd%20Qtr.%202012%20FINAL%20MASTER.pdf> [hereinafter *LAPD Third Quarter 2012 Discipline Report*] (complaint no. 07-002292).
- 113 Los Angeles Police Department, *Discipline Report for Quarter 4, 2007* 14 (Feb. 11, 2008), available at <http://assets.lapdonline.org/assets/pdf/2007%20QDR%204th%20Qtr.pdf> [hereinafter *LAPD Fourth Quarter 2007 Discipline Report*] (complaint no. 07-000989).
- 114 Los Angeles Police Department, *Discipline Report for Quarter 1, 2009* 14 (May 6, 2009), available at [http://assets.lapdonline.org/assets/pdf/QDR\\_2009\\_QTR\\_1-Final.pdf](http://assets.lapdonline.org/assets/pdf/QDR_2009_QTR_1-Final.pdf) [hereinafter *LAPD First Quarter 2009 Discipline Report*] (complaint no. 06-3552).
- 115 Los Angeles Police Department, *Discipline Report for Quarter 3, 2012* 14 (Oct. 25, 2012), available at <http://assets.lapdonline.org/assets/pdf/QDR%203rd%20Qtr.%202012%20FINAL%20MASTER.pdf> [hereinafter *LAPD Third Quarter 2012 Discipline Report*] (complaint no. 07-002292). The disciplinary reports do not provide descriptions of the employee’s conduct in the same table that identifies the disciplinary outcomes at the Board of Rights. The report does, however, provide brief factual descriptions of the incidents along with the complaint numbers in an appendix of sustained complaints, which can be correlated with the complaint numbers in the table describing Board of Rights outcomes. Multiple officers may be implicated in a single complaint, however, and, where multiple officers are involved, there is no identifying information in the report to connect the factual allegations against a specific officer with a specific Board of Rights hearing aside from the rank of the officer. The unauthorized force incident in which the officer received a 3-day suspension was part a multi-officer complaint on May 1, 2007—the day of the May Day demonstration and controversial LAPD response involving excessive force against protestors and journalists. *See* Richard Winton & Duke Helfand, “LAPD takes blame for park melee,” *L.A. TIMES*, Oct. 10, 2007. There were over a dozen officers implicated in the single sustained complaint related to unauthorized use of force—either as perpetrator or as a supervisor who failed to take action—who received discipline ranging from official reprimands to suspensions. Only three of the officers cited appeared before the Board of Rights. Based on the information available it is impossible to tell which of the incident summaries applied to the specific officer who appeared before the Board. However, the factual summaries regarding the type of excessive force used are very similar for each of the officers who may be the actual officer who appeared before the Board of Rights. All of the officers’ at the Officer III rank who received a 3-day suspension for unauthorized force were found to have either struck a citizen with one or more two-handed baton strikes or using unauthorized force to knock a seated individual off of a rock. *See Id.* at 59.
- 116 *LAPD Third Quarter 2009 Discipline Report, supra* note 111 at 12.
- 117 *LAPD First Quarter 2009 Discipline Report, supra* note 114 at 14.

- 118 *LAPD Third Quarter 2012 Discipline Report*, *supra* note 115 at 14.
- 119 Los Angeles Police Department, *Discipline Report for Quarter 1, 2008* 15 (May 8, 2008), available at <http://assets.lapdonline.org/assets/pdf/2008%201st%20QTR%20QDR.pdf> [hereinafter *LAPD First Quarter 2008 Discipline Report*] (complaint no. 06-0309).
- 120 Los Angeles Board of Police Commissioners, *Abridged Summary of an Officer-Involved Shooting and Findings: Officer-Involved Shooting 039-09*, available at [http://assets.lapdonline.org/assets/pdf/039-09\\_Newton-OIS.pdf](http://assets.lapdonline.org/assets/pdf/039-09_Newton-OIS.pdf).
- 121 Los Angeles Police Department, *Discipline Report for Quarter 1, 2013* 14 (May 9, 2013), available at <http://assets.lapdonline.org/assets/pdf/1stQtr2013%20final.pdf> [hereinafter *LAPD First Quarter 2013 Discipline Report*] (complaint no. 10-001596).
- 122 “LAPD Prevails,” *supra* note 100.
- 123 Office of the Chief of Police, Los Angeles Police Department, *Administrative Order No. 15: Penalty Guide and Penalty Assessment Factors – Updated* (Sept. 15, 2016) (on file with author) [hereinafter *LAPD Penalty Guide*].
- 124 *Id.* at 9-10.
- 125 *Id.* at 10.
- 126 *Id.* at 11.
- 127 *Id.* at 1.
- 128 *Id.* at 4-6.
- 129 *Id.* at 4.
- 130 *Id.* at 4-5.
- 131 *Id.* at 9.
- 132 *OIG Best Practices*, *supra* note 88, at 5, 9-10.
- 133 This code section is a part of a series of provisions which provides a number of employment-based protections to police officers that are not afforded to other City employees. Cal. Penal Code Section 832.7 mandates that “[p]lace officer . . . personnel records . . . or information obtained from these records, are confidential and shall not be disclosed,” except in criminal or civil proceedings after certain threshold requirements have been satisfied pursuant to Evidence Code Sections 1043 and 1046.
- 134 In *Copley*, the Court of Appeal never considered “whether the Commission may close [administrative appeal] hearings to the public,” this issue was not determined by the Supreme Court. 39 Cal. 4th 1281 n.3.
- 135 Matt Lait & Scott Glover, “Officer Who Killed Boy, 13, is Cleared, L.A. TIMES, Jan. 10, 2007; *see also* Erwin Chemerinsky, “A bad LAPD decision, squared,” L.A. TIMES, Jan. 12, 2007 (disagreeing with the City Attorney’s position that the *Copley* decision required the closure of Board of Rights proceedings).
- 136 In June 2007, the City Council voted to adopt a resolution introduced by former LAPD Chief-turned-city councilmember Bernard Parks to endorse S.B. 1019 (Romero) which would have expressly abrogated the decision in *Copley Press* and reopened police disciplinary proceedings. *See* L.A., Cal., City Council File 07-0002-S111 (introduced May 9, 2007), available at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=07-0002-S111>. This state legislation was also endorsed by then-Chief Bratton and Los Angeles Mayor Villaraigosa, among others. Gerry Miller, *Report of the Chief Legislative Analyst 2* (May 16, 2007), L.A., Cal., City Council File 07-0002-S111, available at [http://clkrep.lacity.org/online/docs/2007/07-0002-s111\\_rpt\\_cla\\_05-16-07.pdf](http://clkrep.lacity.org/online/docs/2007/07-0002-s111_rpt_cla_05-16-07.pdf). Earlier in 2007, the City Council adopted a resolution seconded by then-councilmember Garcetti to support any state legislation that would “revisit the decision in *Copley Press*,” to “reopen public access to police disciplinary hearings and records,” to “increas[e] public confidence in the LAPD.” *See* L.A., Cal., City Council File 07-0002-S12 (introduced Jan. 16, 2007), available at [http://clkrep.lacity.org/online/docs/2007/07-0002-s12\\_reso\\_01-16-07.pdf](http://clkrep.lacity.org/online/docs/2007/07-0002-s12_reso_01-16-07.pdf).
- 137 Editorial, “Don’t be fooled—Measure C is a union ploy to go soft on police misconduct,” L.A. TIMES, May 10, 2017 [hereinafter “Don’t be fooled”].
- 138 Lait & Glover, *supra* note 135.
- 139 Scott Glover, “Officer had been warned in prior case,” L.A. TIMES, Jan. 13, 2007.
- 140 Los Angeles Police Department, Press Release, *Decision Reached in Board of Rights Hearing* (Jan. 9, 2007), available at [http://www.lapdonline.org/january\\_2007/news\\_view/34334](http://www.lapdonline.org/january_2007/news_view/34334).
- 141 L.A., Cal., City Council File 07-0078, Motion (Perry), (introduced Jan 12, 2007), available at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=07-0078>. This motion was ultimately amended to instead require the Chief Legislative Analyst to prepare a report on options available to correct the results of *Copley*. *Id.*, Motion (Perry), (introduced Jan. 16, 2007). The amended motion was adopted, although the council file does not contain the requested report or reflect any further action.
- 142 Matt Lait, “Officer cleared in shooting releases transcripts,” L.A. TIMES, Jan. 13, 2007.

143 Rick Orlov, “Cop releases confidential ruling clearing him in teen’s shooting,” L.A. DAILY NEWS, Jan. 13, 2007.

144 *Rampart Independent Analysis*, *supra* note 57, at 607.

145 *Perspectives on LAPD Discipline*, *supra* note 1, at 8.

146 *Board of Rights Manual*, *supra* note 42, at § 180.

147 *Rampart Reconsidered*, *supra* note 65, at 64.

148 *Board of Rights Manual*, *supra* note 42, at §180.60.

149 *Board of Rights Manual*, *supra* note 42, at §212.60.

150 Los Angeles Police Protective League, brochure available at [https://www.lapd.com/sites/default/files/LAPPLBrochure\\_2011.pdf](https://www.lapd.com/sites/default/files/LAPPLBrochure_2011.pdf) (listing the Police Protective League activities providing “[l]egal representation for members at all Boards of Rights”).

151 *Rampart Reconsidered*, *supra* note 65, at 64.

152 *Board of Rights Manual*, *supra* note 42, at §363.10.

153 *Board of Rights Manual*, *supra* note 42, at §363.40.

154 *Board of Rights Manual*, *supra* note 42, at §363.60.

155 *Board of Rights Manual*, *supra* note 42, at §260.60.

156 *Rampart Reconsidered*, *supra* note 65, at 65, n.92.

157 *Rampart Reconsidered*, *supra* note 65, at 64.

158 *Rampart Reconsidered*, *supra* note 65, at 65.

159 *Board of Rights Manual*, *supra* note 42, at §363.10.

160 *Rampart Reconsidered*, *supra* note 65, at 65.

161 *Rampart Reconsidered*, *supra* note 65, at 65.

162 *Rampart Reconsidered*, *supra* note 65, at 65 & n.92.

163 L.A., Cal., City Council File 03-1497, Motion (Weiss), (introduced July 11, 2003), available at <https://cityclerk.lacity.org/lacityclerkconnect/index.cfm?fa=ccfi.viewrecord&cfnumber=03-1497> [hereinafter L.A., Cal. Council File 03-1497]

164 *Id.*

165 *Id.*

166 *Id.*

167 Letter from Police Commission to Public Safety Committee (Nov. 7, 2003), in Memorandum to File, L.A., Cal, Council File 03-1497, *supra* note 163, at 5, available at <http://clkrep.lacity.org/online/docs/2003/03-1497.PDF> [hereinafter Police Commission Letter (Nov. 7, 2003)].

168 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 5.

169 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 5.

170 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 5.

171 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 5-6.

172 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 6.

173 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 6.

174 L.A., Cal. Council File 03-1497, *supra* note 163.

175 *United States v. City of Los Angeles, et al.*, No. 2:00-cv-11769-GAF-RC (C.D. Cal. June 16, 2001) [hereinafter *Rampart Consent Decree*].

176 *Rampart Consent Decree*, *supra* note 175, at ¶118.

177 Independent Monitor for the Los Angeles Police Department, *Report for the Quarter Ending March 31, 2007* 35-36 (May 15, 2007) [hereinafter *Consent Decree Monitor Report May 2007*].

178 *Id.*

179 *Id.*

180 *Consent Decree Monitor Report May 2007*, *supra* note 177, at 36.

181 *Legislative Analyst Report*, *supra* note 40, at 3.

182 *Legislative Analyst Report*, *supra* note 40, at 3.

183 *Legislative Analyst Report*, *supra* note 40, at 3.

184 A post-Rampart report, for instance, demanded “reforms that institute a strict disciplinary system that has the confidence of both the public and the officers.” *Rampart Independent Analysis*, *supra* note 57, at 599.

185 *OIG Best Practices*, *supra* note 88, at 3-12.

186 *OIG Best Practices*, *supra* note 88, at 5.

187 *Perspectives on LAPD Discipline*, *supra* note 1, at 7.

188 See, e.g., Melina Abdullah, “Why We Must Vote a Resounding NO on Charter Amendment C on May 16th,” L.A. SENTINEL, May 11, 2017. See also, *Get the Facts*, No On C, <https://www.nooncharterc.org/about/> (arguing that Charter Amendment C was “never intended to provide real civilian oversight or LAPD accountability”) (last accessed September 21, 2017).

189 “Don’t be fooled,” *supra* note 137.

190 *OIG Best Practices*, *supra* note 88, at 5.

191 *Christopher Commission Report*, *supra* note 20, at 176.

192 See *Board of Rights Manual*, *supra* note 42, at §§ 176.20-176.30.

193 The Board of Rights Manual also allows the removal of a civilian member “for cause” based on a “legally sufficient cause therefor.” *Board of Rights Manual*, *supra* note 42, at §210.25. The rules do not specify what qualifies as “legally sufficient” cause. To the extent the procedures continue to allow removal of board members for cause, the rules should be amended to specify what constitutes cause, or what existing legal standard is being applied to make this determination.

194 *Board of Rights Manual*, *supra* note 42, at §210.25.

195 Annie Lloyd, “Why the L.A. Times, the ACLU, and Black Lives Matter Oppose Measure C,” LAist, May 5, 2017, available at [http://laist.com/2017/05/05/what\\_is\\_measure\\_c.php](http://laist.com/2017/05/05/what_is_measure_c.php) (last accessed September 4, 2017).

196 Greenslade, *supra* note 64, at 52. Gary Fullerton, a police union official who served on the Board of the PPL recounted officers’ fears that the civilians included on the Board of Rights panels would be “from . . . housing project[s]” and would be “unsophisticated.” *Id.* This concern was assuaged based on what he described as a “secret process [by the Police Commission] on who gets to be a hearing officer and who doesn’t,” which resulted in “a lot of . . . lawyers” serving as civilians, whom he viewed as “logical[.]” *Id.*

197 Greenslade, *supra* note 64, at 52.

198 Greenslade, *supra* note 64, at 52.

199 See generally, Office of the City Clerk, “General Information on City Commissions,” Oct. 2016, available at <http://clerk.lacity.org/sites/g/files/wph606/f/City%20Commissions%20General%20Information.pdf> (last accessed Sept. 4, 2017)

200 Newark, N.J., Admin. Code §2:2-86.1, available at <http://clerkshq.com/default.ashx?clientsite=Newark-nj> (last accessed Sept. 4, 2017).

201 Newark, N.J., Admin. Code §2:2-86.1, available at <http://clerkshq.com/default.ashx?clientsite=Newark-nj> (last accessed Sept. 4, 2017).

202 Editorial, “LAPD’s discipline process demands a true public airing, not a hollow roadshow,” L.A. TIMES, Oct. 28, 2018 LA Times.

203 Lally, *supra* note 46.

204 Lally, *supra* note 46.

205 *Perspectives on LAPD Discipline*, *supra* note 1, at 7 & n.11.

206 *Perspectives on LAPD Discipline*, *supra* note 1, at 8.

207 *Christopher Commission Report*, *supra* note 20, at 173

208 *About Us*, Office of the Inspector General, <https://www.oig.lacity.org/about-us> (last accessed on Sept. 8, 2017).

209 *Id.*

210 *Christopher Commission Report*, *supra* note 20, at 178.

211 Merrick J. Bobb et al., *Five Years Later: A Report to the Los Angeles Police Commission on the Los Angeles Police Department’s Implementation of Independent Commission Recommendations* 44 (1996).

212 *OIG Best Practices*, *supra* note 88, at 11.

213 The list of available audit reports published by the OIG is available on its website at <https://www.oig.lacity.org/audit-and-complaint-reports>.

214 *OIG Best Practices*, *supra* note 88, at 22, 28, 48.

215 *OIG Best Practices*, *supra* note 88, at 22-23, 28.

216 *OIG Best Practices*, *supra* note 88, at 22-23, 28.

- 217 *Perspectives on LAPD Discipline*, *supra* note 1, at 38. While the report does not define “LAN,” the authors presume that it is an acronym for the Department intranet. As of the publication of *Perspectives on LAPD Discipline* report, this goal was listed as in-progress. *Id.*
- 218 *OIG Best Practices*, *supra* note 88, at 29-30 & n.30.
- 219 *OIG Best Practices*, *supra* note 88, at 36.
- 220 This report is currently limited only to “instances in which a sworn employee opted for a BOR in lieu of the initial proposed penalty.” *LAPD First Quarter 2009 Discipline Report*, *supra* note 114, at 14.
- 221 *Legislative Analyst Report*, *supra* note 40, at 4.
- 222 *Legislative Analyst Report*, *supra* note 40, at 4.
- 223 C.A. Legis. Sen. S1421 Reg. Sess. 2017-2018 (2018), available at [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201720180SB1421](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1421)
- 224 *Id.*
- 225 Charter C Ballot Resolution, *supra* note 44.
- 226 *Rampart Independent Analysis*, *supra* note 57, at 609.
- 227 *OIG Best Practices*, *supra* note 88, at 10-11.
- 228 *LAPD Penalty Guide*, *supra* note 123.
- 229 *LAPD Penalty Guide*, *supra* note 123, at 4.
- 230 *LAPD Penalty Guide*, *supra* note 123, at 2.
- 231 *LAPD Penalty Guide*, *supra* note 123, at 2.
- 232 *LAPD Penalty Guide*, *supra* note 123, at 2.
- 233 *Rampart Reconsidered*, *supra* note 65, at 68.
- 234 *Rampart Independent Analysis*, *supra* note 57, at 641-644.
- 235 *Rampart Independent Analysis*, *supra* note 57, at 641.
- 236 *Rampart Independent Analysis*, *supra* note 57, at 643.
- 237 *Rampart Reconsidered*, *supra* note 65, at 68.
- 238 L.A., Cal. Council File 03-1497, *supra* note 163.
- 239 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 6.
- 240 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 6.
- 241 Police Commission Letter (Nov. 7, 2003), *supra* note 167, at 5.
- 242 L.A., Cal. Council File 03-1497, *supra* note 163.
- 243 L.A., Cal. Council File 03-1497, *supra* note 163.